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Thursday, March 6, 2008

Chair

Mr. Art Hanger

Standing Committee on Justice and Human Rights

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● (1530)

[*English*]

The Chair (Mr. Art Hanger (Calgary Northeast, CPC)): I'd like to call to order the Standing Committee on Justice and Human Rights.

Our agenda for today is pursuant to the order of reference of Wednesday, November 28, 2007. Bill C-426, An Act to amend the Canada Evidence Act (protection of journalistic sources and search warrants), will be before the committee. We have a number of witnesses who are here to testify.

Monsieur Ménard.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Mr. Chairman, following consultations with both Opposition and government colleagues, it has been agreed that we will reorganize today's workload as follows: we will spend one hour questioning the witnesses, as agreed and as is our custom; we will not be able to proceed with clause-by-clause consideration, given that a number of parties and the government have amendments to propose and that there is a need for additional information; once the hour is up, as agreed at the last meeting of the Steering Committee, we will start providing direction to the researcher for the preparation of our report on a blood alcohol concentration level of 0.05; and, we will conclude the meeting with a vote on the Parliamentary Secretary's motion regarding Mr. Saunders' appearance. If you make enquiries, you will see that there is quite a lot of consensus on this new reorganization of our workload.

[*English*]

The Chair: Giving all consideration to the witnesses who are here to testify—and there are approximately five, or maybe six witnesses—I don't want to shortchange any of their presentations. Will an hour be enough, and is there unanimous consent from the committee members?

Mr. Bagnell.

Hon. Larry Bagnell (Yukon, Lib.): I don't think Mr. Ménard said specifically an hour.

The Chair: He did.

Hon. Larry Bagnell: Did he? I'm hoping as a friendly amendment they can be flexible around the hour, in case we have to go a little bit longer, but otherwise I have no problem with it.

The Chair: Mr. Comartin.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): I didn't catch what the proposal was with regard to Mr. Saunders. He wasn't scheduled for today.

[*Translation*]

Mr. Réal Ménard: Mr. Chairman, perhaps it is not the Committee's wish to immediately begin providing direction to our researchers. However, I had understood that we would be giving them direction at this meeting with respect to the drafting of the report. Maybe we can take an hour and a quarter, but I want members to be aware of the fact that the bells will start ringing at 5:15 p.m. and that there will be a vote à 5:30 p.m. Furthermore, I think we should deal with Mr. Moore's motion. Because it is not controversial, perhaps we can even pass it right away. I don't want to take time away from the witnesses, but it is important to be aware of these constraints. Having said that, neither the government nor the Opposition has any desire to move to clause-by-clause consideration today.

[*English*]

The Chair: Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): That shouldn't be a problem. I've had some discussion. I don't think my motion should be very controversial. I don't know if we want to speak to that now. That should only take about a minute.

I'm in general agreement with Mr. Ménard. If we run over by 10 or 15 minutes to accommodate questions, I think that would be fine, but let's get right to it.

The Chair: If the witnesses would beg the indulgence of the committee until we look after this one minor point of business, I would move to that minor point of business.

● (1535)

[*Translation*]

Mr. Réal Ménard: Could someone move the motion, Mr. Chairman? It's your motion on hearing witnesses.

[*English*]

The Chair: Yes.

[*Translation*]

Mr. Réal Ménard: I so move.

[*English*]

Hon. Larry Bagnell: I second it.

The Chair: It has been moved and seconded.

Mr. Moore.

Mr. Rob Moore: Mr. Chairman, my original motion said that the DPP appear next Wednesday. If there's agreement for that, we can do that.

We had talked about having the DPP appear at the end of one of our regular meetings, and my suggestion would be Thursday. If we met on Thursday for an extra hour to have the DPP there, we could have our chance to put questions to him.

[*Translation*]

Mr. Réal Ménard: Agreed.

[*English*]

The Chair: Is there agreement on that motion?

Mr. Rob Moore: The last time we spoke about this, there wasn't any agreement to have it on Wednesday. If there's agreement now for Wednesday, that's great.

The Chair: Mr. Comartin, let's wrap this up.

Mr. Joe Comartin: The debate at the last meeting was around whether the minister was going to be appearing on this issue. So I would like an indication from Mr. Moore as to whether the minister is also going to be appearing on March 12 or on some other date.

Mr. Rob Moore: The minister will be here on another issue on Tuesday.

The DPP, Mr. Saunders, cannot be here on Tuesday. He can be here on Wednesday or Thursday.

Mr. Joe Comartin: That doesn't answer my question.

Mr. Rob Moore: Your question is, will the minister be with him?

Mr. Joe Comartin: No. The question is, will there be time on Tuesday for the minister to answer questions on this appointment?

Mr. Rob Moore: The minister will be here on another matter, the identify theft bill. I suppose you could put a question to him, but he's not specifically coming to answer questions on Mr. Saunders.

Mr. Derek Lee (Scarborough—Rouge River, Lib.): I have no objection to that.

Mr. Joe Comartin: Okay. Can we ask him questions?

Mr. Derek Lee: You can ask your questions on Tuesday.

The Chair: So the appearance of Mr. Saunders, then, will be on Wednesday—

[*Translation*]

Mr. Réal Ménard: Agreed.

[*English*]

The Chair: —as the motion states?

[*Translation*]

Mr. Réal Ménard: Yes.

[*English*]

Hon. Larry Bagnell: The minister will answer questions on Tuesday about Mr. Saunders.

(Motion agreed to [See *Minutes of Proceedings*])

The Chair: Mr. Saunders will appear before the committee on Wednesday, March 12. Thank you.

Now we'll go to the witnesses. I will go according to the agenda.

From the Canadian Association of Chiefs of Police, we have Mr. Clayton Pecknold, the deputy chief of the Central Saanich Police Service.

Mr. Pecknold, you have the floor.

Deputy Chief Clayton Pecknold (Deputy Chief, Central Saanich Police Service, Canadian Association of Chiefs of Police): If I may, Mr. Chair, my colleague Mr. Pierre-Paul Pichette, from the Montreal Police Service, is here as well. Our presentation, as before with this committee, will be in both French and English. He'll commence the presentation, if that's okay.

The Chair: That's fine.

Mr. Pichette.

[*Translation*]

Mr. Pierre-Paul Pichette (Assistant Director, Corporate Operations Services, City of Montreal Police Service): Mr. Chairman and honourable members of the Committee, my name is Pierre-Paul Pichette and I am Assistant Director of the Montreal Police Service. As you just noted, I am accompanied today by Mr. Clayton Pecknold. We appear before you today representing the Canadian Association of Chiefs of Police, as both of us are Vice-Chairs of the organization's Legislative Amendment Committee. I also want to take this opportunity to convey the greetings of our President, Mr. Steven Chabot, who is the Assistant Director General of the Sûreté du Québec.

The Canadian Association of Chiefs of Police represents the management of police and law enforcement agencies in Canada. Ninety per cent of its members are directors, assistant directors or other senior managers of various Canadian police services, both at the municipal and federal levels. Our association's mission is to promote the effective enforcement of Canadian and provincial laws and regulations to ensure the safety of all Canadians.

In that context, we are regularly called on to take a position on legislative reforms that are contemplated. Indeed, we have always been enthusiastic participants in consultations organized by government with respect to changes in the criminal law, just as we are doing today.

I am going to turn it over now to my colleague, Mr. Pecknold, to present our position on Bill C-426. Mr. Pecknold will make his presentation in English. After that, I will have some closing remarks.

● (1540)

[*English*]

The Chair: Mr. Pecknold.

D/Chief Clayton Pecknold: Thank you, Mr. Chair and honourable members. Thank you for the opportunity to speak to you today.

Many of you will know that CACP appears before your committee and before the Senate on a wide range of bills. In fact, members of our association have appeared before this committee on several of the bills you have dealt with recently, and so have my colleague and I, as you recall.

This is the first time, to our recollection, that we have appeared before you concerning a private member's bill. We ask that you notice that the CACP is here, because we wish to bring your attention to some quite serious concerns we have with the language of this bill.

Before we comment further, let me state first that the CACP understands the motivation behind Bill C-426. The press and the journalists who operate within that estate are a vital part of a free and democratic society, holding government and its institutions to a high degree of accountability and public scrutiny.

We in the policing community know very well the importance of public accountability and the service provided to our citizens by the media. Clearly, to do that job effectively, journalists must work free from political or other interference. It is important to state at the outset that the police community does not object to the principle of journalist privilege. It is in fact currently recognized in this country as a common law principle.

Yet it is also important to note that the codification of such a privilege should be suited to address precisely that privilege and not used to potentially shield illegal communications or documents from legitimate law enforcement investigations and prosecutions and thus ultimately discredit the very values it is meant to protect.

As the committee knows very well, however, in most aspects of our society and the legal framework under which we live, there's a need to find the appropriate balance between the rights and powers of one institution or activity as against those of the other. Drafters of legislation and you, honourable members, must carefully weigh that balance when you bring laws forward into legislation.

In this case, with respect, some important modifications to this bill are needed before it meets that test. Permit me to elaborate after making two general points.

Our association notes that to date the courts and legislators have declined to add to the class privileges afforded to, for example, solicitor-client communications and informant privilege. In our view, that decision should be formulated after the appropriate level of public policy consultation and debate. That has not occurred in this case, and in our estimation it should. There has been insufficient debate, and we would urge you to consider affording that opportunity.

The second general point is that we believe the bill as presently drafted attracts a series of unintended consequences. Some of the language is overly broad, imprecise, and ambiguous and may therefore become a hindrance to the effective administration of justice. Such a result, in our respectful submission, defeats the balance of interest that you, honourable members, must so carefully maintain. That is the balance between the public good of a free and vigorous press and the equally important public good of an effective criminal justice system.

As stated, we believe the intention behind the bill is to facilitate true journalism and all of the public good that comes from a free press. In order to achieve that goal, it is important firstly that the bill aim at true journalism. Today many persons, especially by using the Internet, may be called journalists or “the press” because they disseminate information to the public, yet may not merit the journalist's confidential source privilege. Many websites promoting racism, hate, or drug cultivation, for instance, would qualify under the notion that they're engaged in the dissemination of information to the public, yet would the average Canadian call them journalists?

Since this bill purports to do that which the courts presently determine on a case-by-case basis, the wording and definitions within it are crucial. Some jurisdictions where similar laws have been enacted have chosen to provide a definition, while others refer to notions of profession, gain, or employment as a way of putting appropriate boundaries around who might be considered a journalist and therefore be entitled to assert the privilege. We acknowledge the amendment suggested yesterday by the proponents of this bill as being a step in that direction.

In addition, we also respectfully submit that it should be made very clear that illegal documents or communications are excluded from the application of the act. As the Ontario Court of Appeal very recently said in the case of the *National Post*:

> Although, in pursuit of their constitutional right to gather and disseminate the news, journalists are entitled to protect their sources, that entitlement loses much of its force when journalists use it to protect the identity of a potential criminal or to conceal possible evidence of a crime.

● (1545)

As the court said, the press, like anyone else, should have an interest in seeing that crimes are investigated and prosecuted. Society expects as much. Instead of furthering that interest, however, the respondents, in that case, were shielding a potential wrongdoer from prosecution for a serious crime by refusing to deliver to the authorities the items representing the actual *actus reus* of the offence. But again, we notice that the proponent of the bill wants to introduce what we understand to be a crime exception, and we submit that such an amendment is very necessary.

Furthermore, we think the recent decision in the *National Post* case shows that the case-by-case approach works very well in Canada. If, however, the intent of this legislative body is to codify the recognition of journalistic privilege, we see no necessity to introduce a complete class privilege, or a de facto class privilege, by reversing the burden of proof as found in proposed subsection 39.1 (6) of the bill.

Permit me, if you will, to summarize a few points. First and foremost, the CACP believes the present state of the law as most recently applied in the *National Post* case applies the appropriate balance between the state's legitimate need for effective public security and an unfettered and free press. This means that the present application of a journalistic source privilege is being applied appropriately on a case-by-case basis. The law, in our respectful submission, is working well.

Secondly, if it is the intention to codify the present state of the law and not to extend the class of privilege, the bill as presently drafted should be improved in order to meet this aim. Any intention to create a new class of privilege must, in our view, be done after a much more enhanced period of public debate and consultation.

Thirdly, in order to avoid unintended and detrimental consequences, some amendments to the language are required. As stated, the definition of who's a journalist needs refinement; as well, some language that clearly states that unlawful communications or when the communication constitutes the *actus reus* of an unlawful act—for example, child pornography or hate-promoting communications—cannot be privileged, or where the journalist is engaged in illegal activity, for example, as a co-conspirator, and receives information from a source in furtherance of an unlawful activity. We note that while this might be implied by the common law, as it is with solicitor-client privilege, solicitor-client privilege as applied to the criminal law is created by the common law, so the common law exclusions clearly apply. It is much less clear that common law exclusions would automatically apply to a statute-based journalist privilege, unless clearly stated so in the statute.

Clearly, the goal behind the bill is laudable. The effect of the bill, though, and the imprecision of some of the drafting leaves those laudable goals in peril. We believe journalists may also share our concern. They too have an interest in protecting the integrity of their profession from the stain of hate-mongers or child pornographers, hiding behind the cloak of a claim of privilege that the courts, you honourable members, and our fellow Canadians neither sought nor wished to grant them.

Thank you. Those are my remarks.

Mr. Pichette will now make some closing remarks.

[*Translation*]

Mr. Pierre-Paul Pichette: To follow up on my colleague's comments, I would just like to remind Committee members that all Canadian police forces are anxious to enforce current laws and regulations appropriately. Clear, unambiguous legislation is a considerable facilitator on the ground, as it ensures better understanding and greater buy-in on the part of the public.

I, too, would like to thank you for giving us this opportunity to comment on the bill. We are available to answer any questions you may have as a result of our presentation.

[*English*]

The Chair: Thank you, Mr. Pichette.

You're a ranking officer, are you?

Mr. Pierre-Paul Pichette: I'm an assistant director with the Montreal Police Service.

The Chair: What does that mean?

Mr. Réal Ménard: He's a big boss.

The Chair: I gather that it could be higher up in the administration or it could be a ranking officer.

Mr. Pierre-Paul Pichette: I'm a ranking officer, but a senior one.

The Chair: Very good. Thank you, sir.

François Bourque.

[*Translation*]

Mr. François Bourque (President, , Fédération professionnelle des journalistes du Québec): Good afternoon.

Thank you for this opportunity to appear before the Committee to present our views today, particularly on the topic of source protection, which has given rise to much passionate debate in the House of Commons. I hope your deliberations this afternoon will be more serene and harmonious.

Today, I speak on behalf of the Fédération professionnelle des journalistes du Québec, representing some 2,100 journalists from every kind of media all across Quebec—in other words, newspapers, radio stations, television stations and Internet media. The FPJQ represents both media executives, unionized and non-unionized journalists, freelance and independent journalists. We represent a very broad spectrum of people working in journalism.

Many of my colleagues here today are legal experts, which is not my case. As a result, I will not be able to make any specific comments on the legal issues. However, I have been working as a journalist long enough to know that the bill currently before you is an important one.

It is important for journalists, but I would say it is also important for Canadians and for the vitality of our democracy. It is a means of consolidating a fundamental right recognized in the Charter: freedom of the press. That is the reason why the FPJQ is an enthusiastic supporter of Bill C-426, which we see as a valuable opportunity to improve the quality of our democratic life.

One value is important in the world of journalism, and that is that one should normally identify one's sources publicly. We recognize that value, and it is clearly laid out in our code of ethics. Revealing one's sources is common practice for journalists. It allows our listeners and readers to assess the credibility and competency of the people speaking to them, as well as the merit of the different points of view that journalists help to disseminate.

Our code of ethics also recognizes, however, that important information may never be published if journalists do not guarantee anonymity to certain sources that agree to speak to them or provide them with documents. Important—indeed, critical—stories have become public in the past only as a result of sources having agreed to speak to journalists, knowing that they would protect them. The most famous story of that type is Watergate. Closer to home, the *Globe and Mail* reporter, Daniel Leblanc, got wind of the sponsorship scandal through a source that he protected. We can all agree on the tremendous public interest there is and was in publishing that research, which had the consequences we are all aware of.

At the same time, reporters who do research on delicate and potentially controversial issues have a sword of Damacles hanging over them. At all times, they run the risk of being called to testify before a court of law with respect to their research, and come under pressure to reveal the identity of their sources, or see the documents and images collected through their research seized by police.

This sword of Damocles hangs over the head not only of journalists, but of sources that trust those journalists and help them to better inform the public. Sources often take risks when they agree to speak to journalists, and could be subject to reprisals if their identity were to be revealed.

I would just like to take a few minutes to tell you the story of a journalist colleague in Quebec City who reported on the problem of asbestos contamination in Quebec government buildings in the fall of 2006. Certain employees agreed to speak with her under cover of anonymity and describe what they had experienced. A member of the union's health and safety committee also agreed to speak to her and agreed to be identified. That union representative was subsequently dismissed because he had spoken to a reporter—a dismissal that he challenged in front of the Labour Relations Board.

My journalist colleague was summoned to appear before this tribunal, and the lawyers of the employer—the Société immobilière du Québec, or SIQ, in this case—wanted to compel her to file all her notes and recordings and reveal the identity of other sources. One of them was known, but they wanted to force her to reveal the identity of the other sources. She expressed her opposition, and the FPJQ supported her.

The Labour Relations Commissioner ultimately recognized the validity of the arguments made by the lawyers of the journalist, who was not forced to reveal her sources. Was it a victory? I don't really think so, because to my mind, the harm has already been done once you reach that stage. SIQ employees clearly understood what they would be risking now if they decided to talk to reporters. Their employer was able to dismiss a union representative who had said too much. They know perfectly well what will happen to them if they decide to talk, even if it is under the cover of anonymity, and their identity ends up being revealed.

In that case, the Labour Relations Commissioner protected the reporter's anonymous sources, but who is to say that a future commissioner or judge will see things the same way? The consequence of that is that an employee will cease to contribute to the dissemination of information which is in the public interest. It is clear that the sword of Damocles hangs over the head not only of journalists and sources, but of the public as well, which is in danger of being deprived of information that is important for our democratic life. Journalists have a moral responsibility to protect the identity of sources to whom they have promised anonymity. That value is also clearly laid out in our code de ethics.

● (1550)

Professional journalists honour that responsibility, but the lack of legal protection makes them and their sources subject to unnecessary pressure and risk. Bill C-426 provides an opportunity to remove that sword of Damocles over their head and allow everyone to work more serenely.

It is not always easy for journalists to convince their sources to talk. They may be afraid of journalists. I am not sure why, but it is possible that some people are afraid of journalists. They may also be afraid of reprisals from their colleagues or their employer, as I described a few moments ago. Journalists sometimes have to work in tense social situations—for example, where there are labour disputes or demonstrations occurring.

I remember covering a labour dispute in the 1980s at the Manoir Richelieu, a fancy hotel in the Charlevoix region, near Quebec City. Employees there were fighting to keep their jobs. There had been demonstrations and vandalism. A plot to explode a bomb was even uncovered. One evening when there was a demonstration, one of the demonstrators died at the hands of police who had just arrested him. So, you can imagine how tense it was in the village at the time. A Radio-Canada colleague filmed the demonstration as the labour dispute was ongoing. In the course of that demonstration, windows were broken. She used some of the pictures in her report, but not all of them. The police then seized her film reels with the intent of using them as evidence against the demonstrators, and there are many such examples.

The danger is that when demonstrators, employees or members of the public start to see reporters as a threat or, worse, as potentially collaborating with police or the justice system, they will become wary of journalists and stop talking to them or cooperating with them. Once again, I believe the public would ultimately run the risk of being penalized. Bill C-426 would mitigate that risk.

Journalists are not above the law. We are aware that there can be circumstances where a journalist's testimony is the only way of securing material evidence, and thus serving the public interest. It's important to be open to that theoretical possibility. We accept the idea that a court of law could arbitrate between the rights of the press and other rights. However, we do think it's important to put an end to the fishing expeditions carried out by police officers and lawyers who sometimes fail to carry out their investigative work thoroughly and properly. They take the easy way out, which is to put a journalist in the witness box. The use of journalistic materials and testimony should be an exception and a last resort.

For all these reasons, we support Bill C-426. There is nothing exceptional about it. Indeed, in the Western world, there is currently a trend towards protection of sources. Legislation has been passed in a number of countries, including the United States and in Europe, notably France and Belgium. It is a fairly significant trend, and we believe it is high time that Canada followed their example and joined the countries that are leading the way in that regard.

Thank you. I am obviously available to take any question you may have and participate in the debate.

● (1555)

[*English*]

The Chair: Thank you, Mr. Bourque.

Acting Director General Jennifer Strachan, you have the floor.

Superintendent Jennifer Strachan (Acting Director General, Community, Contract and Aboriginal Policing, Royal Canadian Mounted Police): Thank you very much, Mr. Chair and committee members and fellow invitees. I'd like to thank you for the opportunity today to speak before you. My name is Jennifer Strachan, as already mentioned. I'm an RCMP superintendent in charge of operational policy and programs here at national headquarters for the RCMP.

My purpose today is to provide you with information on the RCMP perspective relative to the proposed Bill C-426 related to the protection of journalistic sources.

The RCMP respects the work of professional journalists and understands the importance of protecting sources in certain circumstances. We believe the common law principles currently afforded a journalist in protection of their sources is critical to their profession.

Journalistic standards and practices are not legally binding in the way standards are for doctors and lawyers; however, at least one nationally recognized journalistic organization encourages its practitioners to default always to transparency in their reporting and only resort to withholding sources' names in extraordinary circumstances. RCMP members need to challenge journalistic protection of sources on very rare occasions, and since journalists should resort to confidentiality practices as sparingly as possible, it would appear that problems may not arise very often. With that in mind, it should not be difficult to find ways to avoid working at cross-purposes.

There are several amendments we would like to see that would make the bill clearer and more manageable. I understand the originator of the bill has already proposed amendments to Bill C-426C-426, and we see this as a positive step in finding an acceptable solution to what we consider critical issues.

Strict and clear definitions of terms such as “journalist” and “source” are very important, as these terms could otherwise be interpreted so widely as to hinder normal police investigations. Ambiguity exists in this regard; for example, bloggers encouraging hate crime or underground websites propagating beliefs unacceptable in Canadian society could realistically fall under the current definition.

The protection proposed by this legislation would also extend to anyone who assists a journalist. This could offer protection to people who, for various reasons, should not be given such a privilege.

The RCMP is not in favour of conferring privileges upon journalists that are similar to solicitor-client privileges for lawyers. No other profession, not doctors or priests, has such legislative protection, even though those two groups have complex admission and qualification criteria for anyone seeking accreditation. So far, this kind of professional standard does not exist for journalists, and the bill implicitly seeks to confer a privilege on them that is not recognized by law.

In addition, based on these facts, we must be mindful that legislation of this nature, for journalistic protection, could open the door to other professional groups who might seek similar recognition.

Under the proposed bill, the police would be required to investigate all other sources of potential information prior to considering a search warrant on a journalist's possessions. This broad requirement could compromise public safety and cause undue delay while police attempt to meet the criteria of the bill.

Any impediment to obtaining information about the identity of a perpetrator, such as a journalistic claim to confidentiality, could result in the compromise or destruction of evidence, for example concealment of the whereabouts of potential victims, or further harm to victims.

Victims' rights advocates should be made aware of this bill and the impact upon those they seek to represent. They should also be afforded an opportunity to voice their opinions on potential ramifications.

A further impediment would be the time police would have to go about meeting the proposed bill's burden of proof to obtain this type of information, as already mentioned, in time-sensitive cases. This is one example in which police operations could be affected.

Currently, legislation allows for a balancing of interests between the public, police, and journalists under the Criminal Code of Canada and common law. Justices have the ability to order disclosure where a party can prove that the public interest in disclosure outweighs the public interest in non-disclosure. For these reasons, I would suggest that the clauses pertaining to search warrants be removed or significantly revisited within the bill.

Legislation already exists that addresses seizure and securing of evidence. This includes search warrants, information to obtain and the ability to seal search warrants, as well as reports to justices on evidence seized on form 5.2. Already these processes are very complex and have their own set of rules, and in the past they have been able to manage expectations of the criminal justice system.

The process of filing a return, which is a form 5.2, manages the activities of law enforcement in relation to the execution of search warrants and provides an opportunity for the respondent to contest the detention of items seized. Respondents can also file an application to quash a search warrant.

● (1600)

In addition, as it relates to protection of the interests of a potential source, police agencies do not disclose evidence to the public while investigations are ongoing unless circumstances, such as imminent risk of death or grievous bodily harm, make disclosure necessary. If the police were to obtain information from journalists and were worried that the disclosure of that information would cause harm to their source, it would be handled with the same level of confidentiality as all other evidence.

In a democratic society, the work of the police is work on behalf of the people. Our goal of community safety and security is shared by all law-abiding citizens. Additionally, a journalist strives to serve communities by providing information, warnings, news, and entertainment that improves our quality of life as a society. In fact, we often work together in that regard.

These two sets of objectives are not incompatible. Legislation to clarify those potential instances where conflict could arise and to provide direction for both parties gives us an opportunity to understand how the relationship between the police and journalists can function without undue conflict.

Thank you very much.

The Chair: Thank you very much, Ms. Strachan.

From the Barreau du Québec, we have Nicole Dufour.

[*Translation*]

Ms. Nicole Dufour (Lawyer, Research and Legislation Service, Barreau du Québec): Good afternoon. My name is Nicole Dufour.

I am a lawyer with the Research and Legislation Service of the Barreau du Québec. With me today is Mr. Erik Vanchestein, who has been practising criminal and disciplinary law for more than 21 years. He is currently Vice-President of the Conseil de presse du Québec. He will be making the presentation on behalf of the Barreau du Québec regarding Bill C-426.

The Barreau du Québec is the professional association representing lawyers practising in Quebec. It has more than 22,000 members. Its primary mission is to protect the public, primarily by monitoring, regulating and overseeing the profession. The Bar is, indeed, a critical institution in a society such as ours, which is founded on the rule of law. In that context, the Bar has a social responsibility, namely to defend certain fundamental values consistent with a free and democratic society, including respect for human rights, the free flow of information and the right to a fair trial. The Bar also has a social responsibility to see to the proper administration of justice.

I would like to turn it over now to my colleague, Mr. Vanchestein.

● (1605)

Mr. Erik Vanchestein (Lawyer, Bar Member, Barreau du Québec): Mr. Chairman and members of the Standing Committee on Justice and Human Rights, I am pleased to appear today on behalf of the Barreau du Québec to discuss Bill C-426. I want to thank the Committee for inviting us to take part in this important discussion.

The Barreau du Québec has had an interest in the question of protection of journalistic sources and journalists' testimony for several decades now. In 1988, in a brief prepared in response to a policy proposal aimed at amending the Loi sur la presse du Québec, the Barreau du Québec suggested provisions intended to set parameters regarding the testimony of journalists, seizures and searches of journalistic materials and also to protect journalistic sources. It supported specific principles: the free flow of information must be ensured by protecting journalistic activity; the public interest justifies the protection of journalists' confidential sources of information; it is in the public interest for justice to be done and material evidence providing for fair resolution of litigation or conclusion of an inquiry to be available.

Consequently, there is a need to seek the appropriate balance between those two sides of the public interest: the free flow of information, on the one hand, and fair resolution of a dispute or conclusion of an investigation or inquiry, on the other. A court would seem to be the only appropriate forum for ensuring that there is that balance.

The Barreau du Québec's recommendations included: maintaining the rule regarding the compellability of journalists, at the same time limiting their testimony to only those cases where they could play a material role and where it had been demonstrated that evidence of the facts could not be secured by other reasonable means.

Another recommendation was to prohibit disclosure of seized journalistic material likely to reveal the identity of a confidential source, even if the content was of material importance, unless it could be established that the public interest required that the source's identity be disclosed.

Finally, it was suggested that a publication/dissemination presumption be established, by means of the simple filing of a journal or video-audio tape, in order to avoid the need for multiple testimony by journalists for the sole purpose of establishing that the information was published or disseminated. We note that the bill tabled by the member for Marc-Aurèle Fortin, Mr. Serge Ménard, reflects the spirit of those recommendations.

Also, in May of 1990, the Barreau du Québec participated in the development and signature of a memorandum of understanding with the Fédération professionnelle des journalistes du Québec, the Fédération nationale des communications and the Conseil de presse du Québec. That MOU laid out a framework for the process, as well as certain principles that the signatories defined as follows:

> 1. the need for legislative intervention as regards the testimony of journalists and seizure of journalistic material is a function of the public's interest in journalists' retaining access to all sorts of information;
>
> 2. it is also in the public's interest that justice be done, that conclusive evidence leading to fair resolution of litigation or the conclusion of an inquiry or investigation be available;
>
> 3. it is the journalistic activity, based on which the right to freedom of the press is exercised, rather than the individuals who engage in that activity, that needs to be protected, in order to ensure that the public has access to comprehensive information with respect to all matters on which citizens are asked to express an opinion;
>
> 4. it is possible, without granting privileges to journalists who must, like all other members of the public, continue to be compellable witnesses, to pass legislation that preserves the conditions under which a journalist must exercise his or her profession, while at the same time respecting the imperatives associated with the administration of justice.

This MOU contains a legislative proposal that lays out the circumstances in which a journalist's testimony may be used. Some of the points raised are as follows:

> 1. In the case of testimony dealing with facts gleaned by journalists in carrying out their duties, but which were neither published nor disseminated, such testimony should be limited to only those cases where it is of material importance to the resolution of litigation, or where it has been demonstrated that evidence of the facts cannot be secured by any other means;

> 3. in the case of testimony involving disclosure of a confidential source of information, journalists should not divulge the identity of the source, even if disclosure is of critical importance to the resolution of litigation, unless the court believes that the public interest requires that the source's identity be revealed: in such cases, the judge will have to render a decision based on both facets of the public interest—namely, resolution of the litigation and freedom of access to the information; in establishing the appropriate balance, the court should also consider all the consequences of the journalist's testimony, particularly for sources themselves, and immediately intervene for the purposes of weighing the two dimensions of the public interest when a party, or the journalist who is being asked to testify as to his or her confidential sources, fails to oppose it.
>
> 5. in the case of journalistic material that has already been published or disseminated, that a publication or dissemination presumption be established, through the simple filing of a journal or video audio/tape [...]

● (1610)

Once again, these recommendations are echoed in the proposed provisions of Bill C-426.

The Barreau du Québec believes that this bill fosters the free flow of information, by preserving the right to a fair trial, which are two fundamental rights. Indeed, journalists must be able to freely collect all information that is relevant in conveying news to the public. Also, persons appearing before a court of law are entitled to aduce any and all evidence that allows them to defend themselves.

The bill establishes the principle that journalists cannot be compelled to disclose in court their unpublished documents, unless they are of material importance to resolving litigation or cannot be introduced in evidence by any other means. In cases where the identity of a confidential source is at stake, the judge should ensure that disclosure is in the public interest, considering the outcome of the litigation, the need for the free flow of information, and also the impact on the source of disclosure of his or her identity.

Justice La Forest of the Supreme Court of Canada ruled in *Radio-Canada v. Lessard* that freedom of the press is critical in a free society and includes the right to disseminate news, information and opinions. Information collection could be seriously hindered in many cases if the government had unreasonably easy access to information in the possession of the media. The press should not be turned into a police investigation service. The fear that police could gain easy access to a reporter's notes could represent a hindrance for the press in terms of information collection.

Therefore, the Barreau du Québec believes that this legislation is an appropriate response to the repeated request made by signatories of the 1990 MOU in terms of providing a legislative solution that would establish appropriate parameters for the use of a journalist's testimony, as well as protecting journalistic sources.

Thank you. We are now available to answer your questions.

[*English*]

The Chair: Thank you both.

Mr. Bagnell is next, for questions.

Hon. Larry Bagnell: Thank you, and thank you all for coming.

A couple of witnesses today and yesterday talked about our needing more public consultations and debate on this as a very serious bill. That's true, but that often happens in a public policy process. Private members' bills don't go through exhaustive analysis by the department or the public, so we have to change that system. I think the system is actually broken. But we can't change it today for this bill.

This is for the police witnesses and any of the ones from yesterday, if they're listening. You talked about the philosophy, which I think we all agree with, and the balance. But we're going to be putting in specific amendments, and anything you can give us later—for instance, Jennifer, about how provisions concerning the people assisting the journalist could be modified to be more effective.... If you could get technical amendments to solve the problems you raised to us in writing before we do the clause-by-clause, that would be wonderful.

Mr. Bourque, I've submitted six amendments, and I know Mr. Ménard has some, so there are some things that will have to be changed. What are the important parts of the bill for you? What are the things you wouldn't want changed? What makes a difference between this bill and the existing regime, so that we know what to be careful about when we're doing amendments?

[*Translation*]

Mr. François Bourque: In my opinion, the bill will make it possible to protect reporters, sources and the public, and eliminate the uncertainty associated with the fact that courts of law, here and there, and at any time, will be in a position to decide when journalists will or will not be compelled to reveal their sources. We believe that defining and setting out in much clearer legislation the parameters that everyone will have to abide by is a protection—a guarantee. I believe that this bill will mean that journalists will be asked less often to reveal their sources in front of a court. So, for both the public and the sources, there is something here that is more reassuring.

As I said earlier, even if a journalist appears before a court, but is ultimately not compelled to reveal his sources, it seems to me that, in each case, that carries with it some risk as well as the concern that this could ultimately undermine the public's confidence in journalists. People could thus become increasingly reluctant to provide information to journalists that is in the public interest, something that would clearly penalize society as a whole.

In our opinion, the main merit of this legislation is its ability to avoid unnecessary risks and make the rules clear. Of course, a judge will still be required to arbitrate, but I think that, in many cases, it will be possible to avoid the temptation to call on journalists, or seize their material, and so on. In that regard, I did not cite all the examples I had in mind earlier.

In April of 2000, the premises of both Radio-Canada and TVA were searched because broadcasters had filmed a demonstration where windows had been broken. The police officer, Roger Roy, a technician with the SPCUM's identity service, was on site at the time of the demonstration and recorded the events on a video camera. For obvious security reasons, he was not able to get close to the demonstrators. So, because the police officer had not been able to adequately do his job, because it was too dangerous a situation for him, journalists were asked to do it instead. That is the kind of situation we are hoping to be able to avoid.

● (1615)

Hon. Larry Bagnell: Thank you.

My comments are addressed now to the Barreau du Québec.

[*English*]

I got your point and your support, but I was concerned that you really didn't have any suggested improvements. As you know, in the short time we've had for witnesses—a meeting and a half—there have been a number of concerns: about the override clause, about the definition of "journalist" and "media", about the definition of "assistance", about the nature of the information that's not qualified, about knowing the outcome of a court case as a condition before you even know what the information is going to bring. Those are a lot of serious concerns that there should be some amendments about.

Did the bar not have any comments on any of those types of technical elements or anything else in the bill?

[*Translation*]

Mr. Erik Vanchestein: This is obviously a bill under development. I pretty much agree with Mr. Bourque. The major advantage of this bill is that it clarifies the situation upstream, meaning before problems actually arise. And that has to be associated with fundamental values, such as those advocated by the Barreau du Québec, including freedom of the press and the public's right to information. So, we're talking about a free press that can collect information without constraint or fear of consequences.

In terms of the definition, I have heard quite a few things but, unfortunately, I was not here this morning and did not take part in the other debates. For the time being, I have no concerns with the definition of « journalist », as it appears in the bill. For example, blogs are not journalism. They can be in certain situations, particularly when they're associated with a specific media outlet. It is fairly easy to make the distinction. Radio-Canada does not use the term « blogue », but tends to refer more to journals, if I'm not mistaken. At the newspaper *le Soleil*, some of the reporters…

All of that activity is subject to the standards of journalistic ethics, as set out by the Conseil de presse, when a professional journalist is involved. However, nowhere is there a definition, if I'm not mistaken —and I stand to be corrected—of professional journalist. There are a lot of freelances. The concern that anybody could write anything in Canada and claim to be a journalist is not founded, in my opinion. I don't think that jibes with reality.

The aim of this bill—and that is what we are defending here—is to protect journalistic sources associated with information. We are not talking about a primary school bulletin. I believe the FPJQ supports the idea of moving forward and establishing clear guidelines. That pretty well reflects our own position. That way, we will no longer be dealing with an entirely discretionary common law rule. The judge will know what to rely on to make his decision; and, journalists and others involved will know what to respond.

We have not done a clause-by-clause analysis of the bill as a whole. Therefore, we are not in a position to answer that, but we can certainly give you our impressions with respect to specific aspects of the bill.

● (1620)

[*English*]

The Chair: Thank you, Mr. Bagnell.

Monsieur Serge Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): Thank you, Mr. Chairman.

My first question is for Ms. Dufour, unless Mr. Vanchestein would prefer to answer. I know that Ms. Dufour has been following the debate in this area for a very long time. My question relates to subclauses (8), (9) and (10) of the bill.

Ms. Dufour, you are well acquainted with the case law in this area. Do you believe that these provisions properly reflect the test set out by the Supreme Court in specific rulings?

Ms. Nicole Dufour: Having examined those provisions, we believe that you have essentially reproduced the tests laid out in the case law of the highest court of the land. They are perfectly consistent.

Mr. Serge Ménard: As regards the ruling in the *National Post* case last Friday, do you believe the court's ruling would be influenced by this legislation?

Ms. Nicole Dufour: Are you talking about the court's current reasons?

Mr. Serge Ménard: Yes, I'm talking about the reasons it gave in the *National Post* case. I don't know who was suing the *National Post*.

Ms. Nicole Dufour: Who referred to it?

Mr. Serge Ménard: I believe Mr. Pecknold referred to it—rightly so.

Ms. Nicole Dufour: I'm afraid I am not sufficiently acquainted with the facts in that case.

Mr. Serge Ménard: Mr. Pecknold, I want to tell you that, quite frankly, I am very pleased with your presentation. It is very difficult for a member of Parliament, working alone, to achieve perfection the first time around. He needs help and the input of witnesses. I believe you read the corrections proposed in my presentation yesterday and that you are more supportive of the bill now.

I would just like to remind you of what those amendments involved. You can single out the definition of journalist, because it is the most difficult one. In my amendments, I say that it has to be in the context of work carried out independently or for remuneration. Also, in relation to sources, it always refers to confidential sources. As regards journalists' records that would be protected, the wording refers to documents or records collected in the performance of their duties or, if your prefer, as part of their professional activities. I believe the RCMP prefers that solution. Also, the final provision—which I have borrowed from the Australian legislation—stipulates that these provisions « in no way prevent the seizure or disclosure of communications or documents prepared with a view to committing fraud or a criminal offence. »

Based on those amendments, of which you are already aware, would you say that you are more supportive now of the bill?

[*English*]

D/Chief Clayton Pecknold: With your permission, Mr. Pichette will answer that. I was on a plane during your testimony, so I didn't get a chance to see it.

[*Translation*]

Mr. Pierre-Paul Pichette: You are right, Mr. Ménard, but we read legislation from a variety of different countries. We particularly focussed on legislation in effect in Belgium, the United States and Australia, which you mentioned, as well as New York State. As we pointed out in our presentation, you are on the right track.

There are two specific points to be made in that regard. First of all, there is a clear need to define the term "journalist". I understand what colleagues who testified previously have said in that regard. However, for a police officer in the street, there is nothing to distinguish a professional journalist from one who is not. People could say that a journalist is a professional if his or her employer is *La Presse* or the *Ottawa Citizen*. However, someone could claim to be a journalist without our knowing who the employer is. Based on the four examples I have just given you, you may want to refine your definition further.

Also, journalistic activity at the very least deserves consideration. Should it be included or not? Is one included in the other? At the very least, this should be considered in future discussions.

● (1625)

[*English*]

The Chair: Go ahead, Mr. Pecknold.

D/Chief Clayton Pecknold: May I add to that? I'd answer your general question more directly, sir, in this way: we believe the common law works well now. We don't believe it's necessary to codify this. We don't believe it's necessary to change the presumption, but we're also pragmatic; we realize that if this bill is going to go forward, we'd like very much to embrace any of those amendments that take away any of the ambiguity we talked about.

The Chair: Thank you, Mr. Ménard.

Go ahead, Mr. Comartin.

[*Translation*]

Mr. Joe Comartin: Mr. Bourque, does your federation have a definition that applies to its members—in other words, the journalists who are part of it?

Mr. François Bourque: We have two definitions which are not contradictory. The Federation professionnelle des journalistes is made up of individual members. Therefore, people often come to us asking to become members. Our decision is based on a criterion which, without being perfect, allows us to function: does the individual draw most of his or her income from journalism? Is it the person's main occupation?

That is an operational definition as regards management of our membership. Our code of ethics also proposes the following definition: any person performing the duties of a journalist for a media organization.

I must admit, however, that the media world is undergoing significant change. A number of people at the table have already made that point. We are seeing the rapid emergence of all kinds of new media, either the Internet or other media forms, to the point where there could be some confusion as to what a journalist is or is not. We are currently giving that whole issue some thought. We are thinking that there may be a need to better define the term "journalist". For the moment, we have been able to function perfectly well with our current definition, and we agree with the one proposed in the bill. However, some situations could be ambiguous. There are blogs that are clearly authored by journalists, whereas others are authored by members of the public.

Mr. Joe Comartin: Are any of the bloggers members of your federation?

Mr. François Bourque: Yes, absolutely. I had a blog last fall during the municipal election campaign in Quebec City. As was already pointed out, the same criteria and the same rules apply to people keeping a journal.

Mr. Joe Comartin: The definition of "journalist" in sub-clause 39.1(1) of the bill refers to "anyone who assists". Could individuals that assist be members of your federation?

Mr. François Bourque: Yes, absolutely. Our federation does not only accept journalists who are the salaried or unionized employees of a specific media company, but also freelance and independent journalists. They have every right to be members of our federation and are considered to be professional journalists if they draw most of their income from the profession.

Mr. Joe Comartin: Can you refuse membership to individuals who write blogs containing pornographic or offensive material?

Mr. François Bourque: I don't think members of our federation are involved in that kind of activity. The term "pornography" is not part of the criteria on which we base our decisions on a daily basis. We will not refuse memberships to someone who writes a blog, because a blog is not, in itself, inconsistent with journalistic practices. It is simply a different method of expression used to provide information or disseminate different viewpoints. A blog is not inconsistent with journalism. However, some blogs written by members of the public or certain organizations may not meet the criteria established by the profession.

[*English*]

Mr. Joe Comartin: *Merci*.

Ms. Strachan, you are looking specifically for better definitions, in your perspective, of the "journalist", the "source", and I think you mentioned one other category. Have you any specific proposals as to how you would define those individuals?

● (1630)

Supt Jennifer Strachan: I understand there were some amendments put forward yesterday, and I have to apologize that I haven't had the time to review those, since I had a lot of work during the day. So I can't comment on what was proposed yesterday, sir, but when I read what's in the bill that was provided to me and I read that "'journalist' means a person who contributes regularly and directly to the gathering, writing, production or dissemination of information for the public through any media, or anyone who assists such a person", I see that as being very broad. It wouldn't allow me as an investigating officer, if I was investigating a crimes against a person case where I felt that it was important for me to get the information as soon as possible...and I want to be very careful here because I believe that a majority of the journalists out there would always provide that information. I do believe that, and I've worked in various capacities, whether it be on the front line or when I did do quite a bit of work in the area of sexual exploitation on the Internet, where we relied heavily on the media to support us in getting that information out.

Our worry is that I believe, because it's so broad, some could utilize that definition to their defence. And I actually see it as a means of bringing unprofessionalism to journalists as a group of professionals.

Mr. Joe Comartin: Let me ask Mr. Pichette.

The Chair: Mr. Comartin, I'm sorry, our time is limited.

Mr. Moore.

Mr. Rob Moore: Thanks, Mr. Chair.

I note, in a response to a question, that the Barreau du Québec mentioned they haven't had the opportunity to go through it clause by clause but were commenting generally on the theme of this bill.

I guess that's the problem; it's why we can't rush something like this. The words that are in this bill are powerful words. I've heard some testimony that would suggest that there's a complete vacuum now on this issue and that we are faced with the need to bring in the law, when the fact of the matter is that a long-standing balance has been established in Canada.

I think everyone around this table would agree—certainly the witnesses mentioned it, but I think every one of the members of the committee would agree—that one of the great things about our country is freedom of the press. We want to celebrate and to promote that freedom. But the thought could be out there that somehow this is the wild west when it comes to getting this information, when in fact we have achieved, right now—and it's been upheld as recently as last week—a balance in Canada that weighs those competing interests: tackling crime and also, of course, freedom of the press.

There was a recent Ontario Court of Appeal case dealing with this issue that upheld the law as it is. I should note that a member of the Canadian Association of Journalists and, as a matter of fact, a journalism professor, Professor John Miller, who wrote in *The Globe and Mail*, I think yesterday, says, "A closer look at the facts of this case show[s] that the judges got the balance between press freedom and crime detection just about right."

That's a comment from a member involved in journalism. He's addressing the suggestion that journalists should have the unfettered right to protect the identity of their confidential sources, period. That has not been the common law experience, and I don't think it is in a direction we want to go in.

Her testimony today, and yesterday's, about the special privilege this would accord journalists if it were to pass as is, going beyond even what we think of with priests, with doctors, going beyond that level and according them a special status that, as drafted now, is overly broad, both the definition of "journalist" and of "source"....

I want to get some comment from you, Mr. Pecknold or Ms. Strachan, on some real-life examples of how this could impact on an investigation. I put the question yesterday of even cases involving national security. The threshold that is provided in this bill is completely different from what we have now in common law and the balance that we've achieved.

I'd ask you to comment on how, with perhaps a real-life scenario, that could be impacted here.

● (1635)

Supt Jennifer Strachan: I'll make brief comments, and then I'll leave it to my cohorts here.

The first thing you often think about in this sort of information is the national security issue, and it should be of great concern to all Canadians. But I look beyond that. I look at the front-line policing perspective, which protects the rights of victims.

Again, my background is in the area of investigations in relation to sexual abuse of children on the Internet, sites such as NAMBLA, which is an organization that seeks to propagate conduct between adults and children. There are websites out there such as that. If a source provides information related to that and the investigation is of a time-sensitive nature, perhaps related to locating a child, I think it's important that the information can be gathered quickly. We see this, as you've already mentioned, existing in common law.

Again, there's a story out of New Brunswick in which a media newscaster—not utilizing a source, but you could work source into that—preparing for an interview with a tech crime person in relation to child exploitation on the Internet, did research up to the point when the interview was done and then continued to access illegal images on the Internet.

Again, that's just journalists, or in this a case a media newscaster—and I apologize if I'm bringing the two into one—but it's just not lending itself to a good definition of "journalist". Could that be seen as an issue here?

I would give you those two examples and leave it to my colleague.

D/Chief Clayton Pecknold: It's interesting, because to my knowledge journalism is not regulated in every province in the same way that a solicitor is. A solicitor is defined. You have to be a member of the bar. It's defined, so we know what a solicitor is.

I actually think the concern is—and our child exploitation people will tell us this—that there are websites written in such a way as to have editorials. They have papers. They are promoting the benefits of child exploitation. It's hard to understand, it's bizarre, but they're promoting it in a way that one could argue that they say they're disseminating information.

Our concern is that the way this bill is drafted, it could be used as a shield for people it was never intended for, and in many ways it colours legitimate, true journalism and brings a level of disrepute that we don't want to introduce into it.

Mr. Rob Moore: Do I have a little bit of time?

Yes, that example you mentioned, NAMBLA, I think that was raised yesterday also. I don't think that's where anyone around this table wants to go, but certainly we don't want to have a piece of legislation that could be interpreted in that way. My fear as well is that this is overly broad as currently written.

Could you comment a bit...and I'll leave this open to Mr. Bourque also. There has been a recent case on this dealing with the *National Post*. Many are commenting that there is a balance that we've achieved and it's the right balance.

Mr. Pecknold, Ms. Strachan, or Mr. Bourque, would you comment a bit on the fact that there is a law in place now and how perhaps this would change things? Because there is a test that can take place right now, there is a balance to protect journalistic sources even now. So could you comment on the balance that we've managed to achieve to this point?

The Chair: If you could make those comments in a timely fashion, we'd appreciate it.

D/Chief Clayton Pecknold: Sure. I'll be as quick as possible.

I have a case in front of me, and there's an important part of it where the Ontario Court of Appeal, I believe, in that case restated that "a 'privilege' is an exception to the fundamental proposition that everyone has a general duty to give evidence relevant to a matter before the courts", and from a starting point, that's the presumption. This bill would reverse that presumption. That's the key point. That's a major public policy shift, and we suggest it needs a wider view.

The Chair: Superintendent Strachan.

● (1640)

Supt Jennifer Strachan: The processes are in place. Sometimes we call upon a justice of the peace or a judge, as officials who are well trained and who have a lot of expertise, to look at both sides of the story and render a decision. As a law enforcement officer, I have been there when they haven't sided with my version of what I had put forward and the information to obtain, and at times where they have. I've always tried to respect that.

I agree with you that there is a system in place and it seems to work efficiently. Again, taking it to another extreme just opens the door for other interest groups to seek similar support.

The Chair: Monsieur Bourque.

[*Translation*]

Mr. François Bourque: As I said at the outset, I am not a lawyer, nor am I an expert on legal issues. Based on my understanding and perception of the bill being debated today, what is proposed is not an extreme. On the contrary, I see this as an attempt to codify what has become a practice, as seen in certain court rulings. This bill is a fairly accurate reflection of the case law. It has the merit of clarifying these practices for some time to come and avoiding a situation where journalists would be compelled to testify or would have their journalistic materials seized in cases not deemed to be critical. This bill avoids multiple recourse to journalists as witnesses or to provide support to police carrying out investigations or to the courts.

[*English*]

The Chair: Go ahead, Ms. Dufour.

[*Translation*]

Ms. Nicole Dufour: At the risk of repeating myself, I have to say I agree with Mr. Bourque that this bill has the merit of clarifying the situation upstream and avoiding legal debates that can at times be long, laborious and costly. This is something that is very important for the proper administration of justice. This is not a step backwards. On the contrary, it clarifies things upstream, allowing all stakeholders to arrive at appropriate decisions.

[*English*]

The Chair: Thank you.

I would like to thank the witnesses for appearing here this afternoon. Your information is certainly going to be disseminated. It's been a very interesting discussion.

Go ahead, Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): As follow-up, the Quebec bar didn't quite get a chance to talk about the *National Post* decision; maybe they could follow it up with a letter as to what they think about it.

The second point is the *code de déontologie que M. Bourque*.... A copy of that would be useful, if permitted.

The Chair: I would like you to remember, Mr. Murphy, that another discussion is going to take place immediately after we hear these witnesses, and our time is limited on that discussion.

Mr. Brian Murphy: I'm finished.

The Chair: Have you requested another comment from the bar?

Mr. Brian Murphy: I think they got it; it's okay.

The Chair: Oh, he just wanted to make a comment to them. That's fair enough.

Mr. Brian Murphy: Thank you.

The Chair: Thank you very much. It's my misunderstanding.

Again, thank you for appearing here. We appreciate it very much.

We'll suspend for one minute.

[*Proceedings continue in camera*]

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