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Chair

Mr. Daryl Kramp

Standing Committee on Public Safety and National Security

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● (0850)

[*English*]

The Chair (Mr. Daryl Kramp (Prince Edward—Hastings, CPC)): Good morning, colleagues, and welcome to meeting number 62 of the Standing Committee on Public Safety and National Security. Of course, today we will be dealing with clause-by-clause consideration of Bill C-51.

Pursuant to Standing Order 75(1), consideration of clause 1, the short title, is postponed.

(On clause 2—*Enactment*)

The Chair: We have NDP amendment number one.

Yes, Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): On a point of order, are we not having Justice officials here? There will be a number of questions on this bill related to the charter and other issues as we go through it. It was my understanding that there would be officials here from the Department of Justice to explain some of the contradictions in this legislation.

As well, I'd say, while I'm at it, Mr. Chair—I don't believe it's in our package, I haven't looked yet—if you remember the last witness we had, Mr. McKenna from the Air Transport Association of Canada, we had asked him to forward some amendments. The clerk has those. I don't know whether they've been distributed, but when we get to them I may move them because they're not in our original package—just to give you a heads-up.

The Chair: Fine, thank you very much, Mr. Easter.

Just two quick responses. The officials are here. It's been indicated, and they are of course sitting here now. Should you wish to call them to the table at any particular time, I think that would certainly be in order, but there's no sense having everybody just sitting there right now. Certainly, I would expect—

Yes? Just a second, Ms. James, I'll just finish my other point.

As to the other point on the amendments, it's my understanding that they have been translated and have been circulated electronically.

Yes, Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you, Mr. Chair.

Just for the sake of the committee and so we don't have to invite the officials up at some point later on, maybe the chair could invite the officials to join us at the table to be able to answer any of our questions that we have along the way.

The Chair: That's fine.

Mr. Garrison, on the same point.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): If we don't know who's here, it's hard to know who we're calling to the table, so I think it would be better if we had some idea of who's here.

Hon. Wayne Easter: That's a good point.

The Chair: Okay, we understand. We have approximately 13 officials here, Mr. Garrison, so we can certainly bring a number of them up now, put up their name cards, and advise members of the names of the other people who are here so that they're available to the committee.

At this point, then, we will suspend briefly and we will call some of our witnesses to the table, fill the chairs, and put name cards there, and then advise the committee of who else is here.

Thank you.

● (0850)

(Pause)

● (0855)

The Chair: Okay, we are now back in session and we will now go ahead and call NDP-1. Before I call this to the table—

Mr. Randall Garrison: I do not have an electronic copy of those available to me, and before we discuss this, I do need to know which officials are available to call upon. I cannot proceed without knowing who is here.

The Chair: That's a fair point, Mr. Garrison, and the chair is willing to wait until we have all of that information available to all of the committee.

We will now suspend again.

● (0855)

(Pause)

● (0900)

The Chair: Okay, colleagues, we will resume. You have the list now.

If the witnesses whom you wish to speak to and/or ask for comment are at the table, you can obviously do that. Should you wish to call another witness to the table, simply advise the clerk and/or the chair at that point, and we will make that happen.

We will now resume discussion on amendment NDP-1. The chair would just make note as well here that if amendment NDP-1 is adopted, then Green Party amendment PV-1 and Bloc Québécois amendment BQ-1 cannot be moved, as they would be in line conflict. Should amendment NDP-1 not pass, then we will deal with amendment PV-1 and amendment BQ-1 as they come up in sequence.

On amendment NDP-1, is there comment?

● (0905)

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I'm hereby moving this amendment, which is a very simple one, but it gets to the heart of one of the main problems that we see in Bill C-51. That is the vast expansion of the definition of what is to be the subject of CSIS activity.

In essence, what the amendment does is to return to the existing definition in the CSIS Act, which says that threats to the security of Canada mean just four things, from A to D: espionage or sabotage; foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve threats; activities within or relating to Canada directed to or in support of the threat or use of acts of serious violence; and activities directed toward undermining by covert unlawful acts the constitutionally established system of government in Canada. What Bill C-51 does is expand that list from those four things, which I think almost all of us would agree with, to a list of A to I in the bill.

The purpose of this amendment is to return to what is the existing practice for CSIS.

I am disappointed in the list we have. We don't have anyone form CSIS here at the table. I might not sure who I should ask my questions of, given that CSIS officials are not here. Reading through the officials list, I assume that at least one of those we have at the table now would be Mr. Davies, though I'm not sure he can answer these questions because he is not from CSIS.

Regarding of the change in definition, does he have any knowledge whether this change in the bill was requested by CSIS? In other words, where did this demand for this much broader definition for CSIS come from? Why is it here before us today? He may or may not have that information.

The Chair: Mr. Davies.

Mr. John Davies (Director General, National Security Policy, Department of Public Safety and Emergency Preparedness): The answer is no.

The purpose of the bill is not just about CSIS. It's much broader than that. I believe there's a schedule attached to the bill. There are 17 departments and agencies that are involved in national security in one way or the other. I think the amendment would narrow the scope greatly because those other departments and agencies have a national security role much broader than CSIS.

Mr. Randall Garrison: Thank you very much. That's a very useful answer because I think it's exactly where I was going with this. What we've done is not only expand what CSIS looks at, but we've also expanded for 17 government agencies what information can be shared with CSIS.

Mr. John Davies: That is not the case. This does not change the mandate of the service or the powers of the service in any way. All we wanted to do was to make sure that the definition allowed for the mandates of other departments and agencies involved in national security to lawfully receive information relevant to the threshold in the act.

Mr. Randall Garrison: This does not change the information to be shared with CSIS by those 17 government departments in any way?

Mr. John Davies: No.

Again, the 17 are the receivers. They are the national security departments and agencies that are somehow related. The act is about sharing of all of the Government of Canada with those national security agencies. There's no change in collection authorities by anyone in the act.

Mr. Randall Garrison: Wouldn't those national security authorities include CSIS? It's one of the 17.

Mr. John Davies: It's one of the 17, but what they can collect does not change. This is making sure that all of the 17 have the authority to collect information, and that information can be disclosed to them. We're not changing the powers of the service at all.

Mr. Randall Garrison: If I understand correctly what you're saying, the 17 government departments would now be limited to the definition of threats to security of Canada that's in the existing CSIS Act.

Mr. John Davies: No.

Mr. Randall Garrison: Then why is there a necessity for this?

Mr. John Davies: It's because the 17 that are in the schedule of the act need all of their mandates to be encompassed by the act, otherwise the act won't have an effect. It will only have an effect for CSIS if we use the CSIS mandate defined in the CSIS Act in section 2. We needed to make sure that all of the 17 were somehow brought into the proposed security of information sharing act; otherwise, information relevant to national security that undermines the security of Canada cannot be disclosed to them. We're not changing section 2 of the CSIS Act here at all. We're defining examples of the kinds of things that meet the definition of undermining the security of Canada that will allow all 17 to be included in the act and receive information under the act. No collection mandate is being changed here.

● (0910)

Mr. Randall Garrison: But with respect, what you're saying sometimes seems circular to me, because if CSIS is one of the 17 and you're saying it has no impact on CSIS, I don't understand how that can possibly work.

Mr. John Davies: I'll let Sophie take a crack at it.

Ms. Sophie Beecher (Counsel, Public Safety Canada, Legal Services, Department of Justice): Actually the definition of "activity that undermines the security of Canada" took into account the concepts of national security relevant to the 17 recipients, so we made sure that the elements of the CSIS definition were included in clause 2 so they could receive information under our act but always in accordance with their mandate and their collection authority.

However, the definition needs to be broader because we have 16 other agencies that also need to receive information when it is relevant to their national security responsibilities. The extra portions you see of the definition of activity that undermines the security of Canada reflects their mandate. If you look at the list of 17, it's a very varied list.

Mr. Randall Garrison: I have one last question then.

If Bill C-51 instead had the definition of threats to the security of Canada that's in the CSIS Act, you're saying this system of information sharing will not function?

Mr. John Davies: That's right, because the other 16 would be affected. You cannot disclose lawfully to the other 16 without the proposed definition. The CSIS Act definition in section 2 of that act doesn't necessarily include all the other 16.

Mr. Randall Garrison: Thank you very much.

I think Mr. Easter wanted.... Sorry.

The Chair: I have Ms. James.

Mr. Easter, did you have your hand up?

No.

Ms. Roxanne James: Thank you, Mr. Chair, and thank you to our official for helping to clarify that. That's actually been an issue since the start of this Bill C-51, because there's been some sort of misunderstanding or misinterpretation of the actual bill itself.

There are actually five parts of this bill. The first part we're going through right now, with this amendment by the NDP dealing with the information sharing act. It has absolutely nothing to do with the basis of CSIS activities, as Mr. Garrison just indicated.

The basis of activities that CSIS can undertake is included in the CSIS Act, which is completely separate from this bill and separate from the security of the proposed Canada information sharing act, which is part 1 of this bill. I'm glad you clarified that, or attempted to clarify that one more time.

I understand the information sharing act has to be broad and comprehensive, because we have to include all of the agencies that could be crucial to a piece of information that could go towards impacting our national security and providing security for our citizens.

That is why the definition is different. The definition of the information sharing act applies to multiple agencies and government bodies, whereas the CSIS Act just applies to CSIS, and there is no connection whatsoever with the information sharing act in part 1 of the bill.

I wanted to thank you for clarifying that. I will not be supporting this amendment.

The Chair: Thank you very much.

Mr. Easter.

Hon. Wayne Easter: Thank you, Mr. Chair, and thank you, officials.

In this whole clause that the NDP amendment would amend out, there is a lot of concern about the broad language. I think I understand your point about sharing with 16 other agencies, but what kinds of activities would be considered under the terminology about a threat to the economic security of Canada?

The bill reads undermine "the economic or financial stability of Canada", and so anybody reading this looks at it very broadly. There could be a tractor demonstration for instance that slowed traffic, or some aboriginal demonstrations that maybe slow down the construction of a pipeline. A lot of people would look at that as undermining the economic or financial stability of the country, yet it's a legitimate protest.

So how do you explain that?

Ms. Sophie Beecher: I think it's very important to continue to consider the examples and the definition in light of the chapeau. The test in the definition is actually included in the chapeau, so therefore "an activity that undermines the security of Canada" is an activity that undermines the sovereignty, security, or territorial integrity of Canada, or the lives or the security of the people of Canada. The chapeau is meant to raise the bar on the seriousness of the actions. Therefore any interference with the economic or financial stability of Canada needs to be read with the chapeau in mind. It has to reach that scope that affects the country in a national way. Therefore we'd be talking about something fairly serious here that would cripple Canada in a way that would affect the lives and the security of its people.

The other important thing to remember is that in the example in paragraph 2(a), where you find "the economic or financial stability of Canada", we are talking about "interference with the capability of the Government of Canada in relation to"... "the economic or financial stability of Canada". Therefore, it is not just the fact of affecting that particular area, but affecting the capability of the government to maintain economic or financial stability.

● (0915)

Hon. Wayne Easter: What complicates this even further, though, relates to what Randall was talking about earlier. In the bill, under paragraph 2(d), it's "terrorism" very broadly defined. I heard your arguments before about sharing with more agencies, and that maybe makes it difficult to use the "terrorist activity" definition that is in the Criminal Code. However, without using that "terrorist activity" definition from the Criminal Code, then the bill as currently worded seems to be too broad. There's no sense in my repeating the points that Randall made, but that is a concern.

So how do you get around that argument that people engaging in some activities may feel or be considered to be engaging in a terrorist activity that is broader than the ones already defined under the CSIS Act as terrorist activity? How do you narrow that?

The Chair: A point of order, Ms. James.

Ms. Roxanne James: On a point of order, first, the officials are here to help us understand the bill as it's written, not to ask them questions about their opinions on how to get around something. I just want to make sure that the officials are being used as they're intended to be, to assist us in understanding the bill, and not describing what their opinions might be on other things that are a possibility, or are not in the bill.

The Chair: I thank you for that. However, in clause by clause there are no specific rules governing the questions that may be asked. Obviously, the chair would certainly appreciate relevancy to the topic.

Carry on, Mr. Easter.

Hon. Wayne Easter: I'm not asking for opinions, Mr. Chair. I'm asking officials from the Department of Justice why the terrorist activity definitions in the CSIS Act were not used, because they're very specific. In this bill, it seems to me—

The Chair: Mr. Easter, I'm just going to interrupt you. I just stated there is no limitation—

Hon. Wayne Easter: Yes, I understand that.

The Chair: —so I would just ask you to receive that. I've already stated it clearly, but I would also just ask for consideration, moving forward, that we try to be as close to the parameters of the study as possible. That way we'll be a little bit more efficient and effective.

You still have the floor, sir.

Hon. Wayne Easter: Thank you.

I come back to my question. There are concerns over the view that this word "terrorism" is clause 2 is much too broad and may draw in areas beyond the narrower definition in section 83.01 of the Criminal Code on terrorist activity.

I'll ask you a second question at the same time, and that will be it for me, Mr. Chair.

I would like you to explain, if you could, what's the threshold of activity that's related to "interference with critical infrastructure".

● (0920)

Ms. Sophie Beecher: When the definition was crafted, all existing definitions in law were studied and taken into account. It was considered that we should not constrain the definition to legal interpretations that are associated with other statutes because they were brought into force in very specific contexts for very specific purposes.

We did not want to discount the interpretation of those terms either and, therefore, it is anticipated that the word "terrorism", as used in this act, will be interpreted first of all in the very specific context of this act with a view to the chapeau and the objectives of this act, but also not in isolation of similar concepts or the use of the word "terrorism" in other statutes.

Therefore, we anticipate that the definition will be interpreted with a view to the definition of terrorist activity in the Criminal Code as well as any other definitions. It will be read in context.

Mr. John Davies: To the second part on the threshold related to critical infrastructure, I just go back to the point that we've made before that the chapeau is the key here, that the threshold be considered in the context of whether the activity undermined the sovereignty of Canada, the security of Canada, or the territorial integrity of Canada.

The Chair: You had another question, Mr. Easter?

Hon. Wayne Easter: No.

The Chair: Madame Doré Lefebvre.

[*Translation*]

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

I would like to thank the witnesses for being here today. It is extremely important to have you here so that we can better understand the intricacies of Bill C-51.

Perhaps I misunderstood some of the distinctions that you made. I reread the definition that is being used by the Canadian Security Intelligence Service. I do not see why the 17 federal institutions affected by Bill C-51 could not use this definition, which seems to include a lot of things. The definition includes espionage, sabotage, foreign-influenced activities, activities that promote the use of violence, and so on. The definition that CSIS is currently using already includes a lot of things.

First, why could the 17 federal institutions affected by Bill C-51 not use that definition? What would that change?

Second, if I understood correctly, CSIS is one of the 17 institutions that will be affected by the definition set out in Bill C-51. In a way, the bill would not change the definition used by CSIS. Is that correct?

Ms. Élise Renaud (Policy Specialist, Department of Public Safety and Emergency Preparedness): I will answer your first question about broadening the definition.

The existing mandates of the 17 institutions listed in Schedule 3 of the bill are much broader than CSIS's mandate. If only CSIS's definition were used, the existing mandates of the other 16 institutions would not be consistent with the bill's wording.

There are two things to consider with regard to the issue of information. First, there is the information that the other government organizations could send. Second, the 17 institutions listed in Schedule 3 need to have a mandate to gather information.

Such a broad definition is required to allow for maximum flexibility in order to take into account all of the mandates. However, under this bill, the mandate for the gathering of information cannot be broadened because every organization is limited by the powers that it already has in that area. The bill merely authorizes these 17 institutions to share the information in question.

Ms. Rosane Doré Lefebvre: To help me better understand, could you give me an example of the sharing of corporate information? What would the new definition actually do?

Ms. Élise Renaud: A department could have information that is not necessarily related to national security. I cannot give a specific example, but it could involve any government organization that has information that meets the criteria set out in the definition.

First, according to the definition, the information must actually undermine the sovereignty, security or territorial integrity of Canada. Then, we would need to see, of the 17 institutions set out in Schedule 3, which mandate relates to this type of information. If the relevance criteria is met, then the organization in question can share the information. An institution listed in Schedule 3 must already have a legal mandate to receive this information through enabling legislation or other means.

● (0925)

Ms. Rosane Doré Lefebvre: With regard to the last part of my question, or in other words, with regard to CSIS, the change to the definition proposed in the second clause of Bill C-51 will broaden CSIS's definition, even though the Canadian Security Intelligence Service Act already includes a definition. Bill C-51 affects CSIS's definition. What tangible impact will that have on the agency?

Ms. Élise Renaud: It will not change CSIS's existing mandate at all. To receive the information in question, CSIS must respect the existing mandate set out in the act. The definition contained in the bill will not affect the other definitions or the other activities of the organizations listed in Schedule 3. There is therefore no impact on the definition that is currently set out in the Canadian Security Intelligence Service Act.

Ms. Rosane Doré Lefebvre: Okay. Thank you.

[*English*]

The Chair: Thank you very much.

Mr. Garrison.

Mr. Randall Garrison: Thank you very much, and I do thank the officials for their assistance.

Even though the government constantly tries to re-characterize what we're saying, no one on this side has ever argued that this changes CSIS operations. It changes information sharing. The concern that we heard from witness after witness was that the definitions in Bill C-51 are much broader and risk bringing in legitimate dissent. They risk bringing in economic activities, such as protests against pipelines, and they present a risk, because of their broadness, to first nations who are attempting to defend their title and rights. We've heard witness after witness raise these concerns.

I think the purpose of our amendment is clear, and that is to narrow the scope of information sharing. We would agree with the government that if we're talking about use of violence and the common-language understanding of terrorism, obviously government departments need to be able to share that information. But when you come to this much broader list, I think we have a great deal of disagreement.

I just want to cite recommendation 2 from the Canadian Bar Association. The CBA recommended that the scope of activities subject to information sharing under the SCISA be narrowed, and that's exactly what our amendment does. It would narrow those to the much more easy-to-understand definitions that occur in the CSIS Act.

The Chair: Thank you very much.

Seeing no further questions, I will call for a vote on amendment NDP-1.

Mr. Randall Garrison: I'd like a recorded vote.

The Chair: We'll have a recorded vote, please.

(Amendment negatived: nays 5; yeas 4)

The Chair: We will now go to the second amendment, PV-1 by the Green Party.

Ms. May, as we've discussed, you certainly have the opportunity and the courtesy and consideration of the committee to briefly introduce your amendment, and I would obviously suggest that it be brief.

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

Since I'm here only as a result of a majority vote of this committee identical to all the others undertaken through a motion obviously drafted in PMO that deprives me of my right to do so at report stage, I accept the opportunity, but I also have to note that there's a bit of coercion involved. I'm very glad to have the chance, Mr. Chair, to present amendments anywhere in the Parliament of Canada; it is my right as a member of Parliament.

I am again attempting to take up the case made by the NDP amendment that was just defeated. I just want to respond that what my amendment does is one more thing than what Randall's attempted to do, which is that I also deal with the provision that in the current draft reads:

> For greater certainty, it does not include lawful advocacy, protest, dissent

and so on.

Let me go to the first part of what I was trying to do. The definition is from the CSIS Act, and I reject the explanations given to us by the Department of Justice. They are nonsense. I'm sorry, but I don't have much time to go into why I think they're nonsense.

Secondly, I think the word “however” is clearer than “for greater certainty”; it becomes an actual exemption, as opposed to merely advice.

I know that the government amendment that's coming up soon, which I would support, removes the word “lawful”, which is one of the things my amendment does. But the government amendment doesn't deal with this question of “for greater certainty” versus “however”.

There is no more serious thing than sharing information inappropriately. Just ask Maher Arar.

● (0930)

The Chair: Thank you very much, Ms. May, for the discussion.

Yes, Ms. Ablonczy.

Hon. Diane Ablonczy (Calgary—Nose Hill, CPC): Mr. Chairman, I heard the same witnesses that my friend Mr. Garrison referred to. There has been a great deal of fearmongering about this bill. There's been a great deal of overblown suspicion about the bill. Sometimes you can correct that; sometimes you can't. I think the officials have been extremely clear that this is in no way intended to do anything other than protect the sovereignty and security of our country, and that normal protests or free speech in our country are absolutely not impacted.

So it's very clear that there's just been a misunderstanding about the scope of this provision. I think the explanation from the officials has been very helpful, and I think that we should accept the intent as it was explained to us by the officials who drafted this bill.

The Chair: Thank you very much.

Seeing nothing further, I will call for a vote.

Excuse me, Mr. Garrison. I'm sorry, sir.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I really appreciate the work that Ms. May has put into the amendments on this bill, and what she suggests here incorporates much of what was in our first amendment. But I do take exception to the government continuing to say that people who disagree misunderstand. This bill clearly expands information sharing among 17 agencies of the government, and Ms. May's amendment attempts to do the same thing that ours did in NDP-1, which is an attempt to narrow that, which is what the vast majority of the witnesses at our committee said needed to be done.

Thank you.

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

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

The Chair: We will now go to BQ-1.

Mr. Patry

[*Translation*]

Mr. Claude Patry (Jonquière—Alma, BQ): Thank you, Mr. Chair.

In one sentence, we want the agreement to be approved by the commissioner and for it to be set out in writing. That is what we are asking for.

Am I wrong? I apologize, Mr. Chair.

What people have been discussing is very interesting, but the Minister of Public Safety and Emergency Preparedness told the committee that protestors, Aboriginal peoples, unions and separatists are not targeted by this bill.

We want that in writing, in black and white, so that it is truly clear. I come from a labour background, and if people had to go on strike tomorrow morning, then I want that to be clear in the legislation. For now, it is open to interpretation and that is what we are dealing with this morning at this table. It would be easier if it were written in black and white. That is what the Bloc Québécois is asking for.

[*English*]

The Chair: Thank you, Mr. Patry, and thank you for your brevity.

Yes, Mr. Falk.

Oh, excuse me. Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you very much, Mr. Chair.

I would like to thank my colleague, Mr. Patry, for being here with us and proposing amendments.

Mr. Patry is proposing one small change to a definition that we think is much too broad. I do not think that is enough. In fact, it would change only one word of paragraph (*f*) of this broad definition that the Conservatives are proposing in Bill C-51. I am not sure that that would do exactly what the witnesses wanted.

The committee heard from many witnesses, particularly about how the definition was too broad. Many groups, particularly first nations groups and environmental leaders, are affected by this. I get the impression that we are not addressing what is really important here.

Unfortunately, I am going to oppose the amendment that Mr. Patry is proposing today.

● (0935)

[*English*]

The Chair: Thank you very much, Madam Doré Lefebvre.

[*Translation*]

Mr. Falk, you have the floor.

[*English*]

Mr. Ted Falk (Provencher, CPC): Thank you, Mr. Chairman.

Mrs. Doré Lefebvre's analysis of this amendment is not accurate. It's not just one little change, which I don't agree with. They're suggesting changing the word “interference” to “sabotage”. I think some things are best addressed by nipping them in the bud, and changing it to actual “sabotage” does not allow it to do that.

But there is a second part to their amendment, which the NDP did not mention, and that's changing the “for greater certainty” clause in the bill. I think the change proposed by the separatist party is divisive in nature, and I can't support it.

The Chair: Thank you very much.

Okay, we'll now call for a vote—

Mr. Easter, I missed you. Sorry, sir.

Hon. Wayne Easter: That's not a problem. Thank you, Mr. Chair.

I agree with both the Bloc amendment and what Ms. Doré Lefebvre said. I think it is better to say “sabotage of critical infrastructure” than “interference with critical infrastructure”. I think it would give some assurance to those out there who may be legally protesting certain actions.

I will admit I have concerns about the other part of the amendment. I believe there are better amendments further down our list that take out the word "lawful". So I'm concerned about the second part, but I guess it all has to be voted on as a whole. Does it, Mr. Chair?

The Chair: It does.

Hon. Wayne Easter: That creates a problem for me.

The Chair: Fine, thank you very much.

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

The Chair: We will now go to amendment NDP-2. The chair will also note that if this amendment were adopted, then amendments LIB-1 and G-1 could not be moved, as they would be in line conflict as well.

With that clarification we now go to amendment NDP-2.

Mr. Garrison.

Mr. Randall Garrison: This is an amendment that we tried to write in the most simple and straightforward manner, but as legal drafting is a technical exercise, it's probably difficult for people who have not looked at the act itself to realize that all this does is drop the word "lawful":

> For greater certainty, it does not include advocacy, protest, dissent, artistic expression or any other activity considered to be civil disobedience.

We're just removing the word "lawful", and I'm happy to see that one of the changes the government has agreed to in amendment G-2 is identical to this change. This was a very large concern among technical witnesses, the legal community, and many community witnesses we had as well as for some of the law enforcement witnesses we had, who said the danger in casting such a broad net was that we would bring too many people into the purview of national security investigations and therefore run the risk of missing those who present the real threat to Canada.

So, again, it's a simple removal of the word "lawful", and since the government has presented the same in its amendment G-2, I'm looking forward to the government supporting this amendment.

The Chair: Thank you very much,

Mr. Easter.

Hon. Wayne Easter: Mr. Chairman, one of the problems here is that we may be hampered by parliamentary procedure. Randall's arguments are valid, that the word "lawful" is of concern to a great many people out there. We have a very similar amendment on the amendment paper as well, as does the government.

I'm trying to determine which one I want to support to do the job, Mr. Chair. Is it possible to ask a question of the government regarding its amendment or do we have to wait until we get there? Paragraph (b) of their amendment G-1 proposes an addition to proposed section 6. I really want to know why that is there. Maybe it makes a further point that isn't in either the NDP amendment or the Liberal amendment. Is that possible to do?

● (0940)

The Chair: No, it's not. The chair understands your concern—

Hon. Wayne Easter: You're absolutely no help, Mr. Chair.

The Chair: The chair would love to be helpful; however, we cannot ask a question of the government on a motion that has not yet been presented.

You still have the floor, though, sir.

Hon. Wayne Easter: Concern over the word "lawful" was raised by witness after witness as well as by civil society, people who did not have the opportunity to come before this committee. I think that is one of the points in the bill picked out by people who never had the opportunity to come before this committee. They're concerned that the word "lawful" is there, I think jeopardizing the ability of people to demonstrate, to show dissent, or to be involved in activist activity against policy they do not like.

I will certainly support one of these resolutions to get "lawful" out of there, and I would remind the committee that the word "lawful" was originally in the bill of 2001 and was taken out.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Easter.

Mr. Falk.

Mr. Ted Falk: Thank you, Mr. Chairman.

I wouldn't have an issue with taking the word "lawful" out. Where I do have issue is the trailer at the end that has been added by the NDP where it says, "any other activity considered to be civil disobedience."

I think there are activities that would fall under the umbrella of civil disobedience that could be criminal or terrorist in nature. To add a qualifier in the bill of "civil disobedience", I think, is too broad. So I won't be able to support it.

The Chair: Thank you very much.

(Amendment negatived)

The Chair: We will now go to Liberal amendment number 1.

Mr. Easter.

Hon. Wayne Easter: Yes, Mr. Chair.

Basically, as I said in the previous discussion on the NDP amendment, the word "lawful" needs to be taken out. It's as simple as that. We do add in this amendment any of the activities referred to in paragraphs (a) to (d) of the definition of threats to the security of Canada in section 2 of the Canadian Security Intelligence Service Act.

What we're trying to do is to narrow the focus of what can be considered an activity that's a threat to the security of Canada, and in the process, taking the word "lawful" out so that regular advocacy, protest, and dissent can take place in the country.

The Chair: Thank you, Mr. Easter.

Mr. Falk.

Mr. Ted Falk: In looking at this amendment, this is a good amendment. However, it's not the best amendment. There's a better amendment coming that I will be supporting, so again, I won't support this.

The Chair: Yes, Ms. James.

Ms. Roxanne James: Further to that, because the Liberal amendment includes a reference back to the CSIS Act, once again, this goes back to the first amendment that would narrow the scope of the proposed security of information act and the reasons why that act is comprehensive.

Again, I'm not supporting this either.

The Chair: Fine. Thank you very much.

In other words, close but not quite, Mr. Easter.

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

The Chair: The Chair has some information for the committee. We now have an additional witness, so I would just ask you to add her to your list. Our witness is Ms. Amy Johnson with policy and strategic partnerships at CSIS. That is added to your list, colleagues.

We will now go to government amendment number 1. I would ask for your attention, as there are other amendments that will be affected by this as well. I will give them to you. If government amendment 1 is adopted, PV-2, NDP-6, PV-7, and L-2 could not be moved as they would all be in line conflict.

● (0945)

Does everybody have that? I just want to make sure that we're all comfortable.

Speaking to the government amendment, Ms. James.

Ms. Roxanne James: Thank you, Mr. Chair.

I'd like to move this amendment. There are two parts to it, both dealing with clause 2.

The first one has to do with removing the word "lawful" from the greater certainty clause. We've had a lot of discussion on this. From the start, when this bill was first tabled—and I've done a number of panels on this—we've always been very clear that the implied intent of this was not with regard to whether there was a municipal permit or a bylaw that may or may not be in breach or not applicable, or applied in a protest. Instead, in the greater certainty clause we were dealing with legitimate protest advocacy, dissent, and artistic expression. We've been very clear on this from the start.

Even this morning, with the first amendment, we heard from the opposition that they felt that the proposed information sharing act tied into what is to be the basis of CSIS activity, which is clearly not the case. We've certainly had that confirmed by the officials who are here. We believe, as we've always said, that advocacy, protest, dissent, and artistic expression are essential components of democracy. We support those. Many politicians in this room right now have probably been involved in some sort of advocacy. Maybe that's why they decided to choose this as their path.

We just want to make it very clear that this was not the intent of the greater certainty clause. Definitely, this bill is dealing with terrorism. It has nothing to do with legitimate protest, dissent, artistic expression, and so on.

We have removed the word "lawful" just to make sure—even though we knew it was implied—that this is stated explicitly, so as to avoid any further confusion, misinformation, whether intentional or unintentional if someone thought that that's what it meant. We're removing the word "lawful". Hopefully, we can have agreement on that from around the table.

The second part has to do with page 5 of the bill, which is clause 6. There were some concerns from witnesses that this was very broad because it had a reference to "any person, for any purpose". If you actually read this paragraph, it says:

> For greater certainty, nothing in this Act prevents a head, or their delegate, who receives information under subsection 5(1) from, in accordance with the law, using that information, or further disclosing it to any person, for any purpose.

There was some misinterpretation of this. Hopefully, it was just because they didn't understand it, but essentially that clause means that outside of this act, any other laws that were in existence are still applicable. That was kind of the original wording of clause, but because there was some confusion about it, we have come back with a second part of this amendment, which hopefully clarifies this and spells it out perhaps in better English or more explicitly. The amendment we're proposing reads:

> For greater certainty, the use and further disclosure, other than under this Act, of information that is disclosed under subsection 5(1) is neither authorized nor prohibited by this Act, but must be done in accordance with the law, including any legal requirements, restrictions and prohibitions.

We have just tightened up that paragraph hopefully to ease some of the concerns that were out there. Certainly, the intention of that is still the same. We're not changing the scope or what the act is doing in this particular clause, but we're trying to put it in perhaps better English, so that more people can fully understand what we're saying in this particular clause.

Those are the two amendments that the government has put forward.

● (0950)

The Chair: Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair. We certainly welcome the removal of the word "lawful" as a qualifier on things that would be covered in this bill.

I have a question for the officials, perhaps from Justice Canada. There are two things in the government amendment. It's unfortunate that they have been combined, but there are two different things in this amendment. One is the removal of the word "lawful", and the other deals with the sharing of information, but both of those are what are called "for greater certainty" clauses.

I'm looking for assistance from one of the officials to explain to us the legal impact of a "for greater certainty clause", because it seems to me that it's simply a modifier or a general instruction about the interpretation of a clause, but that the main clause stands.

The reason I raise this question is that we've talked about that definition by which information will be shared as being too broad, and that it becomes, in Bill C-51, the basis of the law.

I'd like to know how much the "for greater certainty" restricts that general clause, and since that's used in both of these, could someone give us some assistance on that?

The Chair: Ms. Beecher.

Ms. Sophie Beecher: When a provision begins with “for greater certainty”, it announces that the intention is not to modify anything in law or indicates that the act does not affect or does not.... It essentially states what is already the case. Usually these clauses are included for transparency and clarity so that someone reading the act doesn't misinterpret it. In this case, clause 6 is about use of information received by virtue of the act or further disclosure. We are saying here that for greater certainty this act does not address use or further disclosure of information. That use or further disclosure may be undertaken by the recipients, as they currently do, when they receive information in accordance with the law, meaning either their departmental mandates or limitations or prohibitions in the law, including under the Privacy Act, and in accordance with the charter.

Mr. Randall Garrison: Thank you, I think that's very useful. Of course, when it comes to the first part of this amendment about removing the word “lawful”, it does clarify that the broader definitions for sharing are in no way limited by the “for greater certainty” clause.

In the second part—I want to address the second part of the government's proposed amendment here—replacing clause 6, I certainly welcome a change from something that says share to anyone “for any purpose”. I don't think that was a misinterpretation, but a piece of less-than-optimal drafting, if I can try to be diplomatic here. We did not have the Privacy Commissioner before us, but he did send a letter to the committee. The government amendment here doesn't take into account the Privacy Commissioner's recommendation, which deals with the question that was just raised. If this clause, in fact, does not deal with how information is used down the line, what the Privacy Commissioner suggested was that there needed to be a provision requiring the sharing of that information on the basis of written information sharing agreements between agencies.

So, Mr. Chair, I'd like to propose a subamendment, which I have here in both official languages, that would add the words “and on the basis of written information sharing agreements between agencies”, after “in accordance with the law”, in the second-to-last line of the government's amendment. I'll pass that to the clerk. This is, in essence, one of the key recommendations that the Privacy Commissioner gave us in his letter. I believe it's consistent with the “for greater certainty” clause, because the Privacy Commissioner believes that written information agreements are actually required under privacy law. So it fits very well with the “for greater certainty” clause, reminding people of what is already the law, that there should be the written information sharing agreements in place between the agencies before information is shared.

That's the basis of our subamendment, namely, to adhere to the recommendation of the Privacy Commissioner that we received in his letter of March 5.

● (0955)

The Chair: Okay, does everybody have an understanding of the subamendment?

Yes, Mrs. James.

Ms. Roxanne James: Thank you.

I won't be supporting the subamendment for a couple of reasons. I think there's actually a proposed amendment coming up that touches on this. I'm not sure. I was trying to find it to see what language we used in the amendment, but it is certainly not the intent of the information sharing act to impose on branches or agencies to come up with comprehensive agreements. There may be situations where it's a one-off situation. Certainly it wouldn't be happening in a commonplace scenario. But, again, the purpose of this is to be able to share information pertinent to national security issues, and to be able to do so in a very quick and timely manner.

Obviously, the issue of terrorism has come up before, not only in Canada but also in countries around the world, and so we need to be able to provide the tools and not tie the hands of our agencies by waiting for some sort of document to be able to tell them that they can do this. This act is giving them that authority. Obviously, the Privacy Act and the Privacy Commissioner and others have the ability to review any of the activities that take place under this act.

But for those reasons, the fact that there are one-off situations that may be unique and occur only once a year perhaps, and that certainly there are other situations that could come up very quickly.... That is not the intent of the information sharing act and I will not be supporting the subamendment.

The Chair: Thank you very much.

Is there further comment?

Yes, Mr. Easter.

Hon. Wayne Easter: Mr. Chair, I'm surprised at the government's response to the subamendment. I think it's a very good subamendment. We didn't hear from the Privacy Commissioner, but that was a huge concern of the Privacy Commissioner.

His letter is backed up by a letter from all provincial privacy commissioners, with the exception of the one from New Brunswick. This is a huge concern. The Privacy Commissioner is an officer of Parliament and I think carries a lot of legitimacy. If he suggests that that having written information sharing agreements is important, then I think we as a committee have to accept that fact.

On the motion in general, Mr. Chair—

The Chair: We're on the subamendment.

Hon. Wayne Easter: Okay. Then I certainly support the subamendment and I ask the government members to reconsider. This is an officer of Parliament. It is a legitimate concern.

I know the parliamentary secretary said that there needs to be speed in some of these sharing agreements. We do live in an age of technology. It happens. Speed is the ultimate. It's just as quick to draft an email, and most of it is done that way.

There is no reason in the world why that subamendment can't be accepted by the government.

The Chair: Thank you very much.

On the subamendment, Ms. Ablonczy.

Hon. Diane Ablonczy: Mr. Chair, the parliamentary secretary explained why this subamendment is not desirable and would have unintended consequences, but since her explanation isn't accepted, I wonder if the officials could also weigh in and help us to understand what practical effect this subamendment might have.

● (1000)

The Chair: Mr. Davies.

Mr. John Davies: We haven't actually received the subamendment.

Hon. Diane Ablonczy: It might be good to have it then.

The Chair: We will give our officials a brief time to have a quick look at the subamendment.

I recognize that this is not giving them time for deliberation whatsoever. However, we'll let them confer just briefly for a second, and then we will proceed.

Mr. Davies.

Mr. John Davies: The immediate reaction, based on legal advice as well, is that government institutions don't sign agreements with themselves. They can't bind themselves.

The Chair: Thank you very much.

Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Mr. Chair.

The guiding principles within the act—specifically this is the anti-terrorism act we're dealing with—state specifically that "entry into information-sharing arrangements is appropriate when Government of Canada institutions share information regularly".

Mr. Chair, I think that all this subamendment would do, quite simply for folks at home, is to just add another layer of bureaucracy, another hoop for people to jump through. I think what I just read is a guiding principle that all government agencies utilize currently. I think this is absolutely duplicitous, and I don't think it's necessary. It's just one additional step that we don't have to go through.

That would be my submission.

The Chair: Thank you very much.

On the subamendment, Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I don't think it's helpful for members of the committee to accuse each other of duplicity, and I would ask the chair to keep an eye on that.

The Privacy Commissioner's fourth recommendation is what we're following in this subamendment, and inadvertently Mr. Norlock has just made the case that I made at the beginning. This bill already contemplates that there will be written agreements between government departments, and what a greater certainty clause does is to draw people's attention to that. In fact, it does not add an additional layer of bureaucracy because the idea of written agreements is contemplated in the bill itself.

That concludes my remarks on this.

The Chair: Thank you very much.

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

The Chair: We will now go back to the amendment.

Mr. Easter, you have the floor, sir.

Hon. Wayne Easter: Thank you, Mr. Chair.

We're caught in some binds here by procedure. I definitely want the word "lawful" out of this act, but tied in with this amendment is the second clause. I think there are better clauses than the amendment to clause 6 that are coming forward later on in the amendments.

I will support it overall, but I am concerned about how far and what information can be shared, so I would ask the Justice folks about this, with this amendment in place. A lot of the witnesses were concerned about this wording: "or further disclosing it to any person, for any purpose". I asked some of the people who are in the legal community what that meant, and they said they didn't have a clue.

This, I will admit, does look—or it looks on the surface—like it restricts it somewhat more. Could you explain how this restricts the sharing of information on individuals over basically anything?

Ms. Sophie Beecher: It doesn't restrict anything. That is the effect of the "For greater certainty...". What we're really trying to do through this provision is to express that existing rules and existing law pertaining to use and further sharing of information continue to apply as they are. Therefore, the subsequent sharing of information for any purpose to any person would need to occur in accordance with the law.

These rules can be found in statutes specific to an activity, or they can be found in cross-cutting statutes such as the Privacy Act. Also, the charter continues to apply.

Therefore, the effect is that we're not changing the law pertaining to use or further disclosure. We're stating that it needs to occur under existing law, as it currently occurs.

● (1005)

The Chair: Thank you for that.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you very much, Mr. Chair.

I am going to vote in favour of the amendment proposed by the government.

However, I must say that the Privacy Commissioner's recommendations are fairly clear. We tried to improve the amendment proposed by the Conservatives, but I am rather disappointed to see that the government party members were, unfortunately, not open to those changes.

It is important to mention that we studied this issue in committee for hours and we met with witnesses on several occasions. Many witnesses mentioned that the wording used was problematic. I am pleased to see that the government changed its mind regarding the wording of clause 2. That is important and the issue was raised by several witnesses. For that reason, I am going to vote in favour of the amendment.

However, we must not forget that the Privacy Commissioner is an officer of Parliament. He had serious concerns. He made specific recommendations regarding clause 2. It would have been a good idea to listen to one of our officers of Parliament.

Since it is still an improvement, I will vote in favour of the amendment.

[*English*]

The Chair: Thank you very much.

All in favour?

I'm so sorry, Mr. Payne. My apologies. I didn't see your name on the list.

Mr. LaVar Payne (Medicine Hat, CPC): That's okay, Chair. All I was going to say is that we did hear from a lot of witnesses on the word "lawful", and I think that from that standpoint, we were listening, and we've removed that word.

Thank you.

The Chair: Thank you very much.

We will now vote on government amendment 1.

(Amendment agreed to)

The Chair: Colleagues, as a result of amendment G-1 being adopted, I draw your attention to my previous statement regarding the admissibility of the other motions that are related to this. As a result, the following amendments will now not be moved: Green Party-2, NDP-6, Green Party-7, and LIB-2.

Ms. Elizabeth May: Mr. Chair, did you intend to say Green Party-2 because I don't see how that's affected by the lines we just passed in G-1?

I understand PV-7, but I—

The Chair: The legislative clerk is the one who has made this decision.

Ms. Elizabeth May: It's completely separate from the other two.

The Chair: No, excuse me. I will get clarification from the legislative clerk and we'll see where we're at.

Ms. May, there was an error and thank you for bringing it to the clerk's attention. As a result now, PV-2 is in order, and not only that, you now have the floor to introduce your amendment.

● (1010)

Ms. Elizabeth May: Thank you, Mr. Chair. I know that it was completely inadvertent and I appreciate the assistance of the clerks.

This amendment would flow at the end of the definition section that's found in part 1 under security threats in the information sharing section. As we heard from numerous witnesses, as well as important experts who were not witnesses, such as the Privacy Commissioner to the Government of Canada, Monsieur Therrien, there were concerns about the implications of information-sharing to privacy rights in Canada.

I'll read my amendment:

> In the event of an inconsistency between this Act and any provision of the Privacy Act, the Privacy Act prevails to the extent of the inconsistency.

This is clarifying. I really do hope that the government members might consider allowing it to pass to ensure that privacy rights are not inadvertently destroyed in this country.

The Chair: Ms. Ablonczy.

Hon. Diane Ablonczy: Mr. Chairman, again, we keep seeing these misinterpretations of the act coming forward, but just for clarity, Canadians should be assured that information sharing must always take place in accordance with the Privacy Act.

It's a law of Canada and nothing in this bill is in any way contravening the Privacy Act. If information is going to be shared, there is a clear and explicit authority that has been set up to share that information, a legal framework including oversight by the judiciary.

We need to come back to a realization of why these measures are so important. If there is a risk to national security and someone in one branch of government, say a passport officer or a visa officer, for example, becomes aware of it, that person needs to be able to share that information with the appropriate security agencies to keep us safe.

That's all this act is designed to do. It's in accordance with the law and these conspiracy theories to the contrary are simply not the case.

The Chair: Mr. Garrison.

Mr. Randall Garrison: Once again, mischaracterization of the positions of other members of Parliament as conspiracy theories are not helpful to the debate, particularly in view of the submission that this committee received from the Privacy Commissioner—unless the members on the other side are implying that the Privacy Commissioner is somehow a conspiracy theorist. He expressed real concerns about the impact of this bill on the privacy of Canadians who are not involved in violent or terrorist activities.

All that the amendment proposed by Ms. May would do—to address some of the concerns of the Privacy Commissioner—is to make explicit that this bill does in no way remove privacy rights from those others who are law-abiding citizens. That is the concern here.

The Chair: Thank you very much.

Mr. Easter.

Hon. Wayne Easter: I have a question for the officials on this one, Mr. Chair.

If this—I think you have it before you—subclause were added, would it have any implications for the bill as a whole? I ask because the bill itself says "for greater certainty" in a number of places. Although it is not using the words "for greater certainty", this is in fact doing that to assure the public that the Privacy Act does prevail in times of inconsistency.

So can Justice officials add anything on that? Will there be a problem if this subclause were added?

Ms. Sophie Beecher: Actually, I think the act was developed in the study of the Privacy Act, and both work together. Clause 5 already explicitly states that, "Subject to any provision of any other Act of Parliament, or of any regulation made under such an Act, that prohibits or restricts the disclosure of information, a Government of Canada institution may" share information.

Therefore, it's already stated that other acts prevail. We would say that adding something is redundant.

The Chair: Thank you.

Ms. Ablonczy.

● (1015)

Hon. Diane Ablonczy: Yes, I'm reluctant to get into debate about this. I think it needs to be pointed out that the NDP keep invoking a letter by the Privacy Commissioner, but they didn't call him to explain what he meant by this. It's the job of the Privacy Commissioner to be vigilant on behalf of Canadians to protect Canadians' privacy. That's his job. He's doing that. He's expressing any and all concerns that he might have. But he never in his letter said that this act is going to contravene the Privacy Act, that it's going to be outside the law, because that's not the case.

I just think Canadians need to be assured of that despite some of the efforts by the opposition to somehow bring forward suggestions to the contrary. The scope of the act is within the law and within the ambit of the Privacy, Act as well.

The Chair: Thank you very much.

We'll go back and forth here a little bit.

Yes, Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

There are two things here. The government always likes to ask why didn't we call the Privacy Commissioner as one of our witnesses. To that I respond, why didn't you call him as one of your witnesses?

The point of the amendment we introduced here was that he's an officer of Parliament, not a witness like anyone else who is called before the committee. We did present that amendment to this committee, and asked for him to be called. The government denied unanimous consent to have him here as a witness. Further, in his letter he says very clearly that "Bill C-51 sets the threshold for sharing Canadians' personal information far too low, and broadens the scope of information sharing far too much."

The second quote is: "Bill C-51 is far too permissive with respect to how shared information is handled. It sets no clear limits on how long information is to be kept."

I could read the whole letter to you, but he does have serious concerns about the impact of Bill C-51, and he made some suggestions and recommendations about how we deal with those in this committee, but these are being systematically ignored by the government.

The Chair: Thank you very much.

We will now go to a vote on Green Party number 2.

(Amendment negatived)

The Chair: We will now go to NDP-3.

Mr. Randall Garrison: Thanks very much, Chair.

Luckily these come in order, which allows us to pick up the same topic.

The Chair: We can thank our legislative clerk for that.

Mr. Randall Garrison: No, it's the luck of the drafting, I guess you would have to say, in how amendments come forward in terms of sections of the bill.

The amendment that we're proposing, again, only implements what's already contemplated in Bill C-51 by asking that there be an entry into written information sharing agreements.

Again, that's a recommendation of the Privacy Commissioner. The amendment asks that the Privacy Commissioner be consulted on those information sharing agreements. Again, we have the letter from the Privacy Commissioner, and this is something that he contemplates. I would ask all members of the committee to take very seriously its aim of protecting the privacy of those who are not involved in anything to do with terrorism or violence, but who run the risk, with the broad definition that the government has adopted in this bill, of having information about them shared between 17 government departments.

Thank you.

The Chair: Thank you, Mr. Garrison.

Yes, Ms. Ablonczy.

Hon. Diane Ablonczy: Mr. Garrison and I are going to have to re-cement our friendship after this. We've been over this ground before. The officials have also mentioned that if we get overly bureaucratic about this, the intent of the act will be lost. The intent of the act is that there should be a nimble and effective information sharing regime put into place so that as information comes to the attention of different parts of government, it can be shared with other parts of government for our safety and protection.

To say that there have to be extra consultations and extra layers of written paperwork will simply slow down the process that the act is trying to free up. We're trying to free this up, Mr. Chair and colleagues, because there's a real and present danger to our country that we're trying to address. Adding all of this red tape and these extra layers of bureaucracy makes no sense. It contravenes what we're trying to do and adds nothing to the fact that all of this still has to be done within existing Canadian law, including the Privacy Act.

● (1020)

The Chair: Thank you very much.

Yes, Mr. Easter.

Hon. Wayne Easter: Most of it has already been said, but I'm going to express support for this amendment.

There's a tremendous mistrust of this government out there. That's the reality. You can shake your heads, but there is, and rightly so in my view.

What the Privacy Commissioner said in his letter of recommendations to this committee would quell some of that mistrust. There would be an understanding on their part that there are written agreements for information sharing arrangements between departments and agencies. That does give, I think, greater certainty to the public.

It also gives greater certainty down the road should there be an investigation. The record will be there for the Privacy Commissioner when looking at what Parliament, CSIS, or others may or may not have done, and it will be easier to find where the truth of the matter is.

I'm supportive of this. I find it rather strange that the government is so resistant to officers of Parliament when they provide committees with advice, and they don't want to take it.

The Chair: Thank you, Mr. Easter.

Now, Mr. Norlock.

Mr. Rick Norlock: Thank you very much, Mr. Chair.

Mr. Chair, Mr. Easter finds it necessary to be rather preachy about the motivations of what's happening with the government. We have never, on this side of the table, impugned the motivation of that member and I don't intend to do so.

He says there's a mistrust out there. I think it's the reverse. People have an expectation of this government to keep their safety in mind and to make sure that the evolving threat is adddressed. The threat's evolving. It's not static. The bad guys are constantly trying to find ways around how this country works and trying to use our freedoms against us. I believe that this act is a good balance for that. We need to be prepared and that's what this act does.

The officials time and time again, over the sharing of information, have said there's nothing in this act.... As a matter of fact the act is specific. It says right in there that we have to obey the current rules as far as information sharing goes. Every time we try to say this is just adding another layer, somebody accuses us of some clandestine motivation. All we want to do is put forward a simple change in the way we do things because there is a change in the way the bad guys are trying to get at us. That's what this bill does.

Thank you, Mr. Chair.

The Chair: Thank you very much. We will now call for a vote on NDP-3.

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

The Chair: We will now go BQ-2.

Mr. Patry.

[*Translation*]

Mr. Claude Patry: Thank you, Mr. Chair.

Our amendment pertains to the exchange of specific information. We are proposing that the information sharing agreements between organizations be concluded with the written approval of the Privacy Commissioner and that “any information shared in contravention of the provisions of this Act is to be deleted.”

We want there to be a written agreement that is approved by the Privacy Commissioner when information is requested on a certain subject. We are asking for oversight.

Thank you.

The Chair: Thank you very much.

Ms. Doré Lefebvre, you have the floor

Ms. Rosane Doré Lefebvre: Thank you very much, Mr. Chair.

I would like to thank Mr. Patry for his amendment, which I support. I think it is extremely important to respect what the Privacy Commissioner told the the Standing Committee on Public Safety and Emergency Preparedness in writing about Bill C-51. It is all the more important because he is an officer of Parliament with a lot of credibility, particularly when it comes to the bill before us.

I really like the idea of the Privacy Commissioner giving his written approval. Paragraph (*b*) of the amendment is also important for protecting privacy, particularly when it comes to unnecessary information. The protection of Canadians' privacy in general is extremely important.

I am therefore going to vote in favour of Mr. Patry's amendment.

● (1025)

[*English*]

The Chair: Thank you.

Is there further discussion?

Oh, excuse me: Mr. Payne, again.

How could I ever keep on missing you, sir?

Mr. LaVar Payne: I'm not sure. I didn't think I was that small.

An hon. member: The invisible man.

Mr. LaVar Payne: Thank you. I'm not invisible

Mr. Chair, from what I see, this amendment would expand the powers of the Privacy Commissioner. We've also heard from officials on this whole issue that everyone has to follow the current laws that are in place, including the Privacy Act.

As well, I believe it was the parliamentary secretary who talked about the importance of speed, particularly when we know that the bad guys, as my colleague Mr. Norlock mentioned, are evolving quickly.

So I can't support this amendment. Thank you.

The Chair: Thank you very much.

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

The Chair: I would note, colleagues, that we've done page one of 15. Thank you for your cooperation.

Moving forward, we will now go to Green Party amendment PV-3.

Ms. May.

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

This is another attempt to clarify and protect Canadians' rights to privacy. It would add a new paragraph, on page 4 of the bill, under the principles of information sharing under the act. It would become a principle of information sharing under the act that:

> Canadians have a right to privacy that should only be breached when strictly necessary in respect of activities that undermine the security of Canada.

Thank you, Mr. Chair.

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

Madame Doré Lefebvre, you have a comment.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I understand Ms. May's good intentions in proposing this amendment. However, in my opinion, the words used in that amendment are extremely dangerous. It reads: “Canadians have a right to privacy that should only be breached when strictly necessary...”. I think the choice of words here is serious. As a result, I cannot support this amendment.

Thank you.

[*English*]

The Chair: Thank you very much.

Okay. We will vote on....

Mr. Payne.

An hon. member: My goodness, Mr. Chair.

Mr. LaVar Payne: I thought I had my hand up earlier, but it might have been invisible.

The Chair: Three and out.

Some hon. members: Oh, oh!

Mr. LaVar Payne: Thank you, Chair.

We've talked about this issue in terms of the Privacy Commissioner, the Privacy Act, and the current laws. I believe this change would make some very different amendments and tests using the existing laws, and obviously it would cause some confusion. We've already amended the act under legal requirements.

In my view, I don't think this amendment is necessary, so I can't support it.

The Chair: Thank you very much.

(Amendment negatived)

The Chair: Okay, colleagues, we will now go to amendment NDP-4.

The chair will advise you as well that once amendment NDP-4 is moved, amendment BQ-3 then could not be moved, as it is identical. If amendment NDP-4 is adopted, amendment PV-4 could not then be moved as there would be a line conflict.

I will repeat that if anybody needs clarification, but we will now go to amendment NDP-4.

Mr. Randall Garrison: Thank you, Mr. Chair.

I'd like to start by reassuring Ms. Ablonczy that our friendship is not endangered by this. I'm one of those people who believes our political differences need to be left at the table and that all of us here are trying to do the best we can for Canadians. I have pointed this out several times when we have strayed into more personal remarks about people's positions.

When the Privacy Commissioner was appointed, the NDP expressed some reservations about Mr. Therrien because of his close connections with the government. The irony here is that his recommendations are being so thoroughly ignored by the government.

One of the things he made very clear in his letter was that a change needs to be made in information sharing. It's again one of those one-word changes that is quite significant. The test for sharing information in Bill C-51 is whether information is relevant to the recipient institution's responsibilities. Mr. Therrien says very clearly that's too low a standard and that information exchanges should take place only if that information is necessary to carry out the recipient institution's responsibility. Again, he sees that as a significant lowering of the standard by which personal information on all Canadians might potentially be shared under Bill C-51.

The simple reason is to substitute the necessary standard for sharing for the relevant standard that's contained in the bill.

● (1030)

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

Ms. James, please.

Ms. Roxanne James: Thank you.

I will not be supporting this amendment, which is changing the threshold. When we get into other sections of this bill with regard to Criminal Code amendments, we're lowering the threshold. It's been very clear that when the threshold is too high, it simply will not be utilized. You can't meet that criteria.

Within the proposed information sharing act there are robust safeguards already. Among the individuals who came to testify, we had someone with, I think it was, 35 years of experience in law enforcement and intelligence gathering, who said that the aspects of this bill are absolutely crucial for information sharing among agencies to ensure national security. He also went on to say that there were safeguards. In the same meeting we heard from someone who said this bill had nothing to do with terrorism and that we were only targeting a specific group.

This amendment to the bill would make it way too high, would go against its purpose and the ability to share information that is relevant—and “relevant” is the key word here. Obviously, when you say something is necessary, it almost has to be to the point where it's too late.

For those reasons and many others, I will not be supporting this amendment.

The Chair: Thank you.

Mr. Easter.

Hon. Wayne Easter: I'll direct this to the officials, Mr. Chair.

Quoting from Mr. Therrien's letter:

> We note that relevance is a much broader standard than that established elsewhere with respect to the collection of personal information. As mentioned, CSIS can only collect information where it's “strictly necessary” to report and advise the Government of Canada in relation to a defined threat. CSIS would seemingly have to reject information disclosed to it under a relevance test....

He's saying the bill is too broad.

Can any of the officials expand beyond this? I know he's talking about the CSIS Act to a certain extent, but does the bill as currently worded mean that more information can be shared than is currently the case?

Mr. John Davies: My response would be that the consequence of switching from "relevant" to "necessary" as the amendment proposes would put the many departments and agencies in government in an awkward position. They would be forced to become the national security experts to understand what is necessary before information is shared. That would definitely affect the usability of the act, perhaps even more so than the information sharing today.

Hon. Wayne Easter: Okay, so then what you're suggesting is that the word "relevant" in here is necessary in the bill for the other departments and agencies to be able to share the information.

Mr. John Davies: That's correct.

Hon. Wayne Easter: Okay, thank you.

The Chair: Mr. Garrison.

Mr. Randall Garrison: Thank you very much.

I thank Mr. Easter for drawing our attention to that specific section of the letter from Mr. Therrien. I think it's important to read in the record what the Privacy Commissioner says here:

> The threshold for information sharing is of central importance to striking the right balance in the protection of privacy rights. Applying a relevant standard because it exposes the personal information of everyone would contribute greatly to society where national security agencies would have virtually limitless powers to monitor and profile ordinary Canadians.

That's a very strong warning from the Privacy Commissioner about changing the standard from "necessary" to "relevant". He points out that the standard of "necessary", as Mr. Easter mentioned, is the one established in section 12 of the CSIS Act itself, which the government has seen no reason to amend, otherwise it would included that act in this bill.

● (1035)

The Chair: Thank you very much.

Yes, Ms. James.

Ms. Roxanne James: Thank you, Mr. Chair.

I just want to remind committee members again that we're talking about the proposed information sharing act and that the information that can be shared can only relate to the specific activity that undermines the sovereignty, security, and so on, of Canada. It's tying back to that initial thing, so it's not like all information. Again, it's tied specifically to the purpose of this act and the activities related to national security that would be relevant to another agency or body. I am just tying this back to bring into perspective the actual scope of the information that would be shared to begin with.

The Chair: Thank you very much.

We'll call for a vote now on amendment NDP-4.

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

The Chair: Thank you, colleagues.

We will now go to amendment PV-4, Ms. May.

Ms. Elizabeth May: Thanks, Mr. Chair.

This amendment is directly related to the letter from the Privacy Commissioner. He wrote:

> Equally problematic is that SCISA would authorize information sharing if "relevant" to the jurisdiction of the recipient institution, rather than "necessary" to its mandate or "proportional" to the national security objective to be achieved.

I've heard the comments to a similar amendment from Justice officials, and they say this would create a difficulty for the agencies, but I think that the words of our Privacy Commissioner should be taken very seriously here. The mandate of protecting privacy is a significant one, and the advice of the Privacy Commissioner is reflected in my amendment PV-4, that we would be able to protect privacy by changing "relevant" to "necessary".

The Chair: Thank you, Ms. May.

Yes, Ms. James.

Ms. Roxanne James: Thank you.

I won't labour too much about this. This is very similar to the last one I just spoke to and, for the very same reasons, I will not be supporting this amendment.

The Chair: Thank you very much.

Okay, I call for a vote on PV-4.

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

The Chair: Okay, colleagues, we will now go to amendment NDP-5.

Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

We're staying in the same area of discussion about information sharing and, again, I'm working from the letter from the Privacy Commissioner. What this does is add a section that is in a sense a greater certainty section. What it calls for is that the government institutions that are sharing information have a procedure that ensures the relevance, reliability, and sufficiency of information. In other words, this is information about to be shared. Has it been checked to make sure it's true? Has it been checked to make sure that it's relevant? Has it been checked to make sure it's complete?

The cautionary tale we have here is the story of Maher Arar, whose information was not checked for relevance, reliability, and sufficiency, and which ended up in the torture of a Canadian in another country. So, again, it's like a for greater certainty clause. What it would do is enshrine in legislation the best practice, as the Privacy Commissioner recommends, to make sure that once your information is gathered and then is about to be shared, that it's only done so when it's relevant, reliable, and complete.

The Chair: Thank you, Mr. Garrison.

Mr. Norlock.

Mr. Rick Norlock: Thank you very much, Mr. Chair.

I believe that the security of Canada information sharing act would create clear authorities to share information. The manner in which this information is collected and used will continue to be governed by the receiving institutions' existing legal obligations and restrictions, including the Privacy Act's framework for the collection, use, disclosure, retention, and disposal of personal information by government departments and agencies.

Canadian would and should expect that if one branch of government is aware of a threat to their security, this information would be shared with other branches of government in order to protect Canadians. The legislation has robust safeguards built in to protect the privacy of Canadians. We are not going to privilege the rights of terrorists over the rights of Canadians, Mr. Chair.

● (1040)

The Chair: Thank you very much.

Mr. Easter.

Hon. Wayne Easter: I'm not going to disagree with what Mr. Norlock said. I think what the amendment does is to bring more precision to the definition and the way information sharing is handled. There is a concern that with the broadening of information, some individual may get caught in the loop based on wrong information. If that information is shared—and it doesn't just relate to cases like Arar, which I'm quite familiar with—with the Canada Revenue Agency or whoever, the individual's reputation or credit rating could be undermined or destroyed.

All this amendment is asking for is the various governments, departments, and agencies to be absolutely sure that the information they are sharing is accurate and complete. I think that's a greater protection to society. I'll be supporting this amendment.

The Chair: Thank you.

We will now call for a vote on NDP amendment 5.

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

[*Translation*]

We are now going to move on to amendment GP-5.

[*English*]

Ms. Elizabeth May: As my colleague, Mr. Garrison, noted a moment ago, we're still in the general area.

This is, again, in response to the fact that this bill doesn't adequately protect Canadians' privacy, to put it mildly. This amendment of mine would allow a government department to refuse to disclose personal information if that department felt there would be a risk to the individual who's information was being shared. It would allow the Privacy Commissioner to investigate any complaint about the sharing of personal information.

As it stands right now, this bill has no mechanism for investigating such complaints. The second part of my amendment deals with the potential to investigate complaints. The first part would allow a government agency to refuse to disclose information on the test of a reasonable expectation that it could threaten the safety of an individual or if the personal information were subject to solicitor-client privilege.

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

Discussion, Mr. Norlock.

Mr. Rick Norlock: I believe that the amendment is redundant and unnecessary since the new act does not create an obligation to share information. The institution retains that discretion to share or not to share information.

I think Canadians would expect that if one branch of government is aware of a threat to Canadians' security, that information would be shared with another branch of government to protect them. The legislation, as I mentioned before, has robust safeguards built in to protect the privacy of Canadians. I repeat that I am adamant, Mr. Chair, that we are not going to privilege the rights of terrorists over the rights of Canadians.

The Chair: Thank you.

Ms. Elizabeth May: Mr. Chair.

Can I say that I did not suggest that we should ever—

The Chair: I'm sorry, there is no debate left, Ms. May, but thank you very much.

I recognize, regretfully, that as you're not a member of the committee, you can't be involved in the discussion back and forth, but you certainly are permitted to make your point originally. Perhaps in your next opening statement, if you wish to somehow use that time accordingly, I'll leave that to your consideration.

We will now go to the vote on PV-5.

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

The Chair: Now, Ms. May, amendment 6, please.

● (1045)

Ms. Elizabeth May: In trying to keep it brief, I just want to put on the record that I find it offensive to be accused of preferring the rights of terrorists to the rights of Canadians when I'm trying to amend a dreadful bill and protect the rights of Canadians—and the bill will not make us safer.

Let me just go to this amendment, which is also in response to the letter from the Privacy Commissioner. As he noted:

> The Bill is largely silent on the subject of retention and disposal of information shared.... Bill C-51 should be amended to include as a statutory requirement that personal information that does not meet the recipient institution's legal collection standards should be discarded without delay. SCISA should also require that information, once collected, is retained only as long as necessary.

That is exactly what this amendment proposes to do.

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

Now for the discussion.

Yes, Ms. James.

Ms. Roxanne James: Thank you.

I disagree with the member from the Green Party saying that this bill will not do anything to keep us safer. We had very credible witnesses come from law enforcement, including from CSIS and the RCMP, and from Toronto, including someone with years of experience, decades, in security intelligence gathering. All of them said that the measures in this bill are needed. There were clearly legislative gaps that have been identified. All of those have been addressed in this bill and it's unfortunate that we keep hearing those same types of remarks from opposition parties.

With regard to this amendment, Mr. Chair, I just want to point out that the act has regulation-making authority that will allow the Governor in Council to make regulations pertaining to record-keeping on information shared under the act. Additionally, this amendment proposed by the Green Party would put a significant burden on institutions to provide some sort of a review and analysis function after the fact.

For those reasons, I'm going to disagree with the intent of this amendment and will be voting against it.

The Chair: Thank you.

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

The Chair: Colleagues, we will now go to Green Party amendment 8.

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

In this amendment, it's a deletion, so I just remind committee members what would have been there. This deletes the clause that reads that "No civil proceedings lie against any person for their disclosure in good faith...".

The testimony in a backgrounder that we received from Professors Roach and Forcese was the following:

> The robust immunity from civil liability for good faith disclosures in s. 9 of the new Act, combined with its authorization in s. 6 for lawful disclosure of information (in accordance with the law) "to any person, for any purpose" runs the risk of repeating the Arar pattern of unfettered information sharing on a domestic stage and possibly internationally, minus the government's payment of compensation.
>
> ....
>
> Hence, s. 9, as presently drafted could preclude most civil recovery should someone in the future be harmed or even killed as a result of the sharing of information, as long as the subjective purpose behind the sharing was earnest, even if the conduct was negligent or ill-executed.

That's a quote from a backgrounder that we received, and this amendment to delete that line responds positively to the good advice that we received from Professors Roach and Forcese.

The Chair: Thank you, Ms. May.

Yes, Mr. Easter.

Hon. Wayne Easter: I would ask officials if they can assure us that this will not prohibit legal action against the government? Is that still possible with this clause?

Ms. Sophie Beecher: We can confirm that it is still possible. The section protects persons, so employees of the government, but not the crown. There could still be proceedings against the crown.

● (1050)

Hon. Wayne Easter: Okay, thanks.

The Chair: Thank you, Mr. Easter.

Yes, Ms. Ablonczy.

Hon. Diane Ablonczy: I appreciate that clarification. The fact is that civil servants are employees of the government, so it's the crown's liability that remains in place. However, individual civil servants who are exercising their activities and their responsibilities under this bill would not be held liable, but their employer, the Government of Canada, would still be found liable.

I think, Ms. May, maybe that distinction wasn't clear. We don't want people to go after individual civil servants and have them frozen in place wondering if they're going to be personally liable; they're not. But the Government of Canada could still be liable if anything illegal is taking place.

The Chair: Thank you very much.

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

The Chair: We will now go to the Green Party amendment number 9.

Ms. May.

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

Again, I'm attempting to put measures in place in response to the letter from the Privacy Commissioner.

My amendment number 9—which I have great hopes for despite the rapid defeat of the previous eight—is based on the Privacy Commissioner's advice that:

> Bill C-51 should be amended to include an explicit requirement for written information agreements. More detailed elements of what should be in the agreements could be set out in Regulations. The Office of the Privacy Commissioner should be consulted in the development of these agreements.

This amendment adds to the powers of the Governor in Council under clause 10 that the Governor in Council could require information sharing agreements be developed with the Privacy Commissioner to follow current best practices for the sharing, retention, and disposal of information.

Thank you, Mr. Chair.

The Chair: Thank you very much.

Is there further discussion?

Mr. Norlock.

Mr. Rick Norlock: Thank you very much, Mr. Chair. To my friend, I always act as if hope springs eternal, but I do have some issues here.

I believe the information sharing act is intended to foster information sharing by all government departments and agencies, including those with no traditional national security responsibilities, with designated recipients.

Requiring information sharing arrangements for all information sharing under the act would be impractical. It also has the potential to be contrary to the act's potential intent, as information sharing could be delayed while the arrangements are being negotiated.

I would think that Canadians would expect that if one branch of government were aware of a threat to their security, I repeat, this information would be shared with other branches to protect them.

As I mentioned before, Mr. Chair, this legislation has robust safeguards built in to protect Canadians' privacy.

Thank you.

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

Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

In contrast to Mr. Norlock, I'm going to dampen Ms. May's hopes on this one, as this essentially serves the same purpose as the subamendment, which we moved to government amendment number 1, in requiring what is already the law in Canada, according to the Privacy Commissioner.

What we keep getting from the government is that somehow protecting security is in conflict with protecting basic rights. We've always argued from the beginning of the debate about this bill that it's a necessity for the government to protect both rights and civil liberties, and we never doubted the capability of a Canadian government to do both of them at the same time.

We're not being asked to choose terrorists over other Canadians in these amendments, or terrorists over privacy rights. We're asking that the measures we adopt in this bill protect both the security of Canada and privacy rights. Again, the Privacy Commissioner has made very strong recommendations with that clearly in mind. I think no one here would argue that the Privacy Commissioner had any intention of supporting terrorism or the use of violence.

The Chair: Thank you very much.

Ms. James.

Ms. Roxanne James: Thank you.

That is not what the government's been saying. What we've been saying all along—I remember doing panels on this—is that Canadians would expect that we take national security and privacy rights into consideration. We've done that through this bill. There are adequate safeguards in this bill. We've heard that from various witnesses.

The heart of this is that it ties back to, as Mr. Garrison mentioned, his subamendment to our government amendment. Time is of the essence. We need to ensure that if there is a one-off situation when agencies need to relay the information quickly, they will not be burdened by having to wait for some formal fancy agreement to take place.

We heard from witness after witness. These are the credible experts in law enforcement, intelligence gathering, and so forth, people who have been involved in studying terrorism. Every one of them agreed the threat is real, but it has evolved and is growing.

For those reasons I will not be supporting this amendment either.

● (1055)

The Chair: Thank you very much.

Mr. Easter.

Hon. Wayne Easter: I do have to take issue with the government's stand, and the Green Party and opposition parties have been taking this stand from the very beginning, because we are putting some confidence in what the Privacy Commissioner said in his letter. He has certainly raised concerns.

As I said earlier, it's backed up by the privacy commissioners of all the provinces, with the exception of New Brunswick, and I don't even know if they had a privacy commissioner at the time. The parliamentary secretary said “some formal fancy arrangement to take place”.

We're not talking about fancy arrangements here; we're talking about agencies having a formal agreement for the sharing of information. Yes, in this day and age, it can still happen quickly with the technology we have available, but when there's a formal arrangement and officials within the department know they have to abide by it, you naturally give it a second thought: “Am I accurate in this information? Am I implicating somebody who shouldn't be implicated?”

It's a safeguard. It does not slow things down. It's a safeguard in terms of the protection of the privacy of Canadians, and it is a recommendation by people who understand these issues far better than we do.

The Chair: Thank you.

Yes, Ms. James.

Ms. Roxanne James: Thank you.

I want to go back to something I said earlier, and I believe Mr. Norlock referenced it as well, with respect to the guiding principles at the start of the information sharing act. One of them states specifically that “entry into information-sharing arrangements is appropriate when Government of Canada institutions share information regularly”. It is giving the guiding principle. The intent is there.

This information sharing act does not even mandate that agencies share information. It's encouraged. I just want to reiterate that as well.

Again, for all of these reasons, I will not be supporting this amendment.

The Chair: Ms. Ablonczy, please.

Hon. Diane Ablonczy: I think it's important, again, to take a look at the framework around this.

The Privacy Commissioner's job is to raise any and all concerns that he can see to protect the privacy of Canadians. He's done that in this letter. He's ranged far afield and enumerated every possible objection he can think of, and that's his job.

But, Mr. Chair, the Privacy Commissioner is not responsible for national security. He's not responsible to look at the big picture. He's not responsible to look at all of the pieces that have to be in place in order to respond to an emerging, growing, and evolving threat. That's not his job. He's doing his job, which is a narrow segment of what the government has to look at, and I commend him for that. However, to base the whole of government's response to terrorism on the mandate and viewpoint of one officer of Parliament makes no sense whatsoever. It can't be done.

It's certainly legitimate. I think we should take concerns for privacy seriously, and we do, but the scope of this bill is much broader. The issues at stake that the government has to deal with are much broader in order to protect the security and the safety of Canadians, and that was what we did.

My friends on the opposite side love what the Privacy Commissioner says because privacy is one of their favourite themes. It is a very important theme for the government and for all Canadians, but it's not the only theme. We have to look at the broader framework when we're dealing with this whole issue of terrorism.

I urge all committee members to look at the big picture and the focus on protecting the security of our country because that's what we're trying to do with this bill.

● (1100)

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

We will now vote on amendment PV-9.

(Amendment negatived)

The Chair: Okay. We will now go to Green Party number 10.

Ms. May.

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

This is adding to the powers of the Governor in Council, as found on page 6 under the heading of that name. It clarifies proposed section 10 by adding a paragraph (d) immediately after the words, "respecting the manner in which those records are kept and retained". My amendment is that the Governor in Council would also establish "responsibility within each...institution for review of the necessity, proportionality and reliability of information and for reporting at prescribed intervals to the Privacy Commissioner".

Since other efforts have been defeated, this is one that is quite straight forward. Every institution in the Government of Canada should be able to review the information. It's already made the determination to share it. This would be to review whether it was maintaining the proper principles involved, of "necessity, proportionality and reliability", and also ensure it is reporting at regular intervals to the Privacy Commissioner.

I submit this for the committee's consideration.

The Chair: Thank you.

Mr. Falk, go ahead.

Mr. Ted Falk: Thank you, Mr. Chairman.

As much as I can appreciate Ms. May's burden and desire to protect Canadians' right to privacy, I believe that this act in proposed section 5 already addresses that issue, as all information shared between government departments has to pass the relevancy standard. The information that is not necessary to pass along would obviously contravene the privacy of Canadians and wouldn't be allowed to be passed along under the provisions of this act.

I think Ms. Ablonczy articulated very clearly in her previous remarks our position on information sharing and the big picture of the security of Canadians and how that's the issue that we are looking at. At the same time, we are also considering the whole aspect of Canadians' privacy and have built that safeguard into the bill.

I would oppose this amendment.

The Chair: Thank you very much.

We will call for a vote on Green Party amendment 10.

(Amendment negatived)

The Chair: We will now go to NPD amendment 7.

The Chair advises that if this is adopted, Bloc amendment 5 and the Green Party amendment 11 could not be moved. I am just bringing that to your attention.

We will now go to NPD amendment 7.

Mr. Garrison, go ahead.

Mr. Randall Garrison: Thank you, Mr. Chair.

I am sure that not many people are holding their breath on whether this will be adopted or not.

However, we will come to this concept several times as we come to the amendments, as the bill has four major parts.

This amendment proposes that what we need to do here is a review of the impacts of this information sharing legislation, and then a recommendation from a committee of the House on whether this should be renewed. We are proposing to sunset these clauses in three years.

The government has been arguing consistently this morning that the threats we face are changing and evolving, and no one disagrees with that, but that is actually one of the very strong arguments for having a sunset clause and a review to see if in three years this legislation is in fact doing what it needs to do to protect us against the terrorist threats the country faces.

It is a common concept you'll find coming up again in these amendments that, as elected representatives, we take the time to do a thorough study of the impacts of this bill. Then, that committee could make a recommendation to the House, which by a motion could then extend these provisions, if we find they are effective, or allow them to lapse.

As I said, the government has been emphasizing here this morning the changing nature of the threat of terrorism, and I find it hard to see why the government would not find it a good idea to have this review and a sunset provision.

Thank you.

● (1105)

The Chair: Thank you, Mr. Garrison.

Now, it's Mr. Payne.

Mr. LaVar Payne: Thank you, Chair.

Sunsetting this act would return Canada to where we are today and, obviously, the difficulty we now have in sharing information. It seems to me that when we think about what is happening in the world while terrorists plan their activities and evolve, leaving Canadians vulnerable, if we had a sunset clause here it wouldn't be in the best interests of Canada.

I also might add that the parliamentary committees always have the ability to review government activities and statutes. In that regard, I can't support this amendment.

The Chair: Thank you very much.

Mr. Easter, please go ahead.

Hon. Wayne Easter: Yes, Mr. Chair.

There are a number of sunset provisions in the amendments coming forward in this bill, but specifically on this one there have been a lot of concerns expressed by Canadians about information sharing, and we have the concerns expressed by the Privacy Commissioner.

The government members continue to say, "No problem, this is covered in other areas."

Mr. Payne said, yes, parliamentary committees can review legislation at any time, and that is true, but only if the government is willing to do so when there is a majority position.

What this amendment does is that it gives assurance to Canadians that in three years' time a parliament is going to review these clauses. It does not jeopardize security in any way, because Parliament can review the legislation prior to its being sunset. We'll have the experience of time and will know at that time whether some of the privacy concerns of the Privacy Commissioner are true and need to be addressed, or whether all these assurances the government members are giving us are adequate.

It only makes sense to be supportive of this particular amendment.

The Chair: Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I will not repeat what Mr. Easter said, but I will try to convince my government colleague, Mr. Payne, because he mentioned that it was just a sunset clause and that, after three years, we would be back at square one.

In reality, that is not at all the case with the amendment that is being proposed today. We are talking about a review by parliamentarians to ensure that we still need the provisions of Bill C-51. That would not take us back to square one.

However, I believe it is appropriate to have a sunset clause and for parliamentarians to review this bill. Things can change at any time, particularly when it comes to what is covered by Bill C-51. I believe that it is our duty as parliamentarians to review bills that are passed. It would therefore be reasonable for parliamentarians to review this legislation after three years.

I hope that I can convince my colleagues across the table to vote in favour of our amendment, since it involves reviewing Bill C-51, not simply putting an end to it.

Thank you.

[*English*]

The Chair: Mr. Payne.

Mr. LaVar Payne: I guess one of the concerns I have is that this amendment would tie the hands of future parliamentarians and undermine the principle of the independence of committees.

I'm sorry, but I still can't support your amendment.

The Chair: Mr. Falk.

Mr. Ted Falk: This act is intended to address the threat of terrorism and to keep our communities and our country safe. As long as there's a terrorist threat, this act will have application.

If that ceases to exist in the future, then this act won't have implications because the sharing of information in this act is a provision that is specific to terrorist threats. I think this amendment is redundant.

The Chair: On NDP-7, all in favour? Opposed?.

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

The Chair: We will now go to Liberal amendment number 3.

Mr. Easter.

● (1110)

Hon. Wayne Easter: It's a fairly sensible amendment, as most of ours are, Mr. Chair. I mean even the government, I think, would come on side on this one. Basically, it's asking the Privacy Commissioner to submit a report to Parliament on the sharing of information conducted under the act during the preceding fiscal year. It lays out the timeframe on how that would be done.

It gives greater assurance that some of the information sharing that is happening under this act is, in fact, being monitored by the Privacy Commissioner and the assurances to Canadians that a report has to be prepared and submitted to the Minister of Public Safety.

The Chair: Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you very much, Mr. Chair.

To be honest, I do not think that it is written as well as it could be. Basically, it says that the Privacy Commissioner will prepare an annual report on the sharing of information conducted under the Privacy Act and submit it to the Minister of Public Safety and Emergency Preparedness.

The Privacy Commissioner is an officer of Parliament. In my opinion, the report should not be given to the Minister of Public Safety and Emergency Preparedness. The Privacy Commissioner should report directly to parliamentarians. For that reason, I am extremely uncomfortable with this proposal. We have spoken out about this sort of thing on numerous occasions. The Conservatives often want officers of Parliament to report directly to a minister. I do not agree with that because the Privacy Commissioner should submit his information and his annual report directly to parliamentarians without going through the Minister of Public Safety and Emergency Preparedness.

[*English*]

The Chair: Mr. Norlock.

Mr. Rick Norlock: Well, I somewhat agree with my friend across the table, Madame Lefebvre. However, this amendment is redundant, as the Privacy Commissioner already possesses the authority to carry out investigations of any complaint in relation to the Privacy Act. Moreover, section 38 of the Privacy Act authorizes the Privacy Commissioner to make a special report to Parliament on any matter that he or she has in relation to the Privacy Act, period.

Lastly, under section 72 of that act, all government institutions, including Public Safety Canada, must submit an annual report to Parliament on the administration of the Privacy Act. These authorities would cover the sharing of personal information pursuant to the security of Canada information sharing act.

I don't know why we have to keep repeating things. That officer in Parliament already can single out, if he or she wishes, any particular breach or any concern they have with regard to the Privacy Act.

So I repeat, this amendment is redundant.

The Chair: Thank you very much.

Mr. Easter.

Hon. Wayne Easter: Just to conclude, I think the key point in what Mr. Norlock said is "if he or she wishes". This would be an obligation to do this report. I, in fact, agree with Madam Doré Lefebvre that it would be better if the report were to Parliament. That's the way I would like to see it. But in terms of making this amendment, if we put that in the bill—rather than through the minister—that there would at least be a report, it would be ruled out of order. That's why we've had to restrict this report to the Minister of Public Safety. But it would provide an obligation for the Privacy Commissioner to draft a report, then to go to the Minister of Public Safety with the report, and that way it would be available to us as Canadians.

It's the only way we could do it and meet the requirements, and not have the clerk or somebody toss it out, Mr. Chair. Even you might.

● (1115)

The Chair: Mr. Easter, I would be so amenable to sincere discussion on the issue, but we will now go to the vote.

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

Chair: We will now go to Bloc amendment number 4.

Mr. Patry, on advice from our legislative clerk, I will repeat that *House of Commons Procedure and Practice*, second edition, states on page 767-768:

> Since an amendment may not infringe upon the financial initiative of the Crown, it is inadmissible if it imposes a charge on the public treasury, or if it extends the objects or purposes or relaxes the conditions and qualifications specified in the royal recommendation.

In the opinion of the chair, the amendment does propose such a new scheme, which would impose a charge on the public treasury; therefore, I do rule this amendment inadmissible

We will now go to Bloc Québécois amendment 5. The chair also notes that should this amendment be adopted, Green Party amendment 11 could not be moved, as, of course, it has similar intent.

We will now go to Bloc Québécois amendment 5.

Mr. Patry, you have the floor, sir, briefly.

[*Translation*]

Mr. Claude Patry: Thank you, Mr. Chair.

As we announced many times and as discussed when we examined the anti-terrorism bill, we are proposing that this legislation include an expiry date. We want the legislation and its application to be thoroughly reviewed by the committee three years after it has come into effect.

We want it to have an end date. That is what we are asking, Mr. Chair.

[*English*]

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

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

The amendment proposed by the Bloc Québécois has some good points. However, in my opinion, part of paragraph (2) of the proposed clause 11 is simply unacceptable. It reads: "A comprehensive review of this Act and its operation shall be undertaken by any committee of the Senate, of the House of Commons or of both Houses of Parliament..." That is unacceptable for a number of reasons.

On one hand, the Senate is made up of unelected members. On the other, various witnesses raised concerns about a parliamentary review. They said that parliamentarians who had been elected and were accountable to the public should be the ones to oversee this process. I agree that we should head in that direction, but unfortunately I cannot vote in favour of this amendment since it involves the Senate, which is made up of unelected members.

[*English*]

The Chair: Thank you very much.

Mr. Payne.

Mr. LaVar Payne: Thank you, Chair.

My comments are very similar to the ones I made on NDP-7 that sunsetting the act would return Canada to the current situation with national security information sharing. This is contrary to what we're trying to accomplish so that we can continue to evolve, because the terrorists are evolving their plans and so on.

I think the parliamentary committees still have the ability to review government legislation and this amendment would tie the hands of future parliamentarians. On that basis, I can't support it, Mr. Chair.

The Chair: Thank you very much.

Ms. James.

Ms. Roxanne James: Thank you.

I am also going to oppose this amendment. I can't imagine, for a moment, that when we're dealing with issues pertaining to national security and the protection of Canadian citizens, we would, at a certain point in time, just all of a sudden shut down something that has clearly been identified as required to protect that same national security and Canadians.

If you can imagine what would happen in that particular situation and the devastating effects that a sunset clause like this could have.... Again, Mr. Payne was pretty clear that committees such as this one and governments of the day have the ability to go back and amend, take a look at, or study any piece of prior legislation that is relevant. For those reasons, I'm not going to support this amendment.

● (1120)

The Chair: Thank you very much.

With no further discussion, I will call the vote on BQ-5.

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

The Chair: We will go to Green Party amendment 11.

Yes, Ms. May.

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

This amendment, as other similar amendments in the same spirit do, picks up a tradition in Canadian anti-terrorism law. Certainly, my colleague, Mr. Easter, will remember because he was there during the drafting of the anti-terrorism legislation after 9/11. In contrast to this process, it wasn't rushed; even with the enormous emotional impact of the devastation of what al Qaeda did in New York on that day, parliamentarians were allowed to take their time and hear many witnesses in hearings that lasted long enough to explore the issues properly, which this committee is not being allowed.

Back in 2001, the legislation that was passed included a number of sunset clauses. Future parliaments could always take it up, and as we've seen, a lot of the anti-terrorism legislation of 2001 has been extended. Green Party amendment 11 puts in the proviso that the act ceases to have effect on the day following the day that is the third anniversary of the coming into force of this section—and of course, this section refers to part 1.

The Chair: Thank you very much.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I do not want to spend too much time talking about the amendment proposed by the Green Party. However, I must say that I think that a sunset provision that takes effect after three years without a review by parliamentarians misses the mark. The purpose of a sunset clause is to make sure that a bill gets reviewed.

I know that the amendment is well-intentioned, but I think it is missing something and that is a review of Bill C-51 and an assessment of its impact. I am therefore going to vote against the amendment.

[*English*]

The Chair: Colleagues, the bells have been called.

We can suspend immediately unless you just want to go for the vote on this and then suspend, but that would require unanimous consent. This would get us towards the end of clause 2.

Ms. Roxanne James: Thank you, Mr. Chair.

Hopefully we have agreement from the committee to continue moving forward with our clause-by-clause consideration of the bill. Obviously, the votes are just down the hall; it would only take a minute or two to get there, and I'm hoping that we can carry on for at least another 15 to 20 minutes.

The Chair: Mr. Garrison.

Mr. Randall Garrison: Given that the motion in the House affects the work of this committee, I think we should suspend at this time.

The Chair: Thank you.

We have unanimous consent. We will now suspend.

● (1120)

(Pause)

● (1205)

The Chair: Colleagues, we will now resume. We are on amendment Green Party amendment 11.

There were no more speakers at that time, of course, and the chair is prepared to call for a vote unless there is further discussion.

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

The Chair: Colleagues, that's the end of clause 2. Shall clause 2 carry as amended?

Mr. Garrison?

Mr. Randall Garrison: Each clause of course will be debated as we come to it, but first I have a motion that I would like to move.

Given that we've just come from a vote in the House to suspend debate on a motion of instruction that would expand the mandate of the committee, and which, if successful in the House, would allow amendments that have been proposed on oversight and deradicalization to be considered by this committee and not be declared out of order, at this point I move that, given that debate is only suspended, is still on the order paper, and could be called at any time, we suspend debate on clause by clause until we have the opinion of the House on the motion of instruction to expand the scope of this committee's work on the bill.

● (1210)

The Chair: The chair's initial ruling on this, Mr. Garrison, as you are well aware, is that this portion of the bill and the clauses of the bill do not deal directly with oversight. Your motion put forward on the bill does deal with oversight. While oversight has been the subject of discussion during the course of the bill, oversight is not for discussion in dealing with the amendments. As such, I would make a decision that we are going to proceed with the amendments.

Mr. Randall Garrison: Mr. Chair, with respect, my motion is about the motion of instruction before the House of Commons, which is about the scope of the work of this committee. It's not about any of the particular topics of that scope.

The Chair: That's correct, but until—

Mr. Randall Garrison: It is a motion to expand the scope, so how can we proceed?

The Chair: Until the chair receives a direction from the House, the chair will proceed with the meeting as scheduled here. If the chair receives a direction from the House as to whether or not this committee should hear more witnesses, suspend, or carry on.... The chair has no other obligation but to continue, without the direction of the House, in the manner in which we were.

We will now go to clause 2 as amended.

Yes, Mr. Garrison.

Mr. Randall Garrison: I wish to speak on clause 2.

We've gone through a large series of amendments, so for anyone who is not at this table, trying to keep track becomes very difficult. What I would like to draw to everyone's attention is that we're now dealing with the information sharing agreements.

With only two very small amendments from the government side, while welcome—taking out the word "lawful", and a welcome change to clause 6, which would have allowed sharing with anyone —the basic, broad definition that caused concern not just for the Privacy Commissioner but also for nearly half of the witnesses who appeared before the committee remains the basis of a new information sharing arrangement.

We have a definition that includes infrastructure and includes the economic security of Canada, so there is no doubt that the passage of Bill C-51, without the amendments we presented on the recommendation of the Privacy Commissioner, does not strike a proper balance or does not accomplish both tasks, as I would prefer to put it, of protecting Canada against security threats and at the same time making sure that the privacy rights of those who have nothing to do with violence or terrorism aren't inadvertently restricted or lost as a result of this bill.

It's for that reason that we will continue to vote against this clause, and I look forward to hearing comments of my colleague Rosane Doré Lefebvre as well.

The Chair: Now we will hear from Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I also want to thank my colleague, Mr. Garrison, for his contributions to this debate and to the many amendments presented. It is no secret that the majority of the amendments were presented by opposition members from the House of Commons.

With respect to the amendments, I am a bit sad to see that the government chose not to work with the official opposition and the third party or with Mr. Patry and Ms. May, who are here at this table and who presented amendments.

All parliamentarians need to contribute if we are to improve a bill like Bill C-51. Clause 2 of the bill is rather important in the sense that it has a lot to do with what the Privacy Commissioner said. I think that everyone made a substantial effort to improve this clause. The Minister of Public Safety and Emergency Preparedness said a number of times that freedoms and public safety were important and that one must not be put above the other.

I therefore have a hard time understanding why the Conservative government is not trying to improve the problems associated with clause 2 of Bill C-51. I am sad to see that the Conservatives are speaking out of both sides of their mouths with respect to the issue of privacy. It is extremely important for Canadians to retain their fundamental rights and freedoms. We do not achieve that by ignoring the testimony we have heard in committee and ignoring the amendments that were presented in response to the testimony we heard over the course of the marathon sessions we have had these past two weeks.

A number of witnesses expressed concerns about privacy. I would have liked to see the government be more open. I always hope that it will prove itself to be more open. It would have been very important to make some substantive changes to clause 2, in order to improve Bill C-51 and to better protect the rights and freedoms of Canadians.

That's all I wanted to say about clause 2.

● (1215)

[*English*]

The Chair: Thank you, Madame Doré Lefebvre.

Yes, Mr. Easter.

Hon. Wayne Easter: Thank you, Mr. Chair.

There was certainly quite a series of amendments to this clause of the bill. It is an important clause.

I do welcome the amendment to take the word "lawful" out. We've heard a lot of expressions of concerns from civil society on that issue, and I think that is a fairly substantial step forward. The other amendment that changed the wording of information sharing for any person for anything, by narrowing such information, I think, is also a good amendment.

I certainly would have welcomed the government accepting some of the amendments, not just from the Liberal Party but also some of the very reasonable amendments by the other parties on this side relating especially to sunset clauses and further review of the bill within a limited period of time.

I will say that I have been somewhat assured by the personnel from the Department of Justice on the fact that quite a number of privacy protections do exist. On that basis, I will be supporting this clause of the bill.

I would hope, though, that in moving further throughout the bill, the government will be more open to amendments that are put forward in good faith by opposition parties. However, in this clause of the bill, I'm at least given some assurance. I think when we go back and look at the words from the Department of Justice officials on how privacy issues are protected, I think that will be beneficial to us, and probably to society.

Thank you.

The Chair: Thank you, Mr. Easter.

If there are no further votes then, we will now vote on clause 2 as amended.

(Clause 2 as amended agreed to)

The Chair: Colleagues, the chair will look for your guidance going forward, in that we have clauses 3 to 10 in which there are no amendments. Of course, I will be looking for an unanimous opinion as to how we would proceed; otherwise we will continue in the exact format that we are now doing.

We could either group them—

Hon. Wayne Easter: On a point of order, wasn't clause 6 amended? Clause 6 was amended, I believe, by the government's motion.

The Chair: It was proposed section 6, in clause 2. Thank you very much, Mr. Easter.

We can either take clauses 3 to 10, and deal with them in total, or we can take them one at a time, or we can group them.

Mr. Garrison.

Mr. Randall Garrison: I would have no objection to grouping clauses 3 to 8.

The Chair: Do I have any thoughts on grouping clauses 3 to 8?

If that's the case, I will call the vote on clauses 3 to 8 inclusive.

(Clauses 3 to 8 inclusive agreed to)

The Chair: Thank you, colleagues, for your consideration.

We will now go to clauses 9 and 10. Are there any speakers?

(Clauses 9 and 10 agreed to)

The Chair: We will now go to the proposed new section 10.1, as proposed by the Bloc Québécois in amendment BQ-6.

Mr. Patry, I've been advised that it is inadmissible due to the requirement for a royal recommendation, similar to the last one. Are you comfortable with the clerk's ruling?

Thank you very kindly.

Mr. Garrison.

● (1220)

Mr. Randall Garrison: As I understand, a royal recommendation requires spending by the government. This motion proposes something in terms of Parliament, not the government.

The Chair: The legislative clerk has advised the chair that if dollars come out of the consolidated revenue fund in any way, it requires royal recommendation. In a case like this, it allows for the chair of the committee to be paid, and for the committees to be reimbursed for their expenses in establishing a national security committee.

As such then, because of that it requires a royal recommendation.

Mr. Randall Garrison: Thank you for that, Mr. Chair, just to be clear, because we have other upcoming amendments. That's the reason I'm asking the question at this time.

If it's simply to establish a committee of Parliament, then that would not require a royal recommendation. It's because this one includes provisions for paying salaries and expenses that it requires a royal recommendation.

The Chair: That's the chair's understanding, yes.

Thank you very kindly.

I'm sorry, Mr. Easter. You have the floor, sir.

Hon. Wayne Easter: It's much the same question as Randall's. One of our concerns, Mr. Chair, with the government's attempt to prevent oversight, which—

The Chair: Ms. James, on a point of order.

Ms. Roxanne James: That is clearly not the case. We actually have sufficient oversight, and for Mr. Easter to state and imply that in this committee is completely out of order.

The Chair: Mr. Easter, we are dealing with the admissibility due to the requirement for a royal recommendation. That has nothing to do with the discussion on relevancy of the issue.

I would ask you to keep your comments to that, please.

Hon. Wayne Easter: Mr. Chairman, what this recommendation calls for is a national security committee of parliamentarians. I know your point is that there is money spent for staff under this.

I would submit, though, on this amendment as in others coming forward, that probably about 90% of our witnesses called for such a body as is in this recommendation to do proper parliamentary oversight, which the government is opposed to. I understand that. They shouldn't be.

In any event, my point, Mr. Chair, is that whether it's out of scope, whether it's because it requires a royal recommendation, the fact is that at this committee we heard a lot of evidence calling for such a body, and the government in its own—

The Chair: Okay, Mr. Easter.

The chair's been very lenient. As you know, there is no opportunity for debate on the chair's ruling on this. The chair has been considerate to try to allow you to make your point and I appreciate that, but we're getting a little off kilter with that point. The decision was made to accept the clerk's definition of a royal recommendation on the issue and that will now stand.

We will now go to Green Party amendment 12.

Ms. May, I can read the recommendation, should you wish, but I also have a similar recommendation from the legislative clerk as to the admissibility due to a royal recommendation. It is not up for debate. If you would like the chair to read the ruling I would be prepared to do so.

● (1225)

Ms. Elizabeth May: Could I summarize quickly what it is I was trying to do with creating oversight through this amendment?

The Chair: I'm sorry, no. That is off for debate, but you can certainly hear the ruling should you wish to.

Ms. Elizabeth May: I'd like to hear the ruling.

The Chair: Yes.

Mr. Randall Garrison: One a point of order, certainly we have the right to move motions before they're declared out of order. It can't be declared out of order before it's been moved.

The motion cannot be declared out of order before it's been moved before the committee.

The Chair: It is deemed moved. The motion is deemed moved. Once it is here on the order paper it is deemed moved.

Mr. Randall Garrison: That would be in the case of a third party because it would be a different situation than for members of the committee.

The Chair: It is deemed moved for independent members as a routine motion; in a routine motion that was adopted by this committee.

Ms. Elizabeth May: Mr. Chair, I'm not an independent, but I understand the point you're making. We're in a party of less than 12. They're Green Party motions and we're here on the basis of the motion that was passed by this committee that requires us to submit our amendments 48 hours ahead of time. Then they are deemed moved because I don't have the power to move a motion.

The Chair: Thank you very much. I appreciate your clarification from your perspective on that.

(On clause 11—*Enactment)*

The Chair: Now, colleagues, if you can shift your attention to clause 11, we have a number of amendments here. We will start off with the Green Party amendment 13.

Ms. May, you have the floor.

Ms. Elizabeth May: Mr. Hyer is moving these amendments in relation to part 2, the proposed secure air travel act.

The Chair: Briefly, Mr. Hyer.

Mr. Bruce Hyer (Thunder Bay—Superior North, GP): All of my amendments this afternoon are related to the secure air travel act. As a pilot myself, I focused on these and we have heard from airlines that are interested in our introducing some of these amendments.

The first one is amendment PV-13. Do you want me to read it or is it not necessary to read it?

The Chair: It's not necessary to read it. If you could summarize in a few words, the chair would allow that.

Mr. Bruce Hyer: Mr. Chair, this clarifies part of the act. Canadians are sensitive about their personal computers and cell phones, and the pass words to those. This amendment specifies and clarifies that no part of this bill allows for the examination of personal computers or cell phones unless specifically authorized within the secure air travel act.

The Chair: Thank you very kindly.

Is there discussion?

Yes, Mr. Falk.

Mr. Ted Falk: Also responding as a pilot, I wanted to point out that this proposed subsection does not relate to examination of cell phones or personal computers and, as such, I don't think the motion is applicable.

The Chair: Thank you very much.

Yes, Mr. Garrison.

Mr. Randall Garrison: Thank you, Mr. Chair.

It appears that the Green Party amendment here is, in essence, another "for greater certainty" clause, which would simply clarify that what Mr. Falk said is indeed the case. On that basis I think it'd be a useful addition to the bill.

The Chair: Thank you very much.

All in favour? Opposed?

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

The Chair: Now, colleagues, we'll go to NDP amendment 8. I make note at this time that once 8 is moved, and it will be moved by Mr. Garrison, the Green Party amendment 14 cannot be then moved as it is identical.

Mr. Garrison, on NDP amendment 8.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I'm moving this amendment, which deals with what threshold is to be used for listing someone on a no-fly list. What I believe we've had in the past is what we're proposing as the amendment, to return to the standard of "reasonable grounds to believe will" be involved with terrorist acts.

This substitutes a lower threshold of "reasonable grounds to suspect" in the bill. The no-fly list does already expand from those who threaten air transportation directly to those who might be involved in terrorist activities.

I do have a question to the officials just for clarification.

The definition that's going to be used for the activities of someone who is involved in it, if I'm not mistaken, is not listed in Bill C-51 but is in the existing CSIS Act and is much narrower.

Am I correct in that?

● (1230)

Mr. John Davies: No, sir. Could you repeat that?

Mr. Randall Garrison: When it comes to listing someone and the activities they're involved in, my reading of the bill would say that it is not the larger definition of national security that Bill C-51 has for information-sharing, but it is the subsections of the existing act of CSIS which define that. Am I correct?

Mr. John Davies: No.

Mr. Randall Garrison: So where do we find the definition that was going to be used to list...?

Ms. Ritu Banerjee (Director, Operational Policy and Review, Department of Public Safety and Emergency Preparedness): It's in proposed section 8 of the proposed act.

It's individuals where we have a "reasonable grounds to suspect", "engage or attempt to engage", or "threaten transportation security", or they're travelling by air for the purpose of committing certain terrorism offences.

That's the threshold for listing an individual, so it's all contained within the secure air travel act.

Mr. Randall Garrison: With respect, from my reading of the bill...it's proposed subparagraph 8(1)(a)(i). When it says that it's an offence under the Criminal Code or the terrorism offence from section 2 of that act.

Does that mean the Criminal Code only?

Ms. Ritu Banerjee: Yes, it's under the definitions of the Criminal Code dealing with those specific terrorism offences.

Mr. Randall Garrison: So it would not include sabotage of other than air transportation?

Ms. Ritu Banerjee: Well, if there is reasonable grounds to suspect that an individual is engaging in activity to threaten transportation security, that could still be encompassed in proposed paragraph 8(1)(a).

Mr. Randall Garrison: I do find it reassuring that we're dealing with a much narrower definition in this case. But it is true that we're changing the threshold. Is the current threshold in the no-fly list "reasonable grounds to believe"?

Mr. John Davies: No, the threshold for the passenger protect program has been the same since its inception. I think it was in 2007-2008 that it was originally created with the Department of Transport. It's always been reasonable grounds to suspect.

Mr. Randall Garrison: Then the difference is that the threshold will now be expanded beyond air transport—

Mr. John Davies: To terrorist travel.

Mr. Randall Garrison: —to terrorist travel as a result of that.

Given that, Mr. Chair, I'd like to withdraw my amendment.

The Chair: It is the Chair's understanding, then, because it's already moved, that we would have to have unanimous consent. I'm assuming the Chair has consent for Mr. Garrison to withdraw his amendment.

(Amendment withdrawn)

The Chair: We will now go to Green Party amendment 15.

At this point, the Chair would also advise that if Green Party 15 is adopted, then government amendment 2 could not be moved, as there is a line conflict.

On a point of order, Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: I just want to clarify.

If we had voted on NDP-8, we would not have studied amendment GP-14. Since we withdrew our amendment, will we address amendment 14 from the Green Party? It was the same amendment.

[*English*]

The Chair: Actually, Madam Doré Lefebvre, you are correct. Thank you very kindly for bringing that forward.

Yes, because the original ruling was that if NDP-8 is moved, PV-14 cannot be moved as it is identical. But of course, Mr. Garrison has withdrawn it after explanation from our officials.

We will go back to PV-14.

Mr. Hyer, you certainly have the option to carry on with PV-14.

● (1235)

Mr. Bruce Hyer: Thank you, Mr. Chair.

Notwithstanding the withdrawal of the same amendment by the NDP, we would like to introduce this amendment and we would like to replace the word "suspect" with "believe" because we feel it's a stronger statement. To us, "reasonable grounds to believe" seems to us to be more decisive and "suspect" to us seems too weak a word to go on witch hunts, so we would like our amendment to go forward.

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

Is there further discussion?

Yes, Mr. Garrison.

Mr. Randall Garrison: It may help Mr. Hyer to understand that in the answers I received I realized that this was not changing the grounds that were used for the existing no-fly list, and that the existing no-fly list has many other problems.

The threshold does not seem to have been a problem, and I do think that raising that threshold would present security problems, so we will be voting against this amendment.

The Chair: Fine, thank you.

Mr. Easter.

Hon. Wayne Easter: Basically it's on the same point, Mr. Chair.

I think if you have the passenger protect program with different wording from the no-fly list under this bill, then you do run into complications, so I'll be opposing as well.

The Chair: Fine, thank you very kindly.

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

The Chair: At this time the chair would like to thank Madam Doré Lefebvre for your observation.

We will now go to Green Party 15.

Mr. Bruce Hyer: Thank you, Mr. Chair.

We are introducing this amendment at the request of some of our airlines. This amendment would replace the authority of the minister to direct an airline "to do anything that, in the Minister's opinion, is reasonable and necessary to prevent a listed person from engaging in any act" listed in Bill C-51.

We feel that this is too broad a mandate. This amendment lists the actions that the minister can ask the airlines to engage in, from denying transportation to identification through things like biometrics.

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

Is there further discussion?

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

The Chair: We will now go to government amendment 2.

Yes, Ms. James.

Ms. Roxanne James: Thank you.

Would you just bear with me. I'm just trying to find the section in the bill so I can relate to it directly.

The Chair: Take your time. We'll just put things on hold for a second.

Carry on.

Ms. Roxanne James: Thank you.

I move this particular amendment. We heard from one of our credible witnesses on this that there were concerns with respect to the language that we used in this section. The section as it is currently has wording in there with regard to the minister's opinion. We propose to change that clause to read:

> to take a specific, reasonable and necessary action to prevent a listed

and then the rest of the clause would follow as is.

This amendment speaks to the concerns of the executive director of the National Airlines Council of Canada, who was here. We listened to his concern directly and I think we have actually taken it one step further and modified it slightly more. Those are the reasons we have brought forward this particular amendment and we hope that all parties present will agree to it.

The Chair: Thank you very kindly.

Yes, Mr. Easter, followed by Mr. Garrison.

Hon. Wayne Easter: I'm trying to find lines 2 and 3. I'm doing two things at once here, Mr. Chair.

I'm trying to find where the specific amendment fits on page 14. Would the parliamentary secretary read what is there now. I'm dealing with section 9, but it says “clause 11” on the amendment here—lines 2 and 3 on page 14. What is in those lines now?

● (1240)

The Chair: There's a clarification. Go ahead.

Ms. Roxanne James: Sorry. Currently on page 14, lines 1 and 2 have to deal with proposed subsection 9(1):

> The Minister may direct an air carrier to do anything that, in the Minister’s opinion, is reasonable and necessary to prevent a listed person from engaging in any act set out in subsection 8(1) and may make directions respecting, in particular....

Then it goes on to list a couple of points.

There were concerns directly from this one individual with respect to the terminology around “do anything...in the Minister's opinion”, so that's what we've cleaned up in this particular amendment.

The Chair: Thank you, Ms. James.

Hon. Wayne Easter: I'm fine, thank you, Mr. Chair. That's great.

The Chair: Okay, thank you.

Mr. Garrison, please.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I was obviously present at the same committee hearing and heard the same objection. I think, with respect, that the government's amendment actually doesn't change the sense of this. It takes out the explicit statement, which is really redundant, to say “to do anything that, in the Minister’s opinion”, and says the Minister may direct an air carrier to do anything that's “specific, reasonable and necessary”. That's obviously in the minister's opinion, so that's actually the same thing. It's just less offensively worded, maybe, I would say.

In this case we're proposing a subamendment, because I actually don't think there's anything wrong with the wording that was originally in the bill if we're talking about an imminent security threat. If the minister perceives there to be an imminent threat to security, I do think it's reasonable for him to order anything that he thinks should happen if it's an imminent threat. I think the sense of what the air transport issue was is that it's not reasonable for the minister to be able to direct the industry in how they run a no-fly list on a daily basis.

We're actually proposing a subamendment here that preserves the very broad authority of the minister in the case of an imminent security threat, but leaves the policy, which would govern the no-fly list, to operate on a daily basis, much as it would in cooperation between Public Safety and the air carriers. We simply would add at the beginning of proposed subsection 9(1) the words, “in the case of an imminent security threat”. It says “in the case of an imminent security threat”. In the translation things got moved, so if I'll just make that correction “in the case of an imminent security threat”. The order of the words there is incorrect.

The Chair: That amendment is in order without a problem at all. We will consider the subamendment amended for clarification purposes. It will fall in front of “security”. That's totally reasonable.

Ms. James, then Mr. Easter.

Ms. Roxanne James: I just want to go back to the purpose of part 2 of the proposed anti-terrorism act, 2015. Part 2 actually expands the current passenger protect system. Currently, it's only the no-fly list. No-board are only applicable to an imminent threat to the aircraft itself. The purpose of the changes that we're making here with the secure air travel act is to expand that to include those who may be travelling overseas to engage in terrorist-related activities, whether it be to join ISIL, for training, whatever the case may be.

When we're talking about security being an imminent threat, the ability to travel is not necessarily an imminent threat, as in it's going to occur, that as a result of that travel there might be an terrorist attack here on Canadian soil within the next hour. It's actually something that we want to prevent from happening. It's part of our prevention. From the start we've said that the aim of this bill is about preventing planned attacks, preventing someone from travelling overseas. We've especially heard from witnesses that the biggest threat is if those individuals actually come back to Canada fully trained as jihadist terrorists. So that's what this amendment is doing.

Personally, I agree with that wholeheartedly and so does the government, as Canada does not want to become an exporter of terrorism. That is certainly not what we should be doing, that is, having Canadians travel overseas to participate in or join a terrorist organization, or to commit barbaric acts, as we've seen in the news. Certainly we don't want those individuals coming back to Canada fully trained.

I understand the intent of what you're trying to say, but I will be opposing this subamendment to our amendment.

● (1245)

The Chair: Colleagues, we've now reached the time when we've said we would suspend. However, if the committee wishes to stay longer to finish, potentially, this one here, that's fine. I would have to have the unanimous support of the committee.

Do we have unanimous support to continue for a while? Then, of course, the chair will take the direction as to when to suspend after this.

Some hon. members: Agreed.

The Chair: Fine. Carry on, please.

Okay, now we go to Mr. Easter.

Hon. Wayne Easter: Mr. Chair, I have a commitment at one o'clock.

In any event my question really is for the officials on this. How does this proposed addition compare with the travel protect program that is already in place? I think there needs to be conformity in the law between the two programs. I understand what Randall is proposing here. I think it's to put a safeguard in place on when the minister may direct an air carrier. Does this amendment in your estimation complicate that in any way, or is there a difference between the no-fly list here and the travel protect system that's already in place?

Mr. John Davies: My initial reaction would be, yes, it would complicate things. By bringing in the concept of imminent, it would create issues on how you meet that definition and how that would be prescribed. It's much easier to keep things open-ended in case the minister needs to take other kinds of actions for other kinds of threats if necessary.

I'll just say as well that the Minister of Transportation also retains a broad discretion in this area as well, in terms of ability to direct air carriers to do things that are reasonable to do regarding security.

Hon. Wayne Easter: Thank you.

The Chair: Thank you, Mr. Easter.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I would like to respond to the last comment from the parliamentary secretary. The proposal changes absolutely nothing. Pursuant to the clause, the minister is the one who will make the final decision.

Moreover, I would also like to respond to what was just mentioned, with all due respect for the government officials here with us today.

You all just said that it could be complicated for the minister to react. I agree with you more or less, primarily because the minister retains the power. These days, technology is pretty quick. The minister can therefore react very quickly.

We are not really trying to change the amendment, but we want to give a little more flexibility to the air carriers that must deal with legislative measures that can make things very complicated for them. That is what they told us in committee. It appears as though they were not consulted and they do not have the necessary resources.

They also mentioned that such measures are costly in terms of time and money. We need to support them and fix this problem, with the amendment. I don't think that is too much to ask.

[*English*]

The Chair: Thank you very much.

Is there further discussion?

Ms. James.

Ms. Roxanne James: Your subamendment actually does change the original amendment because you're basically referring only to an imminent security threat. Again, I will not be supporting your subamendment.

The Chair: Thank you very much.

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

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

The Chair: Mr. Easter.

Hon. Wayne Easter: I spoke of these earlier, and I think this is where I have to bring them in. I apologize for not having them before, but you have them there on your sheet. Their reference number are 7905359 and 7905367, for Liberal amendments 3.1 and 3.2 respectively. They are the amendments that we asked the airline industries to bring forward. So I will be moving Liberal amendment 3.1 first.

● (1250)

The Chair: Do my colleagues all have a copy of this?

Hon. Wayne Easter: Does everyone have a copy? The clerk has them. They were sent to the clerk, were they not?

You have them in—

The Chair: Okay, we don't have copies for everybody yet. The clerk will get them right now, Mr. Easter.

Ms. Roxanne James: We just had unanimous agreement to finish this one amendment. I have not seen what you're saying we should see, but I would suggest that we carry this on afterwards.

Also many of the members of this committee have other commitments after one o'clock.

The Chair: Fine, the original agreement was to carry on to finish that one. This is pertinent, Mr. Easter, but we do need the time to get the distribution under way, and if you're content as well, then we're all content. We're all a happy family and we'll come back here after question period at four o'clock.

We will suspend until four o'clock.

● (1250)

(Pause)

● (1600)

The Chair: Okay, colleagues, we will resume. When we left, Mr. Easter had the floor.

Hon. Wayne Easter: It's page 14.

The Chair: You have the floor again, sir.

Hon. Wayne Easter: That is so kind of you, Mr. Chair. I am glad to get back to where we left off.

When the Air Transport Association was here and they were asked the question, they admitted they were not consulted in advance on this bill. As I said at the meeting that day, I find it really shocking that the airlines, which are so responsible, weren't consulted on a bill of this type. Regardless of that, you will recall I asked them at committee, if they had any suggestions on amendments, to forward them to the clerk, and that we would have a look at them and, if we thought so, we might move them.

The one I am moving is indexed. The last three numbers are 359. Because it is not in the package, I'll read it:

> That Bill C-51, in Clause 11, be amended by replacing line 8 on page 14 with the following: (b) the requirement to alert the Canadian Airport Transport Security Authority of the screening of a person before they

This amendment would make it necessary that the Air Transport Security Authority be alerted about the screening of a person. There are other amendments that will follow up on that to draw more merit to it. In the evidence, I said to Mr. Skrobica, “What I am hearing is that you are responsible, but you are not ultimately in charge”, and he agreed. I think the description that he gives in the minutes outlines it well. He said to us as a committee:

> You will recall the reports of an individual who was travelling with a pipe-bomb. CATSA handed the pipe-bomb back to the individual and allowed him to travel. Under this bill if CATSA were to be in error potentially we would be responsible. That's not equitable in our view.

The airlines can be fined, and this amendment, therefore, would give them an alert as to a situation with somebody who is being screened. I think that amendment eminently makes sense.

I so move.

The Chair: Thank you, Mr. Easter.

Yes, Ms. James.

Ms. Roxanne James: I want to ask the officials who are here with respect to this amendment. Sorry, what was the witness' name? He represented a very small group. They were not like the major airports with international flights and so forth. They were a small, more domestic—

Hon. Wayne Easter: Yes, I can give you this. They were headed up by a Mr. McKenna. The one who answered this question was Mr. Skrobica. When you go back and look at the minutes, you'll find that the National Airlines Council of Canada—we didn't raise the same questions with them—also weren't consulted on this bill. I think that's a problem.

● (1605)

The Chair: Yes, go ahead, Ms. James.

Ms. Roxanne James: I think the larger airline said they welcomed the changes in the bill. They had specific concerns about that one clause, that one section that we've already amended, that the government put forward the amendment on.

I am wondering if the officials could answer a question for me with regard to the current process for the passenger protect system for individuals who are an imminent threat to the aircraft itself. How does that work currently with the smaller airports, such as the one of the representative from this organization? I am trying to figure out whether the passenger protect system applies to those types of locations as well, just to get more insight on this.

Mr. John Davies: It is not really location-based; it's more the size of the planes. Planes with fewer than 20 passengers are exempt from the passenger protect program. Every other plane and every other carrier need to screen their manifest for the specified persons list under the passenger protect program.

Ms. Roxanne James: I want another clarification on this one, for the size of the aircraft. How would the requirement to alert the Canadian Air Transport Security Authority be beneficial to this bill? Do you see it as problematic for the bill?

I'm curious, because we have just seen this. We may have to come back to this amendment specifically to review it in more detail later on in the committee's clause-by-clause examination. I'm just trying to understand what your perspective on this amendment would be, with respect to this bill.

Mr. John Davies: To echo your comment, we just got this five minutes ago—Public Safety, on the policy lead with Justice—and hadn't a lot of time to look at it.

A gut reaction is that this already happens. Transport Canada already works hand in glove with CATSA . Adding a legislative amendment like this would probably not be necessary, but we would probably want to go back to Transport Canada and talk to them to confirm that. But I'm pretty confident in my conclusion.

Ms. Roxanne James: Personally I would myself prefer to be able to look into this a little more deeply before making a decision on whether it's something I see as advantageous or beneficial or necessary to the bill.

I'm going to ask the committee whether we could come back to this later, leaving this amendment to a later point, possibly today or tomorrow, so that we can take a look at it more closely rather than make a decision right off the bat.

The Chair: Well, we can consider that, but first of all we have two other speakers here; then we can go to that.

Mr. Garrison, you have the floor first.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I want to thank Mr. Easter for the work he did with the witness. Because of the rushed schedule we have been on with this bill, we run into situations such as this, in which we have a witness appearing on the last night with a deadline for submitting amendments to include in the package of 9 o'clock the next morning. I appreciate Mr. Easter's having followed up with him.

It seems to me—I know I'm not allowed to talk about the other three in that package and so can only talk about the first one now, but one can assume that my opinion is the same—that these all look eminently sensible and would help, I guess, make up for the fact that neither of the organizations representing air carriers in Canada was consulted before the bill was introduced. So I'll be supporting these.

I guess we're going to come back to the question about when we're going to do that in a moment.

The Chair: Yes, Mr. Easter?

Hon. Wayne Easter: I don't have a problem with Ms. James's point, if she wants to table this amendment for the time being so that Justice and Public Safety and Transport Canada can have a discussion. But I want to be absolutely sure that there is a discussion, so that there is an alert in place whereby the Canadian Air Transport Security Authority is alerted to these issues. It's only fair and makes sense.

The Chair: Okay, thank you very much.

Ms. James, are you comfortable with your request right now: that the chair will put to the committee, basically postponing it—standing it down until later on?

● (1610)

Ms. Roxanne James: I am comfortable with that. Again, I want to take a look at it more, because this is actually replacing what is currently there. What is currently there refers to the screening of a person before they enter an area—unless I'm in completely the wrong spot, but I think I'm in the right spot—and this is actually the requirement to “alert” of the screening of a person. I don't know whether both would still be required, as distinct from having one replace the other.

Again, I would be very happy, if we can defer this so that I have time to take a look at it, obviously with my colleagues on the committee on this side as well as with the background on this particular amendment.

The Chair: Okay, thank you. The chair is—

Yes, Mr. Garrison?

Mr. Randall Garrison: I assume that what we have is in an effect a motion to table, and we would have to have, I think, a time that we come back to it, perhaps at the end. It's hard to say which...whether it's a section or not, but my understanding was that we were to have officials here who could answer these questions. I haven't gone through that list carefully enough, but I guess that would be my question. Do we not have the officials needed to answer questions such as this about the bill?

The Chair: There is an understanding that we're on clause 11, and clause 11 has a number of amendments all through. Now, we cannot move off clause 11 without having a decision on what we're going to do with it. I would just bring that to the committee's attention. But certainly it can stand down now until after we finish clause 11, on which we have a number of amendments. This should give some time for either research or consideration.

The only thing the chair would ask, and the chair is looking for direction here.... We could have preliminary discussion on the other motions that are presented with respect to this testimony and the recommendations that have come in, so there may be some discussion and some people might want some time to look for clarification, or we can now just table the rest of the three motions until we hit the end.

The chair is looking for a sense of direction on this.

Do you understand where the chair is going?

Hon. Wayne Easter: Yes, I do, Mr. Chair. Procedurally we can't just set aside that one amendment—because I don't think we need to talk to officials on the other amendments that are in this package—but if we have to table the whole of clause 11 to do it, I don't have a problem, just as long as we come back to them at some point.

The Chair: That's fine. We can just take this piece by piece and we'll have a look as it goes. That's all the chair was looking for, a sense of direction.

At this point, then, I obviously have the consent of the committee to stand down amendment 3.1, and we will now go on to amendment 3.2.

Mr. Randall Garrison: I'm sorry, Mr. Chair, until when will it be stood down? Is it until the end of the consideration of clause 11?

The Chair: It's until the end of consideration of clause 11.

Mr. Randall Garrison: Thank you.

The Chair: At that point, we will have to deal with it one way or the other. We'll either have to stand down all of clause 11 and carry on or make a decision on it at that point.

Hon. Wayne Easter: So we're standing down the one that relates to alerting the Canadian Air Transport Security Authority.

The next amendment, then, Mr. Chair—

The Chair: That is amendment 3.2, Mr. Easter, yes.

Hon. Wayne Easter: Yes. The last numbers in the reference number are 367.

The Chair: Okay. I'll just bring that to my colleagues' attention.

The last three numbers of the reference number on your amendment are "367".

Hon. Wayne Easter: This relates to the same witness, Mr. Chair. What it does is add another proposed subsection 9(1.1) that would read:

> to a peace officer must provide such assistance as the air carrier may request when denying a person transportation under paragraph (a)

What witnesses confirmed with us is that in the United States there are procedures to have a law enforcement officer available just in case the situation turns violent. We don't have that in Canada, they indicate. When the passenger protect program came into being in our consultations, that was one of the recommendations that the government elected not to put into place at the time.

If you listen to the government, we are dealing with more volatile individuals than in a normal no-fly situation, and I think it is protection for the airline, protection for the people who work in the airline business, if the air carrier requests that a peace officer be provided for assistance. I therefore support this amendment.

● (1615)

The Chair: Thank you.

Mr. Norlock.

Mr. Rick Norlock: Thank you very much, Mr. Chair.

I'm reluctant to vote yes to this. I think the current arrangement is ample. I'll tell you why.

Currently, most of our airports—for sure the large ones, but most of our airports—are separate entities that operate in municipalities. Some municipalities are policed by the RCMP; for the Greater Toronto Airports Authority, it is Peel Regional Police; in other jurisdictions, it's the Ontario Provincial Police—et cetera.

What this is requiring is to have an officer specifically assigned to duty at an airport. I can think of many small airports at which there might be four or five flights a day. I just think this is creating a burden where one need not be created. There have been no instances in which we have received, to my knowledge...there may be some, but no instances in which there were no officers available during a time of crisis that I can go into detail of—the ones I'm aware of—but there were police officers onsite. And if I remember correctly, the larger airports do have a 24-hour police presence.

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

Now we have Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

What we have heard when we've consulted on this away from this table is that those employees of airlines who are expected to deliver these notices to people are very concerned, because now we're listing not only those who might be a threat to air transportation itself, but those who might be involved in terrorist activities. They have a very large concern about delivering messages to both a larger number of people and a broader group of people.

While I share Mr. Norlock's concern for the practicalities of this, what this says is that they must provide assistance as requested. It does not say there must be 24-hour assistance available at every airport. That's drawing I think the most extreme conclusion you could from this, but I know that there is concern among the staff of the airlines who work at the desks and have to deal with potential anger or, in this case, with plots that people are trying to carry out. Again, we will be supporting this as a reasonable measure to take and as something that is already in place in the United States.

The Chair: Thank you very much.

Now we have Ms. Ablonczy.

Hon. Diane Ablonczy: I have a question for Mr. Garrison.

If there has to be assistance as requested, then clearly you have to be in the vicinity because you have a situation, right? That really does mean 24-hour coverage.

The Chair: Mr. Garrison, and then we'll come back to Mr. Payne and Mr. Norlock.

Mr. Randall Garrison: With respect, most airlines are operating on schedules and know when they'll have flights going from airports, so they don't have them going 24 hours a day. If they're non-scheduled airlines, they will know what their charter schedules are, so they will be able to inform whatever authorities they need to of their schedule. As I said, you can draw the worst conclusion here about resources, but I don't think that necessarily is what will happen in practice.

The Chair: Thank you.

We have Mr. Payne and then Mr. Norlock.

Mr. LaVar Payne: Thank you, Chair.

Just to talk to the smaller airports, I live in Medicine Hat, where there's a smaller airport with four and maybe five flights a day, and certainly there aren't police officers there at all times.

You've talked about the schedule, but I can tell you that in fact in Medicine Hat we have a lot of flights cancelled because the airline isn't doing what it maybe should be doing in terms of getting the passengers to their next destination. It certainly creates an additional problem, obviously, with having to have a peace officer available.

The Chair: Thank you.

Mr. Norlock.

● (1620)

Mr. Rick Norlock: Thank you very much, Mr. Chair.

I thank Mr. Garrison for some of his thought processes there. That got my thought processes going. In any of these consultations that he's done, I wonder if he's ever heard of a police department that refused to or that didn't send a police officer upon request.

I cannot think of any police department in the Dominion of Canada that, when asked for assistance in order to have people “keep the peace and be of good behaviour” would have said, “No, we're not coming.” They may have said that they couldn't come right away and would be there in a few minutes, but my experience in policing, although it's limited to Ontario, is that this would be a legitimate call for assistance and that it would be fulfilled.

I can understand that where we want to put everything in writing, well, then, I think it would be too much to handle. Really, I cannot see where a police department, when called by an airline that's saying they're going to give a person some bad news and their clerk or assistant is very concerned for her or his safety.... I'm sure they would send a police officer.

The Chair: Thank you very much.

Mr. Easter.

Hon. Wayne Easter: I find the resistance of the government members a little strange on this one. Simply put, if you have an individual who is on the no-fly list as a result of this legislation, or in other words, you're worried about potential terrorist activities.... As you know, most areas have police departments not too far away from an airport.

All the airline industry is asking for here is that when they need assistance, they can request that assistance. You have these individuals who are coming up and are told they can't on the flight to where they intended to go. If they're potential terrorists, as the legislation claims, then I certainly think that the government would be suggesting that it would do all it can to assist and to ensure that for regular staffers, who are not trained to defend themselves, there would be a peace officer present. It's a simple enough request.

The Chair: Thank you very much.

Okay. No further discussion? All—

Oh, excuse me. Yes, Ms. James?

Ms. Roxanne James: I'm going to take out this page so I can see it front on. On this particular section, the government made an amendment to this already to remove “to do anything that, in the Minister's opinion...”. But for this particular direction, these points that we're discussing right now, this says “may make directions respecting, in particular....”, so this is not something that would be mandated or that would be an absolute requirement. Is the way I'm reading this correct?

Mr. Ari Slatkoff (Senior Counsel, Public Safety Canada, Department of Justice): No. As I understand it, this would be a separate provision, under 1.1. What the member was just reading—

Ms. Roxanne James: Okay.

Mr. Ari Slatkoff: —was proposed subsection 9(1), which creates a power for the minister to “direct an air carrier to do” something “reasonable and necessary”.

The proposed subsection 9(1.1) would be a new requirement for peace officers to provide assistance to air carriers if the direction is made.

Ms. Roxanne James: We've heard some comments on this side that there are some airports where a peace officer may not actually be there 24-7. Is there a cost associated with putting law enforcement in all of these locations for smaller aircraft?

Mr. John Davies: Absolutely, and I think it would depend on the situation and on how that jurisdiction was managed in terms of law enforcement.

I would like to clarify, though, that obviously if someone is dangerous and is showing up in an airport, law enforcement and intelligence agencies often would be aware of that and would plan accordingly.

Also, what happens at the gate is that there's a call into Transport Canada's operations centre and they're wired immediately into law enforcement across the country. It's not like the person at the gate is talking, or necessarily making that person who could be on the list uneasy, or creating any kind of conflict or drama there. There may be discussion with the Transport Canada operations centre about what to do and how to respond.

● (1625)

Ms. Roxanne James: So that's the process that's currently in place right now? Okay. Thank you. Got it.

The Chair: Thank you.

We will now go to the vote on Liberal amendment 3.2.

(Amendment negatived)

The Chair: Colleagues, we will now go to the Green Party's amendment 16.

Mr. Bruce Hyer: Thank you, Mr. Chair.

This amendment adds the words “respecting transportation security”, which would allow the minister to share only the information related directly to transport security, not any or all information of suspected persons.

The Chair: Thank you very much.

Yes, Ms. James.

Ms. Roxanne James: That slightly goes against the purpose of creating the secure air travel act. Obviously, we want to be able to deal not only with those who are an imminent threat but also those who are possibly travelling to engage in terrorism, training, and those sorts of things. I will be opposing this amendment.

The Chair: Thank you.

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

The Chair: Thank you.

You're up again, Mr. Hyer, on Green Party-17.

Mr. Bruce Hyer: This amendment would instruct minister to give the Privacy Commissioner a copy of any arrangements that he or she enters into with any foreign country with regard to the exchange of information for transportation security. By making it so that you can't just enter into agreements with anyone over anything, this will help accountability by providing that information to the Privacy Commissioner.

The Chair: Thank you, Mr. Hyer.

Mr. Payne.

Mr. LaVar Payne: Thank you, Chair. We've talked about this before in terms of the Privacy Commissioner. They have a right, obviously, to investigate any complaints and conduct audits, etc., so the Privacy Act already protects individuals. I see this as redundant. I can't support this.

The Chair: Thank you.

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

The Chair: Now we have Green Party-18.

Mr. Hyer.

Mr. Bruce Hyer: This amendment deletes the words "within 60 days after the day on which they are denied transportation". It deletes the 60-day deadline for applying for appeals.

People may not even know at first that they're on the list. There should be no deadline for appeals. People may not find out until day 59 or day 70 or day 80 that they're even on the list, and then they have no opportunity for appeal.

Why would we want to have a deadline on appeals?

The Chair: Thank you.

Mr. Falk.

Mr. Ted Falk: Thank you, Mr. Chair.

What Mr. Hyer says is not accurate.

The act specifically says that the day they were denied is when the 60-day period starts. They would have had full understanding that they were denied transportation. Sixty days is a reasonable amount of time, and in unusual circumstances the minister has the ability to grant an exception.

The Chair: Thank you very much.

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

The Chair: Now we have Green Party number 19.

Yes, Mr. Hyer.

Mr. Bruce Hyer: The no-fly list is scheduled to be reviewed every 90 days within this act, with no provisions for expedited processes in extreme circumstances. This amendment will allow people to apply for a quicker review process to take place within a 15-day period. For example, let's say you have a death in the family and you don't know you're on the no-fly list; you'd be held up now for up to 90 days.

The Chair: Thank you, Mr. Hyer.

Yes, Ms. Ablonczy.

Hon. Diane Ablonczy: It seems to me that 15 days would result in a very rushed process for the minister. The minister would not able to gather all the information and make a well-considered decision. The 90 days is a reasonable timeframe, and it also allows the applicant to apply for judicial review.

I think that trying to rush this process through without proper time to consider all the factors would not be in the best interests of any individual.

● (1630)

The Chair: Thank you.

Yes, Mr. Easter.

Hon. Wayne Easter: I do think there are exceptional circumstances, Mr. Chair, and I'll be supporting this.

However, there is a problem with the appeal process in totality, and that is that it isn't really an appeal process at all. The obligation is on the wrong individual. If the minister doesn't respond within 90 days, you're still on the list. There should be an obligation on the part of the minister to have to respond. If there isn't, it's really not an appeal process where the minister has to do anything. That's part of the problem.

There is an amendment to that effect later, but I do believe you'll run into situations—it's natural that these would happen—where there are exceptional circumstances, where family dies or whatever. There should be a way for individuals to try to deal with that.

The Chair: Thank you, Mr. Easter.

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

Mr. Chair: Now we'll go to NDP-9.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

We have a few amendments that will be coming forward that deal with the so-called appeal process and the no-fly list.

I think the problem we have is that for someone who ends up on it for incorrect reasons, because of incorrect information or because of a similarity of name or birthdate, it's very difficult to find out how you got on that list and the reasons why. There may be good security reasons for that, but at the appeal level—at least once you've challenged it—you need to know what you're appealing. This amendment would require that in the case of an appeal, the appellant receive reasons for that decision.

Now, that does not mean those reasons have to be the whole file. It doesn't say that at all; it's just the the reason for that. In the absence of that, it's very difficult for people to make sense out of what's happening with them if they end up on the no-fly list.

It seems a basic part of fundamental justice that you have to provide reasons for decisions at some point. I am granting that we're doing this at the appeal level. We're not doing this when someone is listed; you send him a notice and say he's listed for the following reasons.

When someone says "I don't understand this and how this can be working", and they get no reason for it, except "Well, we're right; you're wrong", I think this will facilitate making this a real appeal process, along with some of the other things that are coming up here.

The Chair: Thank you.

Yes, Ms. James.

Ms. Roxanne James: To my understanding, the current practice is that the individual is informed.

I'll maybe look to the officials to clarify it in better English than I can put it.

Ms. Ritu Banerjee: In the current situation, if an individual has been denied boarding they're notified. Then they're given an opportunity to provide additional information. The minister does provide an unclassified summary of the reasons why that individual has been denied boarding. After that period of going back and forth, if the individual is not satisfied with the situation they can seek a judicial review before the Federal Court.

We're basically emulating and codifying what the current practice is. Yes, currently an individual is provided the reasons why they're denied boarding.

The Chair: Thank you.

Yes, Mr. Garrison.

Mr. Randall Garrison: Just to make sure I'm understanding clearly, because that's what I thought we thought we were doing here, currently there is no requirement for the minister to do that. This simply puts into the law what is the current practice.

Ms. Ritu Banerjee: Do you want the view from a Justice perspective...?

We obviously believe there is a necessity to do it, and that's why we're doing it.

Mr. Randall Garrison: But it is not written in the statute anywhere.

Ms. Ritu Banerjee: That's correct.

Mr. Randall Garrison: Thank you.

The Chair: Thank you, Mr. Garrison.

Yes, Mr. Easter.

Hon. Wayne Easter: I mean, if that's the case, and that is the practice, then there's really no negative implication on this amendment whatsoever. It just makes sense to put it in.

I expect that the government members will be onside with current practice, certainly.

● (1635)

The Chair: Thank you, Mr. Easter.

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

The Chair: We will now go to Green Party amendment 20.

I'll bring it to your attention that if PV-20 is adopted, then NDP-10 and LIB-4 cannot be moved.

On amendment PV-20, please.

Mr. Bruce Hyer: Thank you, Mr. Chair.

Given that this concept seems to have been rejected it may be a moot point, but this amendment is also dealing with deleting the 60-day deadline for applying for appeals.

I've also acquired this tendency toward hope, so we'll see what happens here.

The Chair: Thank you very much.

Is there discussion?

Yes, Ms. Ablonczy.

Hon. Diane Ablonczy: I think there's an unintended consequence here of this amendment. As I read the amendment, it would remove the obligation of the minister to respond to an individual within 90 days. This means that if the minister doesn't respond to the individual, then the individual can't go to court and try to get himself removed from the list. Surely we wouldn't want to put an individual in limbo like that. I don't think this is a well-thought-out amendment.

Maybe we should ask the officials if that's a correct interpretation.

Mr. John Davies: Yes, I believe that's correct.

The Chair: Thank you very much.

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

The Chair: We'll move now to NDP-10.

The chair notes that if this amendment is moved, then LIB-4 cannot be moved, as it is identical.

We will now go to NDP amendment 10.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

This is one of those aspects of the current no-fly list that some have described as Kafkaesque, because if you don't hear anything, then you're deemed to have decided that you're still on the list. It's very difficult for anybody to deal with a deemed to have decided that you're still there. It would seem, if it's to be a real appeal process, that the lack of action from the minister on something, which ordinarily would be considered very important, then should be deemed to have decided to remove the person from the list.

In other words, if they're actually a threat, then that requires action from the minister. We're really reversing the onus here in the appeal process.

The Chair: Thank you.

Mr. Easter, then Mr. Payne.

Hon. Wayne Easter: Mr. Chair, I think you'll note that both these amendments are identical.

It just goes to show that great minds think alike. We'll see if the minds on the other side think alike as well.

The Chair: There's no debate there, Mr. Easter. Carry on.

Hon. Wayne Easter: There's no debate; they do.

If you read the section, Mr. Chair, this is an absolutely convoluted appeal process. It reads an appeal process in law that is upside down and backwards, if I could say so. If the minister does not make a decision with respect to the application within 90 days, the minister —and it goes through the wording “the application is received”—is deemed to have decided not to remove the applicant's name from the list. It's backwards.

The minister should have an obligation to respond to appeal, not to be lackadaisical and not respond and carry on forever and a day. This is not due justice and not fair, and I appeal to the government on this one. For Heaven's sake, let's have a proper appeal process and not a farce.

The Chair: Thank you.

Mr. Payne.

Mr. LaVar Payne: I take offence to that, Mr. Easter.

Hon. Wayne Easter: I don't care.

Mr. LaVar Payne: I knew you wouldn't; sometimes your earlier comment also has another ending, but I won't suggest that at this point.

I believe this amendment would significantly undermine the integrity of the passenger protect program. Robust measures are already in place. I see this as a very risky move, and by default that certainly would have potential major impacts, in my view.

I'd like to ask the officials for their comments on this.

● (1640)

Mr. Ari Slatkoff: There may be many reasons why the government's not able to make a decision within 90 days, and the purpose of the 90-day provision is to make sure individuals have prompt access to the courts if the government is not making a decision within that timeframe. A lot of it can have to do with availability of information that is covered by national security privilege. It may come from third parties outside Canada. There could be ongoing investigations, for example. So there may be situations in which the minister simply cannot make a decision and issue reasons. At that point the person can petition the courts for a remedy.

The Chair: Thank you very much.

Mr. Easter.

Hon. Wayne Easter: Mr. Chair, I can't accept that argument. You have people's lives, and there is no question in my mind we've seen innocence already caught on no-fly lists. There has to be some obligation on the government somewhere to get into a court process. It's great to get into that process if you have lots of money, but it's a lengthy process, delays in court. There has to be the obligation somewhere in this appeal process to respect individuals' rights and their need to at least have a response from the minister as to why they continue to be on this list.

The Chair: Fine, thank you very much. There's nothing further?

I'm so sorry; I have a couple more here.

Ms. James.

Ms. Roxanne James: Thank you.

I think that Mr. Easter is jumping the gun slightly. The section we're dealing with deals with the application to the minister. It's not the appeals process as yet. Based on the 90-day period, that's the trigger where someone may do the appeal process. The officials have clarified that there are a number of reasons—I think we can all think of some—why there may not be a response within that timeframe. So this is giving the benefit of the doubt to the person so they can move forward with the appeal. Otherwise, as you or someone stated, they could be in limbo for an unspecified period of time. So I'm not going to be supporting this amendment either.

The Chair: Fine, thank you.

Mr. Payne.

Mr. LaVar Payne: Thank you, Mr. Chair.

Our colleague talks about the inconvenience to individuals. I would ask him to think about the case where one of these deemed individuals got off the list and happened to create a major catastrophe. To me there's a protection in this particular piece of legislation. So I won't be supporting the amendment.

Thank you.

The Chair: Thank you very much.

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

The Chair: We will now go to Green Party number 21.

Mr. Bruce Hyer: Thank you, Mr. Chair.

Under section 15 if the crown is unreasonable, the judge says "may". This amendment proposes changing the word "may" to "must". If the judge finds that the reasons a person is listed are unreasonable, the judge must remove them from the no-fly list—not "may". Why would he or she have a choice after deciding the original decision was unreasonable?

The Chair: Thank you.

Mr. Norlock.

Mr. Rick Norlock: Thank you very much, Mr. Chair.

The intent of this provision is to give judges flexibility in granting a remedy on appeal. In some cases the court may consider it more appropriate to send the matter back to the minister for remedial action. This could happen, for example, where significant new information was presented since the original decision, or there has been a procedural irregularity. In these cases there's a strong public interest in maintaining the person on the list until the minister reconsiders the decision. The government therefore cannot support this legislation.

The Chair: Thank you very much.

Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

In this case I agree 100% with Mr. Norlock. There are two aspects here. One is preserving the discretion of the judge who will have the full information in front of him, and the other is the features that Mr. Norlock named, that while an appeal goes through the process and the original reason for listing someone may have been unreasonable, additional information may be available to the judge. So I think it's important that we preserve that discretion for the judge who will have the most recent and full information.

● (1645)

The Chair: Thank you, Mr. Garrison.

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

The Chair: We will now go to Green Party number 22.

Mr. Bruce Hyer: Thank you, Mr. Chair.

This would delete the following: "The judge may receive into evidence anything that, in the judge's opinion, is reliable and appropriate, even if it is inadmissible in a court of law, and may base a decision on that evidence".

This amendment would delete the lines that allow evidence that would not be allowed in a court of law.

The Chair: Thank you.

Mr. Norlock.

Mr. Rick Norlock: I believe the provision in Bill C-51 would allow the presiding judge to see all information relevant to the government's actions while still protecting sensitive information from public disclosure. The provision ensures fairness to the applicant while giving judges flexibility to consider information from a variety of sources. There is no reason to limit the judge's discretion in the manner proposed by this amendment.

The Chair: Thank you very much.

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

The Chair: We will now go to NDP-11. The chair notes that if number 11 is adopted, Green Party 23 cannot be moved.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

We find our party in a somewhat unusual circumstance here in that generally we feel that the special advocate process is deficient, but it's better than no process. So in this case when someone is in court and information needs to be kept from the public for security reasons —we accept that does happen—it's important that someone be there. If we're having a court process, there have to be two sides to that process, and without someone there on the other side it violates the basic way we do things in our court system. So the judge is the neutral arbiter of the two sides of the case. We're suggesting that in those cases when it affects national security and you can't share it with that person, a special advocate should be appointed to protect the interests of the appellant and to make it a two-sided case before the judge.

The Chair: Thank you very much.

Mr. Falk.

Mr. Ted Falk: Thank you, Mr. Chair.

That process is commonly available to immigration and refugee applicants, but the interests affected by immigration proceedings are different from those affecting the passenger protect program, because in immigration proceedings people are subject to detention and deportation. The ability to use commercial aviation at a certain point does not rise to the same level of need for an advocate.

The Chair: Thank you.

Is there further discussion?

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

The Chair: We will now go to Green Party-23.

Mr. Bruce Hyer: Thank you, Mr. Chair.

This is similar. This amendment adds a requirement for special advocates to be appointed when reviewing evidence that cannot be shown to the accused because of national security reasons, real or alleged. Basically, it says that at the end of the day we don't end up with secret evidence.

The Chair: Thank you.

Mr. Falk.

Mr. Ted Falk: For the same reasons that I spoke to the previous amendment, I would again not be inclined to support this amendment.

The Chair: Thank you very much.

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

The Chair: We will now go to LIB-4.1.

Hon. Wayne Easter: Mr. Chair, this was a request by the airline association, and because I said what I did at committee, I put it forward.

In the legislation as it's worded now, the fine is $500,000, which does seem fairly substantial for some of the smaller airlines especially. They have suggested that what they would like to see is $250,000. That reduces it to a more reasonable level for some of the smaller airlines in the industry.

I put that forward.

● (1650)

The Chair: Thank you very much.

Is there further discussion?

Ms. James.

Ms. Roxanne James: Thank you.

This fine is for extremely serious breaches. This would not be a fine that would be applicable to someone who has made an error through no fault of their own. The offence here—possibly I'll get the officials to talk more about why it was set at that amount and what it would apply to—is obviously something that I believe would be willfully done, because of the serious breach and the seriousness of it.

Perhaps the officials can explain that a little better.

Mr. John Davies: I'll just say that I think the current penalty is prescribed in regulations. It hasn't been updated in a long time.

As you've said, it's important to get the incentives right, given the seriousness of the offence.

Hon. Wayne Easter: The current penalty is $500,000?

Mr. John Davies: No. In the amendment to the act it's at $500,000. The current one is much lower. I'm not sure....

Hon. Wayne Easter: What is the current one?

Mr. John Davies: We'll have to get back to you on that.

Hon. Wayne Easter: What is in this bill, then, is an increase from what the current penalty is.

Mr. John Davies: That's right.

Hon. Wayne Easter: Can the officials give us any indication of how often that fine has been levied?

Mr. John Davies: I'm not able to do that. We may be able to find the fine for you; we're just going through the regs.

Again, Transport Canada would have to give you a bit more of the history on how many times that fine has been used.

Mr. Ari Slatkoff: If I can add to that, though, in answer to the member's question, this is for the most serious offence in the act. That is the offence in proposed section 22, which is wilful obstruction of a person "exercising or performing their powers, duties or functions under this Act". It's not just a failure to verify somebody's identity at the gate properly. It's wilful obstruction: destroying documents, concealing evidence, and things of that nature.

Hon. Wayne Easter: You don't have the figure of what the current fine is yet?

Mr. Ari Slatkoff: No, but I understand, having been involved in drafting this, that the current fine has not been updated in quite some time.

The Chair: Thank you very much.

Madam Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: I had some questions for the officials and they were answered. Thank you.

The Chair: Thank you.

[*English*]

All in favour?

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

The Chair: We will now go to Green Party-24.

Mr. Bruce Hyer: Mr. Chair, could you clarify—

The Chair: Excuse me. We do have one more Liberal amendment before that.

My apologies, Mr. Easter. I do have you here.

Hon. Wayne Easter: Now it's page 23, Mr. Chair, pages 21 to 23.

The Chair: No....

Hon. Wayne Easter: Okay, you're right. Thank God, Mr. Chair, you're right.

Voices: Oh, oh!

Hon. Wayne Easter: You're a good man.

The Chair: This would be the one with reference number 515.

Is that correct?

Hon. Wayne Easter: Yes. Thank you.

The Chair: You have the floor, Mr. Easter.

Hon. Wayne Easter: The amendment really relates to the previous question. Again, it comes from the airline industry. As we indicated, they were the last witness. They were concerned about due diligence, that it could be implied that they didn't do due diligence. I guess it is actually lessening that threshold, which would be a good way to put it.

The Chair: Thank you very much for the comment.

Ms. James.

Ms. Roxanne James: Thank you.

I think most airlines would know what due diligence is.

The fact that this amendment specifically says the "established due diligence" would indicate there would have to be some sort of...I don't want to say "bureaucracy" behind it. The word "established" actually infers that it would be something that would be all encompassing and describe exactly what specific due diligence means. Obviously, different situations call for different ways to deter that from happening.

I won't be supporting this amendment for some of those reasons. I think when we talk about this particular section, we're talking about due diligence. I think the airlines know what that means. I don't think we need to create a huge bureaucracy behind us and make it established.

● (1655)

The Chair: Thank you very much.

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

The Chair: We will now go to Green Party number 24.

Mr. Bruce Hyer: Amendment number 24 adds the requirement that documents removed or inspected by the minister be related to the inspection directly of a suspected person, not just any other document or thing like a laptop or a cellphone in the vicinity of a suspected person in an airplane.

We are concerned, and others have told us they are concerned, that this could lead to a kind of wholesale collection of cellphones and laptops on an airplane where there's one potential suspect.

The Chair: Thank you very much.

Is there any discussion?

Ms. Ablonczy.

Hon. Diane Ablonczy: As I read the section now, the inspection is not having anything to do with lists of personal information. The inspections have to do with ensuring that the carriers are complying with all of the provisions of the act.

It's not focused on people's personal information. It's focused on the due diligence—did I just use that word, Mr. Easter?—of the airlines.

Hon. Wayne Easter: Good for you.

Hon. Diane Ablonczy: I don't see the necessity for this amendment because the stated purpose of the amendment is not the purpose of the inspections.

The Chair: Thank you very much.

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

The Chair: Mr. Hyer, now we will go to number 25, sir.

Mr. Bruce Hyer: Mr. Chair, amendment 25 is very similar. It adds the requirement that data processing systems removed or inspected by the minister be related to the inspection of a suspected person, not just any document or thing in the vicinity of that person in the airplane.

The Chair: Thank you very much.

Yes, Ms. Ablonczy.

Hon. Diane Ablonczy: Again, the inspections are not directed toward people; they are directed toward the airlines.

The Chair: Thank you.

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

The Chair: We will now go to NDP-12.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

This is a similar amendment to one we considered at the beginning of our discussion of this clause, where we actually supported the minister having quite strong powers in the case of an imminent security threat.

I'm expecting the same outcome of the vote, since it's the same principle, so I won't belabour the discussion of this one.

The Chair: Thank you very much. Seeing no further discussion, all in favour?

Hon. Wayne Easter: Mr. Chair, I have a question.

The Chair: Yes, Mr. Easter. Go ahead.

Hon. Wayne Easter: You can rule me out of order if it's not related to this section. The Canadian Bar Association, when they were before the committee, said a person may be denied travel based on a mere possibility of risk determined by an unknown person and using unknown and untested criteria. That relates to this whole section. Can officials comment on that observation. I neglected to ask it earlier. I had it in my notes. But that's a pretty broad claim by the Canadian Bar Association. They're not a small group. They're basically saying that you could be denied travel based on the mere possibility of risk. What are the parameters?

● (1700)

Mr. John Davies: I think we discussed this earlier. The threshold is reasonable grounds to suspect that an individual would be a threat to transportation security or the other provisions in the act linked to terrorist travel that are defined in the Criminal Code. So it's reasonable grounds to suspect.

Hon. Wayne Easter: Okay, thank you, Mr. Chair.

The Chair: Thank you very much and we will now go to the vote.

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

The Chair: Green Party number 26.

Mr. Bruce Hyer: Thank you, Mr. Chair.

This amendment clarifies that the exact criteria for appearing on, or removal from, the no-fly list are posted and thus not vague, arbitrary, or secret but instead enforceable and accountable.

The Chair: Thank you very much. Is there any discussion?

Mr. Payne.

Mr. LaVar Payne: Thank you, Chair.

Proposed section 8 of the secure air travel act explicitly lays out conditions and requirements for placing or deleting a person's name from the list. The requirements are sufficient in legislation to cover how the Minister of Public Safety will add or delete an individual's name. So I can't support this.

The Chair: Thank you very much.

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

The Chair: Now NDP amendment number 13, and here I would note Green Party-27 could not be deemed to be moved if NDP-13 is adopted.

Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

In this portion of the bill we're making a very major change to the no-fly list by adding to the no-fly list those who intend to travel for broader terrorist purposes. As the government has noted many times, terror threats have been shifting very rapidly over time. So the amendment would do the same thing we suggested previously, that it would be a good idea if we sunsetted these clauses after the third year, with a requirement that the House of Commons undertake a study and make a recommendation to the House on whether or not these provisions should be extended beyond that third year. This gives us a chance to review how effective the legislation has been and, if it's not effective, to look at the reasons why it's not effective and make any further changes that might need to be made. So, again, as we go through the sections, we're suggesting the same for each of these portions where we are making large changes. I would hope that the government would be willing to look at a review in two years and a sunset in three years.

Thank you.

The Chair: Fine, thank you very much, Mr. Garrison.

We have Mr. Norlock.

Mr. Rick Norlock: Thank you very much, Mr. Chair.

The passenger protect program has been in existence since 2007. The government committed to enhancing the passenger protect program as a part of its response to the final report of the Air India inquiry. The proposed secure air travel act would provide a more solid legislative foundation for the passenger protect program and would reflect the new mandate under the purview of the Minister of Public Safety. The legislation provides strong safeguards, such as privacy protections, and more streamlined judicial review mechanisms. The bill also includes privacy safeguards, such as clear prohibitions on the disclosure of information except for specific purposes.

Mr. Chair, I believe that's sufficient to support the current legislation and not the amendment.

The Chair: Thank you very much.

Yes, Mr. Easter.

Hon. Wayne Easter: I really don't know how Mr. Norlock derives from that his support for the current legislation. We're willing to support many aspects of the current legislation, but the sunset clause proposed here and elsewhere is that there be a dedicated time period for when these laws end, thereby giving some confidence to society that any overburdensome aspect of this law will not be in place and Parliament has the right to look at it and reintroduce it if it so decides.

I note that Mr. Norlock picks and chooses. I agree with the Air India recommendation here in both the sharing of information and this aspect of the bill, but there's also a part of the Air India recommendations that talks about oversight and review, which the government is constantly resisting. So if we're going to bring up the bill in one area based on the Air India recommendations, we should be bringing it up in others.

I'll stop before you rule me out of order.

● (1705)

The Chair: I was just about to do that, Mr. Easter. Your timing is impeccable. We will now go to Mr. Norlock, please.

Mr. Rick Norlock: Thank you very much.

We all pick and choose, to answer my friend across the way. Throwing a little potshot, as he is wont to do very often and being holier than thou, I don't think is incumbent on any of us. We do pick and choose here. We choose the amendments or not because we feel they are either enhancing the legislation or they're not. I don't want to cast aspersions. If it's so bad, then I'm sure the honourable member will be voting against it because he doesn't speak very positively about it. We can do these things or we can...but casting aspersions about other people isn't becoming, I don't think.

The Chair: Let's go back to the vote on this bill.

Yes. Ms. Ablonczy.

Hon. Diane Ablonczy: I was on the list, wasn't I?

The Chair: Yes, I thought so but I thought I had you before, that's why....

Please go ahead.

Hon. Diane Ablonczy: I think it's important to say this. We have to keep our eye on the big picture. The big picture is that we have a terrorist force spreading across the globe, starting in the Middle East, but certainly their tentacles have reached into developed countries such as Canada, but also Denmark and Australia and France, and we have to have a regime that can push back and protect Canadians against this kind of incursion.

If anyone on the other side seriously believes that this threat is going to somehow magically dissipate in three years, they are badly mistaken and did not listen to the intelligence experts we heard in front of this committee. If we put a regime in place and then say it's a short-term thing, that in three years it will be gone, how are our security forces supposed to operate if they are not sure exactly what's going to happen?

If the regime needs to be changed in some way, then Parliament is entrusted with doing that and will do so. But to say that all of a sudden we fall off the edge of the cliff in three years with respect to our security regime would send a very bad signal, and it is not the right way to go about the business of protecting Canadians. Tweaks are necessary. They will happen, but to just say there's going to be a chop-off date in three years is a very bad strategy.

The Chair: Thank you very much.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I would like to remind my colleague, Ms. Ablonczy, that we proposed something similar for clause 2. We proposed a sunset clause with a review. It will not be chaos. After three years, parliamentarians do a review. I think that everyone around this table acknowledges that there is a terrorist threat. I think it is a bit of a stretch to say that the official opposition does not take this seriously.

People on the other side of the table may change their mind when they learn that there would be a review after three years. This is extremely important. As parliamentarians, we have a duty to ensure that the bill achieves its objectives.

[*English*]

Hon. Diane Ablonczy: Sunset, sunset, not review.

[*Translation*]

Ms. Rosane Doré Lefebvre: It is a sunset clause that would provide for a review. I suggest that my colleague reread the amendment and she might change her mind. I think it's important for parliamentarians to do a good job. This review would enable us, after three years, to see whether Bill C-51 worked well or if changes are needed. At the end of the day, it is up to us to ensure that what we did worked well.

I think it would be honourable if the government were to change its position on this amendment, which I think is perfectly reasonable, in light of the scope of the bill, and more specifically clause 11.

[*English*]

The Chair: Thank you very much for the debate.

Yes, Ms. James.

● (1710)

Ms. Roxanne James: Thank you.

Just as a reminder once again, Parliament, government, and committees can review legislation at any point in time, as my colleague Ms. Ablonczy just said. I think she has it exactly right. As we have seen since the first Anti-terrorism Act, our government has brought forward a number of measures to further secure Canada and to protect Canadians. That's probably what will happen in the future as well, if we see there's a need to make amendments to this legislation to better protect Canadians. If we find that we need to enact a new act with new tools for law enforcement, that's certainly what the government of the day will do. It's what I know I would do if I were a part of the government, and I think my colleague Ms. Ablonczy has said it completely correctly.

The Chair: Thank you.

We will now call for the vote on NDP-13.

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

The Chair: We will now go to Green Party-27.

Mr. Bruce Hyer: Thank you, Mr. Chair.

Mr. Chair, anti-terrorism legislation has a tendency to ramp up and not back down once the perceived threat is reduced. As we know, there was a reasonable sunset clause on many parts of the Liberal anti-terrorism legislation inspired by the 9/11 twin towers attacks.

The war on terrorism is a very unusual war that can appear to have no peace in sight in the future, so I urge this committee to please consider some sort of sunset clause.

The Chair: Thank you, Mr. Hyer.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you very much, Mr. Chair.

I thank my colleague, Mr. Hyer, for his proposal.

It is similar to the one Ms. May presented for clause 2, I believe. I must say that I unfortunately cannot support this amendment. As with the other sunset clause proposal that was presented, there is nothing to go along with it. As an elected official, I think it's extremely important for us to do a review. That's what we proposed when we suggested the sunset clause we just discussed. That was amendment NDP-13.

Since it doesn't necessarily have a concrete objective, I will vote against this amendment.

[*English*]

The Chair: Thank you very much.

Mr. Norlock.

Mr. Rick Norlock: Thank you very much, Mr. Chair.

I won't repeat what I said with regard to NDP-13, except to say that I hope that the threat of terrorism goes away tomorrow, but I believe that when this act is no longer needed and becomes redundant, I am sure that our elected officials in Parliament, no matter who they are, would review any of the legislation if it isn't needed or acted upon. Until that occurs, I think we need legislation such as Bill C-51 to make sure that Canadians are afforded the best safety possible in a world that's very insecure.

The Chair: Thank you, Mr. Norlock.

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

The Chair: Colleagues, Green Party-28 will not be moved as it is identical.

Now, colleagues, we are at the end of clause 11. We have to do one of two things here: either we go back and deal with Liberal amendment 3.1 and/or we have to table all of clause 11 until we deal with LIB-3.1 later. The Chair is looking for a sense of direction as to where we want to go on that.

Yes, Ms. James.

Ms. Roxanne James: I am hoping that we do not save this until the end. I had a bit of clarification from some of our people. I also wanted to ask the officials for clarification on whether this amendment is actually needed.

With regard to what we heard from the testimony....

The Chair: We are not going to debate it now.

Ms. Roxanne James: Okay, my apologies.

The Chair: We just need to know whether we are going to deal with it now or later. That is the only direction the chair needs.

● (1715)

Ms. Roxanne James: On this side, I'm okay to deal with it now.

The Chair: Are we comfortable with that? Fine.

We will then deal with Liberal amendment 3.1. It is one of the suggested amendments that came from the airlines.

Ms. James, you have the floor.

Ms. Roxanne James: Thank you, Mr. Chair.

With regard to the Canadian Air Transport Security Authority, it is my understanding that they don't have the power of arrest. Notifying them that somebody is being screened would not in fact have any real effect on this legislation.

I wanted to get some clarification. You mentioned that one of the officials had said earlier that on initial thought he didn't think it was necessary. I believe that is what he said. If someone were to notify CATSA, you had indicated that's something that likely already takes place. Would we need to legislate this now and incorporate it into the legislation?

Mr. John Davies: We've been able to discuss this with our Transport colleagues. They do not believe legislation is necessary. If required, something like that could be done in regulation.

Ms. Roxanne James: Thank you.

The Chair: Thank you for the discussion.

Mr. Easter, go ahead.

Hon. Wayne Easter: We are dealing with a real problem here, Mr. Chair, when you have an omnibus bill of this nature and the airlines, at least the two that were before us, were not consulted. I do see that as a major problem. The officials may not see it as necessary, but when witnesses who are in the industry come before this committee—they are not in the Ottawa bubble—and claim they would like to be alerted, then I really think we ought to listen to that.

I will ask officials the question. You claim you can put it in regulation, but if this paragraph were in the bill, would it do any damage to the intent of the bill? I think it would be a good thing for us to satisfy the airlines that they are going to be alerted. Would it damage the bill to insert this paragraph in it? Is it going to jeopardize anything? I am suggesting that we put it in, for greater certainty, if you want to call it that, and to recognise that they raised a concern and we as parliamentarians are recognizing it.

Mr. John Davies: A lot of work and a very long time went into developing the bill with Transport Canada and with all the national security communities. It was not recommended that this go into the bill. One issue that you would have is that on international inbound flights, CATSA has no authority. You would have to be very careful how you drafted that. I think much more work would be needed before we put something like this in legislation.

Hon. Wayne Easter: I am going to make a suggestion, Mr. Chair, and I hope the Justice officials take it seriously. Next time they draft a bill, talk to the airlines. That would be sensible, in my view.

The Chair: Thank you very much. We will now go to the vote on Liberal amendment 3.1.

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

The Chair: Okay, colleagues, so now we have the vote on clause 11. As amended, shall clause 11 carry?

Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I'd like to speak. Now that we look at the clauses and the very small changes made, we will be voting against this clause. I think what we're left with here is a colloquial no-fly list. It doesn't have a real appeal process for those who are inadvertently caught in it.

I know that the government likes to emphasize the dangers of those who are legitimately on the list, but for those like others I've talked to who end up inadvertently on the list because they have the name “Smith” or the ethnic equivalent of “Smith”, it can be very costly. It can be costly for their family, for missing family events. I know of at least one case where someone, through an error, missed an important family event. Or, it can cost in in terms of business.

One person I talked to—and I have every reason to believe their story—flew from Toronto to Vancouver but was not allowed to board a connecting flight, because at that point, someone noticed a similarity between their name and someone else on the list. The person was denied boarding, and when they turned around to fly back to Toronto, of course the people said they couldn't board a plane because they were a security risk.

So you end up with these very odd situations.

I think it's incumbent upon us to make sure we have a workable, quick, and fair appeal process that protects ordinary citizens who, through no fault of their own, are caught in the web, one that does not cost them in family or business terms.

For that reason, we'll be voting against the clause.

● (1720)

The Chair: Thank you very much.

[*Translation*]

Ms. Doré Lefebvre, you have the floor.

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I don't want to revisit what my colleague just said. I completely agree with Mr. Garrison with respect to the no-fly list and all of the problems it is currently causing. I think the government could have made some concessions and listened to some of the witnesses' suggestions and concerns on this topic.

I wanted to quickly touch on the sunset clauses with review proposed by our party. We discussed this twice, for clause 2 and clause 11. I know that it was commonly used by previous governments—Liberal or otherwise. I also noted that in a number of their bills, the Conservatives added sunset clauses with review.

I am not exactly sure what changed with the introduction of this bill. Why did the Conservative majority decide not to provide for a mandatory review of the provisions that will be passed? In my humble opinion, it shows a lack of judgment on the part of a responsible government to not review the provisions of a law and their concrete impact on the lives of Canadians and ordinary citizens.

I therefore hope that the Conservatives will reconsider their position in the near future. If other amendments are presented, I hope that they will remember that they have already presented this type of provision in the past.

[*English*]

The Chair: Thank you very much.

Yes, Mr. Easter.

Hon. Wayne Easter: Mr. Chair, we're trying to be supportive of a bill that I believe we need to put in place greater security measures. There are some aspects of this bill...and I've outlined a number of amendments here by people in the industry. Having an appeal process that is a real appeal process would be nice.

The government continues to resist for reasons that, I say, are not that good.

It's difficult to be supportive of legislation when I think the government fails to recognize some pretty decent amendments that would not in any way jeopardize the thrust of the bill, but would give airlines and citizens more confidence in the bill and how it might apply to them.

I hope the government members consider that as we move forward.

The Chair: Thank you very much.

Yes, Ms. James.

Ms. Roxanne James: Thank you, Mr. Chair.

First of all, there is an appeals process. It's clearly in this bill. Regarding the amendments that we have discussed in part 2 of Bill C-51, we've had the officials on hand and they have clarified the questions and the concerns. I understand that the opposition parties want to get some more of their viewpoints on the record, but clearly the legislation is there. It's clear that there are safeguards in place. We heard that from witnesses, and the officials have been here to answer any of those concerns directly. So I just wanted to put that out there as well.

The Chair: Thank you very much.

We will now go to the vote.

Mr. Randall Garrison: Recorded vote.

(Clause 11 as amended agreed to: yeas 5; nays 4 [See *Minutes of Proceedings*])

The Chair: Now colleagues, we have clauses 12 to 14 in front of us with no amendments. The chair can take them one at a time or we can take all three together.

The chair will take all three unless he hears objection.

(Clauses 12 to 14 agreed to [See *Minutes of Proceedings*])

The Chair: Now we will go to Liberal amendment number 5.

Mr. Easter, it is deemed inadmissible because it requires a royal recommendation.

● (1725)

Hon. Wayne Easter: Mr. Chair, I don't want to speak on the amendment, but I want to emphasize again that we bring witnesses in to committee to outline their thoughts on a fairly massive piece of government legislation. With this particular amendment, which is calling for a national security committee of parliamentarians, similar to our Five Eyes—

The Chair: Point of order.

Ms. Roxanne James: On a point of order, since this was ruled inadmissible, out of order, out of scope, however you want to phrase it, there should be no debate or discussion on it thereafter.

The Chair: There is none. I was hoping Mr. Easter would just make a quick point and move on, but if we're going to be into a discussion, there is no debate.

Hon. Wayne Easter: I'm not going to get into a discussion, Mr. Chair, but—

The Chair: You've got about four to five seconds then, Mr. Easter.

Hon. Wayne Easter: All right. That sounds good. There's evidence after evidence. Members came before this committee and their words were for naught. They called for oversight, and the government fails to address it.

The Chair: That's fine, Mr. Easter, and I appreciate that, but as you know, there is no debate, and it was ruled inadmissible simply because it would involve a money bill with a requirement from the treasury. Therefore it is not eligible.

Hon. Wayne Easter: Spend some of the advertising money.

The Chair: We will now go to clause 15. There are no amendments.

(Clause 15 agreed to [See *Minutes of Proceedings*])

(On clause 16)

The Chair: Now we will go to Liberal amendment number 6. If adopted, colleagues, Green Party-29 could not be moved. I bring that to your attention. So now we will go to Liberal 6.

Mr. Garrison.

Excuse me, Mr. Easter.

Hon. Wayne Easter: Thank you.

The Chair: I didn't mean to insult you.

Hon. Wayne Easter: We're trying to get Mr. Garrison to be a Liberal, but he resists, he resists.

Mr. Randall Garrison: Not ever.

Hon. Wayne Easter: Mr. Chair, basically the word “knowingly” is currently in the legislation, and we believe that “wilfully” would narrow the parameters somewhat but still deal with the concerns on security issues. So we're basically somewhat lowering the threshold of what that clause relates to.

The Chair: Thank you, Mr. Easter.

Yes, Mr. Falk.

Mr. Ted Falk: I would oppose that amendment. Even though the change in wording narrows the scope, it broadens the activity around terrorism that would no longer constitute a violation. The effect would be to create an offence of advocacy or promotion of terrorism in general, which would have a greater intent requirement than that needed to convict a person for counselling the commission of a crime committed under section 464 of the Criminal Code, so I would not support it.

● (1730)

The Chair: Thank you very much.

Yes, Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

We're in a somewhat awkward position on clause 16, since we think it's absolutely unfixable. I'll have some more to say about that when we come to the end of the clause, but we will not be supporting attempts to improve this clause.

The Chair: Thank you.

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

The Chair: Now we will go to Green Party 29.

Ms. May.

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

I was going to say earlier that if Liberal 6 is adopted, we could then say that there would have to be a pause while everyone who has fallen into a dead faint gets resuscitated.

However, I soldier on, and PV-29 is dealing with a section.... I have sympathies for the point Mr. Garrison just made that clause 16, proposed section 83.221, of this bill is unfixable, but I have attempted to fix it. I know that the Canadian Bar Association recommended that we just delete the whole concept of promoting terrorism in general, but I have tried to make it at least more reasonable by changing the word “knowingly” to “wilfully”, and by removing the absurd concept, which is undefined and undefinable, of “terrorism in general” and replace it with “constitutes a terrorist activity, for the purpose of inciting the commission of a terrorist activity”. So it would be something that comes within the known jurisprudence in the use of the language.

The Chair: Thank you very much.

Ms. Ablonczy.

Hon. Diane Ablonczy: Mr. Chairman, I don't understand all this tender care to try to protect people who are exhorting others to attack our country and our citizens. To try to tiptoe around this and excuse them in some way through clever wording makes no sense to me. We have people who are threatening our country, threatening our citizens. We want to be able to identify them and put them out of commission, and the Green Party is trying to make sure that somehow these people are protected through nice language.

Honestly, I'm just shaking my head. I would never support this.

The Chair: Thank you very much.

Ms. Elizabeth May: There is no right of response?

The Chair: No, I'm sorry.

There is nothing further?

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

The Chair: Now on to Green Party number 30.

Ms. Elizabeth May: Perhaps I can use this occasion in introducing number 30 to explain to my dear friend Diane that the Green Party has no interest in coddling terrorists or those who are advocating terrorist acts, but this section is so badly worded that it could well ensnare people who are having private conversations with the goal of convincing someone not to become radicalized. This is why—I'm not debating it, Mr. Chair—I've brought forward this amendment, which says, "No person shall be convicted of an offence under subsection (1)(a) if the communication was in private conversation".

We'll note that similar legislation relating to hate crimes or child pornography excludes private conversations. This doesn't, which is why this section has been referred to as "thought chill". It also leaves open if a person in good faith is having a conversation "on a religious subject or an opinion based on a belief in a religious text". I know that I won't have time to read my whole amendment, so I'll make sure I emphasize point (e), that "if, in good faith, he or she was communicating for educational purposes or for the purpose of deradicalization".

The language we have here is so vague and broad in scope that it could very well create a situation where someone would be afraid to communicate with someone else for the purpose of talking them out of becoming involved in terrorism. That's what bad drafting and rushed legislation will do; it will make us less safe.

The Chair: Thank you, Ms. May.

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

The Chair: Green Party-31, Ms. May.

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

This amendment also falls on the next page. We're at page 27 where we find ourselves in the definitions.

Again, it's strange, bizarre, and unknown language for defining terrorist propaganda, using this notion of "commission of terrorism offences in general". This amendment attempts to tighten the language and make sure we don't create a situation where people cannot even speak to someone who may become interested in joining a criminal organization.

I want to tighten the language to avoid the use of the phrase "terrorism in general" and add (a) through (d) and then (e) to ensure that we are actually able to prescribe the right rules to deal with terrorist propaganda that actually incites violence and tries to persuade people to be involved in it, as opposed to a wide array of other communications, for instance, even relating to incidents of the past. The way it's drafted now, I'm not sure that an old poster of Che Guevara won't be considered terrorist propaganda.

● (1735)

The Chair: Thank you.

Yes, Ms. Ablonczy.

Mr. Falk, you're up first.

Hon. Diane Ablonczy: Sorry, Mr. Falk.

Mr. Ted Falk: Thank you, Mr. Chairman.

I think what this amendment would do is to to put terrorism as a lesser level than hate propaganda, and I think the whole intent of this is to recognize the seriousness of terrorist propaganda at the same level as hate propaganda.

I wouldn't be in favour of supporting this.

The Chair: Thank you.

Mr. Easter.

Hon. Wayne Easter: It relates to this subject and Ms. May's point, Chair. The Canadian Bar Association in its brief—and I'd be asking this question of officials in their brief—made the following observation with respect to the terrorist offences in general provision:

> Even a private academic conversation where a person voices support for an insurgent group could be caught. Such a broad limitation on free speech could be found unconstitutional. Even if charges are never brought in inappropriate situations, the result could be a significant chill on free speech....

The officials here who deal with or wrote this legislation, what are you thoughts on this matter?

The Canadian Bar Association, in a number of their points, raised a lot of concerns, as well as Professors Roach and Forcese and a number of others.

Are they all wrong?

Mr. Douglas Breithaupt (Director and General Counsel, Criminal Law Policy Section, Department of Justice): The proposed defence is modelled on the law of counselling, and the Supreme Court of Canada, in the cases of Sharpe and Keegstra, held that the terms advocating, promoting, and counselling all mean essentially the same thing, and that is active encouragement. We're looking at active encouragement of the commission of terrorism offences in general.

Counselling now requires that there be some degree of specificity as to the offence or type of offence being counselled. This proposed offence uses the term, which is defined in the Criminal Code, "terrorism offence". That includes a broad range of conduct, spanning from violence against people and destruction of property to providing financial and material support and engaging in recruitment, but if one actively encourages the commission of terrorism offences in general without being specific as to the offence or the type of offence—for example, where violence as opposed to recruitment or financing is being actively encouraged—there's some uncertainty about the application of the existing offence of counselling, and the applicable penalty that would apply.

The *mens rea* that is in the proposed offence comes from the current criminal law in counselling where, in the case of R. v. Hamilton, another Supreme Court of Canada case, it determined that knowledge and recklessness are valid *mens rea* concepts for the offense of counselling. They are included in this proposed offence.

As well, if we're looking at active encouragement of terrorism offences, there are no statutory defences or exemptions for private conversations that apply to the law of counselling, or for example, the most serious hate crime offence of advocating or promoting genocide.

Those are some comments one might make.

Hon. Wayne Easter: I guess, Mr. Chair, neither of us are lawyers.

When the Canadian Bar Association itself, and Professors Roach and Craig, who have written extensively on this, studied this, they had concerns. Moreover, the NDP has an amendment that basically takes a lot of this clause out. They don't think it can be fixed.

I understand your words that if there's active encouragement—that makes sense to me—then the charges should be there. But there are too many people in the legal profession, in my view, who have come forward with concerns about this. Should we therefore be limiting this in some fashion, not to coddle to terrorists, but to be absolutely sure that we have it right? I think you're telling me that the definitions that apply to these proposed sections are the definitions that relate to terrorist offences in the Criminal Code. Am I correct on that?

● (1740)

Mr. Douglas Breithaupt: Yes.

Hon. Wayne Easter: Then expand a little bit more, if you could, on active encouragement, encouraging individuals to participate or actively be involved in those terrorist offences as defined in the Criminal Code.

Mr. Douglas Breithaupt: It's important to indicate, again, that the words “advocating”, “promoting”, and “counselling” have been interpreted as active encouragement. Building on the law of counselling, this offence uses the terminology of advocating and promoting. One is looking at active encouragement of the commission of terrorism offences. It's not a case of glorification or praise of terrorism, which would be other than active encouragement. It's directed at prohibiting the active encouragement of the commission of terrorism offences, and not mere expressions of opinion about the acceptability of terrorism.

As you point out, there is the defined term of “terrorism offence” in section 2 of the Criminal Code, and that's the parameters within which this offence works. The concern as expressed was that the current law of counselling requires that there be some degree of specificity as to the offence or type of offence being counselled, but there may be cases where although no specific terrorism offence is being counselled, it is evident nonetheless that terrorism offences are being actively encouraged. And that's what this offence is directed toward.

Hon. Wayne Easter: Thank you, Mr. Chair.

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

Hon. Wayne Easter: Thank you for your answers, gentlemen.

The Chair: We will now go to the vote.

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

The Chair: We will now go to Green Party 32.

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

I also want to thank my colleague Mr. Easter for reminding us of the condemnation of these proposed sections by the Canadian Bar Association.

This amendment propose proposes to add on page 28 what we find at proposed subsection 83.223(4), relating to a person who posted materials and who doesn't show up for a hearing. The proposed subsection currently allows for the court to proceed in the absence of such a person. My amendment suggests that a special advocate be appointed to protect the interest of the person in their absence.

The argument here is that given how broad the promotion of terrorism sections are, even showing up to defend oneself could end up creating a deeper legal morass, and it would be better to at least have the protection of a special advocate available.

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

Yes, Ms. James.

Ms. Roxanne James: I find it rather strange that with regard to this particular amendment to the Criminal Code, the Green Party is suggesting that when someone chooses not to appear before the court to oppose the proposed deletion of terrorist propaganda, a special advocate be used. I don't think it's appropriate for one. I'm going to ask the officials to clarify this, but if opposing points of view are needed, the courts already have the jurisdiction to appoint a friend to the court to advise them where necessary.

I'm going to oppose this for those reasons, but I'm just wondering if the officials could comment on this point of mine about whether the courts have the ability to appoint a friend of the court.

Mr. Douglas Breithaupt: Where warranted, courts have the jurisdiction to appoint an amicus curiae.

Ms. Roxanne James: Thank you.

The Chair: Thank you very much.

Mr. Easter.

Hon. Wayne Easter: What do you mean by “where warranted”?

● (1745)

Mr. Douglas Breithaupt: If it's necessary in the circumstances.

The Chair: Thank you very much.

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

The Chair: Thank you.

Colleagues, we will now deal with NDP amendment 14. I notify you at this point, of course, that there are some amendments that have a similar intent with a sunset provision. They are Liberal amendment 7, Bloc amendment 7, and Green Party amendment 33.

First of all, we will deal with amendment NDP-14.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I will not elaborate further on what we are calling for in amendment No. 14. We are not trying to fix the problems with clause 16. Once again, we are simply trying to bring the Conservatives to their senses by proposing that we add a sunset clause that provides for a review after three years. I debated the same thing with my colleagues at length regarding clause 2 and clause 11. I will therefore not comment further, but I hope that this time we can manage to convince the Conservatives.

[*English*]

The Chair: Thank you very much.

Mr. Payne.

Mr. LaVar Payne: Thank you, Chair.

Currently, as I understand it, there's no provision in this that is subject to a sunset clause. The addition of hate propaganda warrants the provisions on which proposed sections 83.222 and 83.223 are modelled, and they are not subject to a sunset clause. Currently, no Criminal Code offence is subject to a sunset clause, so on that basis, we can't support this.

Thank you.

The Chair: Thank you very much.

Mr. Easter.

Hon. Wayne Easter: Mr. Chair, I would have to say what a wonderful amendment this is, when you see so many parties basically suggesting the same amendment.

This does not in any way jeopardize the bill. We've had witness after witness here, and we've heard the testimony from the witnesses basically clarifying, at least from their perspective, what the Canadian Bar Association, Professors Roach and Forcese, and others have had to say. They've expressed some concerns. Whether those concerns are 100% legitimate or not, I honestly can't say, but they are concerns.

Sunset provisions like this one, which is worded well, lay out a requirement that Parliament itself will have to look at these clauses in the future. Whoever is here will have to look at what has happened under these particular provisions, which some people have expressed concerns about. They'll have to look at what I would call the good, the bad, and the ugly. They may have to add some and take some away. That, to me, makes sense. It does not jeopardize the bill.

Witnesses have asked us to look at this from that perspective, from a sound judgment point of view. I'd appeal to the government members to be supportive of what is a very reasonable amendment.

The Chair: Thank you very much for the discussion.

Ms. James.

Ms. Roxanne James: Thank you, Mr. Chair.

I can't believe that the NDP is suggesting that we put a sunset provision on an offence within the Criminal Code. I can't imagine for a moment what would happen if we were to do this or if the NDP were to suggest that we do this on every single offence within the Criminal Code.

I find it very strange that they've put a sunset provision on this so that it will cease to be in effect at the end of the date specified. Considering the fact that if they legitimately thought there was a problem with this offence, they must have recognized the fact that there would be problems fairly quickly and that it would have to be addressed much sooner than this particular date in this provision. I find it unbelievable that they would even suggest putting a sunset clause on this type of offence. I can't believe it.

● (1750)

The Chair: Thank you very much.

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

The Chair: Now, colleagues, we will move to LIB-7 and the chair will also advise you that once LIB-7 is moved, BQ-7 could not be moved at that point because it is identical. I will also advise you further that if LIB-7 is adopted, then BQ-7 and PV-33 could then not be moved because, again, it would create a conflict.

We will now go to LIB-7. Mr. Easter, I presume you would like to propose a motion.

Hon. Wayne Easter: I made the arguments previously in relation to the NDP amendment, Mr. Chair. I will not have anything further to add.

The Chair: Thank you very much.

Yes, Mr. Payne.

Mr. LaVar Payne: I want to repeat one thing that I said. Currently no Criminal Code offence is subject to a sunset clause so, we can't support it.

The Chair: Thank you very much.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

Although I like the idea behind the amendment presented by my colleague, Mr. Easter, I must vote against it because he said there would be a committee that includes senators. I do not consider them to be parliamentarians. I consider them to be unelected officials. I think the committee should be made up only of parliamentarians.

Therefore I will unfortunately vote against the amendment. That said, I want to say again that a sunset clause providing for a review should be included in clause 16.

[*English*]

The Chair: On the amendment. All in favour? All opposed?

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

The Chair: We will now go the PV-33.

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

This amendment is also a sunset provision, so I have a feeling that I know where this is headed. It would be inserted on page 29 after line 28 to ensure that this provision will cease to have effect on the third anniversary of this coming into force. I know that it's not common to put in sunset clauses on Criminal Code provisions, but when they're as badly drafted as this and are so heavily criticized, if we can't delete them, at least let's put a sunset clause on them.

The Chair: Thank you very much.

Ms. James.

Ms. Roxanne James: To reiterate what I said a few moments ago, and what Mr. Payne has expressed already, there are no other provisions that include sunset clauses, not with regards to anything. I cannot imagine for a moment if we had to put sunset clauses on every single offence within the Criminal Code so that at a certain date they would cease to exist. I can't believe that I'm reading these amendments, to be honest. I'm flabbergasted. If the member of the Green Party thinks that this is going to cause such problems, then I'm sure that we would have to revisit it much sooner than within three years. To say that it should cease to exist at that time is completely inappropriate. It's reckless, and I will not be supporting this amendment.

The Chair: Thank you very much.

[*Translation*]

Ms. Doré Lefebvre, you have the floor.

Ms. Rosane Doré Lefebvre: Thank you very much, Mr. Chair.

I thank my colleague, Ms. May, for presenting her amendment. I apologize that I must vote against it. As I already said, I think we must absolutely do a review after three years, which is why we need to include a sunset clause.

However, I would like to support what Mr. Easter said. Since each opposition party presented its own version of a sunset clause for clause 16, the government should perhaps acknowledge that there is a problem, whether it is with this clause, with clause 11 or with clause 2. It would be good if the government or the parliamentary secretary took that into consideration.

● (1755)

[*English*]

The Chair: Thank you, Madame Lefebvre.

Mr. Garrison, please.

Mr. Randall Garrison: I'll pass.

The Chair: You're fine.

Ms. James.

Ms. Roxanne James: The opposition, both the NDP and the Green Party, have come out to automatically oppose this bill every step of the way. The fact that they've put forward an amendment to create a sunset provision so that all of a sudden things cease to exist on a certain day does not surprise me in the least.

I think that when you're responsible on the government side to ensure the safety and security of this country and of its citizens, we are not going to be so reckless as to have sections of the Criminal Code—provisions that are there to protect Canadians—all of a sudden cease to exist.

Again, I am lost for words. You gave a good word, "flabbergasted". I couldn't believe it.

Anyway, there's no need to go on this point anymore. I will definitely not be supporting this.

The Chair: Mr. Easter.

Hon. Wayne Easter: On that point, Mr. Chair, when you listen to witnesses and talk to those in civil society and activists, there is the question of balance. If an opposition party wants to oppose the bill, then that's their right. The NDP has taken that position. We've taken the other position. We would support it and try and get amendments, but that doesn't seem to be getting us very far, other than the fact we get the word "lawful" taken out.

I know I'm concerned about the improper balance in the bill. We need security measures, but we have to assure people that there's a proper balance in this bill and not an infringement of their civil liberties and their freedom of expression. The government has rejected proper oversight, in one way or another, using whatever excuse it can find. They can bring in oversight themselves if they want it in a parallel bill. They don't seem willing to do that.

What sunset clauses do, Mr. Chair, is at least give society the realization that within a certain period of time the bill will be reviewed by a new Parliament. Maybe it will be a Parliament that works and hears all sides of the story. That would be an exception to what's happening around here now.

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

Mr. Payne.

Mr. LaVar Payne: Thank you.

I'm amazed that you would want to have a sunset clause on the Criminal Code. For Mr. Easter to suggest that Parliament doesn't work...he's been here a long time and you know that your government has pushed stuff forward as well.

I think you need to step back and be a little less critical.

Thank you.

The Chair: Thank you very much.

Mr. Garrison.

Mr. Randall Garrison: I know the government continues to say they're strong in the polls and they would never put in a sunset clause as an aspect of the Criminal Code. Of course, we have already had those in the past. When the original anti-terrorism legislation was passed, we had two provisions, investigative hearings and preventative detention, that were both subject to sunset clauses. They're both part of the Criminal Code. For the government to pretend it is shocked and horrified by these amendments means that it's suffering from complete amnesia when it comes to the history of dealing with terrorist legislation in this country.

I think it's simply a rejection of the fact that anyone could disagree with this government. They're not willing to reconsider, even after a period of three years, whether they've done the things that are most effective to combat the terrorist threats to this country without, at the same time, damaging our civil liberties.

● (1800)

The Chair: Thank you very much.

Yes, Ms. Ablonczy.

Hon. Diane Ablonczy: I think the debate is getting a little more testy than it needs to because we've been here a long time. I think we should look at what we're talking about, which is the advocacy or promotion of terrorism. We're also talking about the ability to take material down from the Internet that is being used to recruit young people. To say that we will not be sunsetting these proposed measures after three years has elicited some rather heated exchanges. I think we want to look at whether we would now, after three years, want to allow that. I don't think anybody in the opposition or the government would think that's a reasonable stance, upon reflection.

The Chair: Thank you very much.

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

The Chair: Now we will have the vote on clause 16 as amended.

Yes, Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

As I said at the beginning of these discussions, we believe that clause 16, taken in its totality, is the most dangerous part of this bill. It's reckless and it's unnecessary. At the appropriate stage—we cannot do this in the committee stage—we will be moving to delete this entire section as recommended by the Canadian Bar Association.

The government, again, has failed to demonstrate any gap in the Criminal Code in the introduction of this new offence. We've been able to have successful prosecutions of the Toronto 18 and of the VIA Rail bombers. The RCMP Commissioner appeared before this committee and said that he would have been able to prosecute the shooter in Ottawa under the existing Criminal Code provisions. The government has not demonstrated any need for this new, vague offence—

The Chair: On a point of order, yes, Ms. James.

Ms. Roxanne James: That's not exactly what Commissioner Paulson said, if that's what you're referring to. He actually—

Mr. Randall Garrison: These are not points of order.

Ms. Roxanne James: He's indicated—

The Chair: No, no. Ms. James, we're into debate.

Mr. Garrison, carry on.

Mr. Randall Garrison: He certainly did say it and it's on the record. Anyone who goes back to the committee evidence will see that he did say he would have been able to prosecute the Ottawa shooter, whose name I specifically do not use. I try to make it a practice never to use the names of those who commit violent acts because many of them seek to become famous. If we use any names, I would urge all my colleagues to use the names of victims and not the names of those shooters.

The second part of this section deals with the warrant procedure for terrorist propaganda on the Internet. Again, it's controversial. It's not a simple thing to say you're going to take things down from the Internet. I have to note that we had a provision in the Canadian Human Rights Act that allowed hate materials to be taken off the Internet by the Canadian Human Rights Commission. All the members on the government side in 2013 supported eliminating that power of the Human Rights Commission to take out hate-filled materials. Now, here we are inserting it back into this section.

I think the two biggest problems here, starting with the vague nature of the offence, is also the use of the word "reckless", implying that people may be caught in this who had no intention of supporting or advocating terrorism. There are a good many experts who argue that we ought not to take down terrorist propaganda and that it's very useful to the police and enforcement if people are posting things, so that they can find them and go after them. If you take down all the propaganda and drive them underground, they're much more difficult to bring to justice. We have the example of the attack in Paris on *Charlie Hebdo*, where those who perpetrated that attack went dark on the Internet for two years before they committed that offence. They did that purposely to make it very difficult for law enforcement to find them.

Finally, we make it difficult for all those who are working in deradicalization if we remove all of the material in advance, again, to find context and counter those materials. When we get to report stage, we will be moving an amendment, as recommended by the Canadian Bar Association and many others, to delete this section in its totality. That does not mean that we in any way support those who counsel the commission of terrorist act. That's already illegal in the Criminal Code. For those reasons we did not support any of the amendments that tried to improve the section, because we believe it is truly unfixable and it will not make a contribution to making Canadians safer. It may hamper those efforts to make Canadians safer at the same time as it produces a chill on freedom of speech in this country.

● (1805)

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

Is there further debate? Seeing none, by recorded vote, shall clause 16 carry?

(Clause 16 as amended agreed to: yeas 5; nays 4 [See *Minutes of Proceedings*])

(On clause 17)

The Chair: We will now go to Bloc Québécois amendment 8.

Mr. Patry.

[*Translation*]

Mr. Claude Patry: Thank you, Mr. Chair.

This amendment has to do with eliminating the expanded scope of arrests without a warrant. Under Bill C-51, there are fewer conditions to initiate an investigation or to arrest an individual by replacing words like "will commit" with "could commit", and "necessary to prevent" with "is likely to prevent the carrying out of the terrorist activity".

Our amendment would prevent these conditions from being lowered and eliminate the authority of the Federal Court to issue preventive detention warrants without acceptable proof.

[*English*]

The Chair: Thank you very much.

Yes, Mr. Norlock.

Mr. Rick Norlock: Thank you very much.

This amendment would remove the lowering of existing legal thresholds for obtaining a terrorism recognizance with conditions under subsection 83.3(2), and the terrorism preventative arrest provisions of subsection 83.3(4), because it proposes to delete all of Bill C-51's amendments in this area. However, this amendment would leave in the provisions of the bill that would propose the extension of judicial remand and the recognizance with conditions scheme from three to seven days, with periodic judicial review.

The proposed amendment is inconsistent with the scope and principle, I believe, of this. I believe it is inconsistent with the scope and principle of Bill C-51, which seeks to make it easier to obtain a terrorism recognizance with conditions by removing the proposed lowering of the legal threshold. Therefore, we'll not be supporting it.

The Chair: Thank you.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I do not agree with what Mr. Norlock just said. I think that Mr. Patry presented a reasonable amendment to clause 17. I will vote in favour of this amendment.

[*English*]

The Chair: Thank you very much.

Yes, Ms. James.

Ms. Roxanne James: Thank you.

The purpose of the amendments with regard to the existing provisions is to lower the thresholds so that they can be better utilized in respect to the intent of this bill, which is to prevent terrorism, prevent radicalization, and really stop something terrible from happening in this country before it does. This amendment would actually be the opposite to what the intent of this bill was. Anyway, I won't be supporting it.

The Chair: Thank you.

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

The Chair: We will now to to Ms. May, Green Party 34.

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

This is in response to many briefs, but I refer briefly to the submission of the BC Civil Liberties Association, where they noted that C-51 “Expands an already troubling regime of preventative arrest and detention. Currently the Criminal Code permits preventative arrest in cases where there are reasonable grounds to believe that a terrorist activity will be carried out...”.

We're now significantly lowering that threshold to “may be carried out.” My amendment suggests that we should ensure that the quite extraordinary powers of being able to arrest someone before they do anything be on a standard of “believes on reasonable grounds that a terrorist activity will be carried out imminently”.

● (1810)

The Chair: Ms. James.

Ms. Roxanne James: Thank you.

I may have heard it incorrectly, but I think the Green Party member mentioned the BC Civil Liberties Association. This is an organization that opposed, going way back to 1983, the original CSIS Act. They had similar concerns about the 2001 Anti-terrorism Act. Of course, none of those came to fruition. The sky did not fall back then, it didn't fall in 2001, and it's certainly not going to fall in 2015.

This amendment has the completely opposite intent to the proposed paragraph in the bill. We heard very clearly from credible witnesses in law enforcement, security and intelligence gathering, including Inspector Irwin, how important these measures are. We heard from Commissioner Paulson with respect specifically to the Criminal Code amendments, and the importance of lowering the threshold so that our law enforcement have the proper tools, the ability to actually conduct this type of work. Again, the intent of this bill is to prevent terrorist attacks from happening.

I will not be supporting this amendment.

The Chair: Thank you.

Mr. Easter.

Hon. Wayne Easter: Mr. Chair, we will admit that we've had a fairly substantive debate within our own office on this particular point.

I would ask the officials who are here from Justice if they could expand on the concern out there that this may lower the threshold too much.

How substantive a change is it from current law, from your perspective?

Mr. Douglas Breithaupt: The proposal in the bill, as indicated, is to alter the test from “believes on reasonable grounds that a terrorist activity will be carried out” to “believes on reasonable grounds that a terrorist activity may be carried out”.

This proposal is to have the test as “believes on reasonable grounds that a terrorist activity will be carried out imminently”.

The recognizance with conditions is designed to disrupt nascent terrorist activity. Adding the word “imminently” could possibly further narrow the scope.

The Chair: Thank you very much.

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

The Chair: Colleagues, we will now go to Green Party amendment 35.

Ms. Elizabeth May: Mr. Chair, similarly, amendment 35 looks at when the peace officer needs to believe, on reasonable grounds, that the detention of a person is necessary to prevent the carrying out of a terrorist activity that involves serious or imminent threat to the life or health of another person. It's an attempt to deal with the many critics who see this bill as going far too far in a free and democratic society.

I saw that Roxanne didn't like the reference to the BC Civil Liberties Association, so I'll quote someone from the Conservative ranks: Conrad Black. I think he is really quite extreme in saying that if we don't act, Bill C-51 will leave us waking up in “unrecognizable despotism”.

The Chair: Thank you very much.

Is there further discussion?

Mr. Norlock.

Mr. Rick Norlock: Thank you, Mr. Chair.

The amendment would change the current law, which requires that a police officer "suspects on reasonable grounds" that the detention of the person in custody is necessary in order to prevent the carrying out of a terrorist activity. Given the serious nature of a terrorist activity and the potential harm it could cause, raising the grounds here to "believes on reasonable grounds" would make preventative arrests more difficult, and thus would be inconsistent with Bill C-51's legislative objective to facilitate the use of these terrorism prevention tools, which, I might add, has been supported by the Supreme Court in the past.

● (1815)

The Chair: Thank you.

Is there further debate on PV-35?

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

The Chair: Colleagues, we have clauses 17 and 18 both without amendments. The chair will deal with both, unless....

An hon. member: No.

The Chair: There's no agreement on that.

We will then deal with clause 17.

Yes, Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

We will be voting against this clause. Once again, the primary problem here is that the government has not demonstrated the need for this reduction in the threshold for using recognizance with conditions or preventative arrest. We are lowering our threshold from "will" to "may", "will" to "likely", and "necessary to prevent" to "likely to prevent".

What we are really going against here is 800 years of British legal tradition in which we actually require someone to be involved in a real act before we make them subject to penalties. The BC Civil Liberties Association, which I intended to quote, has already been cited by Ms. May, very eloquently, in saying that we are going down the wrong road. However, Ms. James said that witnesses testified that this was a problem.

In fact, if you go back to the RCMP Commissioner's testimony, he did not say that. He said it "might" be useful to lower these thresholds, but when I asked him specifically whether the threshold had been the problem in obtaining either recognizance conditions or preventative arrest, what he answered was that there was a greater problem with the court process than there was with the thresholds. Unfortunately, he did not have a chance to tell us in great detail what that meant, but the example he gave was one where a court, because of its business—and one could only presume lack of resources—put off a very important decision for a month. I understand that in that case subsequently there was success in getting restrictions placed on that person.

Again, before we take large steps which restrict civil liberties, potentially for those who've had nothing to do with a specific act, we have to be convinced on this side that there is a real need to do that. If the problem really is resources at the courts and delays in the courts, which the RCMP Commissioner seemed to say, then we need to attack that problem first.

The Chair: Thank you, Mr. Garrison.

Now we go to Mr. Norlock.

Mr. Rick Norlock: Thank you very much, Mr. Chair.

I also recall the evidence, and I am not bringing in to disrepute the pieces of what the RCMP Commissioner and other police officers said, but when they were asked in general terms if this piece of legislation would be of assistance to them in carrying out their job and keeping us safe, there were emphatic in their positive response. The answer was yes.

For the edification of a lot of folks, we hear the Bar Association, etc.... I don't recall, in the nine years I've been here—and of course I am sure Mr. Easter will sling some really cool remark across, given his expert time as a politician here—I don't recall them ever coming before any committee I was on—I was on the justice committee and I've been on this committee for nine years—where they've never agreed with any piece of legislation we brought in. As a matter of fact, I think the best thing they ever said about one of the pieces of legislation was "Well, it really isn't needed; it's basically redundant and it isn't needed."

I am going to remind folks of a few statements, and then I will tell you from where I extracted them and what bill they refer to:

> [The] bill...is far-reaching legislation. In several respects, it calls into question many of the rights and freedoms we enjoy, some of them hard won, rights and freedoms that should not be abridged without good reason.

Then in their brief, they go on to talk about many things, and say how the piece of legislation was somewhat imperiling. They said:

> Defining terrorism is not a simple task. Our courts have consistently refused to define the term.

We now know that they have now or that we have a definition now.

> The proposed definition is too inclusive and unwieldy. It could catch activity that is not terrorist conduct, such as wildcat strikes or public demonstrations. We are also concerned about the potential for discriminatory impact.

I could go on and on. You know who said that, Mr. Chair? It was a submission on Bill C-36, the very same concerns that are expressed here. Bill C-36 has been upheld. The Supreme Court did require the government of the day to fix a few areas of it, but the basic bill was not changed significantly. That is what we hear again and again. It's the same people saying the same things about the same situation.

As my colleague, Ms. James, said that the world didn't come to an end. We have heard from witness upon witness—even witnesses from the other side have testified—that terrorism is evolving. They are changing. They know what the laws are, and they are adapting their methodologies to get around them. This bill just hopes to keep up with it—not get ahead of it, just keep up with it.

Thank you very much.

● (1820)

The Chair: Thank you very much.

Now, Ms. Ablonczy.

Hon. Diane Ablonczy: I think it would be helpful to hear from the witness with respect to the reason that "will" has been changed to "may".

Mr. Douglas Breithaupt: If we're talking about recognizance with conditions, it's reasonable grounds to believe that a terrorist activity "will" be committed. It is proposed to change that to reasonable grounds to believe that a terrorist activity "may" be committed. The reason provided is to facilitate the use of these preventive tools and to better prevent terrorist activity from occurring.

Hon. Diane Ablonczy: Precisely.

We can't set the bar so high that people about whom there's a reasonable belief that they're a danger to the public cannot be removed from a position where they could do that.

We heard that from a witness, Ms. Vincent, whose brother was run over by a terrorist. She said the bar was so high that although authorities, security people, knew he was a danger, they didn't have the tools to remove him.

So that's what we're trying to do here. I think not very many people would be caught by this, but for the ones who need to be caught, it's important that we have the tools to take them out of circulation.

The Chair: Thank you very much.

That's enough for the debate.

Mr. Randall Garrison: I'd like a recorded vote.

(Clause 17 agreed to: yeas 6; nays 3)

(On clause 18)

The Chair: Okay, colleagues, I'll give you a moment to turn to clause 18.

Yes, Mr. Easter.

Hon. Wayne Easter: We had an amendment.

The Chair: It is after clause 18 as it is now a new clause.

Hon. Wayne Easter: Okay.

The Chair: Are there any comments?

(Clause 18 agreed to)

The Chair: Now, Mr. Easter, your amendment LIB-8, the new clause 18.1, is deemed inadmissible as it falls into the parent act that deals with the different elements...deals with the Criminal Code. Should you wish a further explanation, the—

● (1825)

Hon. Wayne Easter: No, I understand that, Mr. Chair. We're just trying to bring the Criminal Code that's already in place there into conformity with the other sunset clauses that we were hoping would pass.

The Chair: I understand your intent, sir, but it does not fall within the parameters of our orders.

We have clauses 19 and 20, with no amendments. We can do them together, unless you want them dealt with individually.

I need unanimous consent.

Do you want a minute, Mr. Garrison?

Mr. Randall Garrison: If they are separate, I'm fine; together, I'm not sure.

Hon. Wayne Easter: Together is fine with me.

Mr. Randall Garrison: Yes, go ahead with them together.

The Chair: Okay. Thank you very much.

We will deal with clauses 19 and 20.

(Clauses 19 and 20 agreed to)

The Chair: Now we will go to amendment LIB-9.

(On clause 21)

Hon. Wayne Easter: Thank you, Mr. Chair.

The officials may need to come in on this, but the current wording is the following:

> The application may be made, during the proceedings, to the presiding judge

To me it makes more sense that the application should be made before the proceedings begin. It makes more sense, from our perspective and our discussion; no witnesses came in on this, so far as I'm aware.

Can the Justice officials indicate why it would say "during the proceedings" here?

Mr. Douglas Breithaupt: If we're dealing with proposed subsection 486(1.1), it reads:

> The application may be made, during the proceedings, to the presiding judge or justice or, before the proceedings begin

So it allows for the application to made during or before, whereas I understand this amendment to limit the applications to be made only in advance of the proceeding.

Hon. Wayne Easter: That's right. So why is "during" allowed?

Mr. Douglas Breithaupt: It may not be possible to know in advance of the proceedings in all circumstances whether an application should be made, and limiting such applications to before the start of a proceeding would be inconsistent with the approach taken in respect of other procedural provisions in current law that, if granted, enable a witness to testify with some form of accommodation. Reference can be made to section 486.1, testifying in the presence of a support person, or section 486.2, testifying via closed-circuit television.

Hon. Wayne Easter: Based on that, Mr. Chair, I will withdraw the motion.

The Chair: Thank you.

Colleagues, we will now go to the question on clause 21.

(Clause 21 agreed to)

The Chair: Now we will go to amendment LIB-10.

(On clause 22)

Hon. Wayne Easter: This is another one that may need clarification, Mr. Chair.

The Chair: Carry on.

Hon. Wayne Easter: What we couldn't understand here was why it includes an application by a witness, so we're narrowing it down to "application of the prosecutor".

Why is "or a witness" in there?

● (1830)

Mr. Douglas Breithaupt: It's my understanding that the provision is made for witnesses, including victims, and for prosecutors and judges to be able to apply for the imposition of measures to protect the security of a witness.

Existing Criminal Code provisions governing the application of testimonial aids and other measures designed to protect witnesses all provide for the possibility of a witness bringing an application, or for the prosecutor doing so on the witness' behalf.

This amendment would seek, it seems, to eliminate the possibility of witnesses making an application, which would be at odds with some other procedural provisions dealing with testimonial aids and the like; for example, those in which witnesses can make application or prosecutors can do so on behalf of a witness in respect of sections 486.1, testifying in the presence of a support person; 486.2, testifying via closed-circuit television; 486.3, restrictions on personal cross-examination; and 486.5, publication bans.

Hon. Wayne Easter: I'll withdraw that one as well, Mr. Chair.

The Chair: Thank you, Mr. Easter. It is withdrawn.

Colleagues, now we have clauses 22 to 30. We can deal with them collectively or can take them one at a time.

Mr. Randall Garrison: I want clause 25 separated out.

The Chair: Okay, then we will deal with clauses 22, 23, and 24 at this point.

Is there any conversation concerning clauses 22 to 24?

(Clauses 22 to 24 inclusive agreed to)

The Chair: Now we will deal with clause 25.

Mr. Garrison.

(On clause 25)

Mr. Randall Garrison: Thank you, Mr. Chair.

I'd like some assistance from our officials.

In the last night of testimony from witnesses, the B'nai Brith organization raised a point that had not been raised by any of the other witnesses, which we did not have time to explore, about whether private prosecutions would be allowed under this act. If so, those private prosecutions would require the permission of the Attorney General.

That is essentially my question. It's not an argumentative question, but since the witness raised something that we have not seen from any other witness, I want to know whether it is in fact the case.

Mr. Douglas Breithaupt: This isn't a prosecution, for one thing. It's an application for a terrorism peace bond, and it would have to be done with Attorney General consent. It says:

> A person who fears on reasonable grounds that another person may commit a terrorism offence may, with the Attorney General's consent, lay an information before a provincial court judge.

Mr. Randall Garrison: We've been going at this quite a long time. I apologize for using the word "prosecutions" and I stand corrected on that. However, what would the result be of a private person's laying the information?

Mr. Glenn Gilmour (Counsel, Criminal Law Policy Section, Department of Justice): [*Inaudible—Editor*]...to the Attorney General, and before anything could be done. A private individual could not on his or her own initiative go to the judge to ask that the terrorism peace bond be placed on a person. The person would first have to get the consent presumably of the relevant attorney general, which could be either the attorney general of the province or the federal Attorney General.

Mr. Randall Garrison: The practical impact of that is very small, then, I guess I would say, because of that requirement being in place.

Mr. Glenn Gilmour: I would think it's probably very small. That would be my opinion, yes.

Mr. Randall Garrison: Okay. Something was raised by a witness, and I just wanted to have a chance to explore it.

The Chair: Thank you very much.

(Clause 25 agreed to)

The Chair: Now colleagues, we will go to clauses 26 to 30, unless the chair is directed otherwise.

(Clauses 26 to 30 inclusive agreed to)

The Chair: Okay, colleagues, I think it is time for a brief suspension while we grab a bite and maybe take a little health break. We will come back in approximately 10 to 15 minutes. The chair will be flexible. We'll see how everybody is making out for time.

● (1830)

(Pause)

● (1850)

The Chair: Okay, colleagues, we're back in session now.

Yes, Mr. Norlock, point of order.

Mr. Rick Norlock: On a point of order, I don't know what the parliamentary prosecution process is for one member of Parliament to mislead another member of Parliament, but Mr. Easter misled the parliamentary secretary who said that we were having pork tonight and it was not pork. It was turkey. I'll leave the punishment in your hands.

Some Hon. members: Oh, oh!

Ms. Elizabeth May: Mr. Chair, I have to take responsibility for that. As a vegetarian I looked at it and reported to Wayne that it was pork.

Mr. Rick Norlock: Chair, to finish it all off I would have to say, from the opposition's perspective, it's the blind leading the blind.

The Chair: Let me suggest now that we are in such wonderful humour after...the old story of happy belly. We'll see if we can carry on as happy members now. We'll go through this as best as possible. I understand we'll probably finish this in the next 10 or 15 minutes.

(On clause 31)

The Chair: We will start off with Ms. May, Green Party amendment number 36.

Ms. Elizabeth May: Thank you, Mr. Chair. Continuing in the spirit in which Mr. Norlock has set us, I'd like to thank him for a fowl joke that was like casting pearls before swine.

Moving on, this is an attempt to remedy something that looks quite benign. Clause 31 of the act on page 40 amends the customs tariff. Essentially what it does is create the ability and the duty of customs officials to enforce the vague provisions about terrorism, in general in terms of propaganda, without judicial authorization. This was one of the clauses that attracted the attention of a number of critics, including Professors Roach and Forcese, who recommended that the provision should be rejected for enforcement by customs officials without judicial authorization.

What I've done, rather than delete it in its entirety, is to tidy up the language and to relate the acts or omissions to language that we understand in law—it constitutes a terrorism offence or a terrorist activity—and remove the reference back to the very vague terrorism in general provisions that are so offensive in this clause.

The Chair: Thank you very much.

Mr. Falk.

Mr. Ted Falk: I believe that the proposed amendment would make the clause too narrow, because what it does is require there to be material that's terrorist-specific activity, as opposed to general terrorist activity or promotional material. I think customs officials should have the power to prevent the importation into Canada of material that counts as a commission of terrorism offence and material that advocates the commission of terrorist offences in general.

The Chair: Thank you very much.

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

(Clause 31 agreed to)

The Chair: Now colleagues, we have clauses 32 to 39 and we can deal with them together.

Mr. Garrison, where are you at on this one?

● (1855)

Mr. Randall Garrison: I would like to deal with 32 separately. I don't believe I have any objection to dealing with the rest.

(On clause 32)

The Chair: Okay, let's start there, sir.

Mr. Randall Garrison: Thank you.

I have a question for our officials. Clause 32 amends the Youth Criminal Justice Act, and says that is replaces the section in the act. Unfortunately, I don't have the act in front of me. My question has to do with the idea of using recognizance with traditions for those who are under the age of majority. I wondered whether we have any jurisprudence on doing that, because it seems to me that the Youth Criminal Justice Act takes into account diminished capacity to make some decisions. That would seem to me to be in fundamental conflict with the idea of recognizance with conditions. I'm sorry, I don't have the Youth Criminal Justice Act here with me and perhaps I'm mistaken.

Mr. Douglas Breithaupt: Thank you.

The recognizance with conditions has never been used, so there's no established jurisprudence there. There have been peace bonds used involving youth.

The Youth Criminal Justice Act contains significant legal safeguards to ensure that young people are treated fairly and their rights are protected. This would provide that they would be dealt with according to the Youth Criminal Justice Act.

Mr. Randall Garrison: What are we actually replacing here because I don't believe we've ever had this? What in the world are we replacing with this? We must be taking something out in order to put this in so that makes me wonder. And I'm sorry. I just don't have that act to hand.

Mr. Douglas Breithaupt: Just give me a moment.

Mr. Randall Garrison: I can't remember. I've dealt with that act forever, but I don't know what's in that section.

Mr. Douglas Breithaupt: It would ensure that section 83.3 recognizances and the new terrorism peace bonds and section 810.011 would apply to youth under the Youth Criminal Justice Act, and that applications would be heard in youth court.

Mr. Randall Garrison: Sorry, I'm just being advised that the section is here. Thank you very much.

I see the existing section does contain provisions for recognizance and so those would be dealt with in youth court. I'm less concerned about that than I was at the beginning.

Thank you for your assistance.

Thank you to our analysts.

The Chair: Thank you. We will now go to the vote on clause 32.

(Clause 32 agreed to)

(Clauses 33 to 39 inclusive agreed to)

The Chair: Now we go to NDP-15 and its proposed new clause 39.1. You can certainly move it, but I think you do understand that it will be inadmissible. You're capable of moving, should you wish, Mr. Garrison. It's inadmissible under the parent act, with the effect in the Criminal Code on that.

If you wish to introduce it and say something, you can.

Mr. Randall Garrison: We're talking about NDP-15?

The Chair: Carry on.

Mr. Randall Garrison: Some of your advice has thrown me.

I would like to introduce the amendment. It's one of four amendments here that attempt to restore the office of inspector general in CSIS, which was eliminated by this government in 2012. It was one of the primary internal oversight mechanisms available both to the minister and also indirectly therefore to Parliament for making sure the activities of CSIS were conducted always in a lawful manner.

● (1900)

The Chair: Thank you very much.

I have of course counsel from the legislative clerk, and I will just refer to it, Mr. Garrison. The amendment proposes to modify section 2 of the Canadian Security Intelligence Services Act. As *House of Commons Procedure and Practice*, second edition, states on pages 766 to 767 "...an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill."

In this case, since section 2 of the Canadian Security Intelligence Act is not being amended by Bill C-51, it is therefore the opinion of the chair that the amendment is inadmissible.

Hon. Wayne Easter: Chair, are we allowed to comment on that?

The Chair: No.

Hon. Wayne Easter: I expected not, but a lot of witnesses called for an inspector general so I wanted to put it on the record.

The Chair: We will now go to Green Party 37 and its proposed new clause 39.1. We have a similar situation.

You have the floor, Ms. May.

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

This amendment is one that was recommended by Professors Forcese and Roach. This is in relation to recommendations that have been received by the Security Intelligence Review Committee.

The recommendation I want to quote from is from Professors Forcese and Roach:

> The most problematic part of paragraph 2(b) is the phrase 'detrimental to the interests of Canada'. It is not found in any other Canadian enactment. It is almost wholly subjective: no criteria are provided to offer any standard for determining what is 'detrimental'...this is hardly the kind of broad discretion that Parliament wished to grant to a security service which was required to maintain the principle of a 'delicate balance' between the need to acquire information and an individual's right to privacy.

The precise meaning of the term "clandestine" is not certain and merely secret activities could be interpreted as clandestine.

They concluded that "Although this formulation of paragraph 2(b) is narrower, we believe that it will provide an adequate mandate for the Service." This is where I'm going, in making this recommendation to amend the Canadian Security Intelligence Service Act by suggesting that "foreign directed activities within or directly relating to Canada that are detrimental to the interests of Canada and are surreptitious or deceptive or involve a serious threat to any person".

Thank you.

The Chair: Thank you very much, but as the chair indicated earlier, this is inadmissible. It follows my previous statement regarding Mr. Garrison's amendment, that section 2 of the Canadian Security Intelligence Act is not being amended by Bill C-51. Therefore, it is the opinion of the chair that this amendment is inadmissible.

Now we have two clauses, 40 and 41.

Can we deal with them together, Mr. Garrison and Mr. Easter?

Hon. Wayne Easter: Agreed.

(Clauses 40 and 41 agreed to)

(On clause 42)

The Chair: Green Party amendment number 38 will also be inadmissible, Ms. May, but I will read you the ruling from the legislative clerk in a bit. But you have the opportunity, first of all, to introduce it very briefly.

Ms. Elizabeth May: Thank you, Mr. Chair, for the opportunity to at least speak to why we've tried to move this.

This is an attempt to delete all those sections that change the fundamental role that has existed for CSIS since 1984, being an intelligence gathering operation, and to move them to having so-called kinetic powers to be able to take actions to disrupt.

We'd prefer they notify the RCMP and for the RCMP to do the disrupting.

● (1905)

The Chair: Thank you very much, but of course the ruling follows *House of Commons Procedure and Practice*, second edition, where it states "An amendment that attempts to delete an entire clause is out of order, since voting against the adoption of the clause in question would have the same effect." So the amendment is inadmissible.

Now we will go to Green Party amendment number 39.

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

In this amendment we're attempting to replace lines as opposed to deleting them. They again relate to the kinetic powers, but this time rather than deleting them, we are trying to restrict them so the possible activities that could be classified as threats to the security of Canada, using the definition in this section of the CSIS Act. I submit that these amendments, while I'd prefer to eliminate them altogether, would provide some narrowing of the potential for CSIS agents using kinetic powers.

The Chair: Yes, Mr. Norlock.

Mr. Rick Norlock: I believe this amendment is not consistent with the intent of the bill, which is to give CSIS an effective mandate to reduce all threats to the security of Canada as defined in the CSIS Act.

By limiting the scope of the threat reduction mandate, the amendment would greatly reduce the value of threat reduction as a national security tool. Although the focus of Bill C-51 is terrorism, the rationale for a threat reduction mandate applies equally to the full range of threats to the security of Canada as defined in the CSIS Act. Opportunities to reduce threats have been identified beyond terrorism, but CSIS, lacking the necessary threat reduction mandate, has been unable to take advantage of those opportunities. We need to advantage them, and therefore I am not in favour of this amendment.

The Chair: Thank you.

Yes, Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I noted with interest that Ms. May said she would like to delete this entire section, and certainly at report stage we'll be asking to remove all of these disruption powers of CSIS.

The McDonald commission, which resulted in the setting up of CSIS many years ago, drew a very proper distinction between disruption activities as the purview of law enforcement, and the importance of separating that from intelligence collection, which I believe all of our allies do in separate organizations.

I don't think this is actually fixable by narrowing the scope, so unfortunately we won't be able to support Ms. May's amendment because we believe the whole thing needs to be taken out.

The Chair: Thank you.

Ms. Ablonczy.

Hon. Diane Ablonczy: Mr. Chair, it is important to be clear about what the Green Party and now the NDP are proposing because if this amendment passed, CSIS could no longer take measures to reduce threats posed by foreign-influenced activities or by domestic subversion. We'd be taking away important tools from CSIS to deal with an evolving threat. I don't think this would make sense to very many Canadians.

The Chair: Thank you very much.

Mr. Easter.

Hon. Wayne Easter: Thank you, Mr. Chair.

I have a couple of points here. One, the SIRC, Security Intelligence Review Committee, study in its summary in the 2009-10 annual report noted that the CSIS director had testified in Parliament in May 2010 that disruption operations should principally be left to the RCMP. So I think it is possible to do disruption without it necessarily being CSIS that does the disruption, and it might be better placed with police authorities.

When Professor Forcese was asked a question on how our intelligence agencies compare with our Five Eyes partners and whether or not any of our Five Eyes partners had empowered their CSIS equivalents with the authority to violate domestic law, he stated:

> I can only report what it is that I've asked counterpart colleagues in Australia, the United Kingdom, and the United States when I posed the question whether their domestic security intelligence organizations have powers of disruption, and whether those powers of disruption are permitted to supersede either their domestic law or their constitutional rights. The answer from the United States, Australia, and the United Kingdom was no.

I wonder if the witnesses who are here could respond. With these new disruptive powers of CSIS, why are we so far removed from the mainstream of what our Five Eyes partners do?

I would say again, Mr. Chair, our Five Eyes partners all have national oversight but the government fails to bring that up.

The Chair: On a point of order—

● (1910)

Ms. Roxanne James: I think Mr. Easter is asking the witnesses to give an opinion as opposed to explaining the context of what's actually in the bill, so I'm not sure whether there's a different question that Mr. Easter would like to ask, but it's certainly not the position of the witnesses to provide opinion testimony as to why certain countries do one thing and other countries do not.

The Chair: Your point is in order.

You may ask a direct question, but not ask for an opinion, Mr. Easter. If it's seeking information that would be in order.

Hon. Wayne Easter: Thank you, Mr. Chair.

Then my question would be do any of our Five Eyes partners, United States, Australia, New Zealand or U.K., give these kinds of disruptive powers to their equivalents of CSIS and do they allow their agencies to supercede either domestic law or constitutional rights?

Mr. John Davies: Yes. Not New Zealand, but the others, Australia, U.K., U.S., absolutely have equivalent powers. The minister mentioned that in his remarks when he was at the committee.

Hon. Wayne Easter: Because the minister mentioned it doesn't mean it's correct, that's for sure.

The Chair: Mr. Easter, that is not helpful. Just carry on.

Hon. Wayne Easter: I'm just stating a fact, Mr. Chair.

The Chair: That is not a fact, Mr. Easter. That's just not necessary.

Mr. Norlock.

Mr. Rick Norlock: Mr. Chair, I can appreciate Mr. Easter making that comment, but I cannot appreciate the questioning of the witness casting him in a disparaging way. As a matter of fact, I don't think we should cast any witness, or anyone here to give us advice, in a disparaging way, just as I would never impugn or put into question an academic's opinion based on his or her research. I think it's important for this committee to make sure that....

We have witnesses who have different opinions, and we have witnesses who can look at other countries and come away with differences of opinion as to their ability or inability to do certain things. Canada is a separate, independent, and sovereign country. We do adapt certain things from other countries, but we don't necessarily have to emulate them or have what they have. I suspect that if we had certain agencies, such as they do south of the border, the people across the way would be—well, except for Randall—pulling their hair out.

Some hon. members: Oh, oh!

The Chair: Mr. Garrison, you have the floor now, sir.

Mr. Randall Garrison: Like most people who are listening to this, and most people at the table, I'm assuming we're back on the Liberal amendment.

The Chair: No, I thought you had your question. I thought you had your hand up—

Mr. Randall Garrison: We're still on the Green Party amendment?

The Chair: Yes, we are. We are on PV-39. Are you fine on that one?

Mr. Randall Garrison: I've spoken on it. Yes, I'm fine. I was anticipating the next one.

The Chair: I'm sorry. Okay, thank you very much.

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

The Chair: Now we will go to Liberal amendment 11.

Hon. Wayne Easter: Mr. Chair, my question concerns the amendment to the act that would ensure that CSIS could not contravene a right or freedom guaranteed by the Canadian Charter of Rights and Freedoms. As I understand it, and correct me if I'm wrong, we're basically asking a judge to authorize a violation—that may be too strong a word, but I can't think of a lighter one—of the Charter of Rights and Freedoms. I believe one of the witnesses, and I forget which one, said that would constitute a constitutional breach from his or her point of view.

I have a question for Justice officials, Mr. Chair. Are Justice officials prepared to state on the record that the provisions in part 4 related to the ability of CSIS to violate the charter will not be overturned as the result of litigation? Can they comment on that?

● (1915)

Mr. John Davies: Just to be clear, I'm from Public Safety, as is Ms. Banerjee. Mr. Duffy is from Justice.

The Chair: On a point of order, Ms. Ablonczy.

Hon. Diane Ablonczy: Mr. Easter, you know, because you've been Attorney General, that you can never prejudge what the outcome of litigation might be. Do you really think it's fair to put this question to a witness?

Hon. Wayne Easter: I really do not know. I put the question forward for the simple reason that I'm fully convinced that the Supreme Court will overturn this at some point in time. I cannot believe that the Department of Justice, with this section in the bill, has found this to be charter-proof. That's why I'm asking the question.

Let me ask it another way, Mr. Chair.

The Chair: Mr. Easter, the chair will respond briefly. It would have to be in a totally different way, the simple reason being that you cannot ask witnesses to pass judgement on something that is subjective and not even before them, from the point of view of an action having been taken. Please head into another direction, if you would.

Hon. Wayne Easter: Good to see you're on your toes, Mr. Chair.

The observation from one witness was that this could be seen as a constitutional breach. I have said that I think these powers would in fact—and I do think the words “violate the Charter of Rights and Freedoms” are wrong.... However, is this law as it's written allowing an undermining of the Charter of Rights and Freedoms by CSIS operatives in some instances?

Mr. Michael Duffy (Senior General Counsel, National Security Law, Department of Justice): Mr. Chair, perhaps I can respond to that for the Department of Justice.

The member's characterization made by an earlier witness that there would be a constitutional breach is precisely why the section does not do what it is alleged to do. If in fact it did create or give rise to a constitutional breach, that is precisely what the Minister of Justice, in his duties in looking at the charter compliance of legislation, would have caught. As the minister indicated when he appeared before this committee, this bill, like every other bill, goes through an intense level of scrutiny to make sure that in fact it is charter-compliant. In this case, that was done.

The suggestion that the bill is designed to actually have a judge violate the charter or be co-opted into violating the charter is not what the bill does. What the bill does is precisely the opposite. It puts the judge in the position of deciding whether or not the charter would be violated by the proposed measure. If it would be violated, that is the end of the matter. No one, including the judge, can authorize the measure.

That's just to correct the record.

The Chair: Thank you very much.

Hon. Wayne Easter: I have a couple of other questions on that then, Mr. Chair.

The Chair: Yes.

Hon. Wayne Easter: Thank you, Mr. Duffy. I appreciate your point, and I sincerely hope you're correct.

In witness testimony, Ron Atkey—in fact, two separate witnesses said this—stated that this is where the discrepancy comes from on the real meaning of this section.

I'm belabouring this point, Mr. Chair, because from my point of view this is a crucial section in the bill, and I think we need to understand what it means correctly.

● (1920)

The Chair: That's as long as it does pertain to the elements of the bill.

Hon. Wayne Easter: Yes, it does. I'll tell you what two witnesses said.

Ron Atkey, before the committee on March 12th, said:

> Part 4 authorizes the Federal Court to issue a warrant to CSIS to take measures that may contravene a right or freedom guaranteed by the Canadian Charter of Rights and Freedoms. This provision, in my view, is clearly unconstitutional and will be struck down by the courts.

That was his point.

Professor Craig Forcese, on the same day, said:

> For the first time, judges are being asked to bless in advance a violation of our charter rights in a secret hearing not subject to appeal and with only the government side represented.
>
> There is no analogy to search warrants. Those are designed to ensure compliance with the charter. What the government proposes is a constitutional breach warrant.

You're suggesting that interpretation is wrong.

Mr. Michael Duffy: Mr. Chair, that's precisely what I'm not suggesting but indicating.

The bill, properly read, doesn't do what the witnesses have indicated it does. The judge is being put in precisely the position of looking at the facts of a particular case and determining whether or not the rights that are at issue are reasonably restricted. That is precisely one of the functions that is allowed a judge under the charter. Section one provides for that determination, and that's what the bill in fact provides for.

It is not correct, in our submission, that in fact the bill is in any way co-opting the court or anyone else into sanctioning a charter violation. It goes to a judge precisely for that reason, to make sure that the charter will not be violated. The charter violation occurs when a particular right is restricted in a way that is not reasonable, and that is the inquiry that a judge makes under the statute.

Hon. Wayne Easter: Thank you very much, Mr. Chair.

Thank you, Mr. Duffy.

The Chair: Thank you.

Mr. Norlock.

Mr. Rick Norlock: Thank you very much, Mr. Chair.

I think at this point I'd like to address my constituents at home and mention to them that in my years as a court officer, I listened to some very smart lawyers and challenged some other very smart lawyers as to whether or not something was right or wrong, whether the police or someone had the right or didn't have the right to do what they did. So in going along with our witnesses and what they say, I believe our witnesses believe the evidence they gave before this committee, which is that they believe this would contravene the charter.

We just heard from expert witnesses here tonight that they specifically think the opposite to make sure that it's protected. When they say, “Well, the judge can't give a warrant to break the law”, that's why police go to a judge to authorize them to go into someone's home, their domicile, and search for things, etc. They have to go before a justice and express the reasons for it.

So for the average person out there who doesn't have experience with the law, when they hear our witnesses saying that it's the end of the world as they see it, that the charter's being contravened, and oh my goodness, why is the government doing that.... The reason we have these good folks here tonight is to tell us why they drafted it that way. I think Mr. Duffy's explanation is evidence in and of itself that the minister and his officials put them through the hoops when it comes to making sure that Canadians' charter rights are being protected. And if there's any necessity to come close to going too far, as far as a challenge to the charter, the minister errs on the side of caution, because that's his legislative responsibility.

I think Canadians need to know that they're going to hear very many differences of opinion as to the legality of certain things in this piece of legislation. I think we've heard some very good common sense here tonight. Again, I repeat that's not to say that other witnesses.... I'm not impugning their reading of the law, etc.; they just see it from a different perspective. I think folks need to realize that their lawyers aren't better than our lawyers. That's why we have a court system. When Mr. Wayne Easter says that this will never meet a.... That's his opinion. It's just his opinion, and we'll have to see what the future is.

But not to meet the evolving threat of terrorism for fear that something negative may happen would be a breach of the government's responsibility, which is the health and safety of its citizens.

Thank you, Mr. Chair. That's why I will not be supporting this amendment.

● (1925)

The Chair: Thank you very much.

Mr. Garrison, please.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I will also not be supporting the Liberal amendment, but that's because, of course, I believe the disruptive powers, as I said before, aren't fixable. The warrants are part of those, and I also believe that those are not fixable. So we intend to try to throw out this entire section on disruptive powers and warrants when we get to the report stage.

Just on Mr. Norlock's point, I have full respect for the officials who are at the table, and I believe they are giving their best advice, but they are, in fact, the government's lawyers on this bill—

Mr. Rick Norlock: Their lawyers are better than our lawyers?

Mr. Randall Garrison: —so I do take his point that these are not separate, independent witnesses. These are the government's lawyers who have prepared the legislation, and I expect them to present professional advice, which I believe they have done this evening.

I'm not sure how that gets us closer to where we need to get to on this, but I think what Mr. Easter's amendment does is it makes the warrants into half a loaf, so for that reason, we still won't support it. He's taken out the worst aspects, but the rest of the bread is still there.

Thanks.

The Chair: Fine, thank you very much.

We will now call for the vote.

Yes, Mr. Easter.

Hon. Wayne Easter: Mr. Chair, I have one other point. I want to come back to Mr. Duffy again, if I can, or the other witnesses.

What gets confusing here, Mr. Duffy, if you go to new subsection 12.1(3), is that it states that the service may not take measures that contravene a right, etc., or will be contrary to other Canadian law unless—and these are the words that are troublesome—“the Service is authorized to take them by a warrant issued under section 21.1.”

I'm not a lawyer, but when that's in there with the words “unless the service is authorized...by warrant”, the first thing that pops into your mind is that they would be authorized to contravene that right or freedom. That's the problem I have with this wording.

I don't question what you said previously, but can you expand on that a little further? Because that's my reading of it.

Mr. Michael Duffy: Mr. Chair, I understand the concern that's been voiced.

What it turns on is section 1 of the charter, which provides that the rights referred to in the charter are guaranteed only to the extent that they are not restricted by reasonable limits prescribed by law in a free and democratic society. That's what it turns on.

The judge may determine that a particular right referred to in the charter, be it mobility or something else, is violated, and that's in a sense the preliminary stage. The point that goes to the judge is, is that violation a reasonable one because the restriction is prescribed by law in a free and democratic society? That's the judicial inquiry that has to take place on the warrant process. When the provision ends with the indication that unless authorized by a warrant, it's precisely that. A right may appear to be infringed or be infringed and that's fine. The judge has to determine whether that infringement is a reasonable one or whether it's a reasonable restriction. If the judge, in terms of illegality, determines that a particular measure will give rise to a legal conduct, then the judge has to determine whether the judge, by way of a warrant, will authorize that otherwise illegal conduct. That's the rider about what a warrant is designed to indicate. The judge does what a judge does to determine whether that charter right that is affected and violated is reasonably restricted by the measure, or whether the particular conduct that would give rise to otherwise illegal conduct is in fact one that should be authorized pursuant to warrant. It reinforces that it is a judicial decision, not a CSIS decision, to take the measures that do these particular activities.

Hon. Wayne Easter: Thank you, Mr. Chair.

I still stand by the amendment because I think the amendment makes it clearer and will not contravene a right or freedom guaranteed by the charter. I still stand by my amendment and will move it.

The Chair: Thank you.

Ms. James.

Ms. Roxanne James: Thank you, Mr. Chair.

I wanted to thank Mr. Duffy for clarifying that. I was going to ask you about the charter, specifically as to what you just referenced and the tests that the federal court judge uses to determine whether a request for a warrant is within a reasonable limit on the right or the freedom. Therefore it becomes in accordance with the charter.

I wanted to thank you for clarifying that. We did hear from a couple of witnesses who said that this is going to contravene the charter and, therefore, that we absolutely can't have this amendment. We already know that warrants are an everyday process and that judges make those decisions every day.

Thank you for clarifying that.

● (1930)

The Chair: Thank you very much.

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

The Chair: We will now go to Green Party amendment number 40.

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

I'll ask someone at the table who is a lawyer and who's studied statutory interpretation. I'm vastly relieved that Mr. Duffy further qualified his first answer, because I thought someone had found a textbook on law authored by Lewis Carroll, because proposed subsection 12.1(3) clearly says that a warrant can be issued that allows for a violation of the charter of rights and freedoms. Now we have the clarification that a judge asked to allow an activity that would violate the charter has to weigh that against the reasonable limits that are imposed within the charter. In other words, this is exactly, as Professor Forcese said, “a constitutional breach warrant”.

I have put forward language not dissimilar to Mr. Easter's to ensure that no warrant issued under proposed subsection 21.1 can contravene a right or freedom guaranteed by the Canadian Charter of Rights and Freedoms. It is absolutely the case that warrants are issued every day by judges across Canada, but we have never had a provision that allowed a warrant to violate the Charter of Rights and Freedoms or to ask a judge alone in an ex parte hearing without other representation to make a decision solely in that courtroom with no public transparency. The situation allows for a breach of the charter given the reasonable limits provision.

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

Is there further comment?

Mr. Falk.

Mr. Ted Falk: Thank you, Mr. Chair.

I thought that maybe Ms. May would withdraw her amendment after hearing such an articulate answer from Mr. Duffy.

Ms. Elizabeth May: He confirmed what we believed.

Mr. Ted Falk: I would like to reinforce the evidence the official gave. In order for CSIS to conduct an activity that may be construed as a violation of the Charter of Rights and Freedoms, it would require, first, ministerial approval, and then judicial approval, and that judge would have to weigh whether the activity was reasonable and proportionate to the limits provided for individual rights and freedoms within our Charter of Rights and Freedoms.

I think the amendment is redundant and not necessary.

The Chair: Thank you.

Ms. Ablonczy.

Hon. Diane Ablonczy: Mr. Chair, I think it's important to point out that the charter is not breached. The charter recognizes that there are times when courts need to make decisions about whether to enforce certain rights given the larger interests of society as a whole. That's exactly the kind of determination that will have to be made under this legislation.

The charter envisions and allows that kind of a distinction to be made by our courts. When that distinction is made, when the courts decide, it's under the charter. It is allowed by the charter. It's authorized by the charter. It's recognized by the charter, and it is charter compliant. There is no breaching of the charter. The charter is simply interpreted in such a way that CSIS is allowed by the courts to take measures or not to take measures that they propose. There should never be any talk about breaking the charter, because it's never breached.

The Chair: Thank you very much.

Is there any further discussion?

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

The Chair: We're on amendment PV-41.

Ms. Elizabeth May: I have good news, then, for the Conservative members opposite, because if that's the case and the charter is never breached, then you don't need a warrant to allow its breach, and my next amendment should meet with your approval.

Just delete, after “the Charter of Rights and Freedoms”, so that the phrase would now read:

> The Service shall not take measures to reduce a threat to the security of Canada if those measures will contravene a right or freedom guaranteed by the Canadian Charter of Rights and Freedoms.

Since we have the word of the various members of this committee representing the Conservative government party that there's no intention to breach the charter through the warrant, then let's not leave the door open to constitutional breach warrants.

● (1935)

The Chair: Thank you.

Is there any discussion?

Mr. Payne.

Mr. LaVar Payne: Thank you, Chair.

I want to thank Mr. Duffy for his testimony. I'm not sure I need to say anything regarding this, other than that I don't support this amendment.

The Chair: Thank you.

Mr. Easter.

Hon. Wayne Easter: I have a question to Mr. Duffy or the other two witnesses on this.

What are the implications of taking out “or will be contrary to other Canadian law, unless the Service is authorized to take them by a warrant issued under section 21.1”? What are the implications of removing that section vis-à-vis what is felt is needed under this bill in order for CSIS to do the activities we're trying to allow it to do?

Mr. John Davies: I think it would have a massive negative operational impact to only allow the Service to undertake activities that are illegal. Without any recognition of the impact on the Charter and so on, it's not clear that it would be worth moving forward with the bill.

Hon. Wayne Easter: I appreciate that.

Thank you, Mr. Chair.

The Chair: We are now voting on amendment PV-41.

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

The Chair: Now we will go to amendment G-3.

Ms. James.

Ms. Roxanne James: We put forward this amendment because throughout the testimony, and even sometimes in the media, I heard from some of my colleagues that somehow CSIS was being turned into a secret police and that we're moving to a police state and everything else. Of course, we've heard this before. We've heard similar comments from organizations going way back to 1983. But I just want to be clear that Bill C-51 does not give CSIS police powers. There's no ability to arrest. Under Bill C-51, CSIS will remain a civilian security intelligence agency dedicated to investigating and addressing threats to the security of Canada, including the amendments in this bill. Nonetheless, we have added this proposed subsection:

> (4) For greater certainty, nothing in subsection (1) confers on the Service any law enforcement power.

We do so in order to clearly set aside any of the rhetoric we have heard about secret police and so forth. That is completely ridiculous and complete and utter nonsense, and that's why we've added this amendment to the bill.

The Chair: Is there a question on that?

Yes, Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

Some witnesses may have said the things that the parliamentary secretary.... Most did not say those things, and most did not imply that the bill granted law enforcement powers to CSIS. In fact, the concerns are based on the positive statement in the bill that says CSIS can do anything, with only three exceptions.

So I am happy to see this amendment, which will certainly clarify the point of law enforcement powers. But it does skip over the main concern, which is about doing anything other than murder people, violate their sexual integrity, or interfere with the courts. That's a very broad grant of power. What's missing there, which was of concern to people, is the ability to detain persons or transfer persons to the custody of another.

I am moving a subamendment to add, at the end of the government's amendment, following the words “law enforcement power”, the following:

> or power to detain any person or transfer any person to another state.

I have copies of that, which can be distributed in both official languages.

So if the government is serious in bringing forth this amendment and trying to clarify those extreme comments, this will very clearly state that detention, which is not arrest—it's a different thing in law—would not be a power of CSIS, and that whether inside or outside Canada, CSIS would have no power to detain someone, and after that detention, to transfer them to another person or state.

If these are indeed ridiculous claims and extreme claims, we can deal with them right now by adopting the subamendment, which would make clear that CSIS would not have those powers.

● (1940)

The Chair: We'll wait until the distribution is complete, and then we have Mr. Easter and then Mr. Norlock.

Hon. Wayne Easter: My question wasn't on the subamendment, Mr. Chair, so I'll pass.

The Chair: Thank you.

Mr. Norlock, are you on the subamendment?

Mr. Rick Norlock: Yes, it's on the subamendment, because there are underlying themes here.

I'm going to ask the officials if there's any jurisprudence with regard to detention, the constitutionality...or that detention is consistent with bodily harm or emotional or psychological harm. Is there jurisprudence that states that detention equates to those two things?

Mr. Michael Duffy: The concept of detention means different things in different contexts. In some cases it may give rise to treatment that would amount to bodily harm, but not necessarily. People are detained at the border for inspection purposes, but they don't necessarily find themselves subjected to bodily harm or treatment that is referred to in the act.

If I might, I would just indicate that the reference to CSIS not having law enforcement powers, as the member indicated, was intended to address the concern that certain powers associated with a law enforcement agency were not being given to CSIS. The important point that was reflected in the drafting is that CSIS as an agency cannot take it upon itself to exercise those powers. It has no power and never has had a power to detain or arrest or imprison. Nothing in this bill changes that.

When the concept of detention is used, for example, again, to repeat myself, the service has never had a power to detain. That is a peace or police officer power that is conferred either by common law or by statute. It doesn't find itself in CSIS.

The point is that in the course of CSIS operations they may, in fact, identify opportunities to take measures to interfere with a person's movement. What the act provides is that if CSIS wishes to do that, and if to do that would contravene the law, they have to obtain judicial authorization. The important point in the legislation that we tried to reflect in the drafting was that it was never up to CSIS to make that decision on its own; it would always fall to a judge to make that determination.

Mr. Rick Norlock: Thank you.

The Chair: Mr. Garrison.

Mr. Randall Garrison: I'd like to thank Mr. Duffy for that explanation, but I would submit that by the very same logic, then, there is no harm done in this subamendment saying that there is no power of detention or rendition involved in this, and that this will simply clarify it. It suits the original intention of the government's amendment to say that there are no law enforcement powers. It should be quite a simple matter, then, to add the subamendment.

Mr. Michael Duffy: Mr. Chair, I would just indicate that I haven't had an opportunity to consider in any detail the wording that the member refers to. But just the reference to “rendition” or “removal to another state” is not necessarily a law enforcement power. So to the extent that the amendment refers to “law enforcement”, it may not be a like thing.

Mr. Randall Garrison: It says “or”.

The Chair: Thank you.

Is there further discussion?

Seeing none, we will now decide on the subamendment.

[*Translation*]

Ms. Rosane Doré Lefebvre: I would ask for a recorded vote, please.

[*English*]

The Chair: Yes, Mr. Easter.

● (1945)

Hon. Wayne Easter: I had a question on that previously, Mr. Chair, before we got into the subamendment.

The Chair: We actually voted on the subamendment. Now we're on the amendment.

Hon. Wayne Easter: Before we got into the subamendment I had a question on the original.

The Chair: I've got you now.

Hon. Wayne Easter: Has this section been found necessary by any of our Five Eyes partners, or not? Does anybody know? It's just of interest. If you can't answer it, it's not a problem.

Ms. Roxanne James: None of our witnesses could give an opinion as to whether something is necessary or not.

Hon. Wayne Easter: It's not an opinion. I was just asking if they have it.

Ms. Roxanne James: You said that it's necessary, so I don't think they can answer whether it's necessary or not.

Hon. Wayne Easter: No, I didn't.

The Chair: No, he asked if they possessed that power.

Hon. Wayne Easter: Anyway, if they don't have the information, that's fine. It was just of interest.

The Chair: Good.

Mr. Michael Duffy: Mr. Chair, I would indicate that it's in the bill, or being proposed to be put into the bill, not because it appears in legislation in some other jurisdiction, it was to address concerns raised in this particular jurisdiction.

Hon. Wayne Easter: Okay, thank you.

The Chair: Thank you.

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

The Chair: We will now go to Green Party amendment 42.

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

In relation to those specific activities that are forbidden to CSIS agents of causing bodily harm and death, or wilfully attempting to obstruct justice, or violating the sexual integrity of a person, my amendment seeks to ensure that the interpretation of “bodily harm” is compliant with the covenant against torture so that the language is clear that “death or bodily harm to an individual”, then continuing on with new language:

> including as a result of using torture within the meaning of subsection 269.1(2) of the Criminal Code or cruel, inhuman or degrading treatment or punishment within the meaning of the Convention Against Torture as defined in subsection 2(1) of the *Immigration and Refugee Protection Act*;

I was surprised that we thought we had to tell CSIS agents they shouldn't kill anyone, or violate their sexual integrity, or pervert the course of justice knowingly, but I think that while we're at it we might as well also ask them not to torture anyone.

The Chair: Ms. May, that's not called for.

Ms. Elizabeth May: Why not?

The Chair: That is not called for. I asked you to introduce your amendment and not to be judgmental on that.

There is no more discussion. Thank you very much.

Ms. Elizabeth May: Mr. Chair, the words speak for themselves.

The Chair: We will now open up for other conversation on it.

Mr. Norlock.

Mr. Rick Norlock: With regard to Green Party amendment 42, I believe that the amendment would specify that bodily harm includes torture, as defined in subsection 269.1(2) of the Criminal Code, or cruel, inhuman or degrading treatment or punishment within the meaning of the UN convention against torture.

The amendment is not necessary. The bill already prohibits CSIS from causing bodily harm, which includes psychological harm, intentionally or by criminal negligence. Furthermore, torture would be contrary to Canadian constitutional obligations, the Criminal Code, and Canada's international commitments and obligations. Therefore, I do not support this amendment.

The Chair: Is there further discussion?

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

The Chair: Now we will go to Ms. May on Green Party amendment 43.

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

This is in relation to testimony, recommendations, and amendments from Professors Forcese and Roach that we should not grant CSIS agents detention powers. I want to enter into the record their comment on the government amendment that just passed. They wrote, "Even more distressingly, the government refuses to redress in any"—

● (1950)

The Chair: Ms. May, you do not have at the committee an opportunity to comment on the issue.

Ms. Elizabeth May: It's directly relevant to my amendment.

The Chair: I'm sorry.

Ms. Elizabeth May: I'm guaranteed, by the motion you passed that brought me here, a reasonable opportunity to present my amendments. I don't think you can edit the way I present my amendments, Mr. Chair. My point is relevant to my amendment.

The Chair: Ms. May, you do not have the floor.

When you have the floor to present your motion, you cannot be referring back to other government amendments. You may certainly speak on your amendment; you just do not have the authority to speak on an amendment that's passed.

Please go ahead on your motion.

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

The confusion that will arise around the language in the bill now also relates to detention, which is why I think this amendment is even more relevant.

As Professors Roach and Forcese have put forward:

> If CSIS wishes to detain or interrogate, it will do so for threat disruption purposes, not "law enforcement". The government's peculiar language does precisely nothing to dispel concerns about a system of CSIS "security detention" or "detention for security interrogation." Given the disturbing experience in other jurisdictions after Sept. 11, 2001, the absence of an express, emphatic bar on detention is alarming.

That's their view, as legal experts. This amendment attempts to address that by explicitly prohibiting detention. Thank you, Mr. Chair.

The Chair: Thank you, Ms. May.

Mr. Falk, please.

Mr. Ted Falk: Thank you, Mr. Chair.

The amendment that is on the floor right now is not consistent with the intent of the bill. It would unduly narrow the range of possible measures that CSIS could take, and would so weaken CSIS's capacity to carry out its threat reduction mandate.

There is no need to place additional prohibitions on CSIS. The judiciary, through the Federal Court, can only authorize threat reduction measures found to be reasonable and proportional, as well as charter compliant.

With regard to detention, CSIS has no statutory authority to arrest individuals and is not being given the powers of law enforcement. Moreover, the bill prohibits CSIS from taking any measures that would cause death or bodily harm, making a prohibition on endangerment of health and safety unnecessary.

The Chair: Thank you very much for the conversation.

Shall the amendment carry?

Mr. Randall Garrison: I was asking to speak on it. That's why my hand was up.

The Chair: My apologies. I thought we'd exhausted that.

Please, Mr. Garrison, you have the floor.

Mr. Randall Garrison: Just to clarify, we are on....

The Chair: We're on Green Party amendment 43.

Mr. Randall Garrison: We're on PV-43 still. Yes, I do want to speak on that one.

I think Ms. May's description of her amendment was why we moved a subamendment to the last government amendment. The testimony we heard from legal experts is really very important. The Canadian Bar Association, I believe, maintained their concern about detention. I'm still having trouble understanding why the government wouldn't want to make the simple statement that detention is not part of the powers of CSIS.

The Chair: Thank you very much.

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

The Chair: Now we will go to clause 42 as amended.

Mr. Garrison.

Mr. Randall Garrison: I know we've had a lot of debate on this.

I just want to say once again that there are some differences between what we're talking about here in terms of warrants in this section and those used under section 8 of the charter. When we talk about search and seizure, I don't know of any other warrants that are issued, beyond search and seizure, that look for the reasonable limits of the charter. When we're talking about this section, we keep talking about warrants that involve the Charter of Rights and Freedoms as a whole, but I don't know that there are any others that are ever used in the courts on a regular basis, other than under section 8, in terms of search and seizure.

Second, the purpose of the warrant in the Criminal Code under section 8 is precisely to bring matters into court so that the way the warrant has been used can be judged, and those who use the warrant can be held accountable to the courts.

The problem, when we're talking about CSIS conducting secret activities authorized by a warrant, is that the purpose of those warrants is not to bring something to court; it's to disrupt an activity. Those warrants will never have a chance to be judged again on whether they've been used correctly or in accordance to the law.

The witness who said that most clearly was former Supreme Court Justice John Major. He said there is no backhand supervision on these warrants. That makes them quite different. In my opinion, and the opinion of the NDP, that is why this warrant section cannot be fixed and why we will be seeking to have these removed from the bill altogether.

● (1955)

The Chair: Thank you very much.

Mr. Easter, then Madame Doré Lefebvre.

Hon. Wayne Easter: I agree with Randall on the point that the granting of the judicial warrant is not oversight of any kind, although ministers have tried to claim that it was.

As one of the witnesses said, and I think it's the best way to explain this, the oversight ends when “the warrant walks out the door”. I think that's the reality of the issue. We are still short on oversight even with judicial warrant, so just add that into the discussion.

The Chair: Thank you very much.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I do not want to repeat what Mr. Garrison said about warrants, since I completely agree with what he said. That said, I do want to bring up a point about the confusion, or the constitutionality, even, of the provisions that could be brought before the court pursuant to the Canadian Charter of Rights and Freedoms.

When we heard from the Minister of Justice and the Minister of Public Safety and Emergency Preparedness, we mentioned the importance of eliminating any confusion with respect to the Canadian Charter of Rights and Freedoms. The Minister of Justice seemed to say that there was no problem. However, we have not been given any tangible proof that these provisions are constitutional or that they are in line with the charter. That is one of my regrets about clause 42. I would have liked to get a little more evidence from the Conservatives on this point.

I must also mention that I'm a bit disappointed to see that, unfortunately, the Conservatives voted against the reasonable sub-amendment the NDP presented on its amendment. I think that our sub-amendment was right along the same lines. We tried to work with the government to address some concerns that they themselves had tried to do with the amendment they presented and we supported.

Frankly, clause 42 is deceiving. Once again, there is some confusion about what is going on and what the provisions in this part of the bill contain. Unfortunately, we will see whether it holds up in court and in the Supreme Court in the coming years. That is very sad to see.

[*English*]

The Chair: Thank you very much.

Mr. Payne.

Mr. LaVar Payne: Thank you, Mr. Chair.

I was just looking at clause 44, and I see the words:

> (f) any terms and conditions that the judge considers advisable in the public interest.

My view is that if a warrant is issued by a judge.... I believe that our colleague Mr. Easter said that's the end of it. That is not correct. The judge can put conditions on that they may have to come back before the judge to determine whether in fact they followed all of the conditions that were set by the judiciary.

Thank you.

The Chair: Thank you.

We will now vote on clause 42.

An hon. member: As amended.

The Chair: Shall clause 42 as amended carry?

Ms. Rosane Doré Lefebvre: A recorded vote, please.

(Clause 42 as amended agreed to: yeas 6; nays 3)

The Chair: Thank you, colleagues.

(Clause 43 agreed to)

(On clause 44)

The Chair: We will now go to Green Party amendment 44.

● (2000)

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

This proposed amendment is directly related to watching much testimony, but particularly the concerns raised by the Canadian Bar Association that, in the event of the judicial warrant provisions carrying, which they now have, we at least amend the bill "to ensure that"—this is the language from the CBA brief—"they align with the fundamental role of Canada's judiciary in upholding the Rule of Law and Canada's constitutional guarantees".

They point out some of the real weaknesses with the process, which is why this is so important as an amendment. They point out that in this judicial constitutional breach procedure:

> No third parties will be able to make submissions. ...the ultimate court decision will be...unavailable to the public, due to confidential security information. No party will be able to appeal the decision.
>
> It is untenable that the infringement of Charter rights is open to debate, in secret proceedings where only the government is represented.

That is from the Canadian Bar Association.

Therefore, I am suggesting that we amend this at the end of clause 44 by replacing line 25 with "determined that the measures proposed to be taken are consistent with the rule of law and...the principles of fundamental justice".

The Chair: Thank you very much.

Ms. Ablonczy.

Hon. Diane Ablonczy: Ms. May seems to have a touching faith in the Canadian Bar Association, but others of us have been members of various bar associations. I've been one, and I have quite a different opinion. It's disappointing to see the Green Party continuing to attempt to put more barriers in the way of protecting Canadian society against terrorism and terrorist threats.

Here's another example. Right now, in order for CSIS to take the steps that they feel are necessary to protect against a threat, they have to go to a judge and say what they're going to do and why they're going to do it, and convince the judge that this is a reasonable and legal thing to do. The judge has to consider the CSIS Act to see whether CSIS is in fact acting within their mandate and, of course, the charter, because anything that CSIS wants to do has to be compliant with the charter, as we've already talked about at length.

Now the Green Party wants to throw some other things into the mix. I'm sure the NDP would never want to do that. Now the judge would have to also consider, in addition to the charter and the CSIS Act, something like "rule of law". They would have to consider things like "principles of fundamental justice", whatever that is. If the Green Party had their way, there would be such a morass of opinions and considerations that action would be pretty much at a stalemate.

I've been a member of the bar and I strongly disagree with the Canadian Bar Association on this, and I strongly disagree with this amendment.

The Chair: Thank you very much. Now for the vote.

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

The Chair: We will now go to Green Party 45.

Ms. Elizabeth May: Again, I would mention just briefly, because I was not allowed to respond earlier, that the Green Party is very concerned to appropriately and responsibly address any terrorist threats. We are not putting barriers in the way of protecting Canadians, but we do like to protect Canadian rights and freedoms, and one of them is—

The Chair: We have a point of order.

Ms. Roxanne James: On a point of order, Mr. Chair, again, I think we need the Green Party member to speak to the amendment she's put forward and not to the past decisions and votes that were done on a previous amendment that was put forward.

The Chair: I understand that, but we just allowed a quick response, and it was a quick response. The chair has a little latitude there as long as it's very quick.

Now, of course, please finish your motion.

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

This amendment, again compliant with the advice that we received from many witnesses, takes out the following:

> (d) to do any other thing that is reasonably necessary to take those measures.
>
> (4) Without regard to any other law, including that of any foreign state,

My language at this point picks up with:

> (4) A judge may, in a

It is not in anyway hampering the new CSIS kinetic powers, which I actually think will make Canada less safe.

In any case, this is to tighten up the language.

● (2005)

The Chair: Thank you very much.

Yes, Mr. Garrison.

Mr. Randall Garrison: Thank you.

I'll reiterate that I don't believe you can actually fix this section of the bill or fix these warrants. But if you were going to fix it, this amendment would be a very good start. For that reason we will be supporting Ms. May's amendment.

The language that she's taking out—"Without regard to any other law, including that of any foreign state"—implies that there will be some kind of violations of international law allowed, and implies that we'll get into situations where we might be violating the laws of our allies and inviting them to do the same for us.

Again, I think generally it's unfixable, but this would be a good start if we were trying to fix the language here.

The Chair: Thank you.

Mr. Payne.

Mr. LaVar Payne: Thank you, Chair.

Certainly I disagree with the amendment. It's contrary to the intent of the bill. The bill gives CSIS a broad mandate to take measures to reduce threats to the security of Canada, and as long as they are reasonable and proportional as well as charter-compliant.... The amendment would prevent CSIS from taking a wide range of threat reduction measures, and would weaken its ability to address threats to national security.

The amendment, by removing the authority of judges to consider only relevant Canadian law and authorizing measures outside Canada, would force CSIS to be aware at all times of any international or foreign legal impacts of our proposed activity and an unreasonable standard to be met.

I think that's enough on that.

The Chair: Thank you very much.

We've had discussion. All in favour....

Oh, excuse me.

Hon. Wayne Easter: That's okay, Mr. Chair.

The Chair: Mr. Easter, I'm sorry, but I have Mrs. James down first, and then I'll certainly get to you as well.

Hon. Wayne Easter: You can take me off the list.

Ms. Roxanne James: Thank you.

I think the biggest concern with this is that it would somehow make CSIS' ability to take threat diminishment measures dependent upon the laws of other countries. I just think back to when we did our previous Bill C-44. We heard testimony, and we've heard testimony again here, about how absolutely ridiculous that would be considering some of the countries' laws and how backwards they are to what we believe is right in a democratic society and under the umbrella of the charter.

I think that's the biggest concern with this amendment, that we would be relying on other countries' laws to dictate how CSIS could carry out their work. Considering some of those countries, I think that's completely over the top and outrageous.

The Chair: Yes, Mr. Easter.

Hon. Wayne Easter: I'll turn to the officials again on this one. We had this under Bill C-44, I believe.

The part in the bill that Ms. May would take out with her amendment states:

> (4) Without regard to any other law, including that of any foreign state

That was in a previous bill. It's now in this one. It is something that we do not see, that I'm aware of, with any of our Five Eyes partners. It certainly is giving the impression to those who we consider allies that we have no regard for their law. How do you explain that, and why is that necessary there?

That's for whoever wants to answer. Don't fight over it.

Mr. Michael Duffy: The provision, Mr. Chair, is in fact the same wording that appears in Bill C-44, and so it's tracked in this particular piece of legislation.

As the member indicated, if the threat diminishment power is to be of use when it is done outside Canada, it would really negate the power if that were subject to the laws of the foreign jurisdiction allowing the service to do what it is they propose to do. So the issue wouldn't only arise in relation to Five Eyes partners. It could arise in relation to other jurisdictions that may actually have a hand in the very activity that the service is seeking to diminish as a threat to the security of Canada, and that is seen as an illogical result that you would have to basically get the consent or do something in accordance with the laws of that jurisdiction.

Whether or not other countries have that type of provision in their legislation, that really reflects the nature of the legislation they have. It is a rather—if I can describe it this way—indelicate thing to say in legislation, and that may be precisely why it doesn't appear in legislation. States do not like to say that on the face of a statute, but because the issue was raised in other litigation involving Federal Court warrants, and it was addressed in Bill C-44, it would have been an anomaly if, in this particular power to take threat diminishment measures, it was restricted to doing what was permissible according to foreign law, quite apart from the fact that, as was indicated, it would be extremely difficult for CSIS as well as the Federal Court judge to know fully what the foreign law on a point was.

● (2010)

Hon. Wayne Easter: Thank you, Mr. Duffy.

The Chair: Thank you very much.

(Amendment negatived)

The Chair: Now, Green Party number 46.

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

This is an attempt, as suggested by Professors Forcese and Roach, that following Criminal Code subsection 25.4 for police and those who are affected by CSIS's activities that are now kinetic and under warrant, that within a year of taking that action, the person who's impacted should be notified that these steps were taken. They're not party to any of the hearings. They don't know this may have affected their lives. Obviously we need some balance in notifying people after the fact, and that's why my amendment is rather long.

I won't be able to read it into the record, but it is important to note that while this amendment would require the director notify someone no later than one year after taking such a measure, the minister would be allowed to notify the director that in this case there's an ongoing investigation or it could hinder something, or it's a security issue, and to not tell the person. But if the person has been exonerated, nothing was found, but their charter rights were violated under a warrant under subsection 21(1), let them know about it after the fact.

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

Yes, Mr. Falk.

Mr. Ted Falk: The amendment would require CSIS to inform individuals affected by measures taken under threat reduction warrants of the measures taken against them within a year. The amendment would also permit the minister to delay notification for a range of security reasons.

However, I don't think the amendment is consistent with the intent of this legislation. The bill authorizes CSIS to take covert measures to disrupt threats to the security of Canada. Notification of persons affected would defeat the purpose of this measure. It would also damage long-term investigations and could risk revealing sensitive tradecraft.

So I would not support it.

The Chair: Thank you.

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

The Chair: We will now go to Green Party amendment 47.

Ms. May.

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

Now, we've heard a lot around the table tonight of the excellent testimony from former Supreme Court Justice John Major who, of course, did yeoman's service on the Air India inquiry. In his evidence, although by video, I'm sure all of us remember with crystal clarity how often he said the bill would be deficient if a national security adviser were not created.

Now, I'm aware that in my position I can't create, by an amendment, a national security adviser. But what this amendment does is say that within a year of the first measure taken by CSIS, where it ceases to be what it was always intended to be—an intelligence-gathering operation only—and takes one of its kinetic measures, that at the one-year mark from that moment, the RCMP, CSIS, CSEC, the Canada Border Services Agency, and any other security agency would gather to discuss expansion of the role of the national security adviser to the creation of this role, as recommended by the Air India inquiry.

In other words, it sets up a moment where the key decision-makers decide to put in place this pinnacle of observation of all security activities.

Thank you.

The Chair: Okay. Is there any further comment?

Yes, go ahead Ms. James.

Ms. Roxanne James: Thank you, Mr. Chair.

I want to confirm that we are in fact on Green Party amendment 47.

The Chair: Yes.

Ms. Roxanne James: With regard to this, first, I don't think it's necessary. We already have in Canada a system of robust coordination and oversight over our law enforcement and security agencies.

Although it's not deemed to be out of scope with regard to this bill, I think it's certainly out of scope with what the intentions of Bill C-51 were in order to fill the existing gaps in legislation clearly identified by our security agencies. Therefore, I'm not going to be supporting this amendment.

● (2015)

The Chair: Thank you.

Mr. Easter, go ahead.

Hon. Wayne Easter: Yes, Mr. Chair, Justice Major certainly did make that point and made it quite well during committee hearings.

I would have to take issue with what the parliamentary secretary said in that we have robust oversight: we have anything but. By the conclusion of this bill we would have anything but robust oversight over all our national security agencies, and witnesses after witness has said they need robust oversight.

I know you've ruled that out of order, Mr. Chair. I don't know whether you'll allow it, but I do have the Conservative Party of Canada 2006 election platform here where it actually committed to —

The Chair: Mr. Easter, Mr. Easter.

Hon. Wayne Easter: Are you not going to allow that?

The Chair: No.

Hon. Wayne Easter: It's a commitment they didn't keep—

The Chair: Mr. Easter.

Hon. Wayne Easter: It's right here. I carry it around.

The Chair: Mr. Easter, do you have further comment on the...?

Hon. Wayne Easter: I'll just say that this amendment does go a step to at least giving us some ability to have oversight that could make a difference in the interest of Canadians; on the one hand, to ensure that the law is utilized fully, and on the other, to ensure that there's not overreach in civil liberties.

I will certainly be supporting this amendment.

The Chair: Thank you very kindly.

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

(Clause 44 agreed to)

The Chair: Colleagues, we can group clauses 45 to 48 if we're comfortable with that.

(Clauses 45 to 48 inclusive agreed to)

The Chair: Now, colleagues, we have a proposed new clause, 48.1, and this is amendment 48 from the Green Party.

You have the floor, Ms. May.

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

This would provide amendments on page 54 of the bill, adding in at an appropriate point in the flow of procedures that, when warrants are being issued, there would be an opportunity for the creation of special advocates. This would, of course, allow for a fuller examination of the issues and also the portion of the amendment that deals with first nations—and it's very modest language, at the end of proposed new subsection 27.2 (1)—

> In appointing a person from the list, the judge must take into consideration whether the person, or the person included in a class of persons, to whom the warrant is proposed to be directed is a First Nation member.

—to then consider a first nations advocate.

I was very struck by the testimony of Professor Palmater who felt there would be occasions when the special status in treaty rights would require this. In the time I seem to be allowed here, I can't adequately describe the amendment, but it is to create special advocates.

The Chair: Got that. Is there further discussion?

Ms. James.

Ms. Roxanne James: I will not be supporting this amendment. For one thing, we're talking about special advocates who are currently only found in proceedings under the Immigration and Refugee Protection Act.

There are a number of other issues here, but to keep it short, I will be opposing this amendment.

The Chair: Thank you.

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

The Chair: Now the vote on clause 49. Shall clause 49 carry?

(Clause 49 agreed to)

The Chair: Now we will go to NDP-16 for a new subclause 49.1.

● (2020)

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

My colleagues will probably be extremely surprised to hear that the NDP's amendment No. 16 proposes a sunset clause, with a review of the law after three years. I won't go into the details. I think that we've already covered this a number of times with other clauses in this bill.

I think it is very important for parliamentarians and the government to conduct a review to determine whether different clauses of a bill as important as Bill C-51 will have an impact and whether they are working. That is our duty. I think it's important to add this sunset clause to clause 2 of Bill C-51.

Thank you.

[*English*]

The Chair: Thank you, Madam Doré Lefebvre.

Mr. Norlock.

[*Translation*]

Oh, I'm sorry, Ms. Doré Lefebvre.

Ms. Rosane Doré Lefebvre: We are talking a lot about sunset clauses with revision, but this really has to do with the new powers being granted to the Canadian Security Intelligence Service. It is doubly important to adopt a sunset clause in that regard. The recent Bill C-44 gives CSIS a lot of powers. Bill C-51 gives CSIS additional new powers. It is important that we do our job here and review the legislation to see whether everything is working.

Thank you.

[*English*]

The Chair: Thank you.

Mr. Norlock.

Mr. Rick Norlock: I don't believe that the proposed amendment is necessary. It's duplicative. I think I mispronounced that word before, and that's why Mr. Garrison got his dander up. I didn't mean anything, and I realize that the mispronunciation carried with it a very different meaning.

The Security Intelligence Review Committee provides an annual report to Parliament on the performance by CSIS of its duties and functions. This will include the new threat reduction mandate. As such, a parliamentary study of the key provisions of CSIS' threat reduction mandate would overlap with the work undertaken by SIRC. Should Parliament deem it appropriate to conduct an additional review of any portion of the bill, including the threat reduction mandate, it will always have the discretion to undertake one.

The sunset provisions of the amendment are inconsistent with the intent of the legislation. The bill intends to strengthen Canada's national security by authorizing CSIS to take measures to reduce threats to the security of Canada. CSIS will take many such measures as part of ongoing, long-term investigations. An end date to the threat reduction mandate with a possibility, but not certainty, of periodic parliamentary extensions would create uncertainty, and will undermine CSIS' ability to effectively plan its operations with the goal of protecting national security.

Thank you, Mr. Chair.

The Chair: Thank you.

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

The Chair: We will then go to NDP-17 as well. Once moved, of course, I will just forewarn Mr. Garrison that it is—

Mr. Randall Garrison: Mr. Chair, I will be very brief.

I would like to move the second of my amendments, which attempts to put back the office of inspector general as an oversight mechanism.

I fully expect you to rule it outside the scope of the bill, as you did the previous one.

The Chair: First of all, let's deal with your amendment NDP-17

Mr. Randall Garrison: That's the amendment.

The Chair: I am sorry. It's getting late. The chair was concentrating on the draft ruling of inadmissibilty in the current act—

Mr. Randall Garrison: I am anticipating with bated breath.

The Chair: —and did not focus on your amendment. Please, would you just repeat it?

● (2025)

Mr. Randall Garrison: I am very pleased to move our second amendment, which attempts to restore the office of inspector general of CSIS as an oversight measure. I fully expect you to rule it outside the scope of the bill, as you did the previous amendment.

The Chair: Mr. Garrison, you are 100% correct.

Mr. Randall Garrison: Thank you, Mr. Chair.

The Chair: Thank you.

Now we have a Bloc Québécois amendment 9, which is deemed to have been moved.

Hon. Wayne Easter: It is another sunset clause, Mr. Chair. I would speak in favour of it. We do need sunset clauses, but I expect the government will likely continue to vote against sunset clauses. It is needed, so I will speak in its favour.

The Chair: Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: You know how much I like sunset clauses, Mr. Chair. However, unfortunately for this amendment, I cannot support it because it means involving the Senate, which is made up of people who do not represent Canadians, because it is an unelected body. That is why I will be voting against this amendment.

[*English*]

The Chair: Fine, thank you very much.

Hon. Wayne Easter: Mr. Chair, may I?

I think Madame Doré Lefebvre would like the Senate to go into the sunset.

Some hon. members: Oh, oh!

The Chair: That may be, but should we have this continued conversation?

Mr. Randall Garrison: Let's have a sunset clause for that.

The Chair: The only serious conversation on this....

Hon. Wayne Easter: Okay. That's out of order.

The Chair: Should we continue to have a dialogue like this, I think the committee could possibly plan on being here till sunrise.

Some hon. members: Oh, oh!

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

The Chair: We move on to Green Party amendment number 49.

Ms. Elizabeth May: Mr. Chair, you have inspired me: "Sunrise, sunset...". I won't sing anymore.

I am promoting this amendment, a sunset provision to the act following section 28. I believe it will be in the interests of public policy and the good of this country that we revisit these things at least at the third anniversary.

The Chair: Thank you very kindly.

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

(On clause 50)

The Chair: We now move on to NDP-18.

Mr. Randall Garrison: At the risk of sounding like a broken record, I will say something first. We had an instruction motion before the House, which is still before the House and the House has failed to deal with, that would have allowed amendments like this to be considered in the committee, which would have seen the restoration of the inspector general. In the absence of that instruction from the House being dealt with, I fully expect you to rule it outside the scope of the bill.

The Chair: [*Inaudible—Editor*]...some clarification, Mr. Garrison.

Ms. Rosane Doré Lefebvre: That's interesting.

The Chair: The way it was worded, the legislative clerk did not deem it to be out of order or inadmissible.

Mr. Randall Garrison: However, in the absence of the other amendments it makes no sense. Therefore, I withdraw the amendment.

The Chair: Thank you very kindly.

We will now go to Liberal amendment number 12.

Hon. Wayne Easter: Thank you, Mr. Chair.

This amendment relates to what SIRC can review. I believe the bill says:

> the Review Committee shall, each fiscal year, review at least one aspect of the Service's performance

We don't believe that is enough, and so we broaden it by way of this amendment, in which the committee would do a broader review and submit a report to the minister.

The Chair: Thank you very kindly.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

Although Mr. Easter's amendment was proposed with good intentions, I have to vote against the amendment because it talks about both houses of Parliament, that is, the Senate and the House of Commons. As I have said several times now, I don't think it is a good idea to get the Senate involved, because it is an unelected body.

Thank you.

● (2030)

[*English*]

The Chair: Thank you very kindly.

Yes, Mr. Norlock?

Mr. Rick Norlock: Just for Madame Lefebvre's edification, every law passed in this Parliament goes through the Senate, so you might have to not vote on anything, if that's the case.

The Chair: We will call the vote.

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

The Chair: Now we will go to the question on clause 50.

(Clause 50 agreed to)

The Chair: Yes, Mr. Garrison, we can do this again, only....

Mr. Randall Garrison: Oh, no, I think this is quite a lot of fun.

The Chair: Okay.

Mr. Randall Garrison: I'd like to move NDP-19, which aims at allowing info-sharing between review bodies, because the information-sharing sections we dealt with earlier ended the silos for departments, in terms of information sharing, but did not do the same for the review agencies.

The Chair: Thank you very much.

The chair will rule this inadmissible under the parent act. The ruling is that "an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act". And, of course, this is dealing with the Canadian Security Intelligence Act; that is why it is not admissible.

We now can do amendment NDP-20, Mr. Garrison.

Mr. Randall Garrison: I'm sorry, Mr. Chair, but I'm falling behind in my page turning.

Amendment NDP-20 would be the last of those amendments attempting to restore the inspector general's position. In the absence of the other two amendments, which you ruled out of order because they're beyond the scope, the remaining amendments really don't make sense in terms of trying to restore the inspector general. So, because of your earlier rulings, I am forced to withdraw the amendment.

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

We will now go to amendment NDP-21.

(On clause 51)

Mr. Randall Garrison: Well, Mr. Chair, I'm afraid we're on the same slippery ground, but we'll try this one again. We really needed the instruction from the House to deal with the question of scope of the bill for some of these to be in order.

One of our witnesses at committee, CIJA, made a very interesting suggestion, and we've tried to do as much of it as we could, thinking we'd stay within the scope of the bill. Their suggestion was to make the SIRC chair an officer of Parliament. Seeing that this would clearly have been ruled out of order, what we tried to do was to change the reporting of the SIRC chair from the minister to Parliament.

I await your ruling as to whether this is within the scope of the bill.

The Chair: Changing the administration of it is in order, so the amendment is in order, Mr. Garrison.

Mr. Randall Garrison: I knew, Mr. Chair, that if we tried to create, in a word-smithing—

The Chair: You're not missing. Your word-smithing has made it in order.

Mr. Randall Garrison: —it would not have been in order.

What we're trying to do here is raise the status of SIRC and the visibility of its reports to the same level other officers of Parliament enjoy, and that's important when we're giving new powers, as we're doing in the case of CSIS. We're changing really fundamentally the role of CSIS, and so we would like to have those reports go directly to the House instead of through the minister.

The Chair: Thank you.

Yes, Mr. Easter.

Hon. Wayne Easter: I have a question to Mr. Garrison on this amendment.

Having changed where SIRC reports, as I understand the way it's worded here, there still wouldn't really be the oversight over all our security agencies that so many witnesses have asked for; it would still just be dealing with SIRC's ability to look at what CSIS does. Is that correct?

● (2035)

Mr. Randall Garrison: Thank you, Mr. Easter, for the question.

Yes, we have the same problem with the scope of the bill. We would like very much to have had the SIRC chair become an officer of Parliament with responsibility over the other national security agencies through a sort of super-SIRC. But again, we run into problems with the scope of bill and rules here in the House and would not have been able to accomplish that under the purview of Bill C-51.

Hon. Wayne Easter: Okay, thank you.

The Chair: Thank you, Mr. Easter and Mr. Garrison.

If there is no further discussion, we will call the vote.

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

The Chair: At this point, as we are moving on a little—we're getting a little close to the appointed ending time, but hope springs eternal—the chair is going to call a brief recess.

We will suspend for 10 minutes.

● (2035)

(Pause)

● (2045)

The Chair: We are now back in session and at Green Party amendment 50.

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

I thought we still had new clause 50.1 with NDP-19 and NDP-20, but maybe I'm mistaken.

The Chair: NDP-19 was inadmissible, and NDP-20 was withdrawn.

Ms. Elizabeth May: Sorry, Mr. Chair.

I'm happy to move to my amendment, which you'll find at the end of part 4, the very end. I attempt to augment the elements of the report. The report is already specified under clause 50 of part 4.

My amendment adds some additional specificity to what the report shall contain. “The number of warrants issued under section 21.1” is already listed. But this also includes “the number of renewals issued”; “the number of assistance orders issued”; “the number of requests for assistance” ordered; and “the nature of the measures authorized under section 21.1.”

The current language of the act allows for only the number of warrants, not the nature of the measures that were authorized. Certainly SIRC will find this of much greater use.

The report shall not contain any information the disclosure of which would

I won't read all the details, but it's would for other public policy or security reasons be inadvisable.

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

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

(Clause 51 agreed to)

The Chair: Now we will go to NDP-22.

Just for your information, Mr. Garrison, NDP amendments 22, 23, and 24 all fall under the same category, but you can certainly introduce each one in order, should you wish.

On NDP amendment 22.

Mr. Randall Garrison: Thank you, Mr. Chair.

NDP amendments 22, 23, and 24 all attempt to improve information sharing among review agencies, as did the previous amendment, which was ruled beyond the scope of the bill. I fully expect to receive the same ruling on all three of these, which, again, is why we had moved the motion of instruction before the House earlier today, on which the debate was, unfortunately, adjourned without a decision. As far as I'm concerned, we can deal with all three at once.

The Chair: Thank you.

Of course, the draft ruling from the chair is the fact that they, on the counsel of the legislative clerk, are also all deemed to be inadmissible. NDP amendments 22, 23, and 24 are all inadmissible

Now we have clauses 52 and 53 we can deal with together, should you wish. Are we comfortable with that?

(Clauses 52 and 53 agreed to)

(On clause 54)

The Chair: Now we will go to Green Party amendment 51.

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

This is my first amendment dealing with part 5 of the bill. I think it's a fair statement, having sat through the committee hearings, that this was the least studied section as we went through the process of reviewing Bill C-51, the Immigration and Refugee Protection Act section.

The changes in the language that are found in section 54, the insertion in relation to what the minister must file with the court in order to get a security certificate.... The new language is "that is relevant to the ground of inadmissibility stated in the certificate".

It's very strange language. We've consulted with a number of special advocates who have found this to be essentially poor drafting. It's confusing. The words, "The ground of inadmissibility", information "on which the certificate is based", and "the case made by the Minister" are likely to lead to confusion for the court about what needs to be shared with special advocates.

The language as amended here is to replace the confusing language found in the current version with:

> and all other information related to the information's origin and reliability, as well as

"a summary of information", and so on with the rest of it.

There is a risk here—and Professor Donald Galloway, from the University of Victoria, has identified it—that the way it's currently drafted could allow a minister to submit to a judge information that had been obtained by torture, without revealing that to a judge. That is also a concern.

● (2050)

The Chair: Thank you very much.

Yes, Mr. Easter.

Hon. Wayne Easter: I think there really is a need for special advocates on this amendment, Mr. Chair. I think it would bring more balance to the decision.

I'd ask the Justice officials who are here. I forget which court case this was related to. I believe it might even have been Arar's.

A CBC story pointed out that the amendment in Bill C-51 in clause 54 related only to disclosing material that is "relevant to the grounds of inadmissibility stated in the certificate". It has been pointed out that that will contradict previous Supreme Court rulings on what the crown must provide to the special advocate.

Can the Justice officials explain how that is appropriate in the bill? In other words, the Supreme Court ruled that all the information needed to be disclosed. As I understand it, this narrows what information can be disclosed.

[*Translation*]

Ms. Nancie Couture (Counsel, National Security Litigation and Advisory Group, Department of Justice): Thank you.

The proposed amendment clarifies the ministers' disclosure requirements regarding security certificates. I would like to draw your attention to the Supreme Court of Canada decision in the Harkat case. It identified what it means to be sufficiently informed of the ministers' argument.

In that decision, the Supreme Court required that the information be disclosed if it would enable the individual targeted by the measure or someone who is not a Canadian citizen to be sufficiently informed in order to give meaningful instructions to his or her legal counsel and to give meaningful instructions to the special advocate.

Of course, that information will always be disclosed to the individual as long as that disclosure is not injurious to national security. If such a disclosure could be injurious to national security or the security of another party, it would be disclosed to the special advocates.

[*English*]

Hon. Wayne Easter: Thank you, Mr. Chair.

The Chair: Thank you.

(Amendment negatived)

(Clause 54 agreed to)

(On clause 55)

The Chair: Now we'll move to PV-52.

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

I'm sure my friends opposite will be thrilled to know this is an amendment suggested by the Canadian Bar Association, a professional association of lawyers across Canada.

I'm forcibly struck by their point that the current section 79.1 offers an appeal, but it's only available to the minister. They noted in their brief:

> Bill C-51 would allow further appeals under IRPA that only benefit the Minister. Asymmetrical access to appeals and judicial review is unfair, further skewing the parties' positions in a process already heavily balanced against the person subject to non-disclosure.

Based on their recommendation, PV-52 would have the effect of removing section 79.1.

● (2055)

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

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

(Clause 55 agreed to)

(On clause 56)

The Chair: We will now go to Green Party amendment 53.

Ms. Elizabeth May: I can save us some time, Mr. Chair, by saying that the preamble is exactly the same. It's the Canadian Bar Association's advice that lopsided appeals that would benefit only one side are offensive in law, and this would remove it.

The Chair: Thank you very kindly, Ms. May.

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

(Clause 56 agreed to)

(On clause 57)

The Chair: We will now go to amendment number PV-54.

Ms. Elizabeth May: I know the hour is late, Mr. Chair, but this is an extremely important amendment.

We didn't have testimony from the special advocates, but they did file a written submission to this committee. They are very concerned about this new provision, which would allow the minister to request of a judge that the minister be exempted from the obligation of providing the special advocate with a copy of the information that normally, in the current process that's been in place since the 9/11 2001 anti-terror laws, allows someone to have access to this information with the concerned person's interests at heart. So, they've expressed—and I think members will remember seeing this in their written submission—that the new provision that will allow the government to obtain an exemption will deny the special advocate access to information that even the government has deemed to be relevant to the case against the named person. There are no guidelines on what information may be withheld from the special advocate or why. It says only that it may be information that would not enable the named person "to be reasonably informed of the case made by the minister". The special advocates have found this extremely problematic. I wish I had more time to present it, and I know the hour is late, but this is quite offensive to people who have been dealing with the law as special advocates for years now, and my amendment would ensure that the provision was removed.

The Chair: Thank you.

Is there any discussion?

Mr. Easter.

Hon. Wayne Easter: Mr. Chair, I am going to speak on this one, because I think Ms. May has a legitimate concern here. We have heard from special advocates, and if they are going to do their job in representing people, they do need all the information that may be relevant to the situation that an individual finds themself in.

My question to Justice officials would be since this seems to be going against what is standard practice to date, what would be the reason for going this way in this particular bill?

Ms. Élise Renaud: There can be situations in which information is relevant although not required for the ministers to prove the case or not required for the individual to be reasonably informed of the case. In such situations, for example, you may have an overall report on a variety of different subject matters, and only part of that report might include something that pertains to the person. In such situations, the rest of the report may not have anything to do with the case at hand, and so the provisions allow the minister to ask a judge to provide an exemption. So the judge would see everything. They could also exercise broad discretion to see if part of that report could be, for instance, held back. They can also communicate with the special advocates to the extent required so that they can make a determination and the special advocates can make a submission as to whether or not that exemption should be granted.

● (2100)

Hon. Wayne Easter: You said the judge can see everything?

Ms. Élise Renaud: Yes.

Hon. Wayne Easter: All right.

Thank you.

The Chair: Thank you, Mr. Easter.

Mr. Payne.

Mr. LaVar Payne: Deleting these provisions would remove the protections that have been added for classified information and that have already been spoken to by the officials.

Thank you.

The Chair: Thank you very much.

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

(Clauses 57 and 58 agreed to)

(On clause 59)

The Chair: Now we will go to amendment PV-55.

Ms. Elizabeth May: Thank you, Mr. Chair. These are also submissions that were suggested to us by the special advocates. They wrote:

> Under the amendments to the Immigration Refugee Protection Act proposed in Bill C-51 the government will be allowed to decide what information is "relevant to the case made by the Minister" and give only that to the special advocates.

The special advocates have no objection to the criteria of relevance, but they object strongly to the government deciding what is relevant. The special advocates have proposed that clause 59 of the bill be amended so that paragraph 85.4(1)(b) will read that the special advocates "shall receive all information and other evidence that relates to the named person".

Taking their suggestions, I've made a two-pointed amendment to those sections. One is that they should at least have all information relative to the information's origin and reliability without disclosing, and also the proposal they made that the minister can't decide what is relevant and only release that. The minister should release anything that is related to the named person.

Thank you.

The Chair: Thank you very much.

Yes, Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I thank Ms. May for introducing this amendment. It covers some of the same ground as our next amendment. I think she's made the arguments very eloquently. The situation special advocates find themselves in is not with judges making a decision on what they get to see, but with the government already making a decision in advance of the judge having an opportunity to do so. We will be supporting this amendment.

The Chair: Thank you very much.

Yes, Mr. Norlock.

Mr. Rick Norlock: I'll be very brief. There's a long analysis, but I'll just go with the short one. The amendment would create an inconsistency between what is filed with the federal court and what is provided to special advocates under paragraph 85.4(1)(a). It would widen the scope of the information that is provided to the special advocates from what is relevant to the case to what relates to the person, which would include irrelevant information.

The bill specifically insures that special advocates not only receive the information that is filed wit the federal court, but also receive any information in the minister's possession that is relevant to the case even if it is not relied on by the minister. The information may be included as evidence by the special advocates if desired.

The Chair: Yes, Mr. Easter.

Hon. Wayne Easter: I have a question I would like to ask in light of the officials, based on Randall's point.

Who makes the decision on this information of what is relevant?

Ms. Nancie Couture: The minister would determine the element to support the allegations in the certificate, but would also provide information that is relevant to the allegations as interpreted by the Supreme Court of Canada in its Harkat decision. It would provide information that is relevant to the case in order that the person has sufficient information to provide meaningful guidance and instructions to the special advocates, and to their counsel as well.

Hon. Wayne Easter: Coming back to Randall's point, even the judge only sees what the minister feels is relevant regardless of all the other court cases. The minister is making a decision on what's relevant. That is a problem.

● (2105)

Ms. Nancie Couture: If information is relevant to the allegations, the information is also provided to the special advocates. You have the information that is provided to the court that is filed into evidence and you also have other information that is provided to the special advocates. They can review all the information and determine if it's relevant to their case. If it is, they can file it into evidence. Paragraph 85.4(1)(b) indicates that.

The Chair: Thank you very much.

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

The Chair: We will now go to the NDP amendment 25.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

This deals with the same issues that we were just dealing with under Ms. May's amendment.

Who makes the decision about what is relevant? This amendment would say that all the evidence about the case in the minister's possession should be turned over to the special advocates. I understand quite clearly what the officials have told us about court decisions, but I think what the special advocates are arguing is that the parallel, even though it's not the same kind of law, would be the prosecutor deciding what the defence should see in a criminal case. In fact we have full disclosure in criminal cases where a prosecutor turns over all the information in their possession and they do not make a decision of what is relevant and what is not relevant.

I think that's the parallel that special advocates are asking for here in that the information in the possession of the minister about this case should be disclosed to the special advocates who can then make a separate decision about what is relevant and present that information to the judge even if it has not been presented by the minister. It seems, I would argue, to raise issues of fundamental justice if information is being withheld from the special advocates.

The Chair: Was that directed to...?

Mr. Randall Garrison: No, it was an opinion.

The Chair: Fine. Thank you very kindly.

Yes, Mr. Norlock.

Mr. Rick Norlock: Thank you.

My opinion is that the amendment would broaden what is provided to special advocates under proposed paragraph 85.4(1)(b) to information that relates to the minister's case rather than information that is in the minister's possession and is relevant to the minister's case, even if it has not been filed with the Federal Court. The amendment would maintain a situation similar to what is taking place currently in certificate cases, whereby a vast amount of information, including that which is irrelevant, is provided to the special advocates. This is inconsistent with the policy intent of the new provision, and therefore I do not support amendment NDP-25.

The Chair: Thank you very much.

Yes, Ms. Ablonczy.

Hon. Diane Ablonczy: Yes, and to further Randall's analogy of the prosecutor's deciding what evidence will be presented, what this amendment would do is it would be for the defence to decide what evidence the prosecutor has to advance. The minister's making the case. He's going to provide every bit of evidence that bolsters his case. If evidence isn't presented, it's because it's not going to be relevant to his case.

Then you have a lot of irrelevant information having to be provided, and it never ends. I don't think this is a very helpful amendment to the whole process because it mitigates against its being expeditious and fair.

The Chair: Fine. Thank you very much.

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

(Clause 59 agreed to)

(On clause 60)

The Chair: We will now go to Green Party amendment 56.

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

This is also one that was recommended to us through the special advocates. What it does is omit the section within brackets that actually applies, not just under security certificates but to all Immigration and Refugee Protection Act appeals, without even appointing a special advocate to review the secret information. It just omits the language "other than the obligations to appoint a special advocate and to provide a summary".

It's a fairly technical, small amendment.

● (2110)

The Chair: Thank you very kindly.

Is there discussion?

Yes, Mr. Falk.

Mr. Ted Falk: This amendment would effectively remove the judicial discretion to appoint special advocates. Judges of our Federal Court are well placed to determine whether special advocates are needed in specific cases, based on procedural fairness requirements, so it's not necessary.

The Chair: Thank you very much.

(Amendment negatived)

The Chair: Now to amendment PV-57.

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

This is relating to proposed subsection 87.01(1) of part five of the act, where once again the legislation puts in place the ability of the minister to appeal a decision without any other parties, such as a special advocate, having the right of appeal. My amendment removes the lopsided access to appeals only in the interests of the government and the minister.

The Chair: Thank you very much.

Ms. James.

Ms. Roxanne James: I would just say very briefly that I oppose this. This amendment is removing the ability of the minister to actually do that appeal in the middle, thus having to wait till the end. Obviously there may be reasons that an appeal is required for the safety of a person, or when a situation could be injurious to national security. Therefore it's absolutely essential that the minister have the ability to appeal at any point during that process. I oppose this amendment.

The Chair: Thank you very much.

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

[*Translation*]

The Chair: We will now go to PV-58.

[*English*]

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

This amendment is an attempt to create a sunset provision to the changes that are brought into effect in Bill C-51 relating to the Immigration and Refugee Protection Act, to take effect on the third anniversary from the coming into force of this section.

The Chair: Thank you very kindly.

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

(Clause 60 agreed to)

The Chair: We are now on amendment NDP-26.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I'm pleased to move this amendment, which would create a community outreach and counter-radicalization coordinator in the Department of Public Safety.

We heard some very eloquent testimony from witnesses about things that are going on at the community level to try to counter deradicalization, in particular the testimony of Zarqa Nawaz, from Regina, and the demand from people in the community that the government step up to the plate and work with them on what we know is most effective in limiting future threats, that is, the counter-radicalization or disengagement kinds of programming that goes on.

I am expecting to hear from the chair because of course despite the fact that we heard this from many witnesses, the run of declarations we've had here about the scope of the bill probably leans against this being admissible. But I still think it points out a major omission in this bill.

The Chair: Thank you, Mr. Garrison.

Yes, this amendment—

Mr. Rick Norlock: May I speak to that, Mr. Chair?

The Chair: Yes, you may speak to it, Mr. Norlock.

Mr. Rick Norlock: Thank you very much.

This is an example of how we can build a really big bureaucracy in the country when there is an agency—

The Chair: We have a point of order, Mr. Norlock.

Mr. Randall Garrison: On a point of order, Mr. Chair, we can't have debate on a motion until it's on the floor. If you have a ruling to make that it's not admissible, it would seem to me that debate on it would be impossible.

The Chair: Actually, that is correct. I'm sorry. We will carry on.

The chair is in error, Mr. Norlock.

It has been introduced and is deemed in order until it is deemed to be inadmissible by the chair, so "conversation" is allowed as long as the chair has not got around to ruling it inadmissible. So if Mr. Norlock wishes to comment, he can.

● (2115)

Mr. Rick Norlock: Well, he absolutely does. Quid pro quo, I guess.

Anyway, getting to the building of bureaucracies, this is a good example, but for folks who might be listening tonight or watching tonight—I think we are being televised, and I imagine this is a good way to keep awake—I note that the RCMP and other police forces did give evidence that they are indeed doing just that. They are working with the various religious agencies and imams, etc., with a view to deradicalization or, actually, the prevention of same.

If we recall, very early on, I think, at the beginning of the meetings, the RCMP commissioner said that this was a rather robust enterprise. He didn't say that they were doubling their efforts, but he did say that they were increasing the efforts in that way. I don't think building another bureaucracy is needed, whether or not the amendment is inadmissible.

The Chair: Are there further comments before the chair rules?

Seeing none, I note that this amendment does propose to modify sections of the Department of Public Safety and Emergency Preparedness Act.

As the *House of Commons Procedure and Practice,* second edition, states, "...an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill".

Since the Department of Public Safety and Emergency Preparedness Act is not being amended by Bill C-51, it is therefore the opinion of the chair that the amendment is inadmissible.

(Clauses 61 and 62 agreed to)

The Chair: We will now go to proposed new clause 63 in amendment NDP-27.

Mr. Randall Garrison: I'm sorry, Mr. Chair.

The Chair: Take your time.

Mr. Randall Garrison: We're just having a discussion about who was going to do this one as the night wears on.

I believe this one will be within the scope of the bill, but we can always play the lottery game and find out. We're asking for a report to Canada on the provisions of this act to be undertaken by a committee designated or established for that purpose, so within one year we are asking the committee to look at what we will have done here in the passage of Bill C-51. I know the members on the other side will say that any committee can always do this, but if we require that it be done, then other things don't take precedence over it and we'll make sure that it does happen.

The Chair: It is in order, Mr. Garrison, as it does not ask to change the legislation. It is a suggestion for study and evaluation.

Yes, Ms. James.

Ms. Roxanne James: Mr. Garrison is correct. Committees can decide what studies they want to undertake. To mandate that a specific committee, or any committee—it doesn't reference this one directly—has to do a comprehensive study within a certain period of time could interfere with government legislation, whether it be this government or another. So for those reasons, and the fact we have sufficient safeguards in this bill, I will be opposing your amendment whether it's deemed admissible or not.

The Chair: It has already been deemed admissible

Mr. Payne.

Mr. LaVar Payne: Thank you, Chair. I appreciate your recognizing me again.

Mr. Rick Norlock: He's sensitive.

Mr. LaVar Payne: I believe Mr. Garrison made my case already, that future committees can review any part or all of the Anti-terrorism Act, 2015, so I will oppose this.

Thank you.

● (2120)

The Chair: Thank you very much.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I don't really agree with my colleagues on the government side with respect to asking a committee to study or review the legislation given that we do that all the time. Indeed, we always choose committees, whether it be to study bills or to review them.

Consequently, I do not quite see how that would change anything at all, since we have specifically selected—and with good reason—the Standing Committee on Public Safety and National Security to study Bill C-51. I don't see how any other committee could be chosen to study it. It just makes sense that this bill would be referred to the Standing Committee on Public Safety and National Security, for instance, and for the committee to have to produce a report after 30 months.

Once again, I must point out that that is part of our job as parliamentarians. I know that some committee members have been here a lot longer than I have. They know how privileged we are to be here. Studying and reviewing the provisions of various bills is part of our job as parliamentarians. That is why I plan to support the amendment.

[*English*]

The Chair: Thank you very much, Madame Doré Lefebvre.

Now Mr. Easter.

Hon. Wayne Easter: Yes, Mr. Chair, the next amendment by the Liberals is similar to this. I think we have an obligation as parliamentarians, given the concern we've heard before this committee. There is a considerable amount of support for the national security measures, no question about that, but there is a considerable amount of concern about where this bill may lead. People are worried about civil liberties and a number of other things, so knowing that, as we all do because we have heard from witnesses, we have an obligation to satisfy that public concern that at some point in the future this bill will be reviewed.

Ms James said there are sufficient safeguards. There are not. There is no Inspector General. The government cut that position, and we can't amend it. The proposal from John Major was disallowed. There is no oversight as our Five Eyes partners have, so there are not sufficient safeguards.

At least we could assure the public that we're protecting their interests, and based on experience, after a three-year period the bill would be reviewed by a future Parliament. It is our responsibility, knowing what we know now of the concerns, to see that this happens, and I would hope the government members would support that.

The Chair: Thank you, Mr. Easter.

Ms. Ablonczy.

Hon. Diane Ablonczy: Mr. Chairman, I think it would be the height of presumption for us to try to tie the hands of another parliament. It's one thing even to say that they have to review it, but now to say that they have do it within a particular timeframe.... Parliaments are sovereign. Governments are sovereign. For us to try to tie their hands under some pretext of our concern, without giving them the liberty to express their own concerns, in their own way, I think would be very disrespectful to our future colleagues, and I wouldn't support that.

The Chair: Thank you.

Mr. Norlock.

Mr. Rick Norlock: Thank you, Mr. Chair.

I just love it when I have to be reminded, after three terms in this place and nine years on this committee, of what my obligation is. I know what my obligation is. I exercise that obligation each and every day, 365 days a year. When we talk about considerable concern out there, you're right, there's considerable concern.

You're doing your job as opposition of trying to cast aspersions on the bill. We're doing our job to try to alleviate the fears that are created, that somehow, some way, every single Canadian, every single organization, every single protester is going to come under some great big magnifying glass, and everything they say or do is going to be recorded somewhere, and they're under suspicion. If you listen to some of the witnesses, that's exactly what they said.

You said, “satisfy that public concern”. Again, this bill does satisfy the public's concern, and that's their safety. Day after day they see on the news what is happening with regard to terrorism and its evolving threat, and how this changes and affects other countries. I could go on and on, but because of the hour of the night, I will simply say that I respect this Parliament and the fact that two members of Parliament put forward the majority of amendments to this because we live in an institution that allows them to exercise that. Out of 308, two people have moved the majority of amendments here. I respect that. That's their right. That's how fair we are. That's how fair we are as a Parliament. I don't need to be reminded of my obligations. I don't need to be preached to. I don't need to be told what job I have to do. I think I understand that.

Thank you very much, Mr. Chair.

● (2125)

The Chair: Yes, Mr. Easter.

Hon. Wayne Easter: Mr. Chair, from the very beginning on this bill I have not been opposing the government in a number of areas, and taken considerable flak for it, as a matter of fact.

Some hon. members: As you should.

Hon. Wayne Easter: However, what I've been trying to do is find the balance. This amendment, I think, helps in that regard. I'm just making the point that we've been consistent in this bill in terms of trying to find the balance between national security and civil liberties, freedom of expression, from the very beginning.

I will just disagree a little bit with what Mr. Norlock says.

The Chair: Thank you very much.

We will now call a vote on this amendment.

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

The Chair: Now we will go to Liberal amendment number 13.

Hon. Wayne Easter: Thank you, Mr. Chair.

There's no sense remaking the arguments that were made the last time around, other than that the same arguments hold true to do a review in three years. I would say, though, while I'm on my feet—

The Chair: We're running out of time here.

Hon. Wayne Easter: While I have the mike, Mr. Chair, put it that way—and I know you can always cut it off, which is what worries me. Ms. Ablonczy said earlier that current governments shouldn't tie the hands of future governments.

I would submit—and I know you'd rule me out of order if I went through the list of where this current government is tying the hands of future governments, so I'll not do that but come back to my point—we have an obligation, knowing what we know, to ensure a proper review is held in three years.

The Chair: Thank you very much.

Go ahead, Ms. Ablonczy.

Hon. Diane Ablonczy: Mr. Chair, I think Mr. Easter knows that I was referring to tying their hands in terms of their own priorities and procedures.

The Chair: Thank you.

Go ahead, Mr. Payne.

Mr. LaVar Payne: I think I am invisible, Mr. Chairman.

Mr. Rick Norlock: You're so sensitive.

Mr. LaVar Payne: I am. I'm very sensitive about this.

No, I'm not. I'm just trying to give the chair a bad time.

However, I think I've said all I want to say on the previous amendment, along with my colleagues. I don't think I need to make any further comments.

The Chair: Thank you.

Yes, Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you very much, Mr. Chair.

Although the Liberal amendment is somewhat similar to ours, there are nevertheless two differences.

On the one hand, the Liberals are talking about three years while we are talking about 30 months. I have no problem with that.

On the other hand, the part that I do have a problem with is the fact that we are talking about a committee that would involve members of the Senate. For that reason, I must vote against the amendment.

Thank you.

● (2130)

[*English*]

The Chair: Yes, Mr. Payne.

Mr. LaVar Payne: Thank you, Mr. Chairman.

Just for your information, Ms. Lefebvre, there are Alberta senators who have been elected by the people of Alberta to go to the Senate.

Thank you.

The Chair: Thank you very much.

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

The Chair: We now have an amendment put by an independent. It's our first one. Independent amendment 1 is deemed received. Is there any discussion?

Yes, Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: I simply wanted to point out that this relates somewhat to the two previous proposals. However, it is even a little more similar to the NDP's proposal. The only thing that is different is that this talks about two years, instead of 30 months, as indicated in our proposal.

I think it would be a good idea for the Conservatives to vote in favour of this, because it is a little different than the others. Personally, I will be voting in favour of this amendment.

[*English*]

The Chair: Thank you very much.

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

The Chair: Now it is NDP-28.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

One of the things we've discussed in many amendments, or tried to discuss in many amendments, is the idea of having some parliamentary oversight. Many members around the table, or some who aren't any longer around the table, submitted models for that parliamentary oversight.

Instead, what we're proposing in this amendment is that the House of Commons sit down and work together to find an appropriate model for parliamentary oversight, which may range from a super SIRC plus a parliamentary committee to all kinds of other possibilities.

Given the record on the previous attempts to put in parliamentary oversight, which is something we heard from literally almost all the witnesses, I'm not optimistic that this will be found within the scope of the bill. It's a big, gaping hole in bill.

The Chair: Thank you, Mr. Garrison.

Yes, as you've intimated, the chair is going to rule on this. It is deemed as inadmissible, and the chair will give the reasons as follows.

The amendment seeks to create a parliamentary committee on security and intelligence oversight, which would have as its mandate oversight of regulations and activities in the area of intelligence. The mandate would include activities and regulations from all departments, agencies, and civilian and military bodies involved in the collection, analysis, and dissemination of intelligence related to Canada's national security. As *House of Commons Procedure and Practice*, second edition, states on page 766:

> An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

In the opinion of the chair, and of course on the advice of our legislative clerk, the mandate of this proposed committee is much broader than what was envisioned and contained in Bill C-51, and it is therefore beyond the scope of the bill. Therefore I rule the amendment inadmissible

We will now go to PV-59, please.

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

My amendment, PV-59, is found on page 59 of the bill—just by pure coincidence. For those who are tracking by page numbers, we are on the last page of an omnibus bill. This again, as in the previous amendment, deals with the importance of having a reporting process. It reads:

> 63.(1) Within two years after this section comes into force, a comprehensive review of the provisions enacted by this Act and their operation shall be undertaken by—

—and this is after line 28, so it is entirely new language not tying into any other part—

> —any committee of the House of Commons that may be designated or established for that purpose.
>
> (2) The committee shall, within one year after the review is undertaken under subsection (1) or within such further time as the House of Commons may allow, submit a report to the House, including a statement of any changes that the committee recommends.

So this would be a full and comprehensive review to Parliament as a whole.

Thank you, Mr. Chair.

● (2135)

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

(Amendment negatived)

(Schedule 1 agreed to)

The Chair: Both proposed new schedules 1 and 2 are not involved, because they were consequential to Bloc Québécois amendment 6 and Green Party amendment 12, which were defeated. Therefore, they're not in here.

Mr. Rick Norlock: Are they deemed defeated?

The Chair: They're not in there at all.

Do you have that, Randall?

Mr. Randall Garrison: Okay.

The Chair: So the proposed new schedules 1 and 2 are both out.

Mr. Randall Garrison: They're gone.

The Chair: On the short title, shall clause 1 carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry as amended?

Mr. Garrison.

Mr. Randall Garrison: Thank you very much, Mr. Chair.

I know we've been here a long time, but I do have a few things I wish to say at this point. It's sometimes hard to follow when we have the two parties that are supporting the bill arguing the most during the evening. I know that sometimes confuses the people who are watching.

Mr. Norlock made the remark that it's the opposition's duty, or our goal, to cast aspersions on the legislation. I don't need to be reminded of my responsibility, because mine is not to cast aspersions on the legislation; it's to get better legislation in the committee through amendment.

I have to say that I am disappointed that the government's record here is quite clear in rejecting every single suggestion that anyone else has made about their bill, with only their three very modest changes made. In fact "modest" would be a large word to describe the changes that have been made. They're welcome changes but they're very, very modest changes that don't affect this bill.

We'll still be seeking, when we get to report stage, to delete the provisions that we think are most threatening to Canadians' rights and freedoms. That's the vague new criminal offence that tends to lump dissent together with violent extremism. We'll also be trying to get rid of the lower thresholds for preventative detention and for recognizance with conditions. Of course, we heard again and again from witnesses about the dangers of CSIS' new powers of disruption, which, in view of the McDonald commission, which created CSIS, I can't imagine why we're even considering at this time.

We did try to add some effective provisions to those things missing from Bill C-51 this evening. Of course, three of the four things we were trying to do there were ruled out of order. That was to strengthen existing oversight of our security and intelligence agencies and come up with a parliamentary system of oversight that would actually work. Probably the most important, to me, was the attempt to establish a community outreach and de-radicalization coordinator to work with those communities, in particular Muslim and Jewish communities, who have both been working very hard to try to prevent youth being swayed to extremist and sometimes violent ideologies. The fourth of those was trying to have three-year review and sunset clauses. Those, of course, were in order but were all defeated. We also tried to limit the scope of information sharing, to protect Canadians' privacy rights, and to narrow the information sharing envisioned by this bill. Those were, of course, also defeated. Finally, we tried to improve the no-fly list so that those who inadvertently, through no fault of their own and through no misbehaviour of their own, end up caught somehow on the no-fly list have an effective appeal mechanism. We didn't get that either.

From the beginning, we didn't hear all the witnesses who wanted to appear. Of those witnesses we did hear, something like 45 out of 48 said we needed major changes to the bill...or abandoning the bill. We did not get major changes, and we've certainly seen that the government intends to press ahead with this bill.

At the end of this committee process, I wish to thank all those witnesses who appeared and to express my disappointment that the many very good suggestions they made to us, whether in written briefs or when they were here in person, were not listened to by the government and taken up in an attempt to produce a bill that really would meet the threats we face in an effective way while at the same time protecting our Canadian rights and freedoms.

Thank you, Mr. Chair.

● (2140)

The Chair: Thank you, Mr. Garrison.

Madame Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

Before I talk any more about the bill, I would like to say something. The Standing Committee on Public Safety and National Security has just been through two extremely tough weeks. We have heard from 48 witnesses, including the Minister of Justice and the Minister of Public Safety and Emergency Preparedness, all at sometimes impossibly tough hours of the day.

The days have been very long—even today's meeting began early this morning—not only for us, but also for our staff. All of the members here are always accompanied by staff, interpreters, people who take care of feeding us and people who make sure the committee runs smoothly. I would like to take a moment to thank all of them, because, frankly, their work over the past couple of weeks has been extraordinary.

I also want to thank the people who are following the debate, either here—since there are still some people in the room—or at home. I'm sure that some people are very interested in the whole debate surrounding Bill C-51. I want to thank them for paying attention. Without those people who care about what's happening, our work as parliamentarians would not serve much purpose. Regardless of our political views on a legislative measure like Bill C-51, it is good to raise questions and concerns, to share our point of view and to pay attention to what public opinion has to say about a piece of legislation as delicate as Bill C-51. I wanted to thank everyone for that.

Of course, I cannot hide that am disappointed this evening. We have worked really, really hard to try to improve the parts of the bill that we thought needed some improvement. As everyone knows, after carefully studying the bill and after taking the time to look at every part of the bill, the NDP has decided to vote against it at second reading. There were many parts of this bill that we didn't want to touch because we thought they should be removed altogether. We will continue working on that. We believe that many of the bill's provisions are a direct attack on Canadians' civil liberties and basic rights. I am not prepared to make any concessions on that.

The Minister of Public Safety and Emergency Preparedness has already said this in the House of Commons and here before the committee. I completely agree with him that civil liberties and public safety should always go hand in hand. He is quite right.

In this bill, however, I could not find what he was talking about. I learned last Friday that the Conservatives were going to amend the bill. The minister also said that he was going to let the committee do its work and that he would be open to amendments. I must say, I was looking forward to some real openness this time, in order to be able to strike a balance between civil liberties, basic rights and public safety. Personally, I was not satisfied with the results, unfortunately.

I will continue to oppose this bill. I have principles. I know that many other people around this table also have principles. We do not all have the same principles. I stick to my principles. We all want the same thing: to combat terrorism and radicalization by passing the best possible legislation; however, we all have different ways of achieving that objective.

Personally, my principles have not changed: I would like to see greater civilian oversight, adequate budgets for our police services and good eradication strategies on the ground. I will continue to fight for these rights and for my basic rights.

Thank you.

[*English*]

The Chair: Mr. Rousseau.

[*Translation*]

Mr. Jean Rousseau (Compton—Stanstead, NDP): First of all, I want to thank all the witnesses, clerks, analysts, technical staff, interpreters and the support staff for the members of all parties. This has indeed been a very tough couple of weeks, and we have all gotten to know each other a little better. I have a great deal of respect for the government members. We must respect one another, even though we don't have the same ideologies.

I spent 25 years of my life working in the arts, where freedom of expression is what matters most. Whether on stage at a rock concert, in the theatre or at an art exhibit, freedom of expression was a fundamental part of my professional life before I was elected, and I still believe in that freedom of expression.

Everyone I have met over the past month has told me they are very concerned about the rights associated with freedom of association, expression and religion. I have also been an activist on behalf of student associations, unions and environmental groups. I have stood alongside first nations members as they asserted their rights. All of those people feel as though those rights are becoming more and more fragile. The NDP will continue to be very vigilant when it comes to those rights.

For the past four years, in other words, since I was elected, I have been meeting people who are concerned about safety. There are seven border crossings in my riding. For the past few months, especially since the attacks, border services officers and the RCMP, as well as soldiers and staff of the Canadian Armed Forces, have all been telling me that they need financial, human and technological resources. They can't even fight street gangs and organized crime groups, and now they are also expected to fight international terrorist organizations, so they need resources. That is what matters most to them. However, with the cuts that have been made in recent years, it is impossible for them to keep up.

Yes, my primary concern has to do with our freedoms, but those people are working incredibly hard to protect us every day, and the more we need them, the more resources they need. My party and I will continue to fight to ensure that Canadians have police forces that have the resources they need to do their jobs, no matter what party is in power. Those people accept the duty they must carry out, but they need resources to do so.

Thank you, Mr. Chair.

● (2145)

[*English*]

The Chair: Thank you, Mr. Rousseau.

Now, Mr. Easter.

Hon. Wayne Easter: Thank you, Mr. Chair.

Mr. Garrison took a little shot my way by saying that there are two parties supporting the bill, and I would say this about our position as the Liberal Party. We're the only party in the House of Commons that isn't taking a rigid position on this bill and we are trying to find the balance.

I'd certainly thank the two Justice officials for being here tonight. I think they did give us a number of clarifications, not that we agree with them all. We certainly appreciate the information that they provided to the committee. Certainly, on behalf of my party, I want to thank all the witnesses who have appeared before us.

I had hoped the government might accept more amendments than the ones that they did, and was hopeful that we would get somewhere on oversight; I know it's been ruled out of order, Mr. Chair.

Similar to that of our Five Eyes partners, we had an all-party committee at the House of Commons in 2004 to make such a recommendation. Mr. Norlock sat on a committee in 2009 that agreed with that recommendation and others, and I would have liked to see some progress on sunsets and overall statutory review.

Having said that, let me close with this, in terms of our position. Although we're not comfortable with some of the issues—some of the amendments not being carried on the civil liberties and freedom of expression side—the way I look at this, we can always fix a bad bill in the future. We cannot fix an incident that would damage infrastructure and maybe take Canadian lives.

There are security measures in this bill—given what both police authorities and national security agencies have indicated, and based on my previous experience in government—that I think we have to recognize and take seriously.

There is no question in my mind that there is an increased threat. In order to prevent as best we can—and we can only prevent as best we can—that threat from doing damage to Canadians, it's for that reason that we are supporting this bill, recognizing that there are some amendments that should have been made on the civil liberty side but were not accepted by the government's side.

There we sit, Mr. Chair. Thank you.

● (2150)

The Chair: Thank you, Mr. Easter.

Now to Ms. Ablonczy, please.

Hon. Diane Ablonczy: Mr. Chair, thank you.

I just want to echo the gracious words of thanks that my colleagues and the NDP and Mr. Easter gave to all the people, both in this room and those who appeared before us, who were the wind beneath our wings in this study. We learned a great deal from other people, and I think from each other, from our debates together.

All members have a deep concern and an anxious desire to protect our hard-won freedoms, freedom of speech, privacy, and our human rights, and in addition we want to protect our country's safety and security from a growing global threat.

I hope we have reached a very good balance in this bill. The amendments that were passed were echoed I think by all parties and demanded by many witnesses, and as others have said, we will continue to watch carefully, to be vigilant, to ensure that we have the tools to continue to protect our country and all Canadians in the best way possible.

Thank you, Mr. Chair, for your good humour and patience in a difficult position.

I think we've done a good piece of work and can be very proud of it.

The Chair: Thank you, Ms. Ablonczy.

Now, Mr. Norlock, please.

Mr. Rick Norlock: I too want to echo the gratitude that was expressed by the other side and by Ms. Ablonczy, especially to the good folks sitting at the end of the table who I know work for the government. Tomorrow they work may for another government that may be of a different stripe, but I know they do their best to craft and assist in the crafting of legislation. I don't believe they would have done so in the knowledge that they would be impinging on civil rights and freedoms, but in doing the job they were asked to do by the government to meet the growing threat of terrorism.

Our staff all work very hard. We don't say thank you enough to the good people around here who make our lives much better. We're the mouthpieces, but often they are the brains behind the mouthpieces.

I think Madame Doré Lefebvre said it appropriately when she said how she felt about it. I felt the same way when we had no one to agree that this bill is as faulty as it is made out to be. The wonder of our democracy is that we view things differently; we sit down in committees like this, and in the end, as Ms. Ablonczy says, I think we came up with a good piece of legislation; we made it just a little bit better.

No one on this side of the table, no one in this Parliament I believe would want to do anything to injure and contravene the civil rights and liberties of the good folks who call themselves Canadians or who are here visiting.

Sometimes in the to and fro of battle—and I'm probably the biggest sinner of all sometimes when we cast aspersions—especially in that theatre called question period, which is all about the questions and not about the answers.

I think we need to meet this evolving threat of terrorism with some new tools, and I won't belabour the point except to say to all Canadians that what you hear today and what you see is a good example of how a democracy works. There's a difference of opinion and in a few short months you, the people who are watching this and your friends and neighbours, will determine who you want to be seated at this table and who will make the right decisions.

Thank you, Mr. Chair.

● (2155)

The Chair: Thank you, Mr. Norlock.

Ms. James.

Ms. Roxanne James: Thank you.

I echo my colleagues' remarks on both sides in thanking everyone here, the staff, and of course the chair for bringing in—it's still questionable—either pork or turkey tonight. We'll find out tomorrow who's sick and who's not. Those who ate vegetarian might be doing very well tomorrow and the rest of us sick.

On a more serious note, the reason that we find ourselves here on Bill C-51 is the recent events that have happened around the world, including here in Canada. We have had incidents of terror back on October 22. All of us in this room were impacted by that. We witnessed the video that was released by the RCMP, or a portion of that video. For those who didn't fully believe what we're facing I think that video spoke for itself. I know I had great difficulties watching that video and reading the printed text that was provided.

With regard to the legislation there were five distinct parts to this bill, each one unique and separate from the others. There were legislative gaps that were clearly identified by our national security agencies, and we heard testimony to that effect. This bill clearly addressed those legislative gaps. We brought in on this side witnesses dealing with law enforcement, intelligence gathering, experts in terrorism-related issues, and every single one of those witnesses talked about how the threat is real, it has evolved, and it's growing.

Of those credible witnesses who we brought in some of them had more than 30 years experience in these areas. All of those individuals indicated how much this bill is needed. The measures contained within it related to information sharing are absolutely crucial. There were amendments to the Criminal Code to reduce the threat level so that they can actually be able to use some of these amendments, or these Criminal Code sections, and of course the added powers to CSIS. We had one witness say that they couldn't believe this was not already the case.

Having said that, we also heard from witnesses—actually on some of the same committee meetings—who sat here as witnesses and indicated that this bill had absolutely nothing to do with terrorism, that it was simply there to instill fear and target groups. It's absolutely not the case.

As the government we brought forward amendments to really explicitly say that this bill does not target protestors, which was already implied in the legislation and which we have been reinforcing and reminding opposition members on every single day. I have personally gone on panels to say that this bill does not target protest. So I'm hoping that the amendments that came forward today, the testimony that we had from the experts that clearly indicated what the information sharing was about, can put those fears to rest.

It's really unfortunate, Mr. Chair, that throughout this process there's been misinformation about this bill. Hopefully, it's not been intentional. I think today some of those misconceptions were clarified by the witnesses, and I really thank you for that testimony and for being here. I'm hoping that it will put to rest some of the concerns that may be out there that are not necessarily legitimate concerns. In fact, we actually had a witness say it was very unhelpful for this process when at the fact of this bill is the national security of this country, the safety and security of Canadians, and providing the tools necessary to our national security agencies to better protect both of those things.

So on closing I would just like to thank you, Mr. Chair, and committee members on all sides of the House, and especially all of the staff and the witnesses who were here with us throughout this entire process.

Thank you.

The Chair: Thank you very much.

Mr. Payne, how ever could I have missed that?

Mr. LaVar Payne: Thank you, Mr. Chair.

The Chair: It must be the grace of you.

Mr. LaVar Payne: It must be. I just wanted to say thank you to all of the staff members here, all of the House of Commons staff members, our witnesses tonight, and certainly all of our colleagues. As has been said, there are obviously two sides to this issue. I would never, in good conscious, ever believe that I would vote for a bill that would infringe upon the rights of any Canadians, and I think we heard that tonight from the officials

So on behalf of everybody here I just want to thank everyone for all of their work, our staff members, and your staff members. I know that with our colleagues across the way we had some good opportunities to certainly exchange ideas, and that's part of the process.

Thank you.

● (2200)

The Chair: Thank you very much.

Mr. Falk.

Mr. Ted Falk: Thank you, Mr. Chair.

I too want to express my appreciation for all the work that's gone into the preparation of this bill by our staff members, by the witnesses who have been willing to come testify before committee, by the House personnel who have provided translation services, and also by the staff in our offices who have provided all the detailed research and homework to make this possible.

As we all know and have recognized, iand every single one of our witnesses has recognized, the terror threat is real. Parliament tasked us with the responsibility of reviewing this piece of legislation and listening to witnesses. At times we heard that we weren't here to listen, and that we were just going through a formality, but indeed, we did care about what witnesses said, about the testimony that was brought here. We did bring forth amendments that we thought were appropriate after careful examination of the testimony provided by witnesses, and those were good amendments.

We also listened to the opposition, and I especially want to thank members across the way for all the work they put into research and amendments, for the thought-provoking comments that they made, and for the cordial atmosphere that we've enjoyed working here together, even though we're often on completely opposite sides of the page.I recognize that.

At the end of the day, I think we've got a piece of legislation that we can all be proud of. We can all sleep comfortably at night knowing that we've given our law enforcement agencies the tools that they need to protect our country and to keep us safe.

Thank you again, Mr. Chair.

The Chair: Thank you, Mr. Falk.

Prior to moving to our next two quick votes, the Chair has been uncharacteristically non-vocal,so I'm just going to take the next hour or so for a brief reflection.

Some hon. members: Oh, oh!

The Chair: Actually I will not, but I'm tempted.

Most everything has been said, so I'm not going to repeat it, but I can tell you that the Chair has received a tremendous amount of help, assistance, guidance, and benefit from our analyst and our legislative clerk. All of our people here, and the support staff for the Chair, have been tremendous. I'm deeply appreciative. Going through a rather challenging bill, their guidance and support has been very necessary, as many of you have seen first-hand. The Chair has certainly benefited from that.

To all of the members here regardless of party affiliation, there's been a tremendous amount of hard work put into this, so I really want to thank you very much. I think what we have found is that, though we have our differences, you don't have to be disagreeable to disagree. That old adage has been around for years, and we've certainly, I think, experienced that to a great degree. I thank you for the courteous respect that you have shown and given to the Chair. May you sleep in at least until seven tomorrow morning.

Some hon. members: Oh, oh!

The Chair: Now we will finish the bill if everybody is willing.

Colleagues, shall the bill carry as amended?

● (2205)

Mr. Randall Garrison: A recorded vote, please.

(Bill as amended agreed to: yeas 6; nays 3)

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

Some hon. members: Agreed.

The Chair: Shall the committee order a reprint of the bill?

Some hon. members: Agreed.

The Chair: Thank you very much.

Witnesses, I didn't get around to thanking you. Thank you for your patience and your indulgence as we went through a little wrap-up after a few weeks of some challenging times. Thank you very kindly, and thank you for your testimony.

To all a good night.

We're adjourned.