And more than five Members having risen:

Mr. Deputy Speaker: Pursuant to Standing Order 114(11), a recorded division on the proposed motion stands deferred.

The next motion is No. 19.

Mr. Dan Heap (Spadina) moved:

Motion No. 19

That Bill C-84 be amended in Clause 12 by striking out line 26 at page 20 and substituting the following therefor:

"specified in the certificate, or release the person. Such addition—".

He said: Mr. Speaker, this motion provides for detention of people who arrive without clear identification or who are suspected by the Minister of being inadmissible for other reasons. The opening part of this new clause reads as follows:

Where, with respect to a person seeking to come into Canada,

(a) the person is unable to satisfy an immigration officer with respect to that person's identity, or

(b) in the opinion of the Deputy Minister or a person designated by the Deputy Minister, there is reason to suspect that the person may be a member of an inadmissible class described in paragraph 19(1)(e), (f) or (g),

an immigration officer shall detain the person—

Then it goes on in 104.1(2):

Where, with respect to a person detained under subsection (1), the Minister certifies in writing

(a) that

(i) the person's identity has not been established, or

(ii) the Minister has reason to suspect that the person may be a member of an inadmissible class described in paragraph 19(1)(e), (f) or (g), and

(b) that an additional period of detention is required to investigate the matter referred to in subparagraph (a)(i) or (ii),

the person shall be brought before an adjudicator who shall continue the person's detention for the additional period specified in the certificate, which additional period may not exceed twenty-one days from the day on which the person was brought before the adjudicator.

In my motion I am asking that we remove line 26 and substitute the words "or release the person". In other words, it would read:

the person shall be brought before an adjudicator who shall continue the person's detention for the additional period specified in the certificate, or release the person.

My point is that an adjudicator is appointed by the Government to be a judge with respect to immigration admissibility. The person is also to be a judge of the necessity of detention after any two-day period which can first be ordered by a senior immigration officer. The adjudicator is selected and trained to exercise his judgment as to whether it is necessary to detain a person for a further period. This clause removes that ability and makes him a rubber stamp. He becomes a clerk who simply says you have to stay here for another 21 days. It means there is no possibility of finding out why the person is being detained except that the Minister says that he suspects that the person may be a member of an inadmissible class as described in Clause 19(1)(e), (f) or (g). He suspects that he may be.

• (1230)

It is a principle in our country that a person should not be detained without due process. The principle is that if he is to be detained he is to be told the reason and is to have the right of counsel to defend him. Partly on the basis of that principle the law in our country is that if the Minister thinks he should be detained longer, the person being detained should have the right to have that detention reviewed by an adjudicator. Taking away the adjudicator's responsibility to say "keep him in longer" or "turn him loose" on the word of the Minister or someone designated by the Minister takes away that person's right to due process.

The Parliamentary Secretary will get up and read a list of possible criminals, terrorists or others like that in order to suggest that because these people are criminals, terrorists and what not, it is obvious that they should not be turned loose. He talks with mock horror of having them walking our streets. It is a typical Conservative trick to assume that a person is guilty unless he gets a chance to prove himself innocent. Because the Minister has said that he suspects he may be a member of one of those groups, he becomes a member of one of those groups and is guilty of either doing something dreadful or planning to do something dreadful and, therefore, we must lock him up.

That is convenient from an administrative point of view. It means that governments do not have to answer for what they do in cases like that. It is, however, contrary to the intent of our laws and the intent of our Charter of Rights and Freedoms. Even though this person is not a Canadian our Charter, according to the Supreme Court, applies to everyone who is within Canada. It does not extend all rights to everyone who is in Canada. It does not give them the right to vote or to work, but it does give them the right to due process according to the Supreme Court.

I believe that the amendment which I have moved would save the time and cost of a series of Charter challenges on the basis of this line in this clause. It would perhaps save having the whole proposed Section found invalid by the Supreme Court and the necessity of then having to go back to the drawing table and introduce new legislation.

It is not a question of whether the Government should have the power to detain a person to learn his or her identity. It is simply a question of whether the Government should be able to do that for an unusually and extraordinarily long time without making known any of the reasoning for it. If the Government does not trust the adjudicators it should hire better adjudicators or train them better. The Parliamentary Secretary has not given us examples of adjudicators wrongly releasing persons as he has suggested they have done.

The RCMP representatives who appeared before the committee last week told us that of the 6,000 undocumented people who came in last year none of them, to their knowledge,