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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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● (1105)

[*English*]

The Chair (Mr. Mike Wallace (Burlington, CPC)): We'll call this meeting to order.

This is meeting 31 of the Standing Committee on Justice and Human Rights. We are dealing with clause-by-clause consideration of Bill C-13.

(On clause 20)

The Chair: We've finished with NDP-5. We're now moving on to NDP-6, still on clause 20.

This is the first motion in a set of amendments that remove the reference to "public officer" from the bill. The following amendments are consequential to this change and the vote on NDP-6 will be applied to them as well in order to remain consistent: NDP-7, NDP-8, NDP-10, NDP-11, NDP-13, NDP-15, NDP-17, NDP-21, NDP-22, NDP-23 and NDP-24. If NDP-6 fails, NDP-7, NDP-8, NDP-10, NDP-11, NDP-13, NDP-15, NDP-17, NDP-21, NDP-22, NDP-23, and NDP-24 will all be removed.

As well, there are amendments that have line conflicts with this change. If NDP-6 is adopted, then we'll worry about that at the time. Okay?

Madam Péclet, would you like to move NDP-6 and introduce it?

[*Translation*]

Ms. Ève Péclet (La Pointe-de-l'Île, NDP): Thank you very much, Mr. Chair.

This amendment is somewhat in the same vein as our amendment NDP-5. It is consistent with the experts' testimony on the definitions of "peace officer" and "public officer". According to the witnesses, the use of the words "public officer" in clause 20 of the bill is clearly a problem and should perhaps be reviewed.

We introduced our amendment NDP-5 precisely for the purpose of replacing the term "public officer" with "peace officer".

Mr. Chair, I think it is important to mention that all the experts who testified during the study of Bill C-13, particularly the Privacy Commissioner, noted the problem caused by the use of the term "public officer". I think it would be logical for the committee to take the experts' testimony into account and to adopt our amendment NDP-6, which would delete the words "public officer" used in lines 6 to 10 on page 14.

That is the end of my presentation on that subject.

The Chair: Thank you, madam.

[*English*]

Mr. Dechert.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Mr. Chair, there has been, I think, some fairly considerable discussion about the definition of “public officer” and why there are a number of appropriate officials within that definition to whom these investigative powers would legitimately be available. I don't think we need to go into much more detail on that. The arguments have been made already.

On that basis, we will be opposing this amendment.

The Chair: I will call the question on NDP-6.

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

The Chair: NDP-7 is removed, but we have NDP-7.1.

This is the first motion in a set of amendments that seek to change the wording of "reasonable grounds to suspect" to "reasonable grounds to believe". The following amendments are consequential to this change and the result of the vote on NDP-7.1 should be applied in order to remain consistent: NDP-12, NDP-14. PV-13, NDP-16, PV-14, NDP-18, NDP-27, NDP-29, PV-16, and NDP-31.

Madam Péclet, would you like to move it?

Ms. Ève Péclet: Thank you, Chair.

I think it's reasonable. We all agree that most witnesses who testified in front of the committee also raised concerns that the threshold for making a demand was unfortunately reviewed at the lowest threshold.

In listening to the Canadian Bar Association, but also other numerous witnesses, including Michael Geist to name one, they were particularly concerned that the government would want to lower the threshold for obtaining lawful access to information.

I would expect the government to understand that the wording “reasonable grounds to believe” would be more appropriate in the kind of situation where very personal information would be obtained by law officers. As the government just refused our amendment regarding public officers, if they want to make it available for any public officer to have access to the personal information of Canadians, then I think the threshold should be reasonable grounds to believe and not reasonable grounds to suspect. Most of the witnesses have testified that this should be the threshold in the law.

I want to hear what the government has to say.

[*Translation*]

I would like to hear what the government representatives have to say about this kind of intrusion into Canadians' privacy and personal information.

I would like to hear a representative of the government party speak to this amendment.

● (1110)

[*English*]

The Chair: Thank you very much.

Mr. Dechert, I'm sure you'd like to respond.

Mr. Bob Dechert: Mr. Chair, the government will be opposing this amendment.

As Madam Péclet knows since it was discussed by many witnesses, including the victims and organizations representing victims and all of the law enforcement witnesses we heard, reasonable grounds to suspect is a common standard. It is used in many similar provisions in the Criminal Code, including with respect to telephone data. Therefore, we think it's completely appropriate that it be the standard in this case. On that basis, we will be opposing this amendment.

The Chair: Madam Péclet.

[*Translation*]

Ms. Ève Péclet: I understand the government's point of view. This is a criterion pertaining to the burden of proof that is used in certain instances in the Criminal Code. It is something that is widely recognized by authorities.

With all due respect to the witnesses who think the contrary, I will say there is a consensus on the idea that telephone data are not the same as data that can be intercepted on the Internet. Data gathered from the Internet is much more sensitive. I want to note that several witnesses said that data gathered from the Internet is much more sensitive and much more personal.

I understand that the government could consider this for data preservation purposes. To obtain a warrant we must continue to use the traditional legal principle of "having reasonable and probable grounds to believe", not "to suspect".

I would ask the government to consider the fact that the majority of witnesses said this might cause problems. I understand that the government wants to go in a particular direction, but why not give us more time and split the bill so that we can study this provision in depth?

The Chair: Thank you, Ms. Péclet.

[*English*]

We'll vote on amendment NDP-7.1.

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

The Chair: We've come to amendment PV-10, which is still in order.

Madam May is here. You have one minute, Ms. May.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thank you, Mr. Chair.

My amendment falls within clause 20, of course. It's attempting to enact a number of the recommendations that were made to the committee by the Canadian Bar Association in terms of the powers of preservation of information and records. It would restrict the power of officers to make such preservation demands to exigent circumstances, so where there's reason to believe that if you don't have a preservation order right away and take some shortcuts, that material might be destroyed. Otherwise, there's no reason not to have a judicial authorization, so it should be restricted to exigent circumstances.

The other recommendation is in relation to laws of a foreign state. Those laws of foreign states should relate to matters that would also be criminal in Canada before a preservation order could be issued under clause 20.

I won't read through the amendment because it's fairly complex, but I think it's clear and committee members will have already reviewed it. We want to make sure that the exigent circumstances and the rationale around them must at least be reasonable that any offence committed in a foreign state must also be an offence in Canada, and the reason these rather shortcut measures are being taken is that if they don't, there's a significant risk that material will be destroyed.

The Chair: Thank you.

Mr. Dechert, on amendment PV-10.

Mr. Bob Dechert: Mr. Chair, the government does not support this amendment.

Under section 487.11, as Madam May will know, police may already act without a warrant in exigent circumstances. In our view, making exigent circumstances a requirement in the context of a preservation demand is illogical and would render the tool useless.

Canada's telecommunications industry is largely unregulated and has thousands of providers with a variety of business practices. The creation of the preservation tools reflect that diversity and the fact that the industry is not required to retain data. A preservation order does not give foreign authorities access to any data whatsoever, as the order is only meant to ensure that the computer data still exists until the appropriate judicial order is issued in order to obtain that computer data. Cooperation with our international partners is essential to ensure that critical data is not lost during often time-consuming traditional mutual legal assistance procedures that enable the requested party to actually obtain the data and disclose it to the requesting party.

On that basis, we will not be supporting this amendment.

● (1115)

The Chair: Thank you very much.

We'll vote on amendment PV-10.

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

[*Translation*]

The Chair: Now we will move on to amendment PV-11.

Ms. May, you have the floor.

[*English*]

Ms. Elizabeth May: Mr. Chairman, this also deals with the matter of preservation demands. It is also related to advice that was presented to this committee by the national association of the lawyers who practise in this country, the Canadian Bar Association. The recommendation from the Canadian Bar Association to remove subsection 487.012(5) is in order to restrict what is now under the act an unlimited power on the part of officers to place conditions on preservation demands. Based on the recommendation from the CBA, the Green Party amendment would remove that unlimited power.

The Chair: Thank you, Madam May.

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, the government does not support this amendment.

It is necessary that the peace officer or public officer be in a position to impose specific conditions when he or she demands the preservation of computer data, as this may assist in protecting the integrity of investigations. Police do not have trusted relationships with every holder of information in Canada. This provision allows police to place conditions on preservation demands which, as Madam May will know, only have effect for 21 days. The most likely condition is to prohibit the subject of the demand from disclosing that they received the demand. This is to ensure that a suspect in an offence does not become aware of the criminal investigation while it's ongoing.

On that basis, Mr. Chair, we will be opposing this amendment.

The Chair: Thank you very much.

We'll vote on the amendment.

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

The Chair: Amendment NDP-8 is next on our list, but it has been removed due to the lack of support for amendment NDP-6. That applies also to amendment NDP-9.

[*Translation*]

Now we will move on to amendment PV-12.

Ms. May, you have the floor.

[*English*]

Ms. Elizabeth May: Mr. Chair, again, this is related to the general category of extremely broad provisions within Bill C-13 that relate to preservation orders. In this case the recommendation is based on one from the Canadian Bar Association that the judicial preservation orders should be restricted to circumstances when the judge is satisfied there are reasonable grounds to suspect a criminal offence under an act of Parliament or a criminal offence under the law of a foreign state has been committed. It would also be a crime in Canada.

In taking that step, amendment PV-12 replaces line 7 on page 16 in clause 20 with the clarification that it must also be an offence in Canada. That same general concept is again put forward in line 17 on page 16. I won't read the whole amendment.

The Chair: Thank you very much.

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, the government does not support this amendment for largely the same reasons that I mooted on PV-11. The preservation order does not give foreign authorities access to any data whatsoever. The order is only meant to ensure that the computer data still exists until the appropriate judicial order is issued to obtain that computer data. As previously stated, cooperation with our international partners is essential to ensure that critical data is not lost in often time-consuming mutual legal assistance procedures between states that enable the requested party to obtain the data and disclose it to the requesting parties. On that basis, we will not be supporting this amendment.

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

● (1120)

The Chair: Amendment NDP-10 is consequential to NDP-6, which was negatived, so now we're on to NDP-10.1 This is the first set of amendments with the wording “assist in the investigation” as a qualifier, so if this fails, this will also affect NDP-32.

Madam Péclet, the floor is yours.

[*Translation*]

Ms. Ève Péclet: Thank you, Mr. Chair.

Our amendments reflect the testimony of many witnesses we heard. I think it would be interesting for the government to consider the following.

At line 5 on page 17, clause 20 reads as follows:

> (b) the document or data is in the person's possession or control and will afford evidence respecting the commission of the offence.

The idea is simply to amend the wording to include the words "and will assist in the investigation of the offence."

We agree that we are not changing the nature of the paragraph here. This also reflects the testimony of certain individuals who appeared before us.

I therefore ask the government to support this amendment.

[*English*]

The Chair: *Merci.*

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, the government does not support this amendment.

This amendment would effectively reduce the level of judicial scrutiny by reducing the level of proof required to obtain the general production order. It's inconsistent with other provisions of the bill, and as such, would render many of those investigative tools less valuable and less powerful in investigating the crimes we're trying to prevent. As we said earlier, it would reduce privacy safeguards that were carefully built into the general production order. On that basis, we'll be opposing the amendment.

(Amendment negatived)

The Chair: Amendment NDP-11 is next. Because they're consequential to NDP-6, the following amendments have been removed: NDP-11, NDP-12, NDP-13, and NDP-14. Amendment PV-13 is next, and it's identical to PV-14, so it has been removed. Amendment NDP-15 is consequential to NDP-6. Amendment NDP-16 is consequential to NDP-7.1 and identical to PV-14. Amendment PV-14 has been removed because it's identical to NDP-16. Amendment NDP-17 is consequential to NDP-6. Amendment NDP-18 is consequential to NDP-7.1.

We're on amendment NDP-19.

Madam Péclet, the floor is yours.

[*Translation*]

Ms. Ève Péclet: It is unfortunate to see that the government is not listening to the concerns of the witnesses. And yet the minister was clear: he was prepared to amend this bill following the testimony and the committee's study. It is unfortunate that the government has rejected all opposition amendments.

The change proposed in our amendment does not alter the nature of the clause. It simply clarifies and adds an element. What is more, it would be good to have the members of the government party listen to the experts on this matter and to vote for our amendment.

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

● (1125)

[*English*]

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, the government does not support this amendment.

The law of privilege, as Madam Péclet will know, applies to the content of communications between a lawyer and a client. Such communications can be obtained when a general production order is obtained, hence the clear reference to the possibility for a justice or judge to apply a condition to protect solicitor-client privilege in that context.

Although a judge is technically not prevented from opposing such a condition, it is difficult to find situations in which such a privilege would apply, particularly in respect to preservation orders, as they do not provide for access to any type of data. On that basis we will not be supporting the amendment.

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

The Chair: On amendment NDP-20, we have Madam Péclet.

[*Translation*]

Ms. Ève Péclet: I will read amendment NDP-20, which adds a paragraph to clause 20 on page 20:

> (1.1) A justice or a judge shall not include in the order any conditions under subsection 1 unless he or she is satisfied that it is in the best interests of the administration of justice to do so.

As the government knows, this amendment is one of those that were proposed by witnesses. Its purpose is simply to improve the making of orders.

It is important that the government make the administration of justice one of its priorities. It should listen to the experts and vote for our amendment. Unfortunately, I already know the government's response, but it would be good if we could have a proper discussion on this amendment.

[*English*]

The Chair: Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, the government does not support this amendment.

The purpose of proposed subsection 487.019(1) is to allow for the imposition of conditions on the execution of the preservation or production orders after the decision is made by the judge or justice to issue such orders. The condition that the judge issue a court authorization or a warrant in the best interests of the administration of justice has a very specific meaning in criminal law. It is a condition that is generally to be met before a judge issues specific court authorizations, such as a general warrant or an authorization to intercept private communication. This condition would be unusual after the judge or justice has decided to issue a preservation or production order, and given the issuance is already limited to what a justice or judge considers appropriate, it would not likely add anything in our view. On that basis, we will not be supporting this.

(Amendment negatived)

The Chair: Amendment NDP-21 is consequential to NDP-6, which has been removed, so it's removed.

We're on amendment NDP-21.1. There is a line conflict, but let's deal with it anyway.

Madam Péclet.

[*Translation*]

Ms. Ève Péclet: This is an extremely important amendment.

Mr. Chair, pardon me for a moment. I took some notes when the witnesses appeared and I want to refer to them.

We are moving an amendment that reflects the various concerns of the witnesses. Proposed paragraph 487.0191(1)(*a*), which reads as follows, "(*a*) notify in writing any person whose information was produced or preserved pursuant to that order or demand; and," was drafted because several witnesses mentioned the problem raised by the part of Bill C-13 that gives police forces new powers without containing oversight and information mechanisms.

People whose information has been shared would never be informed of that disclosure. I should mention to the government that, in R. v. Tse, the Supreme Court of Canada ruled that Criminal Code section 184.4 respecting wiretapping was unconstitutional because it allowed officers to intercept telephone communications without a warrant.

The criterion of urgency was not a problem. That is not what the Supreme Court found unconstitutional, but there had to be a mechanism for oversight and notice. According to the Court, the fact that the police could intercept telephone communications without a warrant and without an accountability mechanism was unconstitutional and violated section 8 of the Canadian Charter of Rights and Freedoms.

The New Democratic Party is therefore moving paragraph 487.0191(1)(*a*), under which the Deputy Minister of Public Safety, for example, would notify people whose personal information has been shared with other organizations during an investigation or electronic surveillance. Paragraph 487.0191(1)(*b*) provides that it must be certified to the court that granted the order or demand, in a manner prescribed by regulations made by the Governor in Council, that the person has been so notified. This simply enables the court that has heard such a case, for example, to consider all the evidence that has been presented to it.

I believe this is important. The Supreme Court has previously held that the lack of oversight and the failure to inform people are unconstitutional. I simply want to emphasize that it is extremely important to know that the Privacy Commissioner and all the witnesses who appeared before the committee said this kind of notice mechanism was imperative. The administration of justice requires this kind of mechanism. I believe that, in the opinion of the Canadian public, the government must do everything in its power to ensure that the courts do not invalidate this bill.

Unfortunately, I want to stress that we have previously spoken to the government about this. Cyberbullying victims do not deserve to have their cases drag on before the courts for months and years because the government has not done everything in its power to pass legislation that can stand up in court. The victims do not deserve that.

That is why I urge the government to adopt this amendment if it is truly concerned about the interests and protection of victims. That may ensure that the bill is not overturned or challenged and is consistent with the Canadian Charter of Rights and Freedoms, with victims' rights, and that there is a fair balance.

● (1130)

I would point out that even the parents of cyberbullying victims said this. There has to be a balance between respect for people's privacy and that of cyberbullying victims. This bill should not be challenged in court for months on end, thus preventing victims from obtaining justice.

The Chair: Thank you, Ms. Péclet.

[*English*]

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, the government does not support this amendment.

In our view, notification jeopardizes investigations and often results in the deletion and destruction of evidence. We also believe that the minister requested to make this notification in this case. It's not the appropriate authority to do that, and on that basis, we will not be supporting the amendment.

The Chair: We'll vote on the amendment.

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

The Chair: Amendment NDP-22 is now removed as it's consequential to NDP-6. The same applies to amendment NDP-23. We're still on clause 20, of course.

We're on amendment PV-15. Ms. May, just so you know, there's a line conflict with amendments NDP-24, LIB-1, NDP-25, so there are other issues if this one happens to pass.

The floor is yours, Ms. May.

● (1135)

Ms. Elizabeth May: Thank you, Mr. Chair.

At this point, we're at page 24 of the bill and my amendment seeks to delete lines 14 to 24.

The reasons for this, Mr. Chair, relate to the immunity for voluntary disclosure. This has been one of the most controversial parts of this bill. This is one of the very strong reasons that so many of us in the opposition wanted the bill split, so that we could deal with the legitimate concerns about cyberbullying without creating what is a loophole so big you could drive truckloads of personal data through it without anybody noticing.

What this allows for, of course, is immunity for those who are holding personal information to voluntarily disclose it. The level at which this is already occurring that we know about is the revelation that the 1.2 million requests to telecom companies for private customer information in just one year alone, 2011, affected 750,000 user accounts. That was voluntary disclosure. This bill will, of course, absolutely confirm and increase the risk of such voluntary disclosures of personal information. It also expands the nature of public officers to whom this information may be disclosed.

It isn't at all about combatting cyberbullying. It is something of a different character altogether in the guise of protecting children from Internet crime and predators. It's a clever disguise, but behind the disguise is Big Brother. This should be removed. It's inconsistent with the government's claims that it cares about court oversight.

I strongly urge my friends on the other side to give this amendment a chance, to vote in favour of it, to make it clear to the Canadian public that this Conservative administration is actually interested in cyberbullying, not in gathering up personal information on spec.

The Chair: Thank you very much, Madam May.

I'm assuming Mr. Dechert has a response.

Mr. Bob Dechert: Mr. Chair, I'm sure Madam May has followed the testimony at this committee quite closely, and she will know that the point was made on many occasions that this provision simply codifies the existing jurisprudence on this point. With respect to section 25 of the Criminal Code, the motion proposes to delete an existing clarification that voluntary assistance under the common law is not displaced by the creation of production orders and that such voluntary assistance is protected from civil and criminal liability.

In our view, deletion of this provision may undermine the comfort of the public in providing necessary voluntary assistance to police when they are engaged in the protection of the public.

You'll recall, Mr. Chair, that a number of witnesses, including those who have served as corporate counsel to media organizations, provided their opinion that in the absence of such a provision, they would be less likely to advise their clients to cooperate with law enforcement, and that is contrary to the purpose of this bill and this legislation.

Policing is not, as you know, Mr. Chair, done in a vacuum, and voluntary support to law enforcement from the public is essential to ensuring public safety, in our view. Canadians who assist the police on a voluntary basis should be assured that they will not incur liability in providing such assistance.

On that basis, we will be opposing this amendment.

The Chair: Thank you.

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

The Chair: Amendment NDP-24 is removed as it's consequential to the decision on NDP-6.

We are now on to LIB-1, which is in conflict with NDP-25, which is next. If LIB-1 is adopted, NDP-25 will not proceed.

The floor is yours, Mr. Casey.

Mr. Sean Casey (Charlottetown, Lib.): Mr. Chair, many of the comments I have with respect to this amendment would be along the lines of what you just heard from Ms. May on her last amendment.

I can't begin to tell you how disappointed I am with the response of the government on the last one. I thought they cared about what Carol Todd said. This amendment is entirely consistent with what Carol Todd said. I thought they cared about what the Privacy Commissioner said. After all, they fiercely supported his appointment. This amendment is entirely consistent with what the Privacy Commissioner said.

Not a single telecommunications company has asked for civil and criminal immunity, not a one. In fact, of every witness who appeared before this committee who was asked what motivated the insertion of this immunity against class action lawsuits, nobody could identify a single party who asked for immunity, no one.

It strikes me as a wee bit odd that yesterday we were sitting here and talking about whether or not transgendered persons should be protected, whether that clause should be put in, the amendment that was proposed by Mr. Garrison. The response from the government was that they didn't hear from any witnesses who asked for it. That very same argument can be made with respect to this immunity. We didn't hear from a single witness who said they want this in the bill.

Contrary to what Mr. Dechert said in his last submission, and contrary to many of the questions he's been putting to witnesses, this does change the law. Section 25 of the Criminal Code has a reasonableness standard when there is voluntary production of documents to police authorities. That reasonableness standard, as we have heard from several witnesses, has been removed with this immunity. What this immunity does is it allows people to act unreasonably. It gives them immunity for acting unreasonably in their cooperation with authorities. That's what this does.

We heard from several witnesses with respect to the joint impact of this provision with Bill S-4. When you take Bill S-4 and this provision together, what it means is that it is not just public officers, it's not just peace officers, it's anyone. Anyone in a contractual dispute can now get private information without consent, without disclosure.

We know now, although not because there is any transparency reporting, that this is widely used.

The purpose of this amendment is to prevent the widening and expansion of the non-consensual distribution of subscriber information. As far as I'm concerned, that is one of the most important changes that can possibly be made to this bill. We heard it time and time again. I would certainly hope that the government would respect the evidence that has come forward to this committee. A monopoly on good ideas doesn't exist on the other side of this room.

Thank you.

● (1140)

The Chair: Thank you, sir.

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, I don't wish to add a significant amount to the record on this since we did discuss it in the previous amendment. All those same arguments apply.

I'll just correct my friend Mr. Casey. He may have missed a meeting, but he will remember that Mr. Canning, the father of Rehtaeh Parsons; Mr. Allan Hubley, the father of Jamie Hubley; Mr. Kempton whose granddaughter died in similar circumstances; Mr. Gilhooly, who was a victim of Graham James; and David Butt, the lawyer for the Kids Internet Safety Alliance and himself a former federal crown prosecutor and litigant before the Supreme Court of Canada, all said likewise, as did the Canadian Centre for Child Protection. Each of the victims' rights organizations that appeared before the committee and Canada's victims ombudsman.... I'm sure he'll have an opportunity to read that testimony again in the next few minutes, but that is the case, and on that basis, we will not be supporting this amendment.

The Chair: Thank you, Mr. Dechert.

Mr. Casey, the floor is yours.

Mr. Sean Casey: Mr. Dechert is quite right: I don't need to reread the testimony. He is correct that those individuals did speak in favour of the immunity.

The point I sought to make is that the parties who will benefit from the immunity, those who hold the records, those who are being given the immunity, those who are being shielded from class action lawsuits and criminal liability, have not asked for this, not one. We did not hear from one witness who will benefit from the immunity, not one.

● (1145)

The Chair: Thank you.

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

The Chair: We're on amendment NDP-25. It is very similar.

[*Translation*]

Ms. Ève Péclet: Thank you very much, Mr. Chair.

Our amendment concerns the immunity granted under subsection 487.0195(2). We are offering the government a slightly better alternative.

It is important to note that one form of immunity is provided in electronic surveillance cases. That immunity is very reasonable and is already being used by the people concerned. There should be some consistency in the Criminal Code to ensure that the immunity enjoyed by peace officers, telecommunications companies and all people concerned in electronic surveillance matters is the same as that already provided for under the Criminal Code. It would be quite reasonable for that to be the case.

It is true that many witnesses are in favour of immunity in this area, but they are not necessarily in favour of virtually unconditional immunity as is provided for here. I am 99.9% certain that no witness said unconditional immunity was desirable. That much is clear. The government cannot tell me the contrary.

I have just provided a quick overview of the testimony of the federal ombudsman for victims of crime, and she never argued in favour of the kind of unconditional immunity the government is now trying to grant to telecommunications companies.

Why could the government not go halfway and grant those companies the same immunity in electronic surveillance cases as is already provided in the Criminal Code? I already know Mr. Dechert's response. He will tell us that section 25 of the code already codifies that immunity. Section 487.14 also codifies immunity. Why then add a new immunity that is inconsistent with the logic of the two sections already in the Criminal Code? We must be consistent.

It would be reasonable to accept amendment NDP-25 so that immunity in electronic surveillance cases is the same as that provided with respect to information sharing.

[*English*]

The Chair: Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, if I heard her correctly, I think Madam Péclet said that it was the government's position that 487.0195(2) codifies section 25 of the Criminal Code. I believe that's what I heard. Of course, that wouldn't make any sense because section 25 is already in the Criminal Code. What it attempts to do is codify what is in the jurisprudence interpreting section 25 of the Criminal Code.

These cases have been mooted by us previously. I have yet to hear from any of my friends in the opposition any discussion of any of the relevant case law. They gloss over it. We've referred to several cases which you can find in the testimony before this committee. That's what we believe it will do.

With respect to this particular standard, as she will know, it is always inferred by the court that any such information supplied is done so to law enforcement on the basis of reasonableness and in good faith. That's the standard the court expects, and when the court has any reason to suspect that is not the case, it would make a different ruling.

In addition, the criteria of reasonable grounds and good faith are proposed to be added in a way that would appear not to apply to the voluntary preservation and production itself, but only to a person who would assist another person doing so. That's a drafting error.

In addition, only including reasonable grounds and good faith for the assistance could be interpreted as only applying the reasonableness and good faith criteria to the person who was aiding and not to the direct preservation or production of the information itself.

On that basis, Mr. Chair, we will not be supporting this amendment.

● (1150)

The Chair: I have a speakers list.

Madam Péclet, do you want him to go first?

Ms. Ève Péclet: Go ahead.

The Chair: Mr. Casey, the floor is yours, and then I'll give Madam Péclet the last word.

Mr. Sean Casey: The government claims that this immunity provision codifies the current state of the law. What I just heard is the view of the government is that the jurisprudence infers a reasonableness standard. There's a reasonableness standard in section 25 of the Criminal Code. If they're going to vote against an amendment that inserts a reasonableness standard, it's amazing.

The Chair: Thank you.

Madam Péclet.

Ms. Ève Péclet: To answer the parliamentary secretary, I'm sorry if I misspoke, but that's not what I meant. What I meant was that.... Well, it proves my point actually: why would we codify something that's already in the code? Exactly. Why would we add a new immunity that's already in the code?

If section 25 is already codified and if subsections 487.014(1) and (2) are already codified, then why would we need to codify a new immunity if there's already an immunity in the code? That's what I meant.

Also, if sections 25 and 487.014 save a certain jurisprudence, then the parliamentary secretary would agree with me that if jurisprudence exists and the fact that the courts already apply the reasonable grounds criteria in their judgments, then why not codify it to make it law?

He proves my two points, that if there's already an immunity codified, then why do we need to codify a new one, and if so, why not codify a criteria that is already applied in the courts? Both of my arguments were made by the parliamentary secretary.

Thank you.

The Chair: This will be the last comment.

Mr. Bob Dechert: Mr. Chair, I just want to clarify. It's clear from Madam Péclet's comments that she has not read the decision of Justice Doherty in the Ontario Court of Appeal in R. v. Ward. Had she done so, she would understand this point.

The Chair: We'll vote on amendment NDP-25.

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

The Chair: We are still on clause 20, by the way, ladies and gentlemen. We are at amendment LIB-2.

So that the NDP are aware, amendments LIB-2 and NDP-26 are identical, so you may want to speak to it because if the amendment fails, yours will be removed.

The floor is yours, Mr. Casey, on amendment LIB-2.

Mr. Sean Casey: Thank you, Mr. Chair.

This amendment seeks to put into law the best practices that exist within the intellectual property companies or the IT companies. We have heard from the Internet Association and from Facebook that transparency reports are part of what they do. We also heard from the minister that as far as he's concerned, this is a contractual matter between the customer and the holder of their records.

This amendment proposes to impose an obligation on the parties that have been afforded an immunity to have some transparency with respect to the extent and frequency with which they take advantage of that immunity and disclose their customers' private information. This is something that is prevalent on a voluntary basis in the industry outside of telecommunications companies that we haven't heard from.

I would urge this upon the government. I would say it would be a step in favour of consumers, in favour of those who are now in a position where they have no idea—because they're not entitled to know—how often their private information is being accessed and produced.

I'll leave it at that. We've heard from plenty of witnesses.

The one final comment I'll make is with respect to the testimony of Parry Aftab, and there may have been other witnesses that talked about it as well. Given that this already exists within companies other than telecommunication companies that are in the social media sphere, there's undoubtedly a real marketing opportunity for telecommunications companies to come out and say, "You should become our customer because we will show your private information more respect than our competitors do." I would suggest to you that this is very much something that the government should have an interest in, given its prevalence in this space anyway. If they do actually have respect for the private information of customers of telecommunications companies, this is a pretty darned fair quid pro quo for the immunity that they're giving to the telecom industry.

Thank you.

● (1155)

The Chair: Thank you, Mr. Casey.

Madam Péclet, go ahead on amendment LIB-2, which is the same as amendment NDP-26.

Ms. Ève Péclet: We support this amendment. I think it would be reasonable that the companies.... It goes to the whole idea of making it more transparent and more accountable. I think a couple of witnesses have spoken about this kind of mechanism, such that we need to have surveillance and accountability and transparency. It would probably make it more acceptable. I'm not saying that it's acceptable that the government refuse all of our amendments, but maybe we will have a chance and maybe they will support this amendment for the sake of accountability and transparency.

The Chair: Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, the government does not support this amendment.

As Madam Péclet will know, the motion proposes to add to proposed section 487.0195 a requirement for telecommunications service providers to report to the minister on voluntary assistance. That would be incongruous with the scope of the provision, which simply clarifies the common law in jurisprudence and does not require nor authorize such assistance. Companies, as she will know, are subject to privacy legislation, which permits disclosure of personal information only in certain limited circumstances.

In our view, it would be a disproportionate reporting burden on the telecommunications sector. All other private sector industries, including banks, transportation, and hospitality service providers, are equally permitted under the common law to provide such assistance, but they are in fact not required to report such disclosures to anyone. On that basis, we will not be supporting this amendment.

The Chair: We'll vote on amendment LIB-2.

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

The Chair: With amendment LIB-2 failing, amendment NDP-26 is removed.

This takes us to amendment LIB-3.

Just so people know, there was a new amendment put on the table this morning. We're treating it as 26.1 which will come after LIB-3.

Amendment LIB-3 is on the floor.

Mr. Casey, the floor is yours.

Mr. Sean Casey: Mr. Chair, I think the government would agree with me that part of the goal in this legislation is to modernize police powers, to modernize their investigative tools, to catch up with where technology has brought us in this day and age. I know I've said a lot of things in this meeting and often do say things they disagree with, but I think we can agree on that.

I hope we can also agree it's a fast-moving train in terms of what is happening in the world around social media and IT generally. It's fast evolving, and legislators and people in the enforcement field are having a hard time keeping up with the advancement in technology.

If we can admit we're in a rapidly changing environment, I would suggest to you it just makes good sense that we come back and examine whether what we've been doing in the course of amending this legislation stands up, whether it still fits three years down the road.

The sole purpose of this amendment is to require us to come back and take a look at what we've done and see if it still works.

This isn't by any means a foreign concept. We did it when we radically changed how we treat veterans. We had a study here in this session about the changes that were made with respect to trials in both languages.

Just last week the Minister of Industry appeared before a Senate committee on the digital privacy bill, something I've argued is intertwined with what we're doing here. This won't be terribly long, but I want to share with you an exchange between Minister Moore and Senator Eggleton on May 28 at the Senate committee that is studying Bill S-4.

Senator Eggleton said to him:

> I agree with you; it's an evolving universe. I think in that regard it's also important to have parliamentary oversight.
>
> When PIPEDA was first put in place, there was to be a review every five years, and I think there was a review in 2007, but there hasn't been one since then. This is perhaps something that needs to be corrected to make sure that we can keep up with the changes in the universe and that Parliament can keep on top of this issue.

The minister said:

> Quite right, and here I am, doing my best.
>
> But you're quite right. When we did the Copyright Modernization Act, and I think I may have been before this or another committee with a similar mandate, we wrote into that legislation as well, the copyright legislation, which I know is always a fight because it's often a zero-sum game when dealing with IP law. There are often governments, ours included, who find it a struggle to find the right balance, certainly, in a minority Parliament and the pressures associated with that, to arrive at the right balance. So we put in place in the Copyright Modernization Act a mandatory five-year review of the legislation so that politicians, regardless of their political willingness, are forced to maintain the best possible IP regime.

What I am proposing is entirely consistent with Minister Moore's testimony in front of the Senate committee. It's entirely consistent with other practices when we're forging new ground, especially in an environment that's as rapidly changing as this one.

All the amendment does is it mandates us to come back and take another look at the changes we've made.

● (1200)

The Chair: Mr. Dechert, I'd like you to speak to this one.

Mr. Bob Dechert: Mr. Chair, I'd just like to say I do agree with Mr. Casey that parliamentary review is a good and valuable concept and one which we support. I would ask him to accept as a friendly amendment the amendment of “three years” to “seven years”.

The reason for that simply is it will take a substantial amount of time in our view for the law to be put in place and for the cases to generate sufficient evidence on how these provisions perform.

We certainly take the point that in many ways this is a new regime for investigating and protecting Canadians against cyber crimes, and the whole issue of cyber data and how it's treated and how it can be hidden is new and evolving. Therefore, we believe if a sufficient period of time is allowed to pass to see what the implications of these provisions are, that would be an appropriate time for the justice and human rights committee to review the impact of the legislation.

● (1205)

The Chair: Thank you, Mr. Dechert.

There is no such thing as a friendly amendment, so I'm treating it as an amendment to the amendment. The amendment to the amendment is to change the years from “three” to “seven”.

Mr. Casey, would you like to speak to the subamendment?

Mr. Sean Casey: If we split the difference at “five”, we've got a deal.

I think seven years is too long, especially when the environment is so rapidly changing. Three years may well have been aggressive, but we have seen the number five in other pieces of legislation.

I'd be much more comfortable with five years, but I can say that I'm encouraged that there's even some interest from the government on this. I'm quite prepared to agree to something longer than three years. I do think seven years is too long in this environment.

The Chair: Mr. Dechert, would you like to respond?

Mr. Bob Dechert: Mr. Chairman, my response would be that, in the first instance, we need to allow a sufficient period of time to accumulate the evidence. Based on what that shows, at the end of that period of time that we're suggesting, it would certainly be in the purview of this committee to recommend to the government of the day, and the government of the day to propose a change to that, so that there's a five-year review thereafter.

The Chair: Thank you.

I do want to bring to the attention of the committee that of course the committee is the commander of its own agenda, that if things change, and things need to be.... This is a legislated requirement for a review, but legislation can be reviewed any time, of course, before that.

The subamendment will stay at “seven”.

If there's nothing further, we'll vote on the subamendment to move from “three years” to “seven years”.

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

The Chair: Is there any further discussion on LIB-3 with the new period of seven years?

Seeing none, we'll vote on LIB-3 as amended.

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

The Chair: We'll now move to the new amendment that was submitted to us just this morning. We've numbered it 26.1. It's an NDP amendment.

Madame Péclet, good luck. The floor is yours.

Ms. Ève Péclet: Yes, it's quite an amendment.

This amendment speaks to the same issues I raised in our amendment NDP-21.1, where we asked for people to be notified about the sharing of their personal information.

[*Translation*]

At the risk of repeating myself, I believe it is extremely important to be clear on this subject. The Supreme Court was clear when it ruled that section 184.4 of the Criminal Code on electronic surveillance was unconstitutional. It was not the substance of the section that it found unconstitutional but rather the mechanism whereby wiretapping could be carried out without a warrant. There has to be a mechanism of oversight and notice for that to comply with the Canadian Charter of Rights and Freedoms. No discretionary power may be granted without there being an oversight or accountability mechanism. That is all the more important since this is about accessing information as personal as that found in electronic or other communications on the Internet. The Supreme Court was clear: there must be an accountability system where discretionary authority is granted to intercept personal information without a warrant.

The government must ensure that the Minister of Public Safety and Emergency Preparedness reports to all parliamentarians and to Parliament on the use of this kind of order respecting the preservation of data. It must ensure that all requests are public so that we know how many there have been and which ones have been brought before the courts. We have to know what happens to our personal information.

I would note, incidentally, that the Supreme Court did not rule section 188 of the Criminal Code unconstitutional precisely because it provides for review by a judge. The Supreme Court held that that oversight mechanism was valid.

I would remind the government that this kind of power cannot be granted without accountability. The department must be compelled to report to all members on the use of this kind of order. The Supreme Court was clear on this matter, as were several witnesses, including the Privacy Commissioner. There must be an accountability mechanism so that officers of Parliament have access to that information and report on it to parliamentarians. The department must be accountable to Canadians.

The victims of cyberbullying should not be prevented from obtaining justice because the government has rejected all opposition amendments on ideological grounds. I hope it will acknowledge the guidelines the Supreme Court has put in place to ensure this kind of power is constitutional.

Thank you very much, Mr. Chair.

● (1210)

[*English*]

The Chair: Thank you.

Mr. Dechert, would you like to respond?

Mr. Bob Dechert: Mr. Chair, the government does not support this amendment.

I'll just point out that wiretap orders are much more invasive than any of the preservation demands or orders that we're discussing in this matter.

The Chair: One second, Mr. Dechert.

The bells are ringing. We have half an hour. One of the purposes of getting this room is that we would be fairly close to the House.

With the permission of the committee, I think we could go until 12:30. We have two amendments after this one, and we'll see how far we can get. We will return after the vote, if that's okay.

Some hon. members: Agreed.

The Chair: The floor is yours, Mr. Dechert.

Mr. Bob Dechert: As mentioned, this provision is with respect to things that are much less invasive than wiretap orders. In addition, Mr. Chair, we believe the volume of orders for these sorts of preservation demands would make this administratively impractical.

On that basis, we will not be supporting this amendment.

The Chair: Thank you.

Madam Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre (Alfred-Pellan, NDP): Thank you very much, Mr. Chair.

I would like to speak today simply in support of the amendment of my colleague Ms. Péclet. I think it is an extremely important amendment.

We asked a lot of question about this in the House. We need an oversight mechanism. There have never been so many requests to access personal information since the Conservatives have been in power. However, we have no oversight mechanism that we can use to report what goes on and see how our data are being used. That information is not being used solely in Canada. It is being shared with various police forces and international organizations. That is troubling from a privacy standpoint.

This is an excellent amendment. We need an oversight mechanism. The minister must provide parliamentarians with more information, even though he has a discretionary power. This is extremely important in view of the speed with which information circulates on the Internet and the ease with which it can be intercepted. We need to know where our personal information is being sent and with whom it is shared. Parliamentarians have a right of access to that information.

The Chair: Thank you, Ms. Doré Lefebvre.

[*English*]

Madam Péclet, you have the last word.

[*Translation*]

Ms. Ève Péclet: I would simply like to respond to the parliamentary secretary's comment. I do not think it is up to him to judge whether the information in question here is less personal than any other. Some witnesses said this information was as sensitive and personal as electronic communications. So I simply want to remind the parliamentary secretary that it is not up to him to judge what is personal or not.

This amendment simply asks that the minister report to parliamentarians on the information of Canadians that the government is sharing. We are not asking for much here. We are only seeking transparency.

The Supreme Court was clear: Canadians have a right to know what the government does with their personal information. That information must not be shared completely in the dark, without guidelines. That is important. This amendment makes no change to the way the act is enforced. It simply adds an oversight mechanism. It in no way changes the powers the government wants to give to public officers or telecommunications companies. We are simply asking the government that the people who make these requests and the minister be accountable to Canadians.

It is not up to the parliamentary secretary to judge which information is more personal than any other. If he wants to rebut the experts' testimony, let him invite other experts to appear before the committee so that we can debate the matter.

Canadians are entitled to know that the government handles their personal information, whether shared or not, in a transparent and responsible manner. That is true for anything. That is what is done in the case of the budget and expenditures. We need to know what happens with the sharing of such data. It is not up to the parliamentary secretary to judge what data should or should not be made public.

Thank you very much.

● (1215)

[*English*]

The Chair: Thank you very much.

If there is nothing further on amendment 26.1, we'll vote on it?

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

The Chair: That brings us to the end of the amendments on clause 20.

Shall clause 20 as amended carry?

Ms. Ève Péclet: On division.

(Clause 20 as amended agreed to on division)

(Clauses 21 and 22 agreed to on division)

(On clause 23)

The Chair: Amendment NDP-27 has been removed.

That brings us to amendment NDP-28.

Madam Péclet, the floor is yours.

[*Translation*]

Ms. Ève Péclet: This responds to the testimony of several witnesses on the definition of a tracking device. A clear definition was obviously needed.

Our amendment is reasonable and changes neither the spirit or not the content of the act. It simply clarifies certain matters.

[*English*]

The Chair: Thank you very much.

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, briefly, the government does not support this amendment.

As discussed at committee and elsewhere, Canadian jurisprudence has already established that a device includes a computer program. The government's provision amends the previous definition of a tracking device to simply codify the common law and make clear that a tracking device could either be hardware or a computer program, i.e., software. Some tracking devices, as you will know, may be hardware, particularly those from many years ago, and some may be software, but most are a combination of the two. The exclusion of a computer program from the definition of “tracking device” does not, in our view, correspond to existing technology in this area.

On that basis we will not be supporting the amendment.

The Chair: We'll vote on amendment NDP-28.

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

The Chair: Amendment NDP-29 has been removed as it's consequential to other amendments that have failed. Amendment PV-16 is the same.

We're on amendment NDP-30, the last amendment.

The floor is yours, Madam Péclet.

● (1220)

[*Translation*]

Ms. Ève Péclet: This is along the same lines as our last amendment. Some witnesses and experts told us about problems with the definition of "tracking device". This amendment reflects their testimony and concerns.

Once again, I would like to note that this amendment is reasonable. It does not have the effect of completely changing the spirit of the act.

I would like to ask the government to support this amendment.

[*English*]

The Chair: Thank you very much.

Mr. Dechert.

Mr. Bob Dechert: Mr. Chair, the government's position is that this amendment should not be supported. It's essentially the same point we were making on the last amendment, which is that excluding “computer program” from the definition of “transmission data” does not make sense, because computer programs are used within commercial telecommunications infrastructure to permit all devices such as phones, computers, laptops, and modems to be identified, activated and configured.

Canadian jurisprudence has already established that a device includes a computer program, and the government's provision simply codifies the common law and makes clear that a transmission data recorder could be either hardware or a computer program. Some transmission data recorders may be hardware, and some may be software, but, as I hope the member knows, most actually combine the two.

The exclusion of "computer program" from the definition of "transmission data recorder" does not, in our view, correspond to existing technology. Therefore, we will not be supporting this amendment.

The Chair: We'll vote on amendment NDP-30.

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

The Chair: There are no more amendments on clause 23.

(Clause 23 agreed to on division)

The Chair: To move things along a little bit, there are no more amendments between clauses 24 and 47.

Shall clauses 24 to 47 carry on division?

Some hon. members: Agreed.

(Clauses 24 to 47 inclusive agreed to on division)

The Chair: We're now on to the short title.

Shall clause 1, which is the short title, carry?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall the title carry?

Some hon. members: Agreed.

Ms. Ève Péclet: On division.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

Ms. Ève Péclet: On division.

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

Some hon. members: Agreed.

Ms. Ève Péclet: On division.

The Chair: Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

Some hon. members: Agreed.

Ms. Ève Péclet: On division.

Some hon. members: Oh, oh!

Ms. Ève Péclet: The fact is I love trees. I don't want trees to be killed for reprints, so let's listen to our environmental conscience, and it's on division, okay?

Mr. Chair, I'm just joking.

The Chair: All right, there you go.

Committee, we will go vote now in the House.

There is important committee business we need to discuss after the vote in the House. If you could come back right after the vote, we'll have a short in camera meeting about future committee business. We need to discuss what we're going to do with Bill C-36.

Thank you very much. We'll suspend until after the vote.

- _____ (Pause) _____
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[*Proceedings continue in camera*]