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Chair

Mr. Bernard Patry

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• (0910)

[Translation]

The Chair (Mr. Bernard Patry (Pierrefonds—Dollard, Lib.)): Pursuant to the order of reference of Tuesday, December 7, 2004, we are studying Bill C-25, An Act Governing the Operation of Remote Sensing Space Systems.

[English]

We will resume consideration of clause 2.

We are really pleased this morning to again have in front of us witnesses from the Department of Foreign Affairs: Mr. Robert McDougall, director, non-proliferation, arms control and disarmament division; Mr. Phillip Baines, senior adviser, science and technology; Madam Anna Kapellas, legal counsel; and Mr. Bruce Mann, senior counsel, justice legal services division.

Welcome. The members of the committee requested that you appear in front of our committee once again because there were some concerns. I know you were here listening to the witnesses on the last day they appeared here.

Bienvenue, Monsieur McDougall. I understand you have a slight communication.

Mr. Robert McDougall (Director, Non-Proliferation, Arms Control and Disarmament Division, Department of Foreign Affairs): Thank you, Mr. Chairman.

I'll just say that we're glad to be back. We are certainly prepared to try to answer your questions as best we can on this bill. I have no special prepared statements, since we made several only last week. I thought you would probably prefer to get down to business. We're certainly ready to try to answer your questions as best we can.

The Chair: Thank you.

Mr. Sorenson.

Mr. Kevin Sorenson (Crowfoot, CPC): Yes, we do want to welcome you back. I think you heard last committee meeting that this bill is....

You know, we're learning a little more about remote sensing space systems all the time. When we came into politics, we knew very little about satellites. A couple of our committee members, in the farming operations they have, have GPS, but other than that, all we know is how to drive the tractor straight, or we hope that the pilot can follow GPS. That's about all a lot of us know about satellite systems.

However, when you were here last time, there were a number of individuals who were here from the industry, individuals who have

been involved in the industry for some time, in different aspects of the industry. You heard their testimony last time. I'm just wondering if the department can come back with any assurances they may have about some of the concerns they had.

In the definition in this bill, it says that we will do whatever possible to abide within our international responsibilities; I don't have the wording right in front of me. Some of them had some amount of concern about the "whatever possible". I mean, how far was the industry expected to go to make sure that all these international obligations were met, not just the treaties but the obligations? Is there any way that the department can spell that out a little clearer in the legislation? Would we do it with an amendment? Or does the department see that as a problem?

Another question that was raised by the industry at the time was the need for archiving. I can't recall all the different things that would be recorded or kept track of, but it would be archives dealing with who they sold the material to, who they sold the pictures to, who in this country or in other countries purchased the surveillance material.

As well, if I remember correctly, there was some question about the potential of there being a public list of individuals to whom they couldn't sell their pictures or their information.

Perhaps you could just respond in kind to those questions. There may have been other things as well that they brought up and that you would like to make note of.

So I'm just wondering if the department sees any way of answering those concerns that the industry had.

The Chair: Mr. McDougall.

Mr. Robert McDougall: Thank you very much, sir.

On your first question, concerning international obligations, as promised by my boss, Mr. Chapin, at the last session, we are in the middle of preparing a written response to questions asked by the committee in terms of what are some of the international obligations. We hope to have that back to you within a few days.

I can give you the general answer that international obligations in this sense refers to both treaties in the formal sense, of which there are many but only a certain number that would be likely to apply directly, and the common international law, which is other aspects. Both of these will be covered by the document we will be referring to you.

Before turning to my legal colleagues to give you better definitions to those, however, I would note that we didn't actually put them into the drafted bill because of a number of things. First of all, we were informed that if you put such a list into the act, then it becomes definitive. If you want to add any documents, then you have to go back to Parliament to say we need to add more to this list. Furthermore, things may change. There may be new obligations that Canada accepts as part of treaty law.

Therefore, the practice, and I believe it is a practice in other pieces of legislation, is to simply list them as international obligations. It will be subject to interpretation from time to time.

That said, if companies come to us we can certainly explain these things to them. It would remain to the Minister of Foreign Affairs, as the administrator of the act, to ensure that companies were aware of what these obligations might be—and in sufficient time in advance, to make sure that it doesn't affect their business adversely when they suddenly find out something they didn't know.

It's a matter that will be reflected, I think, in the regulations in the licence and in the consultations we will be having with industry, but we were advised that putting it into the act itself would introduce a rigidity that might make it difficult to amend or change over time.

Mr. Chair, perhaps I could turn to my colleagues on that question before I turn to the second question.

The Chair: Sure.

Mr. Robert McDougall: Are there additional points you'd like to make, colleagues, on that question of international obligations?

• (0915)

Ms. Anna Kapellas (Legal Counsel, Economic Law Section, Department of Foreign Affairs): Merci.

Most of our international obligations are actually created by treaties, or the vast majority of them are. The vast majority of treaties are also incorporated into Canadian law, which means that there are Canadian laws that set out what these treaties say. So compliance with international obligations most times implies compliance with Canadian legislation. That's one point.

International obligations are also created through what we call customary international law, which is a very limited corpus of law that stems from a state practice, mostly in areas such as human rights or international humanitarian law—for example, the prohibition against torture, or the use of certain types of weapons.

As to how, for example, the international obligations factor would be considered in the context of shutter control, we would have a UN Security Council resolution creating binding obligations for member states of the United Nations, imposing sanctions against a country, including an embargo. We would find out that a Canadian company is selling data to the embargoed state, allowing it to locate patrols by the rest of the international community....

That's where probably shutter control would have to be exercised, to ensure compliance with Canada's international obligations under a UN Security Council resolution. But again, these are very limited instances. As Rob said, creating a list of applicable international obligations would be a bit complicated in this context.

Mr. Kevin Sorenson: I want to quote from an individual who was here. I don't have his name here, but he said:

Does this mean the minister can interrupt and restrict access based upon other treaty arrangements or agreements with foreign governments? If so, what treaty agreements are they?

More to the point:

Does it mean the minister can simply interrupt or restrict access in order to appease other nations' concerns, thereby maintaining good relations over the interests of Canadians and Canadian business opportunities?

How would you answer that? Can the minister intervene and say, listen, in order to keep good relations with this country, we're working on a trade agreement with them and a number of other things with them; we're trying to develop a better relationship with them, and they have requested that this happen?

Could that opportunity for the Canadian industry be deterred by a minister stepping forward and requesting that?

The Chair: Mr. McDougall.

Mr. Robert McDougall: Thank you, sir.

The definition of international relations is somewhat broader and more general than the definition of international obligations, which we've just discussed. It would involve the minister's decision on, for example, priority access, which I believe is the one that your witness was talking about—the decision to jump the queue, as it were, and get data out of order because there was an emergency situation.

For example, in the case of a natural disaster affecting a country that was of interest to or a close friend of Canada, or even just out of common humanitarian impulse, the government might say, "It is important that we help this country in terms of its natural disasters, the satellite happens to be in the right place right now, and therefore we ask you to take the pictures now, even though that's out of order." Now, the minister could do that, and that would be an example of an order given for an international relations reason, not for a treaty obligation but for international relations.

I cannot speak for my minister, either presently or hypothetically—it would be his or her decision—but I would say that these powers are written into the act and envisaged very much to be highly unusual circumstances. They would be rarely used; either that or shutter control. It is certainly not, from the position of the drafters, something that we expect to see happen very often.

As I believe another one of the witnesses last week pointed out, the United States has had its provision written into its parallel act for several years and has never used it. That, as I say, from our point of view as drafters, is our expectation for this act as well.

Frankly, if I may say so, our relations with the companies that currently operate in this field in Canada...or the company that does in these areas has been very good. They have always been willing to respect emergency situations and to help us with our needs. The other thing I would say is that in a lot of cases, it is something we would probably discuss with the company or companies first, before we issued a fiat, or asked the minister to issue a fiat.

As I say, the reason it's rare is that in this case, as the legislation points out, only the minister, or one of two ministers, can actually himself or herself actually issue the order. It's not something that would be easy to do.

• (0920)

Mr. Kevin Sorenson: Is there any method of appeal if the minister were to make such a...?

Mr. Phillip J. Baines (Senior Advisor, Science and Technology, Non-Proliferation, Arms Control and Disarmament Division, Department of Foreign Affairs): Yes. The way we've structured these exceptional provisions is for the right of representation by the company affected when we invoke a shutter control order and make a priority access request. This offers the company a chance to perhaps explain a better way that they might be able to meet the same purposes without impacting their business as adversely as otherwise could be the case. Or it also might provide the company an opportunity to say that for reason of the spacecraft's health and safety, which is paramount, they cannot comply with the order as it's currently written.

So yes, we have provided the right of representation for these purposes.

The Chair: Thank you.

Monsieur Paquette, s'il vous plaît.

[Translation]

Mr. Pierre Paquette (Joliette, BQ): Thank you, Mr. Chair.

I am always pleased to see you.

Since this bill has been tabled, one of our greatest difficulties is to understand its scope. I would like to go back a little bit and I would ask you to describe briefly what companies are and will be in the short term covered by this bill.

We have the feeling that in the end, relatively few businesses will be impacted by this legislation. Will its impact be felt mostly in the future and in the area of exports? Mr. Last, who has appeared before this committee, told us that the Canadian industry would focus on exports. I would like you to tell us briefly what are, presently and in the short term, the perspectives of the remote sensing industry.

[English]

Mr. Robert McDougall: First, Mr. Chairman, I actually had two questions left from the previous honourable member's list. Should I address those now?

The Chair: We'll come back to those questions later, unless Mr. Paquette says otherwise; it's his time.

[Translation]

M. Robert McDougall: I will first answer Mr. Paquette's question.

[English]

Concerning who the act would apply to, it is designed primarily to apply directly to the actual operator of the satellite. That is the legal person who will be licensed by the act. It is the responsibility, which will be written into the licence, for the licensee to ensure that the terms of the licence, particularly regarding protection of sensitive data, are also respected by the people to whom that data is provided. Therefore, the government will be dealing primarily with the licensee, the actual operator of the satellite, but with effect to other companies to whom the data is provided.

Whether or not such a second-level company is of direct concern to us will depend in part on what data they get. If they get sensitive data, then we will be interested in what happens. If they do not get sensitive data, then they will be like any other company.

[Translation]

M. Pierre Paquette: How many are there in Canada?

Mr. Robert McDougall: The question should be put to Mr. Baines.

[English]

Mr. Phillip J. Baines: Could I have the question repeated, please?

• (0925)

Mr. Pierre Paquette: How many satellite owners do we have in Canada?

Mr. Phillip J. Baines: Currently we have a number of satellites in orbit. We have a couple that are owned and operated by the Canadian Space Agency. We have RADARSAT-1. There is an optical telescope, called MOST, that, if it were pointed in a different direction, would be capable of observing the earth. That type of mission would probably be a logical candidate for an exemption rather than a licence.

So there are at least two. RADARSAT-2 is coming along to replace RADARSAT-1. We are working with industry to try to help them secure a second satellite that would look a lot like RADARSAT-2 so that the two could operate in tandem. There is potential for that.

The Canadian Space Agency would like to have other operations. We don't want to be restricted to just synthetic aperture radar ones. We'd like to work in perhaps hyper-spectral missions as well, in the visible wavelength region.

So our premise here is that we expect to see one or two licensees and missions every three years or so.

[Translation]

Mr. Pierre Paquette: Mr. Last complained about the fact that the list was not available for companies that, without necessarily being satellite operators, were marketing the photos, or at least were utilizing them.

He also complained about the fact that there was no deadline involved in the minister's decisions, contrary to what is being done in the United States.

As far as section 15 is concerned, according to Mr. Last's interpretation, the Canadian government could, on behalf of a foreign government, request a number of priority accesses to data. I would have liked to have answers to these questions.

[English]

Mr. Robert McDougall: I would ask Mr. Baines to answer the question on the timeframe.

Mr. Phillip J. Baines: On the timeframe, the gentleman who asked the question was very specific in terms of the initial licensing process. When we were drafting this bill, we looked at other practice in Canada, and we did not see the right of representation given at a time of a licence. That's because the whole licence process is in fact a dialogue among two parties to ascertain what the conditions of the licence would be. The right of representation is that whole duration.

What we did provide in the bill was that if, at the end of that process, the licensee couldn't understand why he didn't get a licence, we made an obligation on the minister to give his reasons for not issuing the licence. The applicant could either fix his application to address those reasons or use that as the basis of a Federal Court or judicial review of the minister's decision.

[Translation]

Mr. Pierre Paquette: But there is no deadline provided for in the legislation.

[English]

Mr. Phillip J. Baines: That's correct, for the initial licensing. If you look at licensing, these, like the nuclear reactor operations, are very complicated systems, and they don't have a timeline on the minister either.

The Chair: Mr. McDougall, do you want to follow up on the other question?

Mr. Robert McDougall: Yes. The other question was about other countries being able to request priority access. I would extend the question to shutter control.

Certainly other countries could make that request if they felt there was a problem with a Canadian satellite, but there is no provision, either in law or in any agreement that I'm aware of, that indicates that we would have to comply. The minister would consider the request, would consider a variety of aspects for the country, but would not be obliged to accept the request.

[Translation]

Mr. Pierre Paquette: I am trying to put my question, but I am not getting any answer. It will probably be put by the Liberals.

[English]

The Chair: Go ahead, Mr. McDougall.

Mr. Robert McDougall: On the question of the public list of individuals, the way the law is set up, the way the licensing regime is set up, is that the licensee, as part of the licensing operation.... It will be indicated by the minister, as part of the licence, that certain types of information, certain sensitivities of information, certain resolutions of information, can be supplied to certain classes of people—I mean classes in a legal sense—and some cannot. There would also be restrictions. For example, this material can be supplied but only

after a 24-hour delay, that kind of thing. There will be a series of conditions placed on it.

As I said before, the licensee would then be responsible for ensuring that those restrictions were also followed by the people to whom the data is supplied to make sure that sensitive data remains protected.

The question of supplying a list of legal persons to whom sales exports might not be made is not one that we considered putting into the bill. If that kind of decision were to be taken, it would be taken under other types of legislation.

There is already legislation where the government can tell people not to sell anything, or to sell certain things, to certain countries or to certain people. That might well be applied to data, but if it were applied it would be applied through existing or at least other pieces of legislation, and not through this one.

● (0930)

The Chair: Thank you, Mr. McDougall.

Mr. MacAulay.

Hon. Lawrence MacAulay (Cardigan, Lib.): Thank you very much.

In fact, Mr. McDougall, as you pretty well answered, the minister would have the responsibility to decide if any material was not to be sold to any other nation. The minister would have control.

A couple of questions that Kevin asked haven't been answered, really, on the storage or archiving of material. I believe that was asked another time here, and we didn't really get an answer.

The list is something that I had something to do with in a previous life in other affairs. It's not very easy to put a list together. I think you could talk a long time about lists, and you'd be talking around a few things, too, because it's a very complicated issue. But I would expect that the minister would be able to decide if some information was to be accessed for certain reasons, be it environmental or security reasons. Or at least I'd hope the minister would be able to do that, and I would understand and expect that he would be able to do that.

Now, are you telling us that he would have to indicate...? Surely he would not have to indicate why he was requesting this material if any problems did arise as to why the minister was asking for this type of material. You could imagine that it could be in the security area or it could be in the environmental area. I also would expect that on international relations, the minister would decide. I would expect that the minister might have some information that might not be publicly available, and would not be good if it became publicly available for reasons that could affect industry.

I would like you to respond to these questions, and I would hope that the answers would be what I would expect.

Mr. Robert McDougall: I hope so too, sir.

To get back to archiving—thank you for bringing it up again—in the access control policy document of 1999, which was sort of our initial drafting document for the legislation, or at least for the regime, it indicates that the owner-operator or registered entity shall maintain a record of all satellite tasking and allow the government access to this record and the archive data, upon request, in accordance with lawful authority. So we are certainly intending to establish a need to archive.

If the legislation is agreed to by the House, and if the regulations are agreed to by the proper authorities, then this would be part of the licensing requirement, to state that material will be retained for a certain period, and that in fact the minister, as the administering minister, must be consulted before it is destroyed.

There is also, of course, as I mentioned in a previous appearance before this committee, the ability to send in government inspectors to examine the archives to ensure that this is being maintained. I would point out this relates to the commands given to the satellite—that is to say, the tasks that the satellite was given, who gave them and on whose behalf—and what the data was that was in fact provided to this customer. The question of archiving is something we are cognizant of and will be following up rigorously.

On the question of ministerial access to data, if I understood your question correctly, this is going to be a commercial satellite. Unlike a government-owned satellite, where the minister can basically make an administrative request, we would normally have to go through regular—

Hon. Lawrence MacAulay: Specific things could happen.

Mr. Robert McDougall: Indeed. Under most circumstances, our first instinct would be to go to the company and say, look, we really need this data, and we want to buy it as a customer, as we'd be doing for data on a regular basis. Frankly, our experience in the past with these companies has been that they're always ready to cooperate with the government. We're a good customer, if nothing else.

• (0935)

Hon. Lawrence MacAulay: Also, it could happen that another country would want information. It's not likely, but it's possible. That would also fall in the same line, wouldn't it? The minister would decide whether that information would be accessed, and held in confidence, and given to that other country.

Mr. Robert McDougall: Yes, the minister could make that decision. As I say, if absolutely necessary, the priority access provision could be invoked, although we expect that to happen but rarely.

The Chair: Thank you.

Mrs. Desjarlais.

Mrs. Bev Desjarlais (Churchill, NDP): Thank you.

I have limited time, so perhaps you would be as concise as possible with the questions I have.

My understanding is that RADARSAT-1 was owned by the government and operated by the Canadian Space Agency. If the government requested images from it, I'm guessing they didn't have to pay for those images. Is that correct? Or did they pay for the images?

Mr. Phillip J. Baines: What happens is that—

Mrs. Bev Desjarlais: Did they pay for the images or not?

Mr. Phillip J. Baines: Yes.

We pay the processing fee for an image. Each department pays the processing fee for each image.

Mrs. Bev Desjarlais: To the Canadian Space Agency?

Mr. Phillip J. Baines: No. As to exactly where the money goes... it probably ends up in general revenue for the government.

Mrs. Bev Desjarlais: But it stays with the Government of Canada, so to speak. It doesn't go to a private company.

Mr. Phillip J. Baines: The service is provided by a private company, so we're paying for that data to get processed. The actual cost of acquiring that data, like building the satellite and having all of that—

Mrs. Bev Desjarlais: Then which company operated RADARSAT?

Mr. Phillip J. Baines: RADARSAT International processes the imagery for RADARSAT-1. Who operates the satellite? The Canadian Space Agency.

Mrs. Bev Desjarlais: Okay. And RADARSAT is the company that processes the images.

Mr. Phillip J. Baines: Correct.

Mrs. Bev Desjarlais: Do you know how much money the company put into the first RADARSAT?

Mr. Phillip J. Baines: I don't know, but I do know that the federal government and provincial governments contributed money.

Mrs. Bev Desjarlais: Do you know who contributed the greatest share? Would it have been the company or would it have been the governments?

Mr. Phillip J. Baines: It would have been the governments.

Mrs. Bev Desjarlais: With the new RADARSAT, my understanding is that the Government of Canada has put in \$430 million. Is that correct, to your knowledge?

Mr. Phillip J. Baines: To my knowledge, it's on the public record here in the last few days that it's \$430 million.

Mrs. Bev Desjarlais: And the company put in \$92 million?

Mr. Phillip J. Baines: That's also on the public record.

Mrs. Bev Desjarlais: Okay.

Does the Government of Canada have to pay for the images the same as before?

Mr. Phillip J. Baines: We're pre-purchasing the data, so we have an account that's worth a certain amount of money. Then we just deplete that account over the life of the spacecraft.

Mrs. Bev Desjarlais: Is that account based on the amount of money that the government has already paid to the company for RADARSAT-2—

Mr. Phillip J. Baines: Yes.

Mrs. Bev Desjarlais: —or is it additional money?

Mr. Phillip J. Baines: No.

Mrs. Bev Desjarlais: It's out of the \$430 million, so it is sort of paying off...

Roughly what period of time is that buyback, so to speak?

Mr. Phillip J. Baines: The satellite is to last seven years, and we hope it will last double that, just like RADARSAT-1 did.

Mrs. Bev Desjarlais: The timeframe to pay back the \$430 million, then, would be in the course of seven years. So the cost of the pictures that you've prepaid, so to speak, would be \$430 million over seven years.

Mr. Phillip J. Baines: Divided by the number of images taken.

Mrs. Bev Desjarlais: That was my next question. Roughly how many images would be taken for the Government of Canada? You must have some idea from the previous RADARSAT.

Mr. Phillip J. Baines: I don't have that information about how much it would be, but—

Mrs. Bev Desjarlais: Somebody would have that, I imagine.

Mr. Phillip J. Baines: Somebody would have it.

Mrs. Bev Desjarlais: You would know how many images, because you worked out a deal and pre-bought the images, right?

Mr. Phillip J. Baines: I guess some of that information is commercial confidential.

• (0940)

Mrs. Bev Desjarlais: Oh, well, we're talking the Government of Canada. You must have had some idea of how many. We're not talking about a business, we're talking about the Government of Canada—

The Chair: Mrs. Desjarlais, I think Mr. McDougall has a complementary answer to that.

Mrs. Bev Desjarlais: Okay, that's fine.

Mr. Robert McDougall: Forgive me, please, madame la députée.

Mr. Patry, we have a little trouble answering this because the foreign affairs department does not in fact get into this detail very much. There is, however, a gentleman here—Mr. Kittridge—who represents the Canadian Space Agency. If I could bring him to the table, with your permission, he might be able to give a more detailed answer.

Mrs. Bev Desjarlais: I just want to know how many images it is for \$430 million.

The Chair: I understand, Mrs. Desjarlais, but I don't see the connection to the bill right now. However, if the gentleman is ready to answer, I could accept it.

Mrs. Bev Desjarlais: It's tied to the whole bill.

Mr. Robert McDougall: I think Mr. Kittridge might actually be able to answer the question of Madam Desjarlais.

The Chair: Fine.

Please come to the table and identify yourself, and where you are working, for the record.

Mr. Tony Kittridge (Consultant, Canadian Space Agency, As Individual): Thank you very much, Mr. Chairman.

My name is Tony Kittridge, and I'm a consultant to the Canadian Space Agency.

The Chair: Go ahead, Mrs. Desjarlais.

Mrs. Bev Desjarlais: Mr. Kittridge, roughly how many images would the Government of Canada use over the course of the seven years?

Mr. Tony Kittridge: The Canadian Space Agency recently conducted a study of departmental usage, and it's estimated that it's about 10,000 seams per year.

Mrs. Bev Desjarlais: So it's roughly 70,000 over the course of the—

Mr. Tony Kittridge: Yes. As somebody else mentioned, these satellites generally have a longer life than their design life, so it's expected that this would probably continue beyond the seven years.

Mrs. Bev Desjarlais: Thank you.

The Chair: Mrs. Desjarlais, last question.

Mrs. Bev Desjarlais: Okay.

There have been some comments about the international treaties and the obligations. I note that in the act signed with the U.S. on radar systems or satellite systems, it indicates priority access when the availability of data may be beneficial to Canada's national security and foreign affairs interests.

Again, it uses the different terminology of “foreign affairs interests” rather than international obligations. I think it actually broadens that even more.

Are there any safeguards in place that ensure that “foreign affairs interests” doesn't look at whimsical things, other than what most of would see as real foreign affairs interests?

Mr. Phillip J. Baines: At the time that policy was drafted, we were looking at trying to encompass the two main prerogatives of the state: national security and our international affairs. This parallels the usage of terms in U.S. practice: national security, writ large—everybody understands what national security is—and foreign policy.

When we drafted this bill and tried to map those big concepts into our legislative practice here in Canada, the two terms that had wide use are Canada's international obligations, those things you *shall* do, and the conduct of international relations, those things you *should* do. Foreign policy, which is a statement of intent, like a will—we will do this, or this is how we want the world to look, and things like that, which can have a little bit of bump or noise on it—we remove.

So we have very solid international obligations reasons and we have conduct of international relations reasons, which, in order to use, means we have to pass some sort of injury test in certain provisions of this bill. These are how we defined something very early in the program as foreign affairs interests and national security interests. They got defined into our five terms—the defence of Canada, national security, the protection of Canadian forces, conduct of international relations, and Canada's international obligations.

● (0945)

The Chair: Thank you.

Now we'll go to Mr. Bevilacqua.

Mr. Maurizio Bevilacqua (Vaughan, Lib.): Thank you very much for making yourselves available once again

You've heard some concerns, you've heard questions, and you've given the answers that you obviously felt fit the question. I'm just wondering, given all that you've heard, are you comfortable with the bill as it is? And what challenges can you foresee in the implementation of this bill?

The Chair: Short questions—good.

Mr. McDougall.

Mr. Robert McDougall: To answer your first question, we are comfortable with the bill. We've wrestled with it for a long time. There's an enormous number of trade-offs in it that could have gone different ways, but we're comfortable with the bill as it is, and comfortable to present it to you for your consideration.

In terms of where we go from here, we are working on the regulations. A good many of the questions that have been raised by yourselves and by other witnesses will in fact be worked out in the regulations, and then in the licensing.

Our major challenge at the moment, frankly, is to get the regulations through. Once you have taken a decision on the legislation, if it is positive, then we will have to look at the regulations. We will have to license RADARSAT-2 quickly, before it's launched. We will have to sign a memorandum of understanding between the different departments to spell out in detail how we will consult with each other in these areas, how the office of licensing will actually work among the various departments. These will easily keep us busy for a year, if in fact Parliament decides to give its consent to the bill.

Hon. Maurizio Bevilacqua: Have you heard anything from anyone around this table that would create concern in implementation of the bill?

Mr. Robert McDougall: I don't think so. I believe they are all concerns that are very important, but in the legislation or in the regulations, as we are drafting, or in the fact that there exist other pieces of Canadian legislation that cover things like privacy, we believe these concerns either are already covered or will be covered by the time the regime is on its feet.

The Chair: Mr. McTeague.

Hon. Dan McTeague (Pickering—Scarborough East, Lib.): Thank you for appearing again. You've certainly given us some clarity in terms of the bill.

I have one question, or possibly two, arising from the same issue of liability. We don't have a policy in this country in terms of regulation of space activities as they do in some other nations. I'm wondering what our liabilities might be for damages caused by, for example, re-entry, a failed launch, or crashing into another satellite.

While this may be an independent or private sector venture with RADARSAT-2, am I correct in understanding that we're still liable?

Mr. Robert McDougall: The very short answer is that the launching state is liable for any damages caused by the launch, or caused indirectly by the launch. However, Madam Kapellas is in fact our resident expert on this, so I will transfer the question to her, if I may.

Ms. Anna Kapellas: Merci.

As Rob mentioned, our liability at the international level is governed by the liability convention for damages caused by space objects. It's based on state-to-state liability, because the international space conventions have not exactly kept up to speed with developments in the commercial space sector. That means if a space object for which we are the launching state causes damage to another space object, or to the surface of the earth, the launching state, Canada in this case, would be held liable at the international level for the damages caused.

Hon. Dan McTeague: So as a state, as a country, Canada could be liable.

Ms. Anna Kapellas: As a country, yes.

Hon. Dan McTeague: Any idea of when we are thinking, talking, delving into the idea of committing ourselves to parallel regulation, liability, or, if you will, legislation to mitigate that with respect to, say, what they did in the United States, the United Kingdom, Australia?

I'm not opening up a can of worms, I just want to make sure that we understand, and that this committee has every possible question asked, so that there is no doubt when we go back in the House.

Mr. Phillip J. Baines: This issue came up during the development of this bill. The government is looking at formulating a policy for that purpose, and for how to implement it.

● (0950)

Hon. Dan McTeague: The other issue of liability that I want to talk about—just quickly, because I know I'm going to get gonged here by the chair—is priority access, and whether or not you're confident that under certain agreements, just thinking of NAFTA, what amounts to an acquisition of the pictures might not be seen as expropriation by other means.

Mr. Phillip J. Baines: Again, this came up with rigorous legal analysis of what we were proposing to do. That's behind our decision to make payment for services received, so that a priority access would not be a measure tantamount to an expropriation.

Hon. Dan McTeague: Ah; now I'm understanding why last time, when I asked the question, the word “may” as opposed to “should”....

Okay, good. Thank you.

The Chair: Thank you, Mr. McTeague.

I have a question for the panel. When RADARSAT came in front of the committee, they had some concerns with regard to subclause 22(1), with regard to liability. The subclause states:

No person is entitled to financial compensation from Her Majesty in right of Canada for any financial losses resulting from any of the following actions taken in good faith: the amendment of a system disposal plan or arrangements under subsection 9(3); the amendment of a licence under section 10; the suspension of a licence under section 11; the cancellation of a licence under section 12; or, the making of an order under section 13, 14 or 15.

They were suggesting that the regulation reinforce recourse for the licensee through the opportunity to make representation to the minister regarding the broad restrictions on the right to compensation.

I'd like to have your comments regarding this, because this was an issue.

Mr. Mann.

Mr. Bruce Mann (Senior Counsel, Justice Legal Services Division, Department of Foreign Affairs): Clause 22 states that no one is entitled to financial compensation from the Crown for damages resulting from specific ministerial acts. This does not mean that the Crown is forbidden, or not allowed, to compensate on, say, an *ex gratia* basis for damages.

We were asked before whether there should be a procedure in the legislation for people to make such claims. The fact is that there is a procedure under the Treasury Board's policy on claims and *ex gratia* payments. Under this policy, anyone can make a claim to the government for damage they've suffered. They don't have to determine whether or not there is liability on the part of the Crown, or whether it would be an *ex gratia* matter, under this policy. They simply make their claim and the government will respond to it.

The claims policy sets out the procedures to be followed. It involves opinions from the Department of Justice on the possibility of settlement, or whether it is indeed an *ex gratia* matter, and a recommendation on whether *ex gratia* payments should be made.

So there is a complete procedure available to the public or anyone who had damage, including secondary kinds of damage. For example, Mr. Last spoke about injury to his business if the minister issues a priority access order, or a shutter control order, which prevents his company from receiving imagery as contracted for with a company like RADARSAT. So the possibility of paying compensation is there, but there is no liability. You could not go to court and sue for that right.

It's a different case when we're talking about the actual cost of priority access data under subclause 22(2) of the bill. In that case, the government is simply paying for services it actually received. This is different from paying damages for injury caused as a result of a decision. The wording we used, that the minister may pay a licensee, has been interpreted in...or that use of the word "may", which is permissive, has been interpreted in other cases to mean that if all the circumstances are appropriate for payment, the minister is in effect obliged to pay for the services actually received.

• (0955)

The Chair: Any other questions?

Ms. Phinney, then Madam Desjarlais.

Ms. Beth Phinney (Hamilton Mountain, Lib.): First of all, thank you very much for coming on such short notice.

I'm sorry I was late, but I had some students from my riding who arrived. We have to see our students when they come.

You've answered a lot of our questions by saying that's going to be in the regulations, or that'll be worked out in the regulations. I'm just wondering if, when the regulations are done, you could let the clerk

know; we would consider whether we would ask to see the regulations before they're presented in the House.

Mr. Phillip J. Baines: I believe we've sent to the clerk regulations that are a work-in-progress, to form the next tab in our briefing book. As the regulations are currently, you have a draft version of them. Those regulations are about 50% complete. We continue to work on writing the rest of them when we're not appearing here or answering other questions.

Ms. Beth Phinney: Maybe the clerk, Mr. Chairman, could let us know when we have all of them. We can consider whether we want to see them when they're completed or spend any time looking at them. We may decide not to, but our answers a lot of the times have been, well, that will be in the regulations, or that may be in the regulations. Well, we'd like maybe to see them.

The Chair: It's in your briefing book—

Ms. Beth Phinney: I understand, but that's only 50%, as he said.

The Chair: Sure. Any other questions?

Ms. Beth Phinney: No. But thanks for cutting me off.

The Chair: I'm sorry?

Ms. Beth Phinney: You cut me off.

The Chair: No, I asked if you had any other questions.

Ms. Beth Phinney: Okay, I want to know when they expect to be done with the regulations.

Mr. Robert McDougall: There's a two-part answer to that.

First of all, we cannot finish them, in a sense, until the legislation is passed. We have no basis on which to confirm or finalize regulations until we know what shape Parliament decides the legislation will have. Since we don't know when the law is going to pass, we cannot be 100% sure of what our deadline is.

Phil, with his colleagues, is actually the one doing the work on these regulations. I might turn to him for a somewhat more precise answer.

Mr. Phillip J. Baines: My ability to estimate time on this project has no credibility whatsoever, because it's taken us six years to get to this point. But we are making much better progress on the regulations than that process took. I would hope that we could work in parallel with the regulations, tracking Parliament, so that in the next two or three months we would be in a position where we could say, you know, we think this is the way it should look.

The Chair: Can you provide the regulations to the members when that's over?

Mr. Phillip J. Baines: That's certainly something we can do.

The Chair: Sure, to the clerk, please.

[Translation]

Ms. Deschamps, please.

Ms. Johanne Deschamps (Laurentides—Labelle, BQ): / We hear a lot about this satellite and the fact that it was designed for commercial and civil purposes. We also hear a lot about the military aspects and about national security.

On the other hand, I know that in Quebec, we are very concerned about environmental issues. I would like to know what is the process for the provinces to request a licence. It is provided that there can be data exchanges without there necessarily being an agreement for obtaining a licence.

[English]

Mr. Robert McDougall: I believe the provinces would be in a position to acquire the data from this satellite, or any satellite under the act, as a commercial operation, basically on the same basis that usually the federal government does. The federal government will be paying for any data it gets through the process that Mr. Baines discussed with Madam Desjarlais.

The question of a licence would only arise if a province decided it wanted to launch its own satellite. That then would fall under the licensing provisions of the act. But simply in order to acquire data, a licence is not required.

As a final point, if a province had an emergency situation of some kind, although there is no explicit provision for this I believe the province could certainly apply to the appropriate minister for emergency access to the data on the basis set out in law. So I believe that would also have coverage of the situation.

• (1000)

The Chair: Thank you.

Madam Desjarlais, one question.

Mrs. Bev Desjarlais: Thank you. I have a few questions.

With regard to the security of information, once it may be given to foreign entities for whatever reason, what kind of safeguards or controls are in place with that information in terms of it being retained, sold from one foreign entity to another foreign entity, or sold for commercial purposes once it's outside of Canada? What kind of safeguards are in place on that information?

Mr. Phillip J. Baines: In our legislation, we've required the licensee to maintain control of the data. Basically this means that the licensee offers data to other persons. It's much like you would buy software; you don't actually buy software, you get a licence to use software. We call these things "end-user" licence agreements.

Under clause 8, we can specify in our licence, which we would expect to appear then in the end-user licence agreement, the protections about further transfer and so forth. We call them end-user licence agreements because the end-user is the person who's at the end of the distribution chain, which means he may not transfer it except in accordance with the conditions in that end-user licence agreement.

Mrs. Bev Desjarlais: How do you ensure what's happening with that information, and what happens if that information gets used for something else? What rules are in place? Are there liabilities, are there criminal charges? What happens?

Mr. Phillip J. Baines: How we find out...is an interesting way.

Mrs. Bev Desjarlais: Share it with me quickly.

Mr. Phillip J. Baines: We have intelligence sources that would be able to—

Mrs. Bev Desjarlais: Okay, and what happens? What type of penalty is in place?

Mr. Phillip J. Baines: The penalty in place is that the person would no longer be able to receive data. We would amend the licence to add this person to a prohibited entity list.

Mrs. Bev Desjarlais: But my understanding from your response is that the licensee...and I take it that the licensee is the person operating the satellite.

Mr. Phillip J. Baines: Correct.

Mrs. Bev Desjarlais: So if you had this company operating the satellite, and they gave information to someone and it was used improperly, this, say, RADARSAT.... It's apparent to me that this is what we're talking about here; even though we talk about other remote sensing systems, as I'm going through everything, we're obviously talking pretty much about one company, for the most part.

Mr. Phillip J. Baines: Well, we hope to have more.

Mrs. Bev Desjarlais: Yes. But it seems to say RADARSAT.

So if that happened, if the information was given to someone else, would they lose the licence?

Mr. Phillip J. Baines: At the most extreme, that becomes the most extreme measure available to the minister for corrective action. What we've implemented in this legislation is a lot of early points for intervention, seeking the licensee to bring the operation into compliance rather than to pay the violation scheme. We've adopted an approach for continuous improvement to maintain the security of this data.

Mrs. Bev Desjarlais: Without jeopardizing security—that's not my intention here—could you give me some idea of how you go about ensuring that? I know it sounds wonderful to say, but I also lived through dealing with the public safety act. A lot of questions came up over protecting information. I've actually watched systems, on video, where you can see it target right down to someone's doorstep.

From my perspective, it's important for us to ensure that we're not jeopardizing civil liberties of people within Canada or elsewhere. I'm curious to know what type of processes would be in place.

• (1005)

Mr. Robert McDougall: I think there are two aspects. First of all, there is the possibility of accidental release or theft—that is to say, not the responsibility of the end-user. For that purpose, part of the licensing agreement is in fact a physical security plan that describes how the data will be protected in a physical sense. For instance, we'll make sure that it is not easy to walk in and pick it up off somebody's desk. That is important, and I certainly agree with you on that.

On the question of protection in terms of malfeasance by...and usually we don't anticipate malfeasance by the licensee, but perhaps by one of the subcontractors in this respect. There was a need to find a balance. Unless you developed an extremely intrusive regime that basically meant that we'd be looking over people's shoulders all the time, which would be very expensive and would have its own, I believe, privacy or at least commercial confidentiality implications, we couldn't create a system that would essentially have somebody from the government guard the data, in effect, all the time.

We created a system whereby there was a clear commitment; people would know what exactly they were responsible for, so they couldn't claim they didn't know. Second, we insisted that all transactions be archived. What you did, what data you got, from whom, who you sold it to—all of that had to be kept available and in fact not destroyed until permission was granted. There are auditing and inspection powers, so the licensee can go in and inspect its clients but also the government can send in inspectors, auditors, to examine the situation. There are, as Phil said, other ways that we could probably tell if information had been diverted improperly, information of security importance.

There is a series of administrative penalties that don't seem to be that much on a day-to-day basis but that are structured to be applied day after day after day, if the violation continued. As you said, and as Phil said, it is structured in such a way that the companies can get around those monetary penalties, for example, if they can prove they brought their system back into line.

Finally, at the top of the line, as you yourself discussed, there is the possibility of either seriously amending in some way or even revoking the licence as a most extreme measure, if that is necessary.

Mrs. Bev Desjarlais: Do I have more time? I have lots of questions.

The Chair: : I know, but one question; we're over our time.

Mrs. Bev Desjarlais: No, no, my understanding is that this meeting goes to 11 o'clock.

The Chair: No.

Mrs. Bev Desjarlais: No? My agenda says 11 o'clock.

Now, if others don't have questions, I do. But I'll stop now if others do.

The Chair: : That's okay. They're good questions. Go ahead.

Mrs. Bev Desjarlais: In the act that was signed between Canada and the U.S., there's an indication that there can be no transfer of ownership, operation, or registration to any company, whether foreign or domestic, without the explicit permission of the appropriate minister.

How is that section of that agreement reflected within the legislation here in Canada?

Mr. Phillip J. Baines: I believe in clause 16, "Transfer of Remote Sensing Satellites", what we've required here is that:

No licensee or former licensee shall permit a command to a remote sensing satellite of the remote sensing space system for which the licence was issued to be given from outside Canada or by any other person unless the licensee or former licensee

(a) can override the command from Canada; or

(b) has obtained the approval of the Minister.

Mrs. Bev Desjarlais: We have a situation where the system, so to speak, on the signature of the minister, can be transferred ownership. It's not on the discussion in the Parliament of Canada or whatever; it's a system that has all this information that the Government of Canada has invested in, in depth, and can, on the signature of a minister, be signed over. Is that a reasonable assessment?

Mr. Phillip J. Baines: Yes, it's a reasonable assessment, because the minister is a minister of the Crown and acts on behalf of the government.

• (1010)

Mrs. Bev Desjarlais: Okay.

Further to that, clause 3 of the bill states that cabinet may designate a privy councillor to be the minister for the purposes of the proposed act. It's my understanding that parliamentary secretaries are now considered ministers, so really, at the signature of a parliamentary secretary, this system could be transferred over.

Is that a fair statement?

Mr. Robert McDougall: I am not familiar with the exact intricacies of cabinet procedure and ministerial appointments, so I would not presume to comment on that. I can say that the act is phrased so that essentially the Minister of Foreign Affairs is the minister responsible for the act, and for licensing other things, but it was thought wise to give the Governor in Council the right to alter that if there was a good reason to do so.

The question of whether a parliamentary secretary counts as a minister for the purposes is something that is beyond my *connaissance*, I'm afraid.

The Chair: I really don't think so.

Mrs. Bev Desjarlais: I'm just going by what's—

The Chair: : I don't think so, no.

Mrs. Bev Desjarlais: I have a briefing note from the researcher—maybe he could clarify this—and it says that the bill states that cabinet may designate a privy councillor to be minister.

I could be wrong, but are parliamentary secretaries not considered part of the Privy Council?

The Chair: They are, yes, but I don't think—

Hon. Dan McTeague: That's every retired minister. Mr. Bevilacqua, who is not a minister, is a member of the Privy Council. The list could be exhaustive. You could probably go and make an argument that the Supreme Court of Canada members could do the same.

Mrs. Bev Desjarlais: I just wanted to note, for the sake of clarification and for the record, that it really takes in a whole scope of people.

Mr. Phillip J. Baines: I would just like to add, about that particular clause on the designation of a minister, that this appears in a lot of different acts.

Mrs. Bev Desjarlais: I know it does, but in some acts I'm a little more conscious of it than others, because they seem to have greater ramifications for the country and the world in general.

With regard to the liability, you indicated in your comments back to my questions that the subcontractors would have an obligation, that they would be liable, not the licensee. Did I hear that correctly?

Mr. Phillip J. Baines: No, I don't think you did. The licensee is the one who is ultimately responsible. When you look at the act, all the actions happen from the licensee. The licensee, because it's responsible, in its commercial contracting will make sure that the act and the regulations and the licence conditions are adequately—

Mrs. Bev Desjarlais: Okay. So it would be the licensee, not the subcontractor. I just wanted verification, because I thought I heard a comment that it would be the subcontractor.

In regard to the liability, it's not just the licensee in all instances; as you indicated, should something happen with the satellite, it's the country of origin of the launching that would be liable. I'm curious as to what type of cost that might incur should we have a situation where a satellite did bump into another satellite, fall down, and land on, I don't know, West Block, or two houses down the street.

Has there ever been any indication, when a satellite came out of space, as to what damages there were, what type of costs were incurred?

Mr. Robert McDougall: I will turn to my colleagues for further detail. The only one of which I'm aware is the Russian Cosmos satellite, which came down in the 1970s. The cost there was \$7 million, if I remember correctly, for which we appealed to the Soviet Union government, which paid the cost. I'm not sure if my colleagues are aware of any other cases.

In that instance, because it landed on the ground in what was then the Northwest Territories, it was cleanup costs, basically.

Mrs. Bev Desjarlais: In regard to the agreement with the company that's going to be operating the imaging, when was that agreement signed, and who exactly signed the agreement? What specific department or ministry signed the agreement?

• (1015)

Mr. Phillip J. Baines: For RADARSAT-2, the master agreement—correct me if I'm wrong—is worked from the Canadian Space Agency, but I believe Public Works and Government Services would be the contract administrators.

Mr. Tony Kittridge : It wasn't a PWGSC standard contract. I think it was signed by a senior official at the Canadian Space Agency.

Mrs. Bev Desjarlais: The agreement with the company was signed by a senior official at the Canadian Space Agency, not by a specific minister. Is that the norm for a deal that's—

Mr. Tony Kittridge: I'm sorry, I'm not sure; it may have been signed by the Minister of Industry.

The Chair: Can you let us know later on, just for the record? We'd like to get a straight answer on that.

Go ahead.

Mrs. Bev Desjarlais: Could you tell me when that agreement was signed?

Mr. Tony Kittridge: It was signed at the end of 1998.

Mrs. Bev Desjarlais: Okay.

Do others have questions? Because I have more questions.

The Chair: You know, some members want to leave, but it's up to you.

Mrs. Bev Desjarlais: We're hearing witnesses, and I have a pile of questions. So my apologies to my colleagues who might want to sneak out or whatever.

This agreement was signed in 1998. The agreement with the U.S. was signed in 2000. We have legislation before us in 2004.

For me, seeing this, the way it's progressed, it's kind of like seeing the cart before the horse. I would often think that we would put in place legislation on these systems, have that legislation in place, and then put out a contract for the system, just for transparency and accountability. Now it's been indicated that you don't think it was the usual type of Public Works and Government Services contract. I'm curious to know why this type of process was used.

Mr. Robert McDougall: I think the short answer is that it's because it was the first time. I believe the process you outlined is likely to be the one that of course will be carried out from now on. If the legislation is passed, the regulations are passed, and the regulatory regime and licensing regime set up, yes, it will follow the usual procedures.

In the late nineties, two trends came together that made it necessary to change the way we'd done things. First of all, for the first time, this type of remote sensing satellite was largely starting to be privately held. Previously, this kind of satellite was traditionally government-operated and government-owned. The data was handled through government channels. It might be sold commercially, but it always flowed through a government operation.

Starting in the second half of the nineties, however, increasingly there were commercial operations that could not, obviously, be regulated in the same way as the others. At the same time, technology advanced very quickly, the sensitivity of the radar in particular; optical as well, but radar is particularly important in these areas, because it can pierce through clouds, you can take pictures at night, and you get much finer resolution in some areas than you can with an optical satellite.

You put these two together and what you suddenly had was a situation where commercial operators were going to be managing satellites that were sensitive enough to have important security implications. That reality hit us before we had the legislation in place. The government did not want to hold up the Canadian space industry, which is in fact one of the foremost in the world in these areas. It did not want to say to them, "Let's wait until we get the legislation."

So in June of 1999—that is to say, just after this started to break—the cabinet passed a document, annex 1 to the U.S. act, which is the access control policy, that basically set out the parameters now followed in the act. It set out the basis for the policy, that Canada essentially welcomes the advent of increasingly sophisticated commercial remote sensing satellites, but has some security concerns, which it will operate.

That was a holding measure. It then took us five years to actually draft the legislation.

• (1020)

Mrs. Bev Desjarlais: You've just indicated it was because it was the first time, but we already had the operation of RADARSAT. My understanding is that there was a company that was doing the business of providing the imagery already. How long had they been doing that, and how long had RADARSAT been operating? That's RADARSAT-1.

Mr. Robert McDougall: The reason RADARSAT-1 didn't immediately bring up this interest was twofold. First of all, although its products were sold through a commercial firm, RADARSAT International, the operation of the satellite itself, the control and command of the satellite, was retained by the government. We always had control of what commands were sent to it. We had control of all the data. It was then transferred to RADARSAT International for commercial sale, but the government maintained actual control of the satellite.

Second, RADARSAT-1's technological capabilities are not so sophisticated as to cause a security concern. It's an excellent satellite, one of the best in the world, if not the best, for things like agricultural monitoring, environmental monitoring, ice monitoring—things where the pictures are big. It is not sensitive enough, however, to cause basic problems for operations in a security area. But there—

Mrs. Bev Desjarlais: Can I stop you there? I don't want to lose this train of thought.

You've just indicated to me that RADARSAT-1 didn't have the same kind of security risk that RADARSAT-2 now has, yet you've transferred that risk to a private company, more for RADARSAT-2. You know, you're doing it right from step one; recognizing that there should be less government operation is something that you're considering needs more security? Where's the logic in that?

Mr. Robert McDougall: I cannot speak for the government's decision at the time.

Mrs. Bev Desjarlais: Okay, I used "logic"; it was a bad term, then.

Mr. Robert McDougall: Believe me, I'm not criticizing government. I'm merely stating the fact that I cannot speak for them—

Mrs. Bev Desjarlais: Fair enough.

Mr. Robert McDougall: —because I wasn't part of the decision.

What essentially happened was that the technology developed, and increasingly the commercial operators became interested in running these things themselves. This is not just a Canadian development; it's happening all over the world.

At that time, those developments had already happened, and it was the government's decision to say at the time, all right, we'll let this happen—it is in line with our policies to strengthen the Canadian space industry, private sector—but we have some security considerations that must apply, and therefore we're setting out this policy, which gives a summary, and we're instructing our bureaucrats to create some legislation before RADARSAT-2 goes up.

Mrs. Bev Desjarlais: I understand everything you're saying, and I know it's not the decision of your department as to how this proceeded, but quite frankly it's opened up a whole different aspect of this process for me. As much as we're not dealing with the costing

of the agreement with RADARSAT and the Government of Canada, I can't help but wonder who's acting on whose behalf here when \$430 million of Canadian taxpayers' money is given to a company and they're only—I'm saying "only" because that's the figure I have—putting in an investment of \$92 million. We're concerned that this needs greater scrutiny, more security, and we really can't absolutely, positively ensure that from a commercial aspect it's going to be secured, from my view; I've seen too many things happen in the past.

I'm trying to find the reasoning in this—

The Chair: Mrs. Desjarlais, that's a comment, not a question.

Mrs. Bev Desjarlais: Do other members—

The Chair: No, but I just wanted to let you know. I agreed to your asking questions.

Mrs. Bev Desjarlais: I'm trying to come to terms with this.

The Chair: Do you have specific questions for the witnesses?

Mrs. Bev Desjarlais: Okay.

The further specific question, then, is that you've indicated that it took five years to prepare the legislation, from 1998 to 2004. The legislation came out in November 2004, correct? What took so long to prepare the legislation? Recognize that I also, at some point, dealt with the drug patent legislation, which, in a WTO ruling, the U.S. maintained that Canada was able to pass through legislation for in three months. There's no reason why they couldn't get the drug patent legislation changes, so I'm curious to know what took so long on this legislation so that we couldn't have had the horse before the cart.

The Chair: Mr. McDougall.

Mr. Robert McDougall: The short answer to the last part of your question is that we only got instructed by cabinet to begin drafting the law after the master contract had been signed. So from our point of view, from a drafting point of view, we were instructed by cabinet in June of 1999, and we worked on it from there.

• (1025)

Mrs. Bev Desjarlais: So in June of 1999 you were instructed by cabinet, but the legislation came before the House in November of 2004?

Mr. Robert McDougall: Right. That's what it was.

The reason it took so long is that it is a very complex bill in a very new area. Frankly, there were a lot of different departments that had concerns, ranging from security concerns and foreign policy concerns to our department, defence, Solicitor General, as it was at the time, to departments such as environment and others who have what you might call a user or a consumer interest.

There were a lot of issues, many of which were raised by this committee this week and last—privacy, compensation, financial aspects, the whole question of criminal offences. Many things had to be considered, and it was all new. There were very few models. There was the United States model, but the United States legal system is not exactly the same as ours, so we couldn't copy them directly. There were other countries who had something like it, such as the United Kingdom. Other countries were in the process of developing it.

It was just a very complex bill in a completely new area. Frankly, it took us longer than we'd hoped it would. But that's how long it took us.

Mrs. Bev Desjarlais: One last question—unless something comes up from the answer.

The RCMP is listed as someone who may use information from RADARSAT. Again, without breaching any security, I'm curious to know exactly what type of information the RCMP would be allowed to get from the imaging, whether or not that would be strictly related to CSIS, terrorism issues, or whether it would be other RCMP reasons that they might need it. Is their access a separate billing to RADARSAT for the imagery, or does that fall into the possible 10,000 images a year from the Government of Canada?

Mr. Phillip J. Baines: When we drafted the section on priority access, in subclause 15(3), where the Solicitor General powers are, the Royal Canadian Mounted Police may have access for their responsibilities under subsection 6(1) of the Security Offences Act. My understanding is that the RCMP does not have it for its regular law enforcement activities, but it has to be specifically restricted to that section.

Given that the RCMP has that, there's a sister group, the Canadian Security Intelligence Service, and they can only operate in accordance with the Canadian Security Intelligence Service Act for their purposes, mainly terrorism. With the transfer of OCIPEP, the critical infrastructure protection, into the new public security minister's portfolio, then critical infrastructure protection and emergency preparedness will fall there.

Mrs. Bev Desjarlais: And all aspects would fall under Canada's privacy legislation.

Mr. Phillip J. Baines: Yes, the Privacy Act lives.

Mrs. Bev Desjarlais: Thanks.

The Chair: Thank you, Madam Desjarlais.

I just want to thank all our witnesses today.

I want to remind my colleagues that next Tuesday at 9 o'clock we'll have UNICEF. Through common agreement among the parties, the Minister of Foreign Affairs will appear regarding the tsunami, from 9:30 until 10:30, and we'll come back after that with UNICEF. At 11 o'clock we'll have a future business meeting. At the future business meeting, we'll be discussing Bill C-25 to see if we can get some additional hearings with witnesses. Biographies will be sent out to members, and we'll discuss when we're going to do clause-by-clause on Bill C-25. That will be discussed next Tuesday.

Merci beaucoup à tous les invités.

The meeting is adjourned.

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