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Chair

Mr. Robert Oliphant

Standing Committee on Public Safety and National Security

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● (1400)

[*English*]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): I call this meeting to order.

This is the 33rd meeting of the Standing Committee on Public Safety and National Security, convened to do a study on the national security framework of Canada.

I want to welcome both our invited guests, who are here to give us testimony and to help us with our study, as well as members of the public who have joined us today.

I want to remind you that there are two meetings today. The meeting from 2 p.m. to 4 p.m. is an example of a meeting we would be doing in Ottawa; however, we are on the road this week. Then from 5:30 p.m. until 7:30 p.m. we are having an open-microphone meeting, allowing any member of the public who would like to make a statement to the committee on the issues defined within the study we are doing on national security framework, to come and make their opinions known. You're all welcome to come back, if you haven't had enough of us by then.

I would remind everyone that this is an extension of Parliament. We are here today as parliamentarians. Even though we are on the road, this is a bit of Parliament coming to you.

[*Translation*]

We work in both official languages of Canada, English and French, so you can put in your earpieces to listen to the interpretation.

[*English*]

We welcome you as members of the public to this meeting.

As I said, we are engaged in a study on the national security framework. We had meetings in Vancouver on Monday, and in Calgary yesterday. The committee is very bright and awake, but we were up at 3:30 this morning in order to be on an airplane quite early to get here, in Toronto, so you'll probably see us drinking water and coffee a lot as we continue.

We welcome our guests.

I'll start with Ron Atkey, adjunct professor at Osgoode Hall Law School, York University, and also teaching at Ryerson University, as our first witness, for 10 minutes.

The Honourable Ron Atkey (Adjunct Professor, Osgoode Hall Law School, York University, As an Individual): Thank you, Mr. Chairman, and thank you for scheduling us in the first panel, so we'll be finished well in advance of the start of the baseball game. We'll see it, and we'll come back and report the score to you.

Thank you for this kind invitation to appear before you on the important subject of Canada's national security framework. Let me say how pleased I am that this consultation process is finally proceeding. I guess it was a year ago that an election was held. One might have thought, given the strong positions taken by opposition parties in the last Parliament on Bill C-51 and companion legislation, that the consultation process would start earlier, but I also understand the exigencies of the machinery of government.

I regret to say there was not a careful, measured debate on Bill C-51 in 2015, as the then-government rushed through Bill C-51, perhaps echoing public demand for swift and firm security action in response to the 2014 attacks in Ottawa and Saint-Jean-sur-Richelieu.

Let's be grateful that this much-needed conversation can now begin. Of course, we are all assisted by the recent release of two important documents. First, on August 25, 2016, the Minister of Public Safety released his “Public Report On The Terrorist Threat To Canada”, noting that the principal terrorist threat to Canada remains that posed by violent extremist groups at home or abroad who could be inspired to carry out an attack within Canada.

The second was an important background document released last month, on September 8, a national security green paper entitled “Our Security, Our Rights”, which is an objective discussion on most of the hot-button issues such as accountability, disruption, information-sharing, the no-fly list, interdiction measures, and investigative techniques.

This 66-page document, plus endnotes, is by no means bedtime reading, and it has been difficult for me to get my students to plow their way through it, but I am going to, before the end of the term, I assure you. It walks the delicate line between being an advocacy piece for enhanced security measures and the need to protect fundamental charter rights and freedoms. For those Canadians who want a shorter document, there is relief, because the actual green paper is only 21 pages.

I offer my sincere congratulations to Minister Goodale for finally getting this process under way. How long it will take remains to be seen. There are some provisions in the Anti-terrorism Act that are clearly unconstitutional and need immediate legislative fix, such as the power given to federal judges granting a disruption warrant that can ignore the Canadian Charter of Rights and Freedoms, or the lack of due process on the administrative side in the administration of the no-fly list. These should not have to be litigated in the courts. They can be easily dealt with by Parliament in this session.

I note that the green paper proposes a mandatory review of the Anti-terrorism Act after three years, but I can't help but observe that this will provide the government with an excuse to do nothing following the current consultation, until the end of 2018 or perhaps after the next election.

The period 2018-19 will be the lead-up to the next general election —hardly a time, in my experience, for constructive, non-partisan debate and enactment of meaningful legislation, if 2015 is any guide to the process.

The first of two items I want to deal with is accountability. Now, to be very fair, last June this government introduced Bill C-22, the national security and intelligence committee of parliamentarians act, which was long overdue. This will provide, for the first time, a select group of Canadian parliamentarians with access to the national security tent. I hope the bill is passed this year, although not without some constructive amendments that may come forward. I may be suggesting some of these to you when I appear as a witness before you next week in Ottawa.

The point I want to make is that Bill C-22 is only a small part of the jigsaw puzzle of national security. Its anticipated achievement as a new structure in our system should not be used as an excuse for delaying necessary reforms to our national security framework generally.

Let me share with you my experience over the past 40 years. During that time, I was an opposition MP; a minister of immigration during troubled times in 1979-80; the first chair of the Security Intelligence Review Committee, from 1985 to 1989; amicus to the Arar commission; and a special advocate under the Immigration and Refugee Protection Act. I have taught national security law for eight years as my retirement project. So I know a little about the subject, and I have some views.

● (1405)

Regarding accountability, I've changed my views. When I first became the CSIS watchdog in 1985, along with four distinguished colleagues following consultations with the opposition parties, I accepted the conventional wisdom that reviewing the complex security operations at CSIS was too difficult and time-consuming for busy MPs, who could not be trusted to maintain security confidentiality in the political atmosphere of the House.

Over time that situation has changed. Whether it was Parliament's responding properly to the horrible events of 9/11 with controversial provisions regarding what was then the Anti-terrorism Act, or the heavy-handed response of Parliament with the passage of Bill C-51 to the 2014 attacks in Ottawa and Saint-Jean-sur-Richelieu, which became law in June 2015 after much partisan debate, one thing has become clear: a way has to be found to bring elected MPs inside the national security tent.

The debate in Parliament and before committee on Bill C-51, which I closely followed, suffered from an absence of an understanding of the objectives and techniques of preserving national security for Canadians while protecting rights and freedoms under the charter. If Canadians are going to be asked to support the toughening of our national security framework, sometimes at the expense of individual rights and freedoms, they need assurances that changes going forward will be carefully scrutinized in camera by a select group of elected representatives. This committee of parliamentarians will be the first point of reference for an overview when something goes terribly wrong, which it's bound to under the circumstances.

That is not to say that the committee of parliamentarians should be a substitute for the independent review bodies like SIRC, or the CSEC commissioner, or the CRCC reviewing RCMP activities. In fact, the committee's work will be complementary to the expert review bodies. It is my view that the jurisdiction of these expert review bodies should be extended to cover other federal agencies such as CBSA or Transport Canada—that's my list—and that steps should be taken to allow these review bodies to share classified information with each other or to conduct joint reviews of national security and intelligence activities.

A lot of the work on the possible changes to the framework for national security accountability in Canada was undertaken by Justice O'Connor and his staff a decade ago as part of the mandate of the Arar commission. Unfortunately, many of his recommendations appear to have been ignored to date. I hope the release of the green paper currently guiding you in your discussions and debate on Canada's national security framework will rekindle some interest in the O'Connor recommendations, many of which remain valid today.

I'm going to conclude by commenting on something that's not in the green paper, and that is the national security adviser to the Prime Minister. Currently this office is within the Privy Council. It does not appear to have a high profile or any operational responsibilities. Given the communication problems that exist between the 17 agencies or departments involved in national security and intelligence activities, the complexity of sharing arrangements contemplated by the Security of Information Sharing Act under Bill C-51, and the practical efficiency of joint operations on a broader base than it is currently, why not give the responsibility to someone with clout at the centre, the national security adviser to the Prime Minister? Of course, the mandate would have to change under this proposal, and so would the manner of appointment. Similar to the Auditor General or the Privacy Commissioner, this person should be appointed by Parliament on the recommendation of the Governor in Council. Presumably the committee of parliamentarians established by Bill C-22 would play a major role in the nomination and approval process, and the national security adviser would be required to table an annual report in Parliament subject to the usual redactions regarding security matters.

● (1410)

Some commentators may regard this proposal as plumping for a national security czar for Canada, but the concept has worked in the U.S. to ensure, since 9/11, more inter-agency co-operation, and the avoidance of institutional stovepipes in the unwillingness to share important security information in an organized and secure framework.

That concludes my remarks. I want to thank you for letting me share these ideas with you, and I look forward to your questions.

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

We're going now to our second witness, Tom Henheffer from Canadian Journalists for Free Expression. He will be giving the presentation, and I believe that Ms. Klein will be available to answer questions, as well. Thank you.

Mr. Tom Henheffer (Executive Director, Canadian Journalists for Free Expression): I would like to thank the chair, the clerk, and the honourable committee members for the privilege of this opportunity to speak to them today.

I'm here on behalf of Canadian Journalists for Free Expression, a non-profit, non-governmental organization that works to promote and protect freedom of the press and freedom of expression around the world. In July 2015, CJFE and the Canadian Civil Liberties Association brought a constitutional challenge to the Anti-terrorism Act, 2015, on the grounds that specific provisions therein violate sections of the Canadian Charter of Rights and Freedoms in a manner that cannot be saved under section 1 of the charter.

There's a lot of work to be done with Canada's national security apparatus, but given the short timeframe, I will limit my remarks to the Anti-terrorism Act, 2015, and its impact on freedom of expression, as protected under subsection 2(b) of the Canadian Charter of Rights and Freedoms, and under article 19 of the Universal Declaration of Human Rights. I will also touch on issues of privacy, as the right to privacy is necessary for the full enjoyment of the right to free expression.

I'll leave it to my colleagues from other organizations to speak to other, equally pressing issues and concerns on the protection of rights and democratic values in the national security framework of Canada.

I'll start with free expression. The oft-touted argument that we must strike a balance between security and rights, implying that the two are at odds, is equally flawed. Protecting democracy requires a deep respect for human rights, as enshrined in our charter and in international human rights documents, full stop. Ignoring Canada's international obligations and disrespecting basic human rights will only create instability and insecurity.

We are very thankful that your government has embarked on this consultation, but we share the concern with many other civil society organizations that the green paper on national security reform is biased in favour of security and police agencies, putting their interests ahead of human rights.

One particularly egregious example is that it contains no mention of the need to impose judicial control over Canada's foreign intelligence agency, CSE, and to regulate the agency's expansive metadata surveillance activities, despite revelations that CSE operates under a ministerial directive that allows it to collect and analyze metadata that is produced by Canadians using mobile phones or when accessing the Internet. CSE is permitted to read Canadians' emails and text messages, and listen to Canadians' phone calls whenever Canadians communicate with a person outside Canada. There is no court or committee that monitors CSE's interception of these private communications of metadata information, and there is no judicial oversight of its sweeping powers. CSE's operations are shrouded in secrecy. At the very least, we must bring judicial oversight to the work of Canadian intelligence agencies, as this is a basic tenet of democracy that our country now lacks.

In terms of the specific legislation, the new Criminal Code offence of “promoting terrorism” is extremely troubling and must be addressed. It is vastly overbroad and captures speech made for innocent purposes, including private conversations. In prohibiting the perceived promotion of “terrorism offences in general”, the law unduly and unnecessarily limits Canadians' freedom of expression and ability to engage in proper democratic debate. It is also unconstitutionally vague and imprecise, and a clear violation of section 7 of the charter.

Leading constitutional scholars have written that this speech crime could easily be interpreted to prosecute anyone quoting a terrorist or sharing content produced by an extremist group online. This is particularly troubling for journalists in Canada, and indeed threatens the very institution of journalism because the law does not weigh a person's intent when they share this content. In other words, a journalist could conceivably be charged with a terrorism offence just for doing his or her job, by doing something such as quoting a so-called terrorist as a source in a story. A private citizen could also be charged for sharing content from an extremist group, even if that sharing was solely for the purpose of condemning that same group.

The vaguely worded speech crime will also undermine the government's commitment to develop new community level programs to counter violent extremism. In order to succeed, any such program will need to engage in robust and frank dialogue with radicalized and extremist individuals. By definition, many of these individuals will hold opinions that are sympathetic to proscriptive terrorist groups. They have to trust they won't be placed under surveillance or arrested because they engaged in good faith with community programs.

Furthermore, criminalizing the expression of a political opinion, however repugnant, is anathema to a free society. There is an important distinction to be made between expressing an opinion, even in support of people carrying out violence, and directly inciting an act of violence. Content should only be considered a threat to national security if it can be demonstrated that it is intended to incite imminent violence, it is likely to incite such violence, and there is a direct and immediate connection between the expression and the likelihood of occurrence of such evidence.

This provision also has a chilling effect on freedom of expression, even if no prosecution is ever brought. Persons will prefer to remain silent rather than risk the perils of prosecution.

The law is unnecessary. Criminal laws in place before the adoption of the Anti-terrorism Act, 2015, were an effective means of dealing with these issues, and they did so in a way that was far less threatening to human rights.

● (1415)

As such, we urge the government to repeal this unnecessary, overbroad, and dangerous law.

When we look at privacy and information sharing, without strong privacy safeguards it becomes far more difficult, if not impossible, for people to exercise their human right to free expression. There are real, tangible harms that are demonstrated to occur when a society and its citizens are subjected to the far-reaching, suspicionless surveillance that the government is currently directing at Canadians.

This is not an abstract or theoretical concern, it is an established fact backed by a large body of scientific research that when people believe they're being watched, their behaviour changes in significant ways. Surveillance in Canada has become increasingly pervasive, and recent revelations have shown that Canadians and others have been surveilled under numerous programs, with little oversight or transparency.

The alternative to mass surveillance is not the complete elimination of surveillance, and we're not advocating for that. It is, instead, targeted surveillance, and only of those for whom there is substantial evidence to believe that they are engaged in real wrongdoing. Such targeted surveillance is far more likely to stop terrorist plots. It also allows for judicial oversight, which again is crucial in any democracy. We urge your government to concentrate on targeted, constitutional surveillance, and to end the ineffective mass surveillance practices that are encroaching on the rights of all Canadians.

Overbroad information sharing is a further threat to privacy. As has been pointed out by privacy commissioners and advocates across the country, the Anti-terrorism Act 2015 allows a large number of government departments and agencies to share an individual's private information and it does so without necessary oversight to ensure that this power is not abused. Worse, this legislation does nothing to address the 2010 Air India bombing commission's recommendation to make sharing information mandatory in terrorism cases. We strongly urge your government to repeal the ATA's information sharing provisions and to replace them with constitutional laws that meet the commission's recommendations.

Our time is limited today, but I want to briefly touch on a few other aspects of the ATA.

Firstly, the bill's new warrant process destroys the entire purpose of the courts in Canada. In a normal democracy, a judge has oversight over the warrant process in order to ensure an investigation can be conducted without unjustifiably violating charter rights. The ATA allows judges to pre-authorize charter violations in secret and without notifying the subject of those violations. This is a bizarre reversal of the purpose of the courts, and it is clearly unconstitutional. Furthermore, it puts legitimate investigations in jeopardy, as it could easily lead to judges throwing out illegally obtained evidence. For the sake of rights and our national security, it must be repealed.

Secondly, the bill allows the government to hold secret deportation hearings, and it drastically limits information shared with advocates on the subject of those hearings. This is an unconstitutional violation of jurisprudence and must be repealed.

Thirdly, the Secure Air Travel Act further extends Canada's opaque no-fly list process, without providing a meaningful means to appeal for anyone who has been added to the no-fly list. There is no evidence that no-fly lists have ever prevented a terrorist attack, but there is clear evidence that they have a huge societal cost. Many innocent people have been robbed of their ability to travel because they've been added to this list through a secret process, with no effective means to appeal.

Maher Arar, to illustrate just one example, is still on a no-fly list. He is still unable to travel because of this faulty process, despite the fact that he has been completely exonerated and he has been compensated because of the situation that he was in previously, thanks to Canadians' sharing of information with other governments. This legislation must be repealed.

Although these issues may not appear to impact free expression directly, the broadness of the legislation, the lack of oversight, and the potential for abuse means these new laws could easily be used to target political enemies of the government, journalists uncovering difficult truths, or citizens exercising their constitutional right to speak freely and to protest. Genuine security can only be maintained through the promotion and protection of human rights. Human rights should be a core consideration in any national security strategy. To ensure the effectiveness of this approach, a national security proposal should be carefully examined, tested for constitutionality, and regularly reviewed to assess its impact on human rights standards and obligations. Our current national security regime, which rests largely on the ATA 2015, was not built on these principles. As such, the Anti-terrorism Act must be repealed.

Thank you for your time.

● (1420)

The Chair: Thank you very much.

We now begin our first round of questioning from members, and we begin with a seven-minute round.

The first questioner is Mr. Mendicino.

Mr. Marco Mendicino (Eglinton—Lawrence, Lib.): Thank you, Mr. Chair. Thank you to the three of you for your testimony today.

My first two questions are for Professor Atkey. I want to take you to the part of your remarks where you addressed threat reduction measures that could potentially violate an individual's rights under the charter. My broad question is whether what was Bill C-51, but is now existing statutory language under the CSIS Act, specifically subsection 12.1, by its existing language implicitly requires a judge to engage in a section 1 charter analysis. I'll be a little bit more tailored, and then I'll let you answer.

Before CSIS requests a warrant, there has to be reasonable grounds. The measures have to be spelled out and articulated. But more to the point, there needs to be some proportionality and some reasonableness addressed in the warrant itself. Do any of these principles, in your mind, require a judicial officer to engage in what is essentially a section 1 analysis?

Hon. Ron Atkey: Mr. Mendicino, the legislation is in conflict with itself. The provisions of subsection 12.1 mirror in many respects section 12 in the granting of a warrant under normal surveillance circumstances, and there are some 22 or 23 conditions the judge has to be satisfied with, many of them including the items you just mentioned. But in the same legislation, in effect in the definition of section 12 of the CSIS Act, to direct that the judge may ignore charter rights and obligations, in my opinion, is unconstitutional. There is the balancing task that the judge performs, both in terms of granting the warrant and in the eventual appeal courts, if there is an appellate situation involved, in the balancing of section 1 rights and whether it's absolutely necessary in a free and democratic society.

The balance we had—which is superimposed and was built on in terms of the charter-proofing subsection 12.1 and section 12—works, as long as you don't have the specific direction, which appears to me as how I read the legislation in section 12, that the judge may ignore our charter rights.

Mr. Marco Mendicino: To be fair, the statute doesn't say that. What it says is that a warrant couldn't authorize the violation of an individual's charter rights, unless the prerequisite conditions were met under the enabling provisions. And it is within the context of those latter revisions, where it talks about articulating the measures.... The one that I think attracts the most amount of attention is "reasonableness and proportionality" which does, I think, lend itself to a certain extent to section 1 of the charter, namely, where you're going to limit somebody's rights, are those limits reasonable, are they prescribed by law, are they justifiable in a free and democratic society?

● (1425)

Hon. Ron Atkey: But reversing that situation, if you're sitting as an appellate court judge looking at a situation in camera, a judge may say, "Well, I don't have to act in a proportional context in this particular case; it's so egregious that I don't care what the Charter of Rights and Freedoms is going to say, so I'm going to grant the warrant." First of all, I think that may be subject to appeal, and I think it just reinforces the unconstitutional nature of that particular definition.

Mr. Marco Mendicino: Let me take you to the secondary, as I'd like to probe a little bit, and that is how you see cooperation between the committee of parliamentarians working with existing civilian oversight, like SIRC. There is a section under Bill C-22 which calls for cooperation between the committee of parliamentarians and other oversight and review bodies.

Drawing on your experience, what are the statutory gateways that could essentially road map the kind of co-operation you envision?

Hon. Ron Atkey: I have a view of the committee of parliamentarians as a body for overview of security matters dealing with all departments of government. I don't ever see the committee of parliamentarians having the detailed staff and the time and the ability to go into the in-depth types of monitoring analysis that SIRC goes through, or that the CSEC commissioner goes through.

Mr. Marco Mendicino: So how do you see it working?

Hon. Ron Atkey: I think the two will work together. I think they will work responsibly. I don't think they'll compete. I think they're complementary to each other, and I think the committee of parliamentarians will come to rely on SIRC.

Mr. Marco Mendicino: May I pause for a moment, because what I want to do is take it to the language itself. What clause 9 of Bill C-22 proposes is that the committee of parliamentarians take "... reasonable steps to cooperate with each other to avoid any unnecessary duplication of work by the Committee and that review body in relation to the fulfilment of their respective mandates."

It seems to me that, as drafted, what we don't want is redundancy, but we do want co-operation and collaboration.

To be as tailored as you can be in your answer, how do you see that co-operation being mapped out?

Hon. Ron Atkey: I think the committee of parliamentarians will welcome having a body like SIRC reviewing CSIS and maybe CBSA, if that's in their future jurisdiction, to be able to hand off the detailed work that has to be done in order to properly analyze the situation and provide a report back to the committee of parliamentarians. I see the committee of parliamentarians in that context as more of a coordinator in the first line of fire when the questions come up in the House or in the media, but I think it will be a logical response in many cases to say, "We've looked at the matter, and we've asked SIRC to get to the bottom of the issue."

Mr. Marco Mendicino: Do you have any other practical tips or advice that you can offer the committee as it embarks on this new chapter of accountability and national security?

Hon. Ron Atkey: Don't get bogged down in the detail. The detail is for the expert bodies.

Mr. Marco Mendicino: The devil's not there?

Hon. Ron Atkey: Don't miss the forest for the trees, or whatever situation you want to describe. I think having an overview body of parliamentarians is extremely important, but not to get bogged down in individual cases, not to get involved in adjudications of individual complaints, but to deal with a broad sweep and use the review bodies, of which I hope there will be more after you do your work, to delegate, and maybe ask a judge, as was done in O'Connor and Iacobucci. It may be to SIRC, or it may be to the CSEC commissioner. The circumstances are all different. I think the committee of parliamentarians with its staff will be able to coordinate and quarterback all that situation and say, "Next case, let's get on with it."

Mr. Marco Mendicino: Okay. I think that's my time. I'll have to save my third question for the next round.

The Chair: Thank you.

I'm going to turn to Ms. Watts, but just before I do, I wanted to check a word you used. You were referring to "overview", and I was wondering whether that was an intentionally chosen word because we have been talking in this committee about accountability and the difference between oversight and review. Review happens after the fact, and oversight happens contemporaneously. You've been using the word "overview", and I don't think we've heard it before.

Hon. Ron Atkey: That's very perceptive, Mr. Oliphant, and it's deliberate.

The Chair: Deliberate, okay.

Hon. Ron Atkey: I think you should not get involved in oversight in terms of approving and being part of the direct operations of the security agencies.

The Chair: But review may be too little. I'm just wondering whether overview is more than review and less than oversight?

Hon. Ron Atkey: Overview is less than review. Overview is the oversight that's taking the overarching broad view of things.

The Chair: Okay, thank you.

Ms. Watts.

Ms. Dianne L. Watts (South Surrey—White Rock, CPC): That was my exact question, so thank you for that.

I would like to keep drilling down on this because we have heard through a lot of these proceedings of accountability and looking at what the different bodies are doing. Now, when you talk about oversight, that puts a distance between that, so we're relying.... From your model, we're going to go back to those bodies to task them to undertake work to look after themselves.

I think that is contrary to what we've been hearing in terms of looking at those bodies to see how they function and review how they're functioning. Are they functioning correctly? Are they interacting with one another? All of that work, as per the model that you're explaining, doesn't allow for that to occur. Basically, there's a committee of parliamentarians that is tasking these different bodies with bringing back answers, so I don't think that gives us or the general public the accountability factor. Can you comment on that?

● (1430)

Hon. Ron Atkey: Quite the contrary, I think in other parts of my remarks today I was saying there should be co-operation, sharing of information, and the removal of some of the stovepipes between organizations, and the review body should be able to exchange information.

Similarly, Parliament—

Ms. Dianne L. Watts: You just said “review body”, or is it an “oversight”? This is what I'm trying to get. A review body has a different mandate.

Hon. Ron Atkey: Let me be very clear. I avoid the word “oversight” because I think it would be a mistake for the committee of parliamentarians to get involved in oversight, as I understand that, and I've spent some time with the intelligence oversight bodies in the U.S. Congress and the Senate. They get briefed in advance of operations that haven't yet occurred. It has two impacts. First of all, if the operations are a success, the politicians can't avoid not talking about it. Second, if it's a failure, they're going to have to wear it. That's the real reason. The third thing is that it has financial implications. By bringing the CIA or the FBI, congressional oversight bodies, into the tent, if you will, and saying, “We're thinking of doing this, what do you think?”, they say, “Yes”, and they ask if they can have $3 million or $4 million to carry this out. It has financial implications that totally skewer the budgets of the security agencies.

As we embark on this new process for us in establishing a committee of parliamentarians, I think it would be a mistake for you to jump right in and to get involved in the oversight function as I've described it.

Ms. Dianne L. Watts: Okay.

My next question is that you were talking about the national security adviser working with Parliament as opposed to the Prime Minister, right?

Hon. Ron Atkey: Well, I think it's like the Auditor General—

Ms. Dianne L. Watts: Who would have an independent role.

Hon. Ron Atkey: —or the Privacy Commissioner. He may be called the national security adviser to the Prime Minister because he has authority, and in our system the buck stops with the Prime Minister on national security issues. I think it's proper he be called the national security adviser to the Prime Minister, but he should be appointed on the recommendation of the Governor in Council, with the approval of Parliament.

Ms. Dianne L. Watts: Right. Okay.

Because I know time is running out here, I want to quickly move to the gathering of information. We have talked about that, and I've heard a lot about security versus human rights and those pieces within the context of Canada. It's very well known in many circles—and I'm sure you are well aware—about all the systems that are being hacked by China, Russia, and North Korea, and about the independent contractors that are out there selling intelligence. If we are not to be in a space where we are dealing with that on the exterior level, how do we deal with that with our own intelligence folks when we know that this is going on at a global level and those people are also gathering information within our country? How would you suggest we deal with those issues?

Hon. Ron Atkey: Both of those issues that you described—

Ms. Dianne L. Watts: Yes, I wanted Mr. Henheffer, sorry.

Mr. Tom Henheffer: In terms of broad-scale surveillance, yes, China, North Korea, and these other countries might be hacking, but they're not doing it on anywhere near the same scale as what's going on from governments from within their own countries. Whereas within Canada, through any number of means, whether it's warrantless access through the telecommunications companies, whether it's back doors that could be put into different programs like in BlackBerry, whether it's like what we saw in the United States, where Yahoo actually allowed the United States government to go in and analyze every email that was sent ever on its servers.... That is something that is far beyond, as far as I know, the capabilities of these other actors—state, governmental, non-governmental, or whatever. You don't need to have broad-scale digital surveillance in order to counter that. You simply need to home in on the people you need to analyze. In fact, by having a government database that actually collects all this information, that collects all of Canadians' metadata—which, by the way, gives you a clearer picture of someone's life than the content of their emails, far more—you can tell everything from that, and obviously you're already familiar with that. To have all of that in some government database somewhere makes it suddenly extremely vulnerable.

● (1435)

Ms. Dianne L. Watts: Absolutely.

Mr. Tom Henheffer: Yes. That is extremely dangerous. To scrap that broad-scale digital surveillance, which has never been proven to stop an imminent attack anywhere in the world, and instead target individual people, solves the problem of having these massive databases that are hackable. If you have that information, then other people can access it, plain and simple. If that information isn't stored on government servers, then they can't, because it's in a number of disparate places. They would have to go to Yahoo and to BlackBerry and to Health Canada and to all of these other places in order to get a holistic picture. But under the new information sharing provisions and under the data collection provisions—and we only know there is no transparency around because of the Snowden leaks—then that is a huge vulnerability that Canada has in terms of outside hackers because they could go into a government database and get all of that information and have a holistic picture, which is a serious security vulnerability.

The Chair: Thank you, Mr. Henheffer. We're at the end of your time.

[*Translation*]

Mr. Dubé, you have seven minutes.

Mr. Matthew Dubé (Beloeil—Chambly, NDP): Thank you, Mr. Chair.

[*English*]

It doesn't matter that the time ran out, because I want to continue on the same point, actually. Metadata is something that has come up, and far from being a semantic distinction from data, there is a huge difference there and it's extremely important. Unfortunately, I don't think many people quite realize the point that you made about how much you can glean from metadata.

I wanted to look at something, and particularly for journalists, I think, an interesting point to look at is in terms of information sharing, with foreign entities, whether they be allies or otherwise, and the fact that the legal protections that exist for privacy aren't the same under other jurisdictions.

Do you folks have thoughts on that, particularly with regard to your organization and more broadly speaking?

Mr. Tom Henheffer: Absolutely. To go into what could be found, there was a study done in the United States where basically a bunch of university professors got people to agree to let them access their metadata, and the professors would see what they could glean from that. They were able to determine people's political affiliation. They were able to determine their religion. They were able to determine that one women had had an abortion, through this information. This was all through just their metadata, just through the information that's collected. To have that holistic picture in the government services is quite dangerous.

To address the second part of your question in terms of outside actors and information sharing, there's already been a case where CSE was found to be sharing information that it was not allowed to be sharing with outside actors, a massive amount of information, about Canadians. This is extremely problematic because all of a sudden we don't know who else has access to our information and what it's being used for.

On top of that, under the information-sharing provisions, in our read of the ATA 2015, essentially it seems that under the right circumstances, and without judicial oversight, any information could be shared with any outside state actor. I believe it's from a 100 different government institutions within Canada, which, again, is extremely dangerous.

Speaking just from a journalistic perspective, the idea that the state could be reading our emails, could be using our metadata to construct who we've been speaking with, who are stories are, who are our sources are, it makes it extraordinarily chilling. It makes it impossible for whistle-blowers to come forward because there's no way for them to know that their information will be protected, and that they can be protected as a source. It makes it extremely frightening for journalists because they're afraid they could be prosecuted.

I know a lot of national security reporters. I know all of the national security reporters in Canada; they're aren't that many of them. They are very frightened by this legislation. As for the idea that the government would never prosecute them, one of those national security reporters is Ben Makuch, who works for *Vice*, and right now he could be thrown in jail, depending on what the results of his appeal are, over the RCMP's production order that *Vice* is fighting.

He has said he'll refuse to provide that information, which would mean he would be found in contempt of court and put in jail. We're already in a system where journalists could be jailed in Canada simply for doing their work. If this is allowed to continue and these powers are exercised.... You are the government of sunny ways, as a Liberal government, but what happens with the next government that isn't quite so sunny? They still will have those legislative powers. It just becomes more dangerous over time.

● (1440)

Mr. Matthew Dubé: I will say, perhaps in fairness, we're not all in the Liberal Party here.

We have seen a precedent of that. Joël-Denis Bellavance was followed by the RCMP, for example. Is that intrinsically linked as well with the vague definitions that you mentioned, the fact that the two go hand in hand, you're collecting data then analyzing it based on these horrible definitions?

Mr. Tom Henheffer: Absolutely.

It's both the vague definitions and the lack of oversight and review that lead to massive potential for abuse. The idea that we would give CSIS enforcement powers when they were stripped from the RCMP in the 1970s because of the dirty tricks that they were doing....

You look at the United States and you can see that police in the United States.... There was just a study released by the AP, that found that there is mass, hundreds, thousands of cases across the United States where police are using their powers to surveil ex-girlfriends, to stalk women, to do any number of things that they are not allowed to do but by accessing the databases they can, because there is very little oversight of that.

The idea that we would restore that power without meaningful oversight to our spy agencies, to our national security agencies, is extremely dangerous.

Mr. Matthew Dubé: I don't want to interrupt you, but my time is limited.

Quickly, for journalists detained abroad are there concerns there? A couple of weeks ago there was an access to information request that showed us that consular services and CSIS have an information sharing agreement. We know often Canadians who are detained abroad in many cases are journalists. Is there concern there from your organization?

Mr. Tom Henheffer: Yes, absolutely.

Data security is extremely important for journalists abroad. One of the main things we do is fight to get journalists out of jail overseas. We only communicate via encryption. We do everything we can to minimize that. But if the government is intercepting our communications then there's a possibility that that information could get to another state actor. Even with Turkey or Egypt, countries like that—routine jailers of journalists—we do have strong diplomatic ties and may share information. You can certainly see our security agency sharing information with those countries. If journalists get caught up in that, their lives could easily be at risk.

Mr. Matthew Dubé: I appreciate that.

Mr. Atkey, I did have questions for you, but my time is coming to an end. It's all related to Bill C-22, so we'll see you when you come before us again.

The Chair: You have almost a minute.

Mr. Matthew Dubé: I have one quick comment as a sort of preview for that study.

Going back to the discussion about oversight versus review, we had a witness mention that with SIRC having their report tabled six months after an event that could have happened up to a year before, you can end up going up to 18 months after the fact. At some point it becomes ineffective when the wait has become too long. That's taking away from oversight.

Is that something you would agree with?

Hon. Ron Atkey: That's a good point. There is power under the CSIS Act for SIRC to put in a special report and not to wait the 18 months. It does require the Minister of Public Safety to agree to table it and make it public. There may be a tussle as to what's redacted and what's not redacted, but there is power within SIRC to act expeditiously—

Mr. Matthew Dubé: In order to be able to do that, it would require more resources—

Hon. Ron Atkey: —if it's an urgent matter.

It would be a brave public safety minister who would sit on something that had been flagged by SIRC as being extraordinarily important to the security of Canada or to the human rights or individual rights of Canadian citizens.

Mr. Matthew Dubé: Thank you.

The Chair: Thank you to you both.

It's always a good sign of a panel when the questions keep flowing one to another and the witnesses are answering. I like this.

Ms. Damoff.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thank you.

Thank you to all of you for being here today. I'm going to take it in a slightly different direction.

Political protest and expanding the definition of terrorism to include interference with critical infrastructure is something that has come up during our meetings in Vancouver and Calgary. I also had an email from a very politically active grandmother in my riding about it. That email said that it's easy to envision a government saying a protest is not an act of defence but rather an attempt to intimidate the public or a segment of the public.

I'm wondering if perhaps both of you could comment on that. How do you see that the legislation needs to be amended to allow protest, but not acts of terrorism on the infrastructure?

● (1445)

Hon. Ron Atkey: Well, the legislation was amended by the last Parliament when the word “lawful” was removed, so the net of protest is broader.

There's no easy answer to this. Canadians have to get used to the fact that we do allow protest, advocacy, dissent, and artistic expression in our society, and it's embedded in legislation as long it's not done in concert with violence to people or property. The exception comes in when there is critical infrastructure that's about to be harmed. That's a fine distinction that's going to be drawn by a judge in individual cases. Protest is not unlimited, but it is allowed as a matter of legal rights.

I can give you an example going back to the G20 meetings in Toronto. The government of the day said they wanted to have these meetings in downtown Toronto but they didn't want any protests, even though every G10 or G20 meeting in previous years had always had protests. That's part of the culture, if you will, and I suggest to you that it's part of the culture in Canada, so there's no easy answer.

Mr. Tom Henheffer: To use the G20 as an example, that was before the ATA came to power, and you saw how incredibly repressive of protest the government was at that time, arresting protesters who had peacefully gathered in Queen's Park even though they were nowhere near the area where there was conflict in downtown Toronto.

It was passed in secret or very quickly and quietly, and allowed police to demand people's identification within 10 metres of the fence around where the G20 was happening. They interpreted that to mean they could ask anyone anywhere in the city including journalists, protesters, whoever, which was a great example of how these laws can be taken to the next extreme by law enforcement.

In terms of protest, I think there is a fairly simple answer to this. I'm not a legal scholar. Our organization's opinion on it is that there's no need for a terrorism provision around protest and threats to infrastructure. That can be dealt with in the Criminal Code under the previous laws. That handled these things fine. If someone bombs a pipeline, then you can prosecute them as a criminal. If someone through some protest actions shuts down pipelines, as what happened last week, then that can be dealt with as well without those people being charged with terrorism offences, which they absolutely could be.

Certainly what the protesters did last week in shutting down those pipelines by turning off the emergency valve was illegal, and they can be prosecuted under that. But it was also a political act of civil disobedience. It's important that they not be thrown in jail for the rest of their lives because they did so. Under this legislation, they could be charged with a much harsher penalty. It's important that we protect these things by treating these offences as criminal offences as opposed to having a broad, vaguely defined, overarching depth of crime that can be applied however a judge or the government decides to.

Ms. Pam Damoff: You both mentioned the no-fly list for the Secure Air Travel Act.

In testimony in 2015, the B.C. Civil Liberties Association said, “Travelers on such lists are deemed too dangerous to fly yet too harmless to arrest.”

Professor Atkey, you mentioned that we needed to move immediately on that. I'm wondering what amendment we should make in the short and the mid to long term to address the issues with the Secure Air Travel Act?

Hon. Ron Atkey: I think the no-fly list is here to stay. It's not something we invented in Canada. It's been around a lot longer in the United States, a lot longer under the United Nations auspices, under committee 1397, which had a no-fly list in 1997. The trick is to make it fair. It's easy to get on the list but maybe it's too hard to get off. It's not fair under the process in which you get on.

Both in terms of appeal rights, when you immediately find you're barred, it should be easier and done in a proper context, in which a person has a right to know if there is evidence against him either to have an in camera proceeding in which the judge would consider the matter or to have a special advocate available in the proceeding so there is some fairness to the decision.

Some people are not going to win if the government agencies have marshalled evidence that suggests they are a threat to the security of Canada, and that's the test used under our law.

● (1450)

Ms. Pam Damoff: Mr. Henheffer, do you have any comments on that?

Mr. Tom Henheffer: Absolutely, I was recently on a panel with someone from the National Council of Canadian Muslims, and obviously they have a deep interest in the no-fly list, because of the names of the people who show up on it.

One of the main concerns with it is that people aren't notified when they're put on the no-fly list. They have no idea until they go to the airport and can't get on a plane. Even when they're not allowed on the flight, they're not told they're on the no-fly list. There's no way for them to know. The idea that there could be any means to appeal when you're not even told you're on the list is outrageous.

I think that Professor Atkey and I would both agree that there need to be some huge changes. It makes sense that there will be a no-fly list. It's an international thing. It's not something that Canada can simply stop on its own but there need to be means to appeal; there needs to be notification of people; they need to have the right to contest being put on the list. There have been so many cases where a five-year-old kid is on the list because they have the same name as someone. Someone down the line screwed up.

Maher Arar, as far as we know, is not on the Canadian no-fly list but because the Canadian no-fly list was shared with other countries, he is on their no-fly list, which prevents him from flying anywhere outside the country. This comes back to information sharing. We need to be very careful with what happens to people on the list because if we share that information with other countries, Canadians may be able to get off our list but they won't be able to get off other countries' list, even though they were put on ours mistakenly.

The Chair: Thank you, we need to end there.

Mr. Brassard.

Mr. John Brassard (Barrie—Innisfil, CPC): Thank you, Mr. Chair. I'm here for one day today, so I haven't had the privilege of waking up at 3:30 in the morning Calgary time like the rest of the committee members. I might have a little more energy.

Mr. Atkey, with respect to the green paper, I have sat in on this committee on at least one occasion. We heard from Mr. Wesley Wark about some of the concerns he expressed with respect to the green paper. He said among other things that it seemed to steer public conversation to a precluded decision. He spoke about concerns around accountability, the prevention of radicalization, a threat reduction with no distinction between home and aborad, and transparency on the no-fly list, which I understand the committee has been hearing concerns about right across the country. On the topic of the green paper, I was wondering if you could add some of the concerns you might have with respect to it, or some of the issues you agree with.

Hon. Ron Atkey: I might differ slightly from Professor Wark, who's a tough taskmaster. I wouldn't want to be his student. I think it's a good first step. It doesn't cover all the issues. It doesn't include, for example, national security adviser to the Prime Minister, which is an important role. More important than the green paper is the discussion paper, which is a very creative document that deals not only with the substance of the green paper, but also with hypothetical real-life examples that allow persons interested in the subject to go in and see exactly what the policy is and what the structure involves. I give the green paper and its background document an A-, at least as a useful public document for discussion.

Mr. John Brassard: One of the issues you also spoke about was Bill C-22. While I completely understand we're dealing with a national security framework, you did mention Bill C-22 and you talked about some amendments you would like to see to it. What are some of those amendments?

Hon. Ron Atkey: They will relate primarily to ministerial veto and powers of the Prime Minister to redact and withhold information. I read the parliamentary debates on Bill C-22 and most of them are within that framework. I don't think we should use the time today when I'm going to do it next week.

● (1455)

Mr. John Brassard: Thank you.

Mr. Henheffer, we heard from Commissioner Paulson of the RCMP, and one of the things he mentioned was that we're in a much different situation with respect to operatives, or the dark room as he referred to it. At one point, he mentioned anecdotally that it would be a quarter of the room and in the rest of the room you can get information. Now it seems like the whole room is dark, because a lot of these organizations, terrorist individuals, or otherwise are really acting in encrypted situations. How can that be addressed in your opinion, understanding the concern that you have with respect to rights?

Mr. Tom Henheffer: When it comes to encryption, the battle for that is lost. There is absolutely no way that the Canadian government can prevent outside organizations from communicating through encrypted technologies. We can go to every single Canadian company that deals in encryption and demand a backdoor key, and it will do absolutely nothing, because there are thousands of other companies around the world from outside our jurisdiction that anyone can go to.

So the idea of trying to prevent encryption, or to go after encryption, is surrounded by a massive misunderstanding. It's impossible. It is impossible for the government to get that. All we can do is make Canada, legitimate actors, and people who are lawfully using this encryption, including our law enforcement agencies, far less secure by demanding these keys and by demanding access. The only people this will actually harm are law-abiding citizens, period.

It is folly to think we will be able to get access to that dark room through encryption. It will never work, and a big part of the reason this bulk metadata and overall data collection simply doesn't work is that the bad guys who really want to prevent you from getting that information will be able to do so. They'll either go offline or they'll use encrypted technologies that our government will never be able to crack, because they're encrypted from organizations outside our jurisdiction. The only way to effectively fight this would be to put an agent, through traditional surveillance, in the room. You can't access that dark room if it's cut off from the Internet. You can access it if you have somebody there. That's the way it has to work.

The Chair: Thank you. We have time for a three-and-a-half-minute round.

Mr. Mendocino.

Mr. Marco Mendicino: Thanks, Mr. Chair.

I will come to the question that I was going to pose to Mr. Henheffer and Ms. Klein. It's just focusing on the advocacy and promotion of terrorism offences under the Criminal Code under subsection 83.22(1).

I just want to try to tease out what your concern is because it seems to me that there is a fault element within subsection 83.22(1), and that fault element is linked to how we generally define terrorism offences and terrorist activity. Within the context of those offences, there needs to be a real motivation to advocate or promote terrorist activity, which of course any journalist would not have by simply reporting on the facts.

Could you articulate and expand a little bit on why the motive element as it exists today in the code does not shield or insulate journalists from potential investigation and prosecution?

Mr. Tom Henheffer: I am not a legal scholar. I am referring to the works of other legal scholars. People like Kent Roach and Craig Forcese have analyzed this, and we've based a lot of research on their research as well.

What it comes down to is that the way this is worded all depends on how you read the law. The law could be interpreted in such a way as to remove that motive. You look at it as, well, this journalist may not have been promoting what these terrorists are saying, but someone who's reading their communications may then be inspired to attack.

Mr. Marco Mendicino: Let me pause you right there. That may actually put the person who's reading your article into the crosshairs of law enforcement or even the intelligence community, but just to clarify, if law enforcement or an intelligence community is seeking an information to obtain or a production order, they do have to spell out to the authorizing judicial officer that an offence is being committed or that there are reasonable grounds to believe that an offence is being committed, and that trying to obtain evidence from the premises or the person they are attempting to search would afford evidence of that offence. That means they have to address the motive element.

That's what I'm trying to understand. Is that part of it not clear enough? Is it overbroad or vague?

● (1500)

Mr. Tom Henheffer: I believe so. I'll let Alice take this one.

Ms. Alice Klein (President, Canadian Journalists for Free Expression): I just think it's really important to understand that some of this is going to pertain to people who are freelancers in the field. Perhaps you are thinking of mandated journalists who are working for high-profile publications, but we've had the experience of freelancers in the field, and there's no precedent for what they have begun to work on, and this intentionality is not easy to defend if they've never published before, for example.

It really has to be understood that some of this journalistic work is is being done by people who are really willing to endanger themselves and to attract the double danger without protection.

Mr. Tom Henheffer: To build off that very quickly, I can give you a concrete example of this. The winner of our Tara Singh Hayer Memorial Award this year is a man by the name of Ali Mustafa. He was a Canadian citizen who was killed in Syria. He was one of the only photojournalists in Aleppo at the time the war broke out, and he was directly embedded with a number of different organizations, some of whom now, as the reality on the ground has changed, would be connected with ISIS or other extremist groups. But when he was on the ground, he was simply telling the stories of the people he met.

In terms of his intentionality, it is not beyond the realm of comprehension that he could be charged because he was spreading the viewpoints of these people simply as an objective observer on the ground. He was killed as a result of that, and he's getting our award this year. That's a type of situation that is overbroad and grey, and there are some real issues that come into it because journalism is a muddy job.

Mr. Marco Mendicino: Thanks for that.

The Chair: Thank you very much.

We're going to take a brief pause while we change panels for our second hour.

● (1500)

(Pause)

● (1505)

The Chair: Thank you.

We're going to continue now with our second panel of the day.

Just a reminder to the public who have joined us, in between or during that first meeting, that this testimony at these hearings in the afternoon is coming from our invited guests. In the evening,everyone is invited. If you would like to speak, you will be given time at the 5:30 to 7:30 meeting of our standing committee.

I just want to clarify one thing that I didn't clarify in the first hour. These consultations are separate from, but not unrelated to, the government consultations on national security, so there are parallel operations. Parliament is separate from the executive branch of government.

The government has issued a green paper and is engaged in ministerial consultations. We have access, obviously, to that green paper and we are going to make comment on it, but we are not limited to the contents of that green paper in our consultations and we're not bound to report at any particular time. However, we do want to be helpful to the minister and the government in helping them understand the views of Canadians with respect to the national security framework. That is the purpose of these hearings.

This afternoon we continue on the panel. Thank you, Senator Segal. Ron Levi and Carmen Cheung are coming to us from the Munk School of Global Affairs.

We'll begin with you two and you're sharing 10 minutes, and then we'll go to Mr. Segal.

Professor Ron Levi (George Ignatieff Chair of Peace and Conflict Studies, Munk School of Global Affairs, University of Toronto, As an Individual): Thank you.

Chair and members of the committee, I want to thank you for this invitation to discuss Canada's national security framework and with it the 2016 “Our Security, Our Rights” green paper.

My brief remarks today focus on the importance of developing an evidence-based and “lessons learned” approach to national security. I'll be sharing my time with Ms. Carmen Cheung. Both of us are in the Munk School of Global Affairs in the University of Toronto, at the school's global justice lab. Each of us will be covering different aspects of the green paper. I will be discussing countering radicalization to violence. Ms. Cheung will be discussing accountability and secrecy. Our core message to you is the same: an evidence-based approach to national security should learn from local research, the experience of other countries, and evidence and experience in cognate fields, including crime and criminal justice.

The green paper identifies terrorism as criminal violence. It concerns itself with radicalization to violence. It has a theory of who might be at risk of becoming radicalized and with it a view of the process of violent radicalization. The green paper outlines the importance of working with communities, engaging youth and women, and promoting positive narratives as alternatives to violent, radical ones. It emphasizes fostering research on prevention and countering radicalization to violence.

I commend the Government of Canada on this approach. My own work has benefited from Kanishka project funding, and I'm pleased to serve on the executive committee of the Canadian Network for Research on Terrorism, Security and Society.

There are challenges to pursuing research in this field. Research approaches that one might pursue in other fields to build a policy-relevant knowledge base, such as experimental designs in criminology, are untenable here. Similarly, while any one case of terrorism is too many, the number of incidents does not always allow for the same sort of research we see elsewhere. Research access, methodology, and ethical review are more difficult in the context of radicalization to violence than in other areas. Yet there is a growing landscape of new research on radicalization and on terrorism, which, when combined with existing research on crime and criminal justice, provides us with an evidence base from which to work.

In the interest of time, I want to highlight just two sets of studies for the committee, since they relate directly to the green paper's theory of radicalization to violence, the importance of communities, and positive narratives.

The first is what we know about relationships between policing, community engagement, and embedded norms within communities. Research in the U.K. and the U.S. shows that when people judge law enforcement as fair and not singling out some groups, police are seen as more legitimate and residents are more likely to co-operate with the police and comply with legal rules. Social psychologists call this “procedural justice”, and this emphasis on neutrality, respect, and trust predicts the likelihood of co-operating with the police, both with respect to crime and with respect to terror.

In contrast, the political views of individuals who may be co-operating have limited impact. Research in Toronto suggests that the availability of counter-narratives to terrorism among youth is chilled. Existing counter-narratives are not shared widely in the community when there is a perception that the community is under targeted surveillance. Research in Los Angeles and other U.S. cities suggests something similar. Peers who notice early signs of extremism may be too fearful to alert law enforcement or others in the community.

On the flip side, research on gangs shows that having individuals with influence from the community—family members, faith leaders, ex-offenders, and other—provides moral messages that are valuable to the community, but the community disapproves at the same time of the behaviour. This seems to work in combination with positive opportunities for employment and engagement to reduce violent crime. If we take these puzzle pieces together, there is strong evidence that trust in state institutions can productively combine with a delegitimation of violence and of shared expectations of behaviour that encourage productive pathways for youth.

● (1510)

The green paper recognizes that different communities have different needs and priorities. As a result, one way of building resilience is to take an approach not exclusively or even primarily lodged in a law enforcement model, but instead, taking a broad view of community safety and well-being that integrates local concerns, including the needs of youth.

We are seeing work on countering violent extremism now move towards a complex public health model, where primary, secondary, and tertiary prevention, which I can speak about in Q and A, are engaged at the same time.

In the interest of time, I won't speak now about the need to broaden our understanding of radicalization to violence based on what we know about criminal offending more broadly. I am happy to discuss that in questions, but I want to say one last thing.

My point here has not been to provide detailed evidence about each issue. It is to echo the green paper's emphasis on the importance of fostering research, adding that we must pay attention to what we know already from related fields and from research on radicalization to violence specifically.

That brings me to a final point in my last few seconds. The green paper does not currently outline performance metrics of success in prevention. I recognize the challenges of doing so, especially with prevention distributed across agencies, and unfortunately, reducing the risk of violent extremism to zero is unattainable, but this makes discrete metrics that reflect prevention efforts and build resilience ever more salient. Incorporating appropriate metrics early on, matching the government's broader commitments to measurable outcomes would provide clarity for Canadians and for government on commitments to prevention and the building of resilience.

Thank you.

● (1515)

The Chair: Thank you.

Ms. Cheung.

Prof. Carmen Cheung (Professor, Munk School of Global Affairs, University of Toronto, As an Individual): Thank you very much, Chair.

Good afternoon. It is a privilege to be here before the committee again. Thank you very much for the opportunity, and thanks again to Professor Levi for generously sharing his time.

I'd like to build a bit on his remarks and on the importance of learning from comparative experience, so let me start with something this committee already knows, which is that we cannot talk about Canada's national security framework without addressing the urgent need to update our framework for national security accountability. The international experience shows that Canada is, quite frankly, lagging behind our closest allies when it comes to comprehensive national security oversight and review.

This committee is currently studying Bill C-22, which would create a national security and intelligence committee of parliamentarians. Political accountability is critical, and the move towards formalizing legislative review is a very welcome development; but as you will have heard from others, a modernized system of national security accountability requires more. Canada's system of independent expert review exists as a patchwork, in contrast to the consolidated model of integrated review that we see in countries like Australia.

The judiciary can play an important role in both oversight and review across a range of national security activities, from authorizing warrants for intelligence activities that might implicate constitutional rights to adjudicating claims arising from government actions. However, unlike in the United States, our courts play little role in authorizing foreign surveillance that might infringe on guarantees against unreasonable search and seizure. These are just a few examples.

This is of course not to say that there is a perfect model for accountability or even a best model. If anything, the value in comparative approaches is in seeing both what works and what does not work. We need not look any further than the recommendations from the Arar inquiry, or last year's extraordinary open letter calling for immediate reform to national security accountability, a letter that was signed by former prime ministers, senior security officials, and former Supreme Court justices. We need not look any further than to our own experts to know that the current system must be improved.

This national consultation we're taking part in represents an important moment of opportunity towards creating an integrated and comprehensive accountability framework, one that can evaluate whether national security policy and practices are effective, legal, and rights-respecting. International comparisons can help us build this framework.

Done right, a robust system of accountability enhances public trust. Also important for public trust is some measure of transparency in how government goes about protecting our national security. This is made complicated by the fact that national security activities will necessarily require some secrecy. Yet I would say that the experience has shown that government sometimes tends towards reflexive secrecy. The commissioners in both the Arar and the Air India inquiries concluded that the government over-claimed secrecy during the course of those two proceedings. Chief Justice McLachlin noted, in the 2014 Harkat decision, that government tends "to exaggerate claims of national security confidentiality".

Excessive and unnecessary secrecy is problematic for several reasons. First, as Justice O'Connor noted in his report on the Arar inquiry, when government over-claims the need for secrecy, it "promotes public suspicion and cynicism about legitimate claims...of national security confidentiality".

Second, Canadians should be able to understand and judge for themselves the nature of the security threats facing the country and the appropriateness of our responses to those threats. Excessive secrecy makes this sort of assessment difficult for ordinary Canadians.

Third, secrecy becomes normalized. We see this in new legislation allowing the use of secret evidence in closed courts, and judicial reviews of passport denials and no-fly listings. When processes are secret it's hard to know or hard to believe that they are fundamentally fair. The open court principle is foundational to the common law, and secrecy in the courts should be exceptional. In a democratic society we should always be looking for ways to make proceedings more transparent, not less.

So how do we balance fairness and transparency with the very real need to keep national security information from falling into the wrong hands? In the case of judicial proceedings, at least, we can learn from the criminal justice experience on how to protect sensitive sources and information in an open court, on which mechanisms are best for determining where the appropriate balance lies between confidentiality and disclosure, on how to go about gathering intelligence that can be presented in a court of law. The constitutional demands for a criminal proceeding may be different from those in administrative or civil cases; however, the presumption in favour of transparency and openness should not be.

● (1520)

Thank you again for this opportunity and we look forward to your questions.

The Chair: Thank you very much.

The floor is yours, Senator.

Hon. Hugh Segal (Chair, NATO Association of Canada, Massey College): Chairman, members of the committee, thank you for the opportunity to share my perspective with you. I am going to focus primarily on Bill C-22, the parliamentary oversight proposition, because I think it's central to the premise of accountability for our national security and intelligence services.

I think the Government of Canada is to be congratulated for circulating the green paper and discussion paper on the balance between national security and individual freedom, and seeking public input on the choices that are ahead. The new legislation creating a committee of parliamentarians on national security, closely modelled on the U.K. committee of parliamentarians, is also a constructive and overdue initiative.

As Ms. Cheung pointed out, Canada has been the only major NATO partner without a legislative oversight structure for national security and intelligence operations. This is an unacceptable anomaly, an unpardonable gap in the vital linkage between the democratic institutions of the country and the agencies committed to protecting national security, which also means they're committed to protecting democracy.

While ministerial oversight has been clearly established by the enabling legislation for organizations such as the RCMP, CSIS, CBSA, Communications Security Establishment, and some retroactive but limited oversight was provided by SIRC and the Inspector General at CSE, their capacity to provide forward-looking oversight, as opposed to dealing retroactively with complaints, was severely limited.

The model suggested in C-22, namely a committee of parliamentarians, chosen by order in council, as opposed to a parliamentary committee elected by the various parties in the House and the Senate, is the right choice and mirrors the initial form of oversight chosen by the United Kingdom in the Thatcher-Major era. Moving to where the U.K. committee of parliamentarians is now, after decades of operation and a proven track record on trust and discretion, would be a serious mistake and a threat to our national security operations.

For the oversight by parliamentarians to work well, and for the agencies being overseen to, along with Canadians as a whole, benefit from the dynamic of oversight, a relationship of trust between the overseers and operating agencies must be established. A five-year automatic review of existing legislation and C-22 will allow the nature and structure of the committee of parliamentarians to be revised and updated, based on real experience with challenges met and addressed in the Canadian context.

In my judgment, the committee, as now proposed, is too small. It should be no fewer than 12 parliamentarians, with eight from the House of Commons and four from the upper chamber. The new mix of independent senators being appointed affords the government a refreshing opportunity to have senators with previous experience in military, police, security, anti-terrorist, foreign affairs, defence, and civil liberties work considered by the government for service on the committee of parliamentarians.

The preamble of C-22 should specify that the oversight mission of the committee of parliamentarians is to be carried out in a fashion that does not favour partisan advantage or preference. Rather, it should promote the protection of Canadian civil liberties, essential freedoms and privacy, consistent with the Constitution and Charter of Rights and Freedoms, increasing the national security and safety of the residents of Canada.

It would be preferable for all security agencies to fall under the oversight of the same committee of parliamentarians. Separate civilian oversight for the RCMP, or none to speak of for CBSA, is not appropriate and it's unacceptable.

A larger committee of parliamentarians, with the freedom to appoint the head of the research, monitoring, and oversight operational structure underpinning its work, makes the most sense. Members of the structure serving the committee should not be appointed by the Clerk of the Privy Council, or any of the operational deputies in the relevant line departments. The organization serving the committee should be answerable to the committee, with fixed terms of service, appropriate security clearance protocols, and measured experience.

The clerk of the committee should have the rank and status of a senior deputy minister, with an order in council appointment of no less than five years, renewable by mutual consent. The operations of Canada's military intelligence should also be under the oversight of the committee of parliamentarians. The operational and committee support structure for the committee, and its meeting place in camera or otherwise, should be away from Parliament Hill in an appropriately secure facility, not adjacent to CSIS, the RCMP, CBSA, or DND.

Its enabling legislation should protect them from ATI requests, except as they might relate to expenditures, costs, travel, and normative operational administration.

● (1525)

Matters for review, testimony heard in camera, negotiations on agenda with the appearing agencies, reporting relationships between operational agencies and committee and/or its operational support unit should, by statute, be exempt from ATI inquiries.

The committee chair, already designated by the government, should have a Senate vice-chair of the committee. Unlike the requirement in the legislation with respect to the House of Commons, Senate members of the committee or a Senate vice-chair, who should also be designated by the government, need not be members of a partisan group in the upper chamber. Any federal body established in this area by statute—for example, on anti-terrorist missions such as deradicalization and community outreach—should be under the oversight of this committee of parliamentarians.

I'd be delighted to take any questions on this or other matters before the committee.

Thank you very much.

The Chair: Thank you very much.

The first round goes to Mr. Mendicino.

Mr. Marco Mendicino: Thank you all.

My first question is to Senator Segal.

I read with interest your written brief, which has been provided to all the committee members today. What I take away from it is that you obviously broadly support the creation of a committee of parliamentarians, but that before we bestow on it complete independence from the executive, it should continue to report to the Prime Minister until such time as it develops public confidence through experience and infrastructure and natural evolution, as has occurred in the U.K., for example. Am I right about that?

Hon. Hugh Segal: That is essentially correct.

Mr. Marco Mendicino: At the same time, you also appear to be advocating for the mothballing of existing civilian oversight agencies over RCMP and over CSIS with SIRC. Is that also true?

Hon. Hugh Segal: I'm generally of the view that those agencies have been restricted by three or four very serious constraints, which the committee and those serving it would not necessarily have to be constrained by. The fact that SIRC has been largely retroactive in its view, based on finding out about complaints that people have lodged, in my view, is insufficient scope. That's number one. Number two is that, certainly from the work I did in the upper chamber when we interviewed people such as the inspector general for the Communications Security Establishment, the notion that a judge and small staff could in any way provide oversight for the millions of messages that agency was intercepting for a whole series of constructive purposes is, frankly, laughable.

It wasn't for any lack of effort on the judge's part or his staff's part, but the quantum for what had to be addressed was insufficient.

Mr. Marco Mendicino: What you're really talking about is the dichotomy between real-time oversight, which would pertain to operations, and review, which is essentially the function that SIRC fulfills right now in its mandate to review CSIS. Am I right in putting it that way?

Hon. Hugh Segal: Yes, what I'm saying is that, for better or for worse, the British concept of oversight, when established, was not about retroactivity. It was about operational reviews that actually saw heads of agencies appear on a regular basis before the committee of parliamentarians, talk about their priorities, talk about their budgetary realities, and talk about what worried them the most. They could then both socialize those issues with the members of the committee and also take very serious questioning either in public or in camera, depending on the nature of the discussion. That was a far better way of actually providing real oversight.

Mr. Marco Mendicino: I suppose what I'm getting at is that I see some tension between the two submissions, namely that the committee of parliamentarians needs the time to develop the public's confidence, and in that transitional period, we wouldn't want there to be a lacuna of experience, which is currently being filled by SIRC, however imperfect you may think it may be. Are you taking the position that SIRC should shut down the moment we pass C-22 and there's this new committee of parliamentarians, or do you accept that there needs to be in essence a period during which there is some overlap? That's the first question.

The second question is this. I think you stand in relative distinction in advocating for this model, because most of the other experts who have written about this do talk about drawing on the experiences of existing civilian oversight. Indeed, we've heard from some who are advocating for a super-SIRC where we have dedicated, full-time subject matter experts. One of the reasons for that is a concern, which I think is not completely without merit, that these parliamentarians who will sit on this committee have other responsibilities. I would ask you to address both of those questions, if you could.

● (1530)

Hon. Hugh Segal: Let me first of all say, part of why I'm taking that view is because it's precisely the view that was taken unanimously by the Senate anti-terrorism committee in making recommendations to the previous government about the kind of oversight agency that should be established and what its terms of reference should be.

I believed it then and I believe it now that Bill C-22 is a pretty strong approximation of what those recommendations were. For me to desert that now would be a little disingenuous.

Mr. Marco Mendicino: So you think that if Bill C-22 passes and therefore SIRC and—

Hon. Hugh Segal: That's your second question. Let me answer this one.

In the way in which governments proclaim legislation, as members of the committee will know better than myself, they can proclaim different sections at different times of any law and bring it into effect. There would have to be a managed phase-out for what SIRC now does, there would have to be a managed phase-out for the civilian oversight of the RCMP, all of which could be part of a two- or three-year transition process, but in the end, there would be one committee of parliamentarians with substantial resources.

By the way, the British model sadly makes the case that if you do get asked by the Prime Minister to sit on that committee, you're not going to have a lot of time for other parliamentary duties.

Mr. Marco Mendicino: Fair enough. I'm going to ask you to stop right there, because I want to ask my last question to Professor Levi.

You mentioned metrics for success in counter-radicalization. Could you just elaborate on that briefly? In your opinion, what would metrics look like?

Prof. Ron Levi: That's going to require us to think about what the process of radicalization to violence is, in and of itself. If we are able to distinguish, which the green paper suggests, radicalization from radicalization to violence, those metrics of success will have to be somewhere along the radicalization to violence line and not on the radicalization line. So what might that look like?

If we think procedural justice between police and community members is part of that process, then we can see enhanced procedural justice as a metric to look at. If we think bonds to school amongst youth, commitments to education and things such as that—which I know from my own research tend to have a preventive effect for crime—are part of that process, the metrics would be there. However, this is going to require development of an analysis of what the radicalization to violence process looks like.

Mr. Marco Mendicino: In addition to staying in school, fulfillment of educational aspirations, and training, what about other underlying issues such as housing and access to transit? Could you take a moment or two to talk about that?

Prof. Ron Levi: When I referred to a public health model, thinking of primary, secondary, and tertiary approaches to dealing with the problem, that is exactly the kind of complex problem that is high stigma for the people involved and high risk for outcomes that we're thinking about.

When it comes to, in a way, development questions for communities, it is about engaging with communities to hear their needs, about what they perceive as the needs they have, and the needs for their youth. It may be employment, it may be transit, and it is fulfilling those conditions that if we have an elaborated theory of radicalization to violence I would think of as part of it and part of the metrics involved.

Mr. Marco Mendicino: Thanks very much for that.

The Chair: Ms. Watts.

Ms. Dianne L. Watts: Thank you very much.

I have a quick question for the senator, and then I want to have a conversation with the professor.

I think it was already touched on in terms of the model that was originally set up in the U.K. that you prefer that model as opposed to the way it has transitioned now to 2013, but you did say something that was quite disturbing. You said that if it goes to where the U.K. model is now, it would be a threat to national security in Canada. Can you tell me why?

Hon. Hugh Segal: That's simply because the notion of how the committee is now appointed in the U.K., the notion of not having the protections that existed at the beginning, would send a message to the security agencies that work on behalf of all of us—and I think all of us around the table share a high regard for the men and women who devote their lives to our national security—that this would be a committee that they could not necessarily be frank with or trust. Until that relationship is established over a period of time, it could have a negative effect on the risks they're prepared to take within the law and the Constitution to protect our national security.

I'm very much of the view that even though the U.K. has progressed from where they were decades ago to where they are now, because this is our first real parliamentary oversight committee that actually has security clearance to get the whole truth, we should be starting where they started and not where they are now.

● (1535)

Ms. Dianne L. Watts: Right.

You think that being that it's under the Prime Minister's office and governed by the Prime Minister, they would feel more secure in terms of talking about what they need to talk about in that model.

Hon. Hugh Segal: Yes. I would argue that they would be more frank and more open, knowing full well that if something entered one of the reports prepared by the committee en route to Parliament, the Prime Minister, basically based on the advice of his national security adviser, could do what is necessary in the U.K. and remove whatever that one line may be.

Ms. Dianne L. Watts: They can doctor any of the reports they want.

Hon. Hugh Segal: But they also in the U.K. have to indicate that they have doctored the report in that paragraph and at that place, which will produce public interest in what that was about.

Ms. Dianne L. Watts: My submission would be that doctoring the report and taking things out is not instilling transparency and openness.

I also understand very clearly that there are issues with national security that have to be out of that realm, so I get that.

I'd like to move on.

I'm very interested in this, because I think there's a really long road to radicalization. I think radicalization is at this end of the spectrum and that many things have to occur to get to this end.

You talked about building resilient communities. You talked about making sure community engagement...and especially about having law enforcement be engaged in the community so that a level of trust is there. In my experience, that is absolutely and exactly the way that communities need to function and build resilience.

I want to ask you this question, though. I'm not talking about any one particular area or country. If there are children from a war-torn country who have witnessed violence, who are struggling with post-traumatic stress disorder, and who may have lost parents or what have you, would you say that, if left without the support—and I know that they would be more at risk—they would be more at risk of being radicalized? I know they're more at risk to get into gangs and into criminal behaviour and all of that—that's proven outright—but does that thread go to radicalization?

Prof. Ron Levi: We don't have evidence on that. That's a simple and clear answer: we don't know. I've seen no empirics that suggest that.

That said, I think what we would want to think about, as a research matter and thus as a policy matter, would be how to distill a pathway to violent radicalization that doesn't presume what is thought about in the literature as a conveyor belt theory, as though somehow A causes B causes C and that this leads you on a conveyor belt to violent radicalization. We have not seen good evidence of that. The Aaron Driver case is one example. We have not seen evidence of predictive power around it.

Coming to the question of how we can predict and whether we can predict based on past experience, I haven't seen that evidence.

I would say that this is about determining what the vulnerability points are and acting on those vulnerability points. I would say that if we thought of it that way, I would want us to think about two things. The first would be to work at a primary level face to face, to work at a secondary level within communities, and to work at tertiary levels with law enforcement and other organizations of the state and others.

I also think you would need to do this in ways that are individual and that also attend to people who have had no contact with that risk, people before the fact, people who may have had some contact with that risk, and people who have in fact already been either radicalized or, as we say, radicalized to violence.

We have to figure out where that threshold is. I don't think the green paper tells us that, and that's going to be a judgment call. I think a lot of attention needs to be placed there. We have to think about those things.

● (1540)

Ms. Dianne L. Watts: Right. In the absence of the research—I mean, for getting ahead of that curve—would it be advantageous to...? There are many countries around the world where we've seen radicalization that is far greater than what we're seeing here in Canada, so it would seem to me that if we want to learn about that, we should go to a variety of other countries that are seeing that increase and see what the indicators are and look at that within your matrix.

I think it's a question of getting ahead of the research. There's a committee being set up about radicalization, but we don't have the data, we don't have the benchmark, we don't have the research. We have to get some.

The Chair: I'm afraid I have to cut you off and I can't let you comment on that.

We would remind you that if members have questions they'd like responses to in writing, they can also ask. Right at the end, we'll see if there's anything you want from the witnesses.

If you're willing to give it we may ask you for submissions to the committee.

[*Translation*]

Mr. Dubé, you have the floor.

Mr. Matthew Dubé: Thank you, Mr. Chair.

[*English*]

Mr. Segal, I don't want to litigate Bill C-22 too much, because we will have dedicated hearings for that, but since you are here, and some points were raised, I do have a few concerns. I just want to hear you out on that, and perhaps I'm misunderstanding. But I know in the Arar commission, Justice O'Connor specifically talked about the importance of having a broad integrated expert oversight, and every expert we've heard from has said that the expert oversight and parliamentary oversight go hand in hand.

You can correct me if I'm wrong, but I seem to understand that you're almost thinking that a robust parliamentary oversight should act alone almost. Am I misunderstanding that?

Hon. Hugh Segal: No. What I said in my presentation briefly was that the support basis that operates, the bureaucracy that operates underneath the committee, should have the finest experts, the most competent people, with experience, to support the committee, but it should be a parliamentary oversight, where the expertise is used for the purpose of analysis and oversight. The notion of having a parliamentary oversight and another oversight allows a competition in oversight, which allows the minister of the day to choose which particular view he or she thinks is appropriate. That's unconstructive.

Mr. Matthew Dubé: Okay. I appreciate that clarification.

The other point I just wanted to raise is this concern over going through the reforms that the British went through with and moving too quickly. I can understand that, but at the same time, when you raised the idea of earning the trust of agencies like CSIS, the most important thing for me is we also need to earn the trust of the public. The chair of the British committee specifically said when he was in Ottawa a couple of weeks ago that for them these reforms, such as having the chair be elected by parliamentarians, were ways of earning the public's trust. While I can understand the concern of going through with these reforms too quickly, aren't we losing as well the public's trust by not implementing those reforms immediately by amending the bill?

Hon. Hugh Segal: That's a completely fair question. It strikes me that if we perhaps move from where the committee would start to a status that is similar to the present committee in the U.K. within the first five years, we will have achieved both. But if we move directly to where the committee is now in the U.K., while we're just starting for the first time to have real parliamentary oversight, I think we'd face some risks of being counterproductive.

Mr. Matthew Dubé: Okay. If I gave you a specific example, I think in the British model they elect the Prime Minister's nominees to the committee. If we just said at least have the members selected in a more traditional way— if we could put it that way—and at least have the chair elected, then at least the committee would earn trust that way by not having someone who could be perceived as simply a pawn of the PMO. I'm not saying that would be the case, but the perception is important, correct?

Hon. Hugh Segal: It is. In my view, the mere creation of the committee is a dilution of the Prime Minister's sole discretion, which there has been historically on national security, and that's a good thing. If we're going to dilute that discretion through an oversight committee, we do have to leave the Prime Minister and the Minister of Public Safety, whichever government's in power, whoever they happen to be, the ultimate capacity to protect national security, because that is their responsibility, period, full stop. It supercedes everything else. If they're not given that authority by being able to make the redactions and other things that we've discussed, and appoint the members of the committee in the first round, we are I think diluting their capacity to protect the national security of Canadians, to which every Prime Minister is committed.

● (1545)

Mr. Matthew Dubé: I appreciate that.

My final question, because I do have a question for Professor Levi afterwards and my time is limited, is, would you not argue that the Prime Minister has traditionally had that power, and yet with Bill C-51 it's an unprecedented—some would say and I would say—attack on Canadians' rights to privacy? With the information sharing pieces that exist in the legislation, among other things, can it not be expected that the Prime Minister and the Governor in Council should see their powers reduced given how much they've asked for and taken with this bill?

Hon. Hugh Segal: I agree with you that Bill C-51 was excessive in many respects. I agree with you that it needs to be changed. I agree with you that the position taken by the then third party in the House of Commons, that they would support the bill but make changes afterwards, was in fact strategically and tactically quite compelling. I also believe that many of the excesses in that bill will be struck down by the courts, as they should be, because they violate the Charter of Rights and Freedoms, and other changes, which will be made over time, which the present government has committed to, will be appropriate and constructive. But I don't think we want to mix the excesses in that bill with what needs to now happen with respect to parliamentary oversight.

Mr. Matthew Dubé: Thank you.

Professor Levi, perhaps it was something I misunderstood, but in your comments you talked about counter-radicalization and this fear in communities about surveillance. I'm just wondering if that's related to existing legislation. I'm not quite clear on what exactly you meant by that.

Prof. Ron Levi: I think the study you're referring to is a study that was done in Toronto, not by me but by my colleagues. They find that where there are existing counter-narratives in communities already amongst youth vis-à-vis radicalization or radicalization to violence, the circulation of those counter-narratives—people willing to talk about them and to use them—is, itself, suppressed when people feel they are being monitored and targeted by law enforcement. The very act of talking about counter-narratives worries people, and so people refrain from doing that. That's a resource available in communities that could, otherwise, be tapped if communities did not feel targeted in that way.

If I might, in terms of counter-narratives, the green paper speaks about narratives and counter-narratives throughout. One thing that I don't know that we know is whether narratives to violence themselves are causal, that people fall under the influence of a narrative to violence or to violent radicalization, or whether they're justificatory, that they provide justification for people's actions. There is psychological evidence about this that goes either way. This is something that needs to be parcelled out when we think about narratives.

Mr. Matthew Dubé: If we look at existing legislation and measures, something like the no-fly list, where there is a risk of profiling and certain communities being more at risk of finding themselves on this list in an unfair way, does that cause problems for the counter-radicalization effort, when you're seeing legislative measures and agencies behaving in a way that makes certain communities feel targeted?

Prof. Ron Levi: What we know from the procedural justice literature, which is not about a no-fly list in particular, is that when people feel that the target of law enforcement is a biased target, in the sense that it's been chosen in a biased manner, that has a negative influence on whether people perceive law enforcement to be legitimate, and would then have a negative influence, we would posit, on the likelihood of co-operation with law enforcement. Where it's seen as broad, the fact that some people versus others are on the list does not get in the way of people's view of legitimacy of the institution.

The Chair: Thank you.

I'm just going to interject one little question in here.

Ms. Cheung, I drew a little picture as you were talking about oversight. You brought in the judiciary as oversight explicitly. I added the minister. The department has oversight of those agencies. We also have various inspectors general and ombudsmen. We have the expert panel advisory, perhaps a super-SIRC, and parliamentary oversight.

Mr. Segal is suggesting that it all come under parliamentary oversight, which, in some sense, it theoretically does anyway, but not explicitly.

Do you have any comments or anything written on this that you want to point us to?

Prof. Carmen Cheung: I don't have anything written on it.

I'm glad that you drew a picture. That's how I see it. I see oversight and review as happening in all three branches of government.

With respect to the judiciary, I see it happening in both oversight and review capacity, oversight in terms of authorizing warrants, and review after the fact if we think that there has been government conduct that might be violating rights, or if there has to be redress before national security activity. There has to be a strong parliamentary review mechanism, possibly oversight. I think that's an open question, whether it should be oversight versus review, and there absolutely has to be ministerial oversight.

I think one of the things we haven't been talking about—and it's not in the green paper—is elimination of the inspector general from CSIS a few years ago. It might be a good idea to bring something like that back, something that is more real-time oversight that provides the minister with more information about what's happening in the agency so it's not something that is covered after the fact. This is something that has come up in SIRC reports, that, if there had been an IG, maybe something that SIRC had concerns about would have been caught sooner. I think that's something that we should continue to think about.

● (1550)

The Chair: I have many more questions.

Ms. Damoff.

Ms. Pam Damoff: That's one of the downfalls of being chair, isn't it?

Thanks, everyone, for coming today.

Senator Segal, you dealt with Bill C-22 mostly, so I'm going to leave that for when we deal with that bill, if that's okay.

I'm going to concentrate mostly on the people from the Munk School. In particular, on counter-radicalization, you mentioned the Kanishka project. I was looking at some of the things it specifically mentions, and there are a couple that aren't included in the green paper or what I had necessarily thought about under the national security framework: “Perception and emotion” and “Collective dynamics and resilience”, how events can “shape thought and action regarding national security”, “how majorities and minorities view these issues”, how terrorist acts can cause “damage to the social fabric”. Some of these things we are not really looking at.

When we are talking about counter-radicalization, are these things that we should be looking at? If so, do you have any suggestions about that?

The question is for either or both of you.

Prof. Ron Levi: There are two answers to the question. The first is that, when we are looking at “radicalization to violence”, as the green paper says, having a sense of community context is going to be crucial to being able to understand any such pathway. Having a sense of how communities experience law enforcement, how they experience a worry that the community has been securitized, and how they engage with the whole issue of terrorism and radical violence would be relevant, even if not directly relevant to a psychological study of an individual in that sense.

The second is the broad framework of producing research in this country on countering violent extremism, as well as counter-terrorism. The Kanishka project and the terrorism, security, and society network have been busy building a network of researchers who could provide a pool of knowledge that was not available several years ago. This is partly also an attempt to foster a research community in this country that would provide broader context on these issues.

Ms. Pam Damoff: The research being done with the Kanishka project should be part of what we are looking at within the national security framework. Is that what you are saying?

Prof. Ron Levi: It would depend on each study. I would imagine some of it to be so, yes.

Ms. Pam Damoff: Thanks.

One of the questions here is: “What resources or services are most needed to recover from the effects of an incident of terrorism?” That's something else that we are not really taking into account. What do we need to do if we have an act, not necessarily by extremists? One of our witnesses talked about climate change as being something we could consider through the national security framework.

My other question on the same type of topic is, do you see gender differences? Do we need to develop different programs for gender and age when we are developing programs for counter-radicalization?

Prof. Ron Levi: There are at least two parts where issues of gender, in particular, as well as age come up. The green paper speaks about women and youth. My sense of the green paper's discussion is that women are seen as a protective factor, as individuals who can foster positive messaging and social inclusion within the community, and so forth. That's one dynamic.

The other is research being done on girls, usually, who are thought of as potentially becoming violent extremists, so there is that dimension.

In the dimension of age, the violent extremists we have been seeing tend to be younger, either late teens or early to mid-twenties. This is not so different from what we see in crime and criminal justice. What we don't know is whether we can transplant what we know about crime and criminal justice to this subfield. In crime and criminal justice, we see a desistance from crime at certain points in the age distribution, so you would find crime falling off as kids age. The question is whether that applies here. To be frank, we don't have that evidence. We know that the incidents we have are of young people.

When it comes to women who may become violent extremists, there is a body of research on that. I don't have that with me, but I'd be happy to provide the committee with information, if that's helpful.

● (1555)

Ms. Pam Damoff: That would be great. Did you have anything to ask?

Prof. Carmen Cheung: No.

Ms. Pam Damoff: You mentioned international concerns, and I noticed when I read through the green paper that there are a lot of comparisons to the U.K. and Australia, but not a lot to other countries. Do you have any international comparisons that you can provide to us outside of what was in the green paper?

Prof. Carmen Cheung: Yes, of course.

I think the reason why the U.K. and Australia are so appealing as comparators is because they have a parliamentary system quite similar to ours here, and they've been grappling with security issues in a similar way to the way we have been.

I know there's a tendency to not want to look to America for answers, in part because their government structure is quite different. When it comes to all the different bells and whistles of accountability that exist, the United States has practically all of them. We can talk about how effective they've been and whether politicalization of things like the FISA court has been a problem. When you look at the judicial accountability and oversight bodies within the institutions, I think it's worth looking at these to see what the structures look like. I'd be happy to provide that information for the committee as well.

Ms. Pam Damoff: That would be great.

The Chair: Mr. Brassard, for a five-minute round.

Mr. John Brassard: Mr. Segal, since it appears that you and I will only be here in one place at one time, I want to focus most of my remarks toward you.

With respect to Bill C-22, I'm sure you're aware that in the proposed legislation by the government that there are seven exemptions they are talking about. For example, the committee can't look into ongoing criminal investigations, anything to do with defence intelligence, the Investment Canada Act related specifically to money laundering, or the terrorist investment act.

My question to you is, and it's a matter of your opinion, do you think this committee will be limited in the teeth it will have to deal with this? Will it consolidate all power to the Prime Minister's Office? Lastly, how can you have real oversight or overview if you're limiting what a committee of parliamentarians can see?

Hon. Hugh Segal: I don't support those constraints. I made that perfectly clear in my presentation, Mr. Brassard, that defence intelligence and military intelligence should be under the same oversight. I think those parts of the bill that exempt certain discussions, other than matters of criminal pursuit, which are outside the term of national security, are excessive and should be dealt with in amendments.

Mr. John Brassard: Given the circumstances that exist, and with those restrictions, it appears that a lot of the power will then lie within the Prime Minister's Office, or reside perhaps with some of his ministers. Would you agree with that, or is it potentially—

Hon. Hugh Segal: I always answer that question by asking myself, where are we starting? We're starting now from the circumstance where all the power is in the Prime Minister's Office, and with the cabinet, and with the Minister of Public Safety. If we're going to have a committee, what are its terms of reference going to be? How is it going to constituted? What will its capacity of inquiry be? I think those should be largely unlimited.

I also think that any matter, such as immigration intelligence, or any matter that relates to intelligence, surveillance, and national security should be under the purview of this particular committee, which should have a very wide swath of scope for performing its responsibilities. The only constraint I am prepared to embrace is the notion that the Prime Minister's Office and the national security adviser should have the right to redact, on occasion, when something gets into a report that may be an inadvertent problem for our security services that are trying to get certain things done in a particular lawful context. When that's been done, it should be a matter of public record, so that parliamentarians, Canadians, and the media know that it's happened and can ask questions about it.

● (1600)

Mr. John Brassard: Thank you for that, Mr. Segal.

Mr. Levi, you made reference to policing in communities. You talked about relationship policing, about policing being perceived as being fair, procedural justice, neutrality, and respect for justice, etc. How would you classify Canadian police services in meeting the criteria that you set? Have you done any studies? Are there any indicators at all that Canadian policing is on track to meet that set of criteria that you talk about?

Prof. Ron Levi: I have not done those studies. I do know that my interactions with police agencies in this country suggest that they are well aware of this in the context of countering violent extremism or radicalization to violence, and they're already developing programs that think about this and implement this. Certainly I think that Canadian policing in general has taken on the procedural justice framework for quite some time. I don't have any data with which to evaluate that though.

Mr. John Brassard: And, Ms. Cheung, comparatively speaking to other jurisdictions, other nations, how do you find Canada rates?

Prof. Carmen Cheung: Well, with respect to policing in particular, like Professor Levi, I haven't done that research. And like Professor Levi, I have had similar interactions with policing here, where we do know that they are quite engaged with this issue, and comparatively, other police agencies are as well. In the U.K. and the United States, the police engage with counter-radicalization and countering violent extremism efforts. But as Professor Levi pointed out, that might be part of what needs to be further studied. That is, is the fact that the police are on the front lines doing this sort of work part of what leads to the sense of securitization and that communities are being targeted?

When we're talking about things like CVE, if we're thinking about a softer approach but it's a mandated approach like we see in Prevent in the U.K., where you have a school teacher you are required to report, does that change the relationship and the dynamics between teachers and students, teachers in their communities? Are teachers seen as the tools of the state? I think those are the kinds of comparative studies that we really need to be paying attention to and seeing the effects of when we are developing our own CVE strategies here in Canada.

The Chair: Thank you for that.

Thank you, all of you, for sharing your expertise and your time with us today.

That is going to bring the close to this meeting. We're going to take a break now, and we will be back in this room at 5:30 to continue listening to public interventions and your own advice to us as a committee.

Thank you.