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Chair

The Honourable Michael Chong

Standing Committee on Industry, Science and Technology

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● (1530)

[*English*]

The Chair (Hon. Michael Chong (Wellington—Halton Hills, CPC)): Good afternoon, everyone. Welcome to the 39th meeting of the Standing Committee on Industry, Science and Technology.

We're here to review Bill C-27, the Electronic Commerce Protection Act, clause by clause. This is a continuation of the clause-by-clause consideration of our last meeting. We will begin today by considering clause 63.

(On clause 63—*Regulations—Governor in Council*)

The Chair: I understand that we have two amendments to clause 63, government amendments 49.1 and 50.

You all should have in front of you a package of amendments that are listed in order.

Go ahead, Madam Coady.

Ms. Siobhan Coady (St. John's South—Mount Pearl, Lib.): When are we going to go back and deal with clause 51?

The Chair: At the end.

Ms. Siobhan Coady: At the very end, okay. Thank you.

The Chair: You'll note in your orders of the day that clause 51 is second to last, just before clause 2.

We'll begin with government amendment 49.1, moved by Mr. Lake. Is there any discussion of this amendment?

Mr. Lake, do you want to speak to it?

Mr. Mike Lake (Edmonton—Mill Woods—Beaumont, CPC): No.

The Chair: Seeing no further debate on government amendment 49.1, I'm going to call the question.

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

The Chair: We will now move to government amendment 50, moved by Mr. Lake. Is there any discussion of G-50?

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

The Chair: Are there any further amendments to clause 63?

Ms. Siobhan Coady: Just to speak to it for a second, I have an amendment that's coming for clause 63.1, which we haven't dealt with yet. So is it okay to move clause 63 without moving on to 63.1?

The Chair: That's right.

(Clause 63 as amended agreed to)

[*Translation*]

(Clause 63.1)

The Chair: Now we are discussing a new clause, clause 63.1

[*English*]

Right now we are discussing new clause 63.1, for which we have three motions. The first one is a motion to establish the new clause, and the second two are amendments to modify the clause. It's actually a series of three new clauses to create 63.1.

Mr. Wayne Cole (Legislative Clerk, Committees Directorate, House of Commons): We will number them if they're adopted.

The Chair: We'll begin in the order in which they were received, beginning with NDP-1. It's moved by Mr. Masse.

Is there any discussion on NDP-1?

Mr. Lake.

Mr. Mike Lake: I'd just like to move what I think is a friendly amendment to this. Can we just strike the word “every” at the beginning?

Mr. Brian Masse (Windsor West, NDP): That's friendly.

The Chair: Okay, so NDP-1 has been moved by Mr. Masse, with the removal of the word “every” at the beginning of the sentence.

Is there any discussion on NDP-1, as moved by Mr. Masse, together with Mr. Lake's friendly amendment? I think it's fairly clear. Seeing no further discussion on NDP-1, which calls for a three-year review of the act, I will call the question.

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

● (1535)

The Chair: Thank you very much, Mr. Masse.

We'll now consider government amendment 51.1. This is moved by Mr. Lake.

Is there any discussion on G-51.1?

I just want to point out to members of the committee that government amendment 51.1 will be renumbered so it reflects all of the changes to the bill. The numbers in G-51.1 will be renumbered from 63.1 to whatever is sequential in the document.

Mr. Mike Lake: It would be clauses 63.2 and 63.3. Is that right?

The Chair: Yes.

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

The Chair: Now I understand we have an amendment from Monsieur Garneau, as moved by him.

Mr. Garneau, would you care to speak to this amendment?

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): It's a reintroduction, Mr. Chair, of an amendment the government withdrew. The rationale is that without this amendment, legitimate professionals will be impeded from following up on third-party referrals by e-mail. We think there are enough safeguards in here to ensure this is not going to constitute spam. It's certainly very, very important for organizations like realtors.

The Chair: Thank you, Mr. Garneau.

The legislative clerk has just informed me that in his view—and it's mine as well—this amendment is out of order because, according to Marleau-Montpetit on page 656,

> An amendment is also out of order if it is moved at the wrong place in the bill, if it is tendered in a spirit of mockery, or if it is vague or trifling. As well, an amendment is out of order if it refers to...subsequent amendments or schedules of which notice has not been given, or if it is otherwise incomplete.

Because this amendment refers to an earlier clause that has been adopted by the committee, clause 10, and because it modifies that earlier adopted clause, it is out of order.

Now, if there is unanimous consent on the part of the committee to reopen clause 10, we can proceed with this amendment. But if there isn't unanimous consent in this committee to reopen clause 10, which has already been adopted, then I cannot allow this amendment to stand.

Mr. Garneau, do you have any questions about that?

Mr. Marc Garneau: May we ask to see if there is unanimous consent?

The Chair: Is there unanimous consent to reopen clause 10 of this bill?

Some hon. members: No.

● (1540)

The Chair: No, I do not have unanimous consent. So I'm going to rule this amendment out of order. If you wish to have the page reference from Marleau-Montpetit establishing that convention, it's page 656 of chapter 16.

Just to clarify, we've adopted a new clause in which there will be two sections as passed by NDP-1 and G-51.1.

A voice: Three new clauses.

The Chair: Clauses 64, 65, 66, 67, 68, 69, and 70 have no amendments that I am aware of. Unless members say otherwise, I am going to call the question on all these clauses.

[Clauses 64 to 70 inclusive agreed to]

(On clause 71—*False or misleading representation—sender or subject matter information*)

The Chair: We will now go to consideration of clause 71. There are three amendments for this clause, beginning with Liberal-4.1. I will note that the vote on Liberal amendment 4.1 will also apply to Liberal amendments 4.2, 4.3, and 4.4. Amendment 4.1 and 4.2 amend clause 71, and 4.3 and 4.4 amend clause 73.

Do I have a mover for Liberal amendment 4.1? Moved by Madam Coady.

Is there any discussion on Liberal amendment 4.1?

Madam Coady.

Ms. Siobhan Coady: This amendment puts in the words "material respect". The way the wording currently exists, it leaves no option. If there is a complaint put before the Competition Bureau, it would have to act. If an error was made, or if the matter was plainly trivial, the Competition Bureau would not have the flexibility to forbear to take action. They would have to act.

We do not think putting in the words "material respect" detracts from the force of the bill. It doesn't change anything in the bill itself, but it gives the Competition Bureau the flexibility to abstain from considering a matter it judges to be unimportant. It will help to keep the system from clogging up if we put in the words "material respect". So we don't think it does any harm to the bill itself. It merely allows the Competition Bureau to take relevance into account before acting.

The Chair: Thank you, Madam Coady.

Mr. Bouchard.

[*Translation*]

Mr. Robert Bouchard (Chicoutimi—Le Fjord, BQ): Mr. Chair, we discussed clause 64 very quickly. Can we come back to it after clause-by-clause study? I think that it is an important point because it deals with the National Do Not Call List. I had my hand up, but you moved on to something else.

The Chair: If there is unanimous consent to look at clause 64 again, we can do so. If not, it is not possible.

[*English*]

I have to have unanimous consent to reopen clause 64.

● (1545)

[*Translation*]

Mr. Robert Bouchard: Let me say a few words. I would like to ask my colleagues what they consider acceptable. Clearly, I see clause 64 as relatively important. I would like to ask some questions about the National Do Not Call List. The list has only been in effect for a year. This bill takes us back to square one. I put up my hand, but you had already moved on to another clause.

Would members of the committee agree to look at clause 64 when we have finished this study? I would like to ask some questions. I think it would be useful for members from all parties, because the National Do Not Call List is included in an act that came into effect scarcely a year ago. It has cost a lot of businesses a lot of money. Now, we are in the process of changing it. I would like to ask some more detailed questions, so that we are all better informed about the implications of clause 64 as it appears in Bill C-27.

The Chair: Thank you, Mr. Bouchard.

The committee has adopted clause 64. If you want to revisit that clause, you must have the consent of all members of the committee.

[*English*]

Go ahead, Mr. Lake.

Mr. Mike Lake: Can I just make a suggestion?

Since this just came up and I don't want to give unanimous consent at this point, can you formally move that motion at the end and then we can decide? Let's go through the rest of this stuff and just at the end maybe move that and we can then decide what we want to do?

[*Translation*]

Mr. Robert Bouchard: Yes, I agree.

[*English*]

The Chair: Okay, so moving on to the business under consideration, we just heard Madam Coady speak to Liberal amendment 4.1. Do you wish to further speak to it?

Ms. Siobhan Coady: I just would say that this amendment would allow for the bill to ensure that you wouldn't automatically face potential criminal prosecution or civil action under the Competition Act every time someone assserts that subject matter information in a business e-mail they send is somehow misleading. It would allow for the Competition Bureau to actually review this to make sure it's not trivial or misleading but will still capture anything that is harmful or material.

Thank you.

The Chair: Thank you, Madam Coady.

Mr. Masse was on the list. Do you wish to speak to this?

Mr. Brian Masse: Thank you, Mr. Chair.

Can I have the department comment on these amendments?

The Chair: Mr. Leduc, would you care to comment on Liberal amendment 4.1?

Mr. André Leduc (Policy Analyst, Electronic Commerce Policy, Department of Industry): My first point is there is nothing in the proposed act that would force the Competition Bureau to investigate something that would seem more like a mistake or an oversight in the header of an e-mail.

Secondly, it would increase the burden on the Competition Bureau to have to prove the materiality of the information described in the header information. And as is the case with most everything in the act, there is a due diligence defence on the civil side for these violations, and if you bring frivolous cases forward, as it is in the Canadian legal system, you run the risk of having to pay for the legal fees and the costs of the defendant. So we don't see this as a problem. We don't see it as an issue. So in our view this is somewhat frivolous.

The Chair: Thank you, Mr. Leduc.

We have Madam Coady. Go ahead.

Ms. Siobhan Coady: Thank you.

If this does no harm, because all material representations will be caught, then there is no reason not to put it in the bill.

Mr. André Leduc: Yes, the reason would be that it places an extra burden of proof on the Competition Bureau in the course of their investigations that they would have to prove the materiality of every subject line and header rather than just go on it by face value.

Ms. Siobhan Coady: I'm sorry, what do you mean by face value?

Mr. André Leduc: Just by reading what it says in the header and having an understanding. They would have to prove the materiality of the comments or the issue raised in the subject line or the header.

● (1550)

The Chair: Mr. Rota.

Mr. Anthony Rota (Nipissing—Timiskaming, Lib.): I'd like to clarify, if you don't mind.

What you're saying is that at face value they would look at it, and it really doesn't matter, they'd go ahead with it regardless. With what Ms. Coady is proposing, they would have to prove that there is fault there. Is that what I'm hearing?

Mr. André Leduc: They would not necessarily prove that there is fault. They would have to first prove the materiality of the information that's in that subject header.

Mr. Anthony Rota: Is that not a precaution that would be worth putting in?

Mr. André Leduc: It's almost understood under the act, but there wouldn't be a burden of proof on the bureau to have to do this. If we add the language in, they would have to do it.

Mr. Anthony Rota: My concern is when you say it's “almost understood”. That could be left wide open. It's almost a presumption of guilt prior to proving that anything has been done wrong. I would like to think we have some kind of proof. It's almost like you would have to prove there's something wrong. What is the role of the prosecutors? Can you explain it? Maybe I'm missing something here, but it doesn't really make much sense. You're proving guilty prior to having any proof.

The Chair: Thank you, Mr. Rota.

We'll go to Mr. Palmer now.

Mr. Philip Palmer (Senior General Counsel, Legal Services, Department of Industry): The amendment requires that the information stated in the header—centre information or subject line—is false and misleading. I don't know, when we're talking about the very bare-bones material we have in the header and centre information, that we could expect that the information could be anything other than material.

One of the fundamental concepts is that if you represent yourself as being the Royal Bank, for instance, your e-mail will be treated differently from badguysbank.com. One of the major problems that we encounter, of course, is that there are a lot of e-mails these days representing themselves—spoofing, as it's called. On their face they strike one as being material without further proof. That was really the idea of this. We do have to prove that the statement is false or misleading.

The Chair: Thank you, Mr. Palmer.

We'll go to Mr. Lake and then back to Madam Coady.

Mr. Mike Lake: That's good, because I'm wondering if Madam Coady can describe a problem that would be solved by making the change that she's making here.

The Chair: Thank you, Mr. Lake.

Madam Coady, do you have any comment?

Ms. Siobhan Coady: I can give you one instance.

If you received an e-mail from a catalogue company that you're doing business with all the time, and in the subject line they say "free shipping", but because the subject line is not long enough they might say, "free shipping on boots", and then in the body of the e-mail it says, "free shipping on three items or more". A competitor or somebody else could actually make a complaint, because they can under this particular act. The Competition Bureau would have no discretion to be able to say no to pursuing this further. Normally under the Competition Act there is.

Also, if we make this change it makes it consistent with the other provisions in the Competition Act. We are making changes now to the Competition Act. That's what this particular section is doing. It has nothing to do really with the body or the intent of the bill. It has more to do with how the Competition Act pursues changes in the subject line or headers.

We think we should have some discretion built into the Competition Bureau to allow them to pursue some things that are material, that are not trivial, and to allow them the necessary discretion in order to pursue things that are actually important. That's the reason we should make this change.

● (1555)

The Chair: Thank you, Madam Coady.

Mr. Lake, did you have a comment?

Mr. Mike Lake: I'd like to come back to the officials to comment on the example. She gave the free shipping example.

Mr. Philip Palmer: I think the chief thing to bring to the committee's attention is the fact that section 52.01 is a *mens rea* offence. We have to actually prove that the person knowingly, willingly, and intentionally did the act. So there is a lot of comfort there, in that trivial cases will not be brought forward.

Secondly, the due diligence as a defence is available for the civil remedies.

Thirdly, there is no requirement that the bureau proceed and prosecute every allegation or complaint made to it. It has the discretion and enforcement policies that help determine the priority in which it will take cases. And obviously, if it is something such as free shipping and then it turns out it's free shipping for three items or more, I doubt the Competition Bureau is going to be spending its time on that kind of a complaint.

The Chair: Madam Coady, go ahead.

Ms. Siobhan Coady: But we did hear from witnesses, including the Canadian Bar Association, that felt that without putting in the words "in a material respect", it would lead to the Competition Bureau being required to pursue anything brought before it. That's why they were asking for the words "in a material respect".

The Chair: Thank you, Madam Coady.

Clearly, the department's view is different from what we've heard from other witnesses.

Is there any further debate or discussion on amendment L-4.1?

(Amendment negatived) [See *Minutes of Proceedings*]

The Chair: Amendment L-4.1 has not carried, and that vote will apply to amendments L-4.2, L-4.3, and L-4.4.

Thank you, Madam Coady, for speaking to those amendments.

We now go to amendment G-52, which is moved by Mr. Lake.

Does anyone wish to speak to amendment G-52?

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

(Clause 71 as amended agreed to)

(Clause 72 agreed to)

(On clause 73)

The Chair: We now move to the consideration of clause 73, for which, I understand, there is one amendment. It's amendment G-53, moved by Mr. Lake.

Is there any discussion of amendment G-53?

Monsieur Bouchard. *Allons-y.*

[*Translation*]

Mr. Robert Bouchard: I would like some explanation from the officials about clause 73. It deals with "... false or misleading representations in a material respect..." in the sender information or subject matter information of an electronic message.

Could you explain that a little more simply?

[*English*]

The Chair: Monsieur Palmer.

[*Translation*]

Mr. Philip Palmer: Previously, we had provisions in the law that prohibited the use of false or misleading representations in hard copy, in newspapers, for example, or advertising or telemarketing. But we had no means of prohibiting false representations in electronic communications such as e-mail. The goal of this amendment specifically is to create a level playing field that includes technology. So misleading representations are contrary to the provisions of the act whether they be oral, written or by e-mail. In broad terms, that is the goal.

● (1600)

[*English*]

The Chair: One moment, please. We're on government amendment 53, is that correct?

Mr. Palmer, what were you just speaking to?

Mr. Philip Palmer: I was actually speaking to clause 73.

The Chair: In general. I understand.

We're presently considering government amendment 53. Is there any further discussion of government amendment 53?

Monsieur Vincent.

[*Translation*]

Mr. Robert Vincent (Shefford, BQ): Are we talking about clause 53 or 73?

The Chair: We are dealing with government amendment 53.

Then we will go to clause 73.

[*English*]

Is there any further discussion of government amendment 53?

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

[*Translation*]

The Chair: Mr. Bouchard, do you have any other questions about clause 73?

Mr. Robert Bouchard: That is fine, I asked my question.

[*English*]

The Chair: Are there any further questions on clause 73 as amended? Seeing none, I'll call the question.

(Clause 73 as amended agreed to)

(Clause 74 agreed to)

(On clause 75—*Deduction from administrative monetary penalty*)

The Chair: On clause 75, we have one amendment, moved by Mr. Lake, government amendment 54.

Any discussion?

Monsieur Bouchard.

[*Translation*]

Mr. Robert Bouchard: Once again, I would like to ask the department representatives to tell me what is meant by "a interim injunction under clause 74.111".

I would also like an explanation of clause 75, which reads: "If a court determines that a person is engaging in or has engaged in conduct that is reviewable..."

● (1605)

[*English*]

The Chair: Mr. Palmer.

[*Translation*]

Mr. Philip Palmer: That is another addition designed to broaden the approach. There are other similar powers elsewhere in the Competition Act. Before a matter can be brought to court, there are often cases where improper activity must be stopped or where more victims and further damage must be prevented. That is the idea of the interim injunction.

Of course, it is done only when a court has been able to consider the facts of a particular case.

[*English*]

The Chair: Are there any other questions or comments from members?

Seeing none, I'll call the question on government amendment 54.

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

(Clause 75 as amended agreed to)

(Clauses 76 and 77 agreed to)

(On clause 78)

The Chair: We now go to the consideration of clause 78. I understand there are five amendments for clause 78. We'll begin with Liberal amendment 5.

Do I have a mover for Liberal amendment 5?

Mr. Anthony Rota: I so move.

The Chair: Moved by Mr. Rota. Thank you very much.

[*Translation*]

Mr. Bouchard, do you have any questions?

Mr. Robert Bouchard: Yes, I would like to ask some questions.

They are for the officials.

Could you explain the scope of the prohibition on the collection of personal information? It is in clause 78, but I cannot tell you exactly where.

Mr. André Leduc: The idea of clause 78, proposed subsections 7.1(1) and (2), is to limit the collection of electronic addresses—e-mails, IP addresses, and so on—and, in proposed subsection 7.1(3), the idea is to limit the collection of personal information by a computer without authorization.

Mr. Robert Bouchard: Okay.

Here is my second question.

Do you think that the wording of the clause could adversely affect investigations on fraud, money-laundering, identity theft or copyright violations?

Mr. André Leduc: That would depend on the way in which the clause is interpreted. It also depends on the nature and the scope of the investigation.

We do not think that it should adversely affect an investigation into a private company.

● (1610)

Mr. Robert Bouchard: Okay. Fine.

The Chair: Are there any other questions on the Liberal amendment?

[*English*]

Mr. Lake, go ahead.

Mr. Mike Lake: The line of questioning there was different from what it was on the L-5 amendment, right?

The Chair: Yes. Monsieur Bouchard had a general question about clause 78.

Mr. Mike Lake: I don't know if Mr. Rota wanted to speak to amendment L-5 first.

The Chair: Do you, sir?

Mr. Anthony Rota: No.

Mr. Mike Lake: It's just to avoid confusion. Maybe the officials can comment on that amendment.

The Chair: Mr. Palmer, would you care to comment on L-5?

Mr. Philip Palmer: The reason it's not possible to have exactly the same definition of electronic address in both PIPEDA and the ECPA, the Electronic Commerce Protection Act, is that under PIPEDA certain forms of information, particularly telephone accounts or telephone numbers, are not considered personal information. That's why the two are not parallel, and I would not advise that they be made so.

The Chair: Thank you very much, Mr. Palmer.

Go ahead, Monsieur Bouchard.

[*Translation*]

Mr. Robert Bouchard: I come back to my questions about clause 78 again. Of course, there are advantages to clause 78. Could there not also be negative consequences, if the wording of the clause were applied chapter and verse?

Mr. André Leduc: As drafted, the clause says that you have to have authorization to collect information and authorization to access a network. Those are the two conditions. It is the access and the collection of information that are not authorized. Otherwise, there should be no problem.

Mr. Robert Bouchard: Okay. Thank you.

[*English*]

The Chair: Thank you.

Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

The bottom line is whether we agree or disagree with allowing others to have access to computers without authorization. I would agree that we don't want to have that.

I want to clearly understand L-5. Does this strengthen or weaken a person's privacy?

Mr. André Leduc: It's just a matter of interpretation. Currently, PIPEDA does not recognize telephone accounts. That was the reason for the difference between the definition in the PIPEDA amendments and the definitions up front in ECPA, where we are recognizing all electronic addresses. I think it would cause a problem for the Office of the Privacy Commissioner to interpret only these two clauses under PIPEDA as including telephone accounts.

Mr. Brian Masse: You're saying that it would then restrict the Privacy Commissioner's ability if it were introduced.

Mr. André Leduc: It would complicate her investigations in this area, because everywhere else in PIPEDA, she doesn't recognize telephone addresses as being part of PIPEDA.

Mr. Brian Masse: We would be prescribing the Privacy Commissioner in her job.

Okay. Thank you.

The Chair: Thank you, Mr. Masse.

Go ahead, Monsieur Bouchard.

[*Translation*]

Mr. Robert Bouchard: As I listen to my colleague, another question occurs to me. It is similar to the one I have already asked, but I will ask it in a different way.

I have heard comments to the effect that the scope of clause 78 is very wide, perhaps too wide. For the benefit of committee members, I would like you to reassure us that the scope is reasonable. I would like to be reassured about that.

● (1615)

Mr. André Leduc: Clause 78, proposed subsection 7.1(3), as drafted, seems very reasonable. There should be consent for personal information to be collected by an unauthorized method.

Mr. Robert Bouchard: How would you respond to people who say that the scope is too wide?

Mr. André Leduc: As in other parts of other bills, there must be an expectation of consent if personal information is to be collected. In this case, collection of this kind is limited to use by an electronic network.

The Chair: Thank you, Mr. Leduc.

[*English*]

Are there any other comments or questions?

(Amendment negatived)

The Chair: We will now go to consideration of government amendment 55.1, as moved by Mr. Lake.

Before we go to any consideration of this amendment, I want to point out that if the committee adopts government amendment 55.1, Liberal amendments 7, 8, and 9 cannot be moved because they will be out of order.

We have in front of us government amendment 55.1. Is there any discussion?

Mr. Lake.

Mr. Mike Lake: This was one that we reintroduced.

I want to get some clarification, and I would appreciate you or the clerk reading proposed paragraph (c) of this amendment.

The Chair: I will get the legislative clerk to read the amendment as moved by Mr. Lake into the record.

Mr. Wayne Cole: It says:

> (c) replacing line 13 on page 48 with the following:
>
> (3) Paragraphs 7(1)(a), (c) and (d) and (2)(a) to (c.1) and the exception set out in

Mr. Mike Lake: I don't believe that is the newest version of this amendment.

The Chair: Mr. Lake, do you have the latest copy of the amendment so I can read it for all members?

Mr. Mike Lake: It should read:

> (c) replacing line 13 on page 48 with the following:
>
> (3) Paragraphs 7(1) (a) to (d) and (2)(a) to (c.1) and the exception set out in

The Chair: So we are all clear, we're considering government amendment 55.1, which has been moved by Mr. Lake. It is as it has been written on the sheet in front of you, with the change in the last line reading:

(3) Paragraphs 7(1) (a) to (d) and (2)(a) to (c.1) and the exception set out in

Is there any discussion?

Mr. Masse.

Mr. Brian Masse: I'd like to ask the department about this change, and then I have some other questions.

● (1620)

The Chair: Monsieur Leduc.

Mr. André Leduc: This is where we have permitted 7(1)(b) in PIPEDA to exist regarding the collection of electronic addresses. Proposed subsection (3) is about the unauthorized collection of personal information, and we didn't feel the exception set out in 7(1)(b) was appropriate to (3).

The Chair: Thank you.

Mr. Brian Masse: So this allows for more unauthorized collection?

Mr. André Leduc: No, this would limit the unauthorized collection. This is placing a further limitation on the unauthorized collection.

The Chair: Mr. Masse, does that clarify things for you?

Mr. Brian Masse: Not entirely. I want to work through this.

Mr. André Leduc: Paragraph 7(1)(b) in PIPEDA would permit a private company to collect personal information without authorization with regard to an investigation in defence of a contract or a law. We're saying that limitation is not appropriate, that that allowance under proposed subsection (3) is not appropriate any longer. So it's a clear tightening of that.

Mr. Brian Masse: The interpretation I had was that this clause, without the change that is being recommended here, would actually open it to more exposure. So you're saying that the change that's just been presented, making it paragraphs 7(1)(a) to (d), is the tightening that's going to—

Mr. André Leduc: A significant tightening, yes.

Mr. Brian Masse: Okay, because this is the one I raised with the minister in the House on Thursday. I want to make sure it's clear, because we haven't received this change until just now. It's not that I don't trust anyone around here.

The Chair: Mr. Masse, do you have any further questions?

Mr. Brian Masse: No, thank you, Mr. Chair.

The Chair: Then we're going to go to Mr. Garneau.

Mr. Marc Garneau: Mr. Chair, I just want to follow up on a clarification you provided that if we are to vote for this government change.... I'm concerned about amendments L-7 and L-9 specifically, that they would no longer be allowed to be brought forward.

The Chair: That's correct. If amendment G-55.1 is adopted by this committee, I will not allow amendments L-7, L-8, or L-9 to be moved.

Mr. Marc Garneau: Can you spell it out for me—why?

The Chair: Because amendments L-7, L-8, and L-9 will contradict what has been adopted in amendment G-55.1.

Mr. Marc Garneau: I understand. Thank you.

The Chair: Once the committee has adopted a clause or an amendment to a clause, as chair I cannot revisit that amendment or that clause unless I have the unanimous consent of the committee to do so.

Mr. Rota.

Mr. Anthony Rota: I'm not quite clear on amendment L-9. I'm fine with amendments L-7 and L-8, but maybe I can have the staff explain how amendment L-9 would contradict amendment G-55.1.

The Chair: Okay. Just one moment.

Mr. Palmer, can you clarify for this committee whether or not amendment L-9 can stand if amendment G-55.1 is adopted?

● (1625)

Mr. Philip Palmer: You have the guy who's the expert on parliamentary procedure. I'm inclined to see it as Mr. Rota does, that it doesn't contradict any of the provisions in—

The Chair: Okay, so what I'll do, then, as chair I'll rule that I will allow amendment L-9 to be considered after the consideration of amendment G-55.1, regardless of whether or not it's adopted.

Mr. Anthony Rota: No, that's fair. I just wanted to make sure they were—

The Chair: Thank you for asking the question.

We're still considering amendment G-55.1. We have an intervention from Mr. Masse, and then Madam Coady, and then—

Ms. Siobhan Coady: That's okay. I was going to ask the same question.

The Chair: Okay, so Mr. Masse first, then Mr. Lake.

Mr. Brian Masse: He can go ahead if he wants.

The Chair: Mr. Lake, go ahead.

Mr. Mike Lake: I just wanted to get clarification on Mr. Masse's line of questioning from last time. If we take a look at the changes that are being made in paragraphs (a) and (c) of this amendment, they're almost identical except that in paragraph (c) we keep paragraph 7(1)(b) in there, and in paragraph (a) we don't; we remove paragraph 7(1)(b).

What is the difference in the two circumstances? What's the result of taking paragraph 7(1)(b) out of the first change and not the second?

Mr. Philip Palmer: Electronic addresses are much less sensitive. They include things like Internet addresses that are not personal. Every time you log onto Bell Sympatico or something of that nature, you get a number assigned for that session. When you log off, it's reassigned to somebody else for another session. This is not particularly sensitive information. It is important for persons who are pursuing their rights through electronic means to be able to obtain at least that core of information. They may need to be able to go further, by lawful means, to identify someone who might have been, for instance, violating copyright.

Mr. Mike Lake: That refers to proposed subsection 7.1(2). In proposed subsection 7.1(3), we are choosing to leave proposed paragraph (b) in, which makes the law more restrictive, right?

Mr. Philip Palmer: That's right.

Mr. Mike Lake: How so, just to clarify?

Mr. Philip Palmer: Unauthorized access to a computer system in order to trawl personal information would not be an accepted purpose under this amendment, so it would be more restrictive.

Mr. Mike Lake: Would it be fair to say that most of the concerns surrounding this clause would be directed more at proposed subsection 7.1(3) than at proposed subsection 7.1(2)? Is that accurate?

Mr. Philip Palmer: That's probably true.

The Chair: Thank you, Mr. Lake.

Mr. Masse.

Mr. Brian Masse: I'm a little bit surprised to see this amendment. I believe that the minister said he thought the amendment would be pulled. Then he said it wouldn't be pulled. Instead, what we have is a change in the amendment. We still have the amendment in this package today.

How would the bill be different if this was not changed at all? Would it reduce other people's access to computers, or would it increase access?

The Chair: Mr. Leduc.

Mr. André Leduc: With regard to the allowances under PIPEDA to collect personal information, we need to clarify which parts of proposed section 7.1 we're discussing. In proposed paragraph 7.1(3)(a), we're just describing which ones are in and which ones are out. Proposed paragraph 7.1(3)(b) means that the allowance that is normally in PIPEDA is no longer available. So it's clear that private companies that are attempting to collect personal information by an unauthorized access to a computer system cannot do so. That's the clarification contained here.

● (1630)

Mr. Brian Masse: Go ahead.

Mr. Philip Palmer: I have a further comment on this. One of the sensitivities that came up was the potential for conflict between legislation. PIPEDA recognizes that it is acceptable to collect information by electronic means to satisfy a police warrant or a court order. When we reflected on this, we realized that it was important to correct this and to ensure that people who are served with court orders are in a position to satisfy the terms of those orders. Therefore, it was necessary to open this up in proposed subsections 7.1(2) and 7.1(3) to ensure that we didn't create situations in which people, in trying to fulfill one requirement, would be violating another.

Mr. Brian Masse: And the two subsequential Liberal amendments are ruled out of order because they would increase that potential? What are the specific reasons?

The Chair: Mr. Masse, amendments L-7 and L-8 are out of order because if amendment G-55.1 is adopted, amendments L-7 and L-8 would amend the same lines that amendment G-55.1 has amended. Therefore, because convention dictates that we can't go back and revisit lines or clauses that have already been adopted by the committee, they are out of order.

I made a mistake earlier by ruling amendment L-9 out of order, thinking it was further up the bill when in fact it comes subsequent to amendment G-55.1.

Mr. Brian Masse: Well, if you were perfect, you wouldn't be working here.

The Chair: Mr. Masse, do you have any further questions for the departmental officials?

Mr. Brian Masse: No, thank you, Mr. Chair.

The Chair: We now have Mr. Lake, and then Mr. Garneau.

Mr. Mike Lake: Again, for clarification of the two changes, they look virtually identical, but the one is the really contentious one. The other one involves IP addresses and e-mail addresses and is largely uncontentious.

I would just point out for clarification that the Liberals were only seeking to amend through amendment L-8 the more contentious one. That's what we changed with our subamendment, our revised amendment.

The Chair: Mr. Garneau.

Mr. Marc Garneau: I'm just trying to understand. From what you had said, are you actually inferring that proposed paragraph 7.1(3)(b) that we're talking about is needed to investigate crime?

Mr. André Leduc: Under proposed subsection 7.1(2), we felt comfortable providing those allowances to private companies with regard to collecting that level, which is what we would consider a significantly lower level of personal information, being electronic addresses, when they're not tied to other personal information. So it allows you to identify whether the source is in fact Canadian. Is it a ".ca"? Is that IP address in Canada? We felt that it was important so that it wouldn't place an undue burden on private entities that are trying to defend a contract or a law.

However, proposed subsection 7.1(3) clearly states this is the collection of all personal information—i.e., very sensitive information—via an unauthorized access to a computer system. If we put proposed paragraph 7.1(3)(b) back in, it would allow private companies to access almost any computer system to collect personal information without authorization in defence of a law or a contract. The government didn't feel comfortable with allowing that type of access to private entities.

Mr. Marc Garneau: To just follow up, what is your comment on the proposal that you really need to have not only address information but personal information if you're going to properly investigate crime?

● (1635)

Mr. André Leduc: For the entire section, law enforcement can then pick up the investigation. So there is a full kind of blanket permission in this area for law enforcement or any activity subsequent to a warrant or a court order.

If you can get the information that can identify the e-address as being a Canadian using a Rogers account, you can go and get the court order to get the further personal information from Rogers. So you're getting judicial oversight to that further collection of personal information.

The Chair: Go ahead, Mr. Garneau, if you have further questions.

Mr. Marc Garneau: So I'm to conclude that you feel that there is a pathway towards getting, ultimately, the information that's necessary.

Mr. André Leduc: Yes. I think a private company would be able to have enough evidence, if they have the electronic address information. They would be able to identify the fact that this is a Canadian using a Rogers, Bell, or TSP account. They can note where the account is being held and can seek a court order to say that they need to collect further information and evidence on this in order to defend their contract, or the law in this case.

The Chair: Thank you, Mr. Garneau and Mr. Leduc.

Monsieur Vincent.

[*Translation*]

Mr. Robert Vincent: You mentioned an order. By that, you mean an order for RCMP officers, not for the Competition Bureau?

Mr. André Leduc: No, an order...for a private company to get personal information on a Canadian, after having identified one.

Mr. Robert Vincent: Can you tell us what an order means to you? If someone in the private sector can get an order to go to Rogers and get information on an account, that seems to me to be a bit wishy-washy as a process. What kind of order are you talking about?

Mr. André Leduc: An order from a provincial court in Canada.

Mr. Robert Vincent: From a judge?

Mr. André Leduc: Right.

Mr. Robert Vincent: Okay. Fine.

[*English*]

The Chair: Is there any further discussion or debate on G-55.1?

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

The Chair: We will now go to the consideration of L-9, which is in order because it is going to amend line 17, which is subsequent in the bill. It is moved by Mr. Rota.

Mr. Lake.

Mr. Mike Lake: I'd like to ask the officials to comment on the amendment.

The Chair: Mr. Leduc.

Mr. André Leduc: To date we haven't tied any of the prohibitions in any of the other sections, such as part 2 of PIPEDA, or the Competition Act, to the front-end sections of ECPA, and there is a clear rationale for doing so. This limitation seems to be somewhat extreme and would limit these PIPEDA amendments solely to sending unsolicited commercial electronic messages. The idea here is to amend PIPEDA globally to update and clarify that it is an act that applies to all personal information in an electronic environment, in this case, at all times.

The Chair: Thank you very much, Mr. Leduc.

Mr. Rota, do you have any comments?

● (1640)

Mr. Anthony Rota: When we first started this was about electronic addresses and electronic communications, and we're expanding it. Part of the concern in putting it together was on expanding it to telecommunications and beyond the scope. So the intent in looking at it was tighten it up more than anything else.

The Chair: Thank you very much, Mr. Rota.

(Amendment negatived) [See *Minutes of Proceedings*]

(Clause 78 as amended agreed to)

(On clause 79)

The Chair: We now go to the consideration of clause 79, for which I understand there is one amendment. G-56 has been moved by Mr. Lake.

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

(Clause 79 as amended agreed to)

(Clauses 80 and 81agreed to)

The Chair: Next is consideration of clause 82, for which I understand there is one amendment, G-57, moved by Mr. Lake.

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

(Clause 82 as amended agreed to)

The Chair: We will now go to consideration of clauses 83, 84, 85, 86, and 87, for which I understand there are no amendments.

Mr. Bouchard.

[*Translation*]

Mr. Robert Bouchard: I would like to bring up clause 86.

[*English*]

The Chair: Okay. So we'll go to consideration of clauses 83, 84, and 85.

(Clauses 83 to 85 inclusive agreed to)

(On clause 86)

The Chair: We now go to consideration of clause 86.

[*Translation*]

Mr. Bouchard, do you have a question?

Mr. Robert Bouchard: I would like the department representatives to tell me if this clause deals with abolishing the National Do Not Call List.

[*English*]

Mr. Philip Palmer: Eventually.

[*Translation*]

Mr. Robert Bouchard: I would like to thank the Conservative Party for allowing me to bring this matter up. We have just seen that we could have debated a question on clause 64. But I am going to talk about clause 86 exclusively. I have some questions for the department representatives.

You seem determined to abolish the National Do Not Call List. Why do you want to include the provisions allowing it to be abolished in Bill C-27?

● (1645)

Mr. Philip Palmer: It is not really a matter of doing away with it. Rather we just want to have the ability to replace this regulatory regime in the years ahead, if need be. Technology-wise, there are already some inconsistencies between the National Do Not Call List and the corresponding legislation. Then there are administrative issues.

For now, we do not intend to do away with the National Do Not Call List, but we want to see what future developments will bring. In other words, it would be possible to respond to those developments by doing away with the program, if necessary. Such cases would then be covered by the Electronic Commerce Protection Act. Whether those provisions will be enacted is by no means a foregone conclusion. But, given the technological and administrative issues we are seeing, we included those measures. We want to make sure that we have the tools we need to address situations that may arise in the future.

Mr. Robert Bouchard: To summarize what you just said, you do not intend to do away with the National Do Not Call List. You are waiting to see how things develop. That being said, we can assume there is some uncertainty on your part.

Why include a provision in Bill C-27 to deal with something that may never happen?

Mr. Philip Palmer: We tried to find a technological difference between the National Do Not Call List and what is in Bill C-27, the provisions dealing with spam and others. In the end, it was impossible to separate the two. In light of developments such as Voice Over Internet Protocol, we were fully aware that we might have to act fairly swiftly in certain situations to ensure that there is always a regime in place to protect Canadians.

Mr. Robert Bouchard: Correct me if I am wrong, but I think that this list is a measure that the government put in place a year or so ago. Is that correct?

● (1650)

Mr. Philip Palmer: Yes.

Mr. Robert Bouchard: Do you agree that having to meet those requirements was costly for businesses?

Mr. Philip Palmer: No doubt. That is why extensive consultations will certainly be held before the provisions are enacted. That is necessary. In fact, we could not even enact the provisions if the regulations were not in place. As you know, there are certain requirements involved, such as public consultations, public announcements, feedback and meetings with private stakeholders. I am sure that these provisions will not be enacted without a fairly extensive consultation process that will allow for discussion of costs, time frames and so forth.

Mr. Robert Bouchard: If I may, Mr. Chair, I have another question.

Does the bill set out the obligation to hold consultations before the provision about eliminating the list is added to Bill C-27?

Mr. Philip Palmer: In the regulations....

Mr. Robert Bouchard: But it is not in Bill C-27.

Mr. Philip Palmer: No, it is not in Bill C-27. But based on our knowledge of other legislation, we can assure the committee that consultations on the necessary regulations will take place before the provisions come into force, prior to the transition.

Mr. Robert Bouchard: Okay.

Did you have a question?

Mr. Robert Vincent: Yes.

Despite holding consultations, could this amendment or provision in the bill hamstring the recommendation? In other words, even with consultations, would the final decision be made by the department or by the government? Would the decision depend on the outcome of the consultations or on the minister's will?

Mr. Philip Palmer: It is my sense that the minister would be very reluctant to impose measures that would give rise to such costs without first holding extensive consultations. That is practically a standard requirement today.

Mr. Robert Vincent: If the consultations show that there is a consensus to keep the National Do Not Call List, would the department go along with that, or would it go with its own position, do you think?

Mr. Philip Palmer: Ministers are very sensitive to public opinion.

Mr. Robert Vincent: Very good.

The Chair: Ms. Coady.

[*English*]

Ms. Siobhan Coady: Thank you very much.

On a number of occasions at committee we've heard people calling for the removal of sections referring to the “do not call” list. Mr. Palmer is trying to clarify that while the sections under Bill C-27 will go forward, they will not be gazetted but will be available to be gazetted.

I appreciate your assurances of public consultation, but if you are willing to go through public consultations and seek the viewpoints of others who have only had this for 13 months and spent the last two years implementing it, why wouldn't you hold out until it's required and we can have some assurances that you will do public consultations and ensure that things happening to the “do not call list” are occurring, which would be effective for both the consumers as well as for businesses?

● (1655)

The Chair: Thank you for that, Madam Coady.

Monsieur Leduc, go ahead.

Mr. André Leduc: The point of these sections is to be somewhat of a backdrop or safety net to the current "do not call" list, which is hosted by a private company. These cannot simply come into force overnight. As Philip mentioned, they will require some consultation, but we feel it wise to include them here to be a safety net to the "do not call list" that is hosted by a private company, and for technology convergence.

We can't completely foresee the future, but if at some point in the not so distant future convergence renders the "do not call" list non-functional, this would be a safety mechanism we could use to protect the Canadian public from abuse, or a loophole or gap between the Telecommunications Act and this act, where there are definite linkages and similarities.

The Chair: Thank you, Mr. Leduc.

Madam Coady, do you have a clarification?

Ms. Siobhan Coady: If you're concerned about the "do not call" legislation or that particular act and you're looking for a safety mechanism, why wouldn't you deal with it under that particular act? Just because of converging technologies you think you could put it in here? It's unusual to be dealing with another piece of legislation that you may be concerned with in the future, within this particular legislation.

The Chair: Go ahead, Mr. Palmer.

Mr. Philip Palmer: I think it's difficult to cast in words easily, but one of the issues is simply that the Telecommunications Act is perhaps not the best place to have this kind of regime, in any event. When you look at the "do not call" list today, it is a somewhat awkward fit with the Telecommunications Act. That is not to say the CRTC hasn't done a magnificent job making it work and applying it. It is early days.

The Telecommunications Act in this regard very much deals with some of the same subject matter as ECPA. For that reason it was necessary to consider the links and possible conflicts between the two. Those are not as apparent today as they will be in a few years.

The Chair: Thank you, Mr. Palmer.

Monsieur Bouchard.

[*Translation*]

Mr. Robert Bouchard: Thank you, Mr. Chair.

If I understand correctly, this is a measure in anticipation of the future. Is that right?

You have a team at the department who discussed it and decided to create a measure in anticipation of eventualities.

I want to know whether you quantified time frames on your end. This measure could come up in one or two years. I do not know. Have you assessed that?

When could the provision to do away with the National Do Not Call List come into effect? Six months, one year, two years, three years? I would like to know whether that has been assessed.

[*English*]

The Chair: Mr. Palmer.

● (1700)

[*Translation*]

Mr. Philip Palmer: Not really.

We are well aware of the fact that technological convergence is happening more quickly and that it is impossible to really differentiate technologically between the telephone and email communication. From a technological standpoint, they are identical. So there is already a bit of an issue in terms of implementing the legislation.

We cannot say right now when it will become a major problem.

The Chair: Mr. Bouchard.

Mr. Robert Bouchard: Could you or your colleagues give us an estimate at least?

Here is a thought, and you tell me if you agree. The National Do Not Call List is working very well. It is easy for Canadians to register. Seven million people in Quebec and Canada have already registered. It is fairly easy to access the service. So we can say almost unanimously that it is a good measure.

Am I wrong in saying that the list is a good measure? It was put forward a year ago. It is a good thing, and a lot of people support the list as it now stands. Am I wrong in my thinking?

Mr. André Leduc: No, you are not wrong.

Yes, right now, the list is doing what it is supposed to and works very well.

The Chair: Thank you.

Mr. Bouchard?

Mr. Robert Bouchard: You may or may not be surprised to learn what Desjardins—which owns a number of businesses—did to comply with the National Do Not Call List. According to its estimates, the company invested or spent approximately $5 million. That is also for the information of the committee members.

I am almost certain that any businesses that are aware of this intention in Bill C-27 would, in my opinion, be very surprised, since most of them adapted to the measures that the government put forward a year ago. It cost them money.

Desjardins expressed its concern to us. There is concern as to whether the implementation or amendment of the provisions in Bill C-27 will come with costs. Desjardins believes that the National Do Not Call List works well. What is being asked is that Bill C-27 not include the possibility of doing away with the National Do Not Call List.

The Chair: Thank you, Mr. Bouchard, for sharing your opinion.

Mr. Vincent?

Mr. Robert Vincent: Earlier, Mr. Leduc was saying that the list works very well. When the head of the CRTC appeared before us, I asked him whether the list was working well. He said that everything was going swell. Even when I asked about holes, he said that that was not the case.

My main question is this: Why use Bill C-27 to try to do away with the National Do Not Call List?

Mr. André Leduc: I think we have been very clear so far. The intention is not to do away with it straightaway. We run the risk of being caught unprepared if the list ever becomes inadequate for technological reasons. There will be nothing to protect Canadians from that.

● (1705)

Mr. Robert Vincent: Do you think that the CRTC could amend the legislation if it wanted to, as it falls within its purview?

Mr. André Leduc: I think the CRTC could make a change to the Telecommunications Act. As mentioned earlier, there are a lot of similarities between the two pieces of legislation. The only difference being that one is an opt-in and the other, the do not call list, is an opt-out.

The Chair: Thank you.

[*English*]

Do you have further questions?

[*Translation*]

Mr. Robert Bouchard: I have a comment.

The Chair: Okay, go ahead.

Mr. Robert Bouchard: I do not have a motion to propose, but this is to committee members.

Why do we not instruct department officials to create something for us to exclude the National Do Not Call List? In other words, the purpose would be to not have this fairly recent measure included in Bill C-27. You have to admit that a year ago is pretty recent. Bill C-27 should not affect or do away with the National Do Not Call List.

The Chair: Thank you, Mr. Bouchard.

If committee members vote against clause 86, the National Do Not Call List will not be eliminated.

Mr. Robert Bouchard: It will be settled.

The Chair: You do not need a motion. If you vote against this clause, the National Do Not Call List will not be eliminated.

[*English*]

Mr. Masse.

Mr. Brian Masse: It's more of a point of order, Mr. Chair. As this discussion, a very important discussion, has been going around, the government has tabled another amendmentm, apparently.

A voice: No, no, no.

The Chair: What I'm saying is that if you vote against.... We're presently considering clause—

Mr. Brian Masse: I'm going through this and trying to feel what was....This was under a separate subject. This is also owed due process.

The Chair: To be clear, we're presently considering clause 86. Clause 86 would allow the government, through the direction of the minister, at some future date to replace the "do not call" list with the new Electronic Commerce Protection Act. If members of the committee do not wish to see that happen, they can vote against this clause. No motion need be moved on the floor of this committee to remove this clause. You simply vote against the clause, and if the clause is defeated then the government, through the minister, will not have that authority at some future date.

I only want to be clear. On clause 86, I think we've had a fulsome discussion and everybody's clear on what it does. This clause allows the government, through the minister, after consultations at some future date, to replace the "do not call" list with the Electronic Commerce Protection Act.

Seeing no further discussion on this, I will call the question on clause 86.

(Clause 86 agreed to)

The Chair: Clause 86 has been adopted. We now move to the consideration of clause 87. I understand that there are no amendments to clause 87.

[*Translation*]

Mr. Robert Bouchard: You said it was adopted?

The Chair: Yes. Clause 86 has been adopted by this committee.

Now, to clause 87.

● (1710)

[*English*]

Seeing there are no questions or comments, I'll call the question.

(Clause 87 agreed to)

(On clause 51—*Order*)

The Chair: We now will go back to two clauses that were stood earlier in our meetings.

Beginning with clause 51, I understand there are two amendments, beginning with government amendment G-43.1, moved by Mr. Lake. We're now into consideration of G-43.1, which Mr. Lake moved in our last meeting and which took some members of the committee by surprise. We stood consideration of clause 51 so you would have a full weekend to consider government amendment G-43.1. This amendment should have been distributed.

Mr. Lake, do you have any comments on G-43.1?

Mr. Mike Lake: To clarify for Mr. Masse, it is the same thing that was handed out last time.

Mr. Brian Masse: That's what I was worried about. We started going through it without having it to hand.

The Chair: Madam Coady.

Ms. Siobhan Coady: I have some questions. Perhaps either Mr. Lake or the officials can answer them for me.

Why are we doubling up here? You have the new law itself and the Competition Act, and you're now doubling up on the fines. That's the way I'm reading it.

Was there a discussion, which I must have missed when we saw witnesses, to bring this forward? What's your rationale here?

Mr. Philip Palmer: The provision is not a doubling-up. The clause essentially functions the same way that it did as introduced. We consider the amendments to be technical rather than of a policy nature. The private right of action in this case for violations of PIPEDA and the Competition Act are all in clause 50. That is the reason why, and it always was.

It is a bit more explicit now because we have actually looked at each of the dispositions and considered how to appropriately differentiate the various contraventions of reviewable conduct that is subject to the legislation, in order to clarify whether the cap of $200 applies to a simple e-mail or whether an e-mail that contains misrepresentations would presumably be treated the same way.

Ms. Siobhan Coady: You've added the wording around subsection 74.01(1) of the Competition Act, and the way I'm reviewing this, it begs the question about whether you would then have a representation of the Competition Act and this act for the purposes of penalties. I'm not a lawyer, sir, but in talking to some lawyers, they are concerned about that.

I'm also concerned that it speaks to my earlier recommendation that we put in the words “in a material respect”. So here you now have an act that even for trivial matters could go forward, and the way I'm reading it is you'd have the possibility of retribution under the Competition Act and ECPA. Is that the way I'm reading it, sir?

Mr. Philip Palmer: You're not reading it incorrectly. But the amendment has nothing to do with that. The amendment does not change the underlying provisions of either the Competition Act or ECPA. It simply clarifies what was perhaps not initially obvious. We were concerned to make it clear, both for the purposes of persons who have to comply with the act and for people who have to adjudicate under the act, that the appropriate remedies be available for similar types of harms or civil wrongs, if you will. That's all we've done. We haven't changed in any measure the aggregate amounts or the minimum amounts at all. We've just attempted to better differentiate where those appropriately apply.

● (1715)

Ms. Siobhan Coady: There may have been concerns from witnesses that could not have been brought forward because they didn't have that clarification. That's what I'm concerned about.

The Chair: Thank you, Madam Coady.

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

The Chair: We now have a second amendment to clause 51, as moved by Mr. Lake. It is titled government amendment 44.

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

(Clause 51 as amended agreed to)

(On clause 2—*Definitions*)

The Chair: We will now go to the second of the two earlier clauses that were stood in our previous meetings, clause 2. There are six amendments that have been proposed by members of this committee, and we'll begin with Liberal amendment number 1, as moved by Mr. Rota. You should all have Liberal amendment number 1 in front of you. It's on the first page of this big package that you have.

Is there anybody wishing to speak to Liberal amendment number 1?

Mr. Garneau.

Mr. Marc Garneau: Thank you, Mr. Chair.

It was really just to take a different approach to try to focus on what is true spyware. As you can see from reading the change that's proposed, it takes the approach of listing what we consider to be the specific spyware that we have to be concerned about. It also includes, as you see from there, a ninth heading, “any other purpose prescribed by regulation”. So we felt this was a better approach, and certainly one that's been followed by a number of states in the United States.

If there are any specific questions, I'd be happy to answer.

The Chair: Any further questions or comments on Liberal amendment number 1?

Mr. Lake.

Mr. Mike Lake: I'd just like to go to the officials, if we could, because it seems to me that we've addressed this through clause 10 already.

Can you maybe talk about the different approaches here?

Mr. Philip Palmer: The subject matter is covered now in subclauses 10.(2.1) and 10.(2.2), where really we've elaborated in the interior of that consent regime instances when enhanced information is required prior to the installation of software on a computer. It serves much the same function of distinguishing between what I've taken to calling “benign ware” and “malware”. So I think that were we to adopt the amendment, it would sit very poorly with clauses 8 and 10.

● (1720)

The Chair: Mr. Garneau, do you have further questions?

Mr. Marc Garneau: I feel snookered here a little bit, in the sense that we're saying we've already addressed this in a different way in another clause beforehand, so it's almost as though it's out of order is the feeling I'm getting.

The Chair: It's in order. There are other motions out of order, but I'll get to that momentarily.

Mr. Marc Garneau: I thought you would.

Well, I'm not going to say anything more, other than the fact that I think it is a better approach to legislation to specify what you're actually talking about, and I think this is a very explicit approach here that does identify it. That's the reason we put L-1 in.

The Chair: Thank you, Mr. Garneau.

(Amendment negatived) [See *Minutes of Proceedings*]

The Chair: We'll now go to the consideration of government amendment number 2, moved by Mr. Lake.

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

The Chair: We'll now go to the consideration of government amendment number 3, moved by Mr. Lake.

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

The Chair: We now have two amendments in front of us, beginning with BQ-1, which I am going to rule out of order.

As I'm sure Monsieur Bouchard is aware, and as the legislative clerk indicated to him before, if your previous amendment did not pass—BQ-1.1—then this one will not stand. The reason this cannot stand is that the amendments make a substantive change to the interpretive clause, clause 2, by adding another paragraph after subclause 2(4). That paragraph would be subclause 2(5) and would be substantively additional to the interpretive clause. So I'm going to rule amendment BQ-1 out of order.

Thank you for proposing that, and thank you for consulting with the legislative clerk, who I know indicated that to you before, as well.

We now will go to the second amendment I am going to rule out of order, which is the amendment the Liberals have just proposed. This amendment is out of order, because it also substantially amends the interpretive clause, clause 2. You can propose amendments to clause 2, but they cannot be substantive in nature.

In Marleau and Montpetit, it states that the "interpretation clause of a bill"—in other words, clause 2—"is not the place to propose a substantive amendment to a bill. In addition, an amendment to the interpretation clause of a bill that was referred to a committee after second reading must always relate to the bill and not go beyond the scope of or be contrary to the principle of the bill".

This amendment is out of order for that reason, because it adds a substantive element to clause 2 and would recognize a body established by the Canadian Parliament or by another province. This is too substantive an addition to the interpretation clause.

I also want to point out to members at this time that it's important whenever we're considering clause-by-clause that you consult with the legislative clerk, because he would be able to give you forewarning that your amendment will be ruled out of order.

Without further ado, we have Mr. Garneau. Go ahead.

● (1725)

Mr. Marc Garneau: I just want to understand this a little more. You say that this is a substantial amendment. I'd like to understand more specifically what makes it a substantial amendment.

The Chair: Well, when you read the existing bill, as passed down to us from the House, the subclause in question, subclause 2(4), called the exclusion paragraph, reads: "An electronic message described in subsection (2) or (3) that is sent for the purposes of law enforcement, public safety, the protection of Canada, the conduct of international affairs or the defence of Canada".

You're proposing to replace "the defence of Canada" with "a body established by an Act of Parliament or a provincial or territorial legislature to regulate a profession, or an affiliated entity of such body". That's a substantial change to the interpretation clause, clause 2.

Mr. Marc Garneau: There may be an error here. I don't think it was meant to remove anything. It was meant to include an additional exception.

The Chair: Sorry, you're correct. I meant to say that it would be added after "the defence of Canada". It's adding something substantially different to the interpretation clause. What it's doing is referencing a possible provincial legislature, a possible provincial body established by a province. And that was never part of the interpretation clause before. In other words, what you're proposing in your amendment is to recognize a body that might be established by a legislature in a province. That is substantially different from what is in the interpretation clause. That's why I've ruled your amendment out of order.

Now, if you wish to challenge the chair, you can do so. I'll seek to see if the majority of the members of this committee will sustain me in my ruling. If my ruling is sustained, then the ruling will stand. If you feel that you want to challenge it further, you could go to the Speaker of the House.

Mr. Marc Garneau: I will not challenge you, Mr. Chair. My aim here is to try to do something sensible that I think has been overlooked. This is really a very sensible thing to do.

I would like to know whether there might be a consensus to make this change, despite the fact I'm not challenging what you said.

The Chair: This is a motion I have in front of me, so unless somebody moves another motion, this is the one that's under consideration.

Mr. Marc Garneau: Is there any option to see whether there is any consensus, or unanimous consensus, to look at it, or is considering it excluded?

The Chair: Well, if the majority of members of the committee decide to overrule my decision that it's not in order, then obviously you can consider it.

Mr. Masse.

Mr. Brian Masse: The process is to challenge the chair, and that's what the Liberal Party has to do if they want to challenge the chair.

The Chair: That's right.

Mr. Marc Garneau: I'm not going to challenge you.

The Chair: Okay.

We now move to government amendment 5, the last amendment to clause 2. It's moved by Mr. Lake.

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

(Clause 2 as amended agreed to)

The Chair: Earlier in our discussion Monsieur Bouchard asked me to seek unanimous consent of the committee to revisit clause 64. I take it that you no longer wish to do that, now that you've spoken to clause 86.

Okay, so I won't call that question.

Shall the short title of the bill carry?

Some hon. members: Agreed.

The Chair: Shall the title of the bill carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: I'll report the bill as amended to the House at my earliest opportunity.

Shall I order the clerk of the committee to order a reprint of the bill as amended for use in the House at report stage?

Some hon. members: Agreed.

● (1730)

The Chair: Thank you very much for your cooperation.

The meeting is adjourned.

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