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Chair

Mr. Robert Oliphant

Standing Committee on Public Safety and National Security

Tuesday, November 29, 2016

● (1530)

[*English*]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): Good afternoon. I call to order the 46th meeting of the Standing Committee on Public Safety and National Security for the consideration of Bill C-22, An Act to establish the National Security and Intelligence Committee of Parliamentarians and to make consequential amendments to certain Acts.

We thank you, officials, for joining us today.

From the Privy Council Office, we have Mr. Allen Sutherland, Ms. Heather Sheehy, and Ms. Nancy Miles, senior legal counsel. As well, from the Department of Public Safety and Emergency Preparedness, we have John Davies.

Thank you for joining us.

We also welcome independent members to the committee today; we're very pleased that you're with us.

[*Translation*]

Welcome to this meeting of the Standing Committee on Public Safety and National Security.

[*English*]

Today we are beginning our clause-by-clause consideration of Bill C-22, and I'm going to warn the committee at the beginning that I'm going to be going slowly through today's meeting and through the amendments we have received to make sure that we give due consideration to the amendments and that we're understanding the process as we go. Because the committee has only done one clause-by-clause study before, and it was somewhat less complicated than this bill with the number of amendments we have, I want to review the process.

I'll just remind the committee that we have help with our legislative responsibilities with legislative clerks—we thank you for joining us today—as well as our usual clerk, who will keep me in order.

I'd like to provide members of the committee with a few comments on how committees proceed with clause-by-clause consideration of a bill.

As you would know and as the name indicates, this is an examination of each and all of the clauses in the order in which they appear in the bill, unless you choose otherwise.

I will call each clause successively, and each clause is subject to debate and a vote. If there are amendments to the clause in question, I will recognize the member proposing each amendment, who may explain it. The amendment will then be open for debate. When no further members wish to intervene, the amendment will be voted on.

Amendments will be considered in the order in which they appear in the package that each member received from the clerk. If there are amendments that are consequential to each other, they will be voted on together.

Just as a reminder, we received a package of amendments that have come in from various members of the House of Commons to our committee; however, other amendments are allowed as we proceed; we're aware of that as well.

In addition to having to be properly drafted in a legal sense, amendments must also be procedurally admissible. I as chair may be called upon to rule amendments inadmissible if they go against the principle of the bill or beyond its scope, both of which were adopted by the House when it agreed to the bill at its second reading, or if they offend the financial prerogative of the crown.

If you wish to eliminate a clause of a bill altogether, it is inappropriate to propose an amendment to the bill to remove a clause. If you want to remove a clause altogether, the proper course of action is to vote against the clause when the time comes, not to propose an amendment to delete it.

As I said, since this is only the second time our committee has been tasked with a clause-by-clause examination, I will go slowly to allow all members to follow the proceedings properly. If you have questions, do not be afraid to ask me, and then I will ask someone who knows, who is probably our legislative clerk at that point.

During the procedure, if the committee decides not to vote on a clause, that clause can be put aside so that the committee can revisit it later in the process.

As indicated earlier, the committee will go through the package of amendments in the order in which they appear and vote on them one at a time. Amendments have been given a number—it's in the top right-hand corner of each page—to indicate which party submitted them.

There's no need for a seconder when moving an amendment. Once it has been moved, you will need unanimous consent to withdraw it; however, you do not need to propose it, even if it is in the package.

During debate on an amendment, members are permitted to move subamendments. These subamendments do not require the approval of the mover of the amendment. Only one subamendment may be considered at a time, and that subamendment cannot be further amended.

● (1535)

When a subamendment is moved to an amendment, it is obviously voted on first. Then another subamendment may be moved, or the committee may consider the main amendment and vote on it at that time.

Once every clause has been voted on, the committee will then vote on the title, the bill itself, and an order to reprint the bill, which may be required if amendments are adopted, so that the House has a proper copy to receive at report stage.

Finally, the committee will have to order the chair to report the bill to the House. That report contains only the text of any adopted amendments as well as an indication of any deleted clauses.

I think the most difficult thing for me in clause-by-clause examination is the fact that if we take a certain action on an amendment at one point, it has effects consequentially, down the line. That may mean that an amendment is not able to be moved later in the process because we've already dealt with something that would nullify its effect. I will be trying to signal that to you as we go, on each of the amendments. For me, when I've done clause-by-clause study before, that has always been the trickiest part. You have to pay a lot of attention to what you're voting on. You may have forgotten that there's an amendment later that we will not be able to consider because it is consequential to what has happened already in the meeting.

I'm thanking you in advance for your patience with me and for your attention as we set out to have a very productive meeting. I am hoping for a very good and thorough consideration of what I think is an extremely important bill for this House to consider.

Are there any questions about that before we begin?

Mr. Marco Mendicino (Eglinton—Lawrence, Lib.): Mr. Chair, I notice that we have some honourable guests at the committee in Ms. May and Monsieur Boudrias. Will you be addressing their status at committee?

The Chair: Any member of Parliament is welcome to come and present amendments at this meeting. We passed a motion earlier that enabled them, and actually required them, to be here at the table today. They are full members of the House of Commons and are able to do that.

I will just acknowledge that the amendments that have been submitted are deemed moved, because they have that right, but they are allowed to comment on them as they are proceeding.

Madam May.

● (1540)

Ms. Elizabeth May (Saanich—Gulf Islands, GP): I appreciate that, Mr. Chair, and I appreciate Mr. Mendicino raising the point.

With regard to the status of members who are not members of recognized parties, my position is that I would vastly prefer not to be required to be here to submit amendments. If you'd not passed the motion that you passed, I would have had the right to submit my amendments at report stage. For members in positions such as mine, report stage is a good time to do such amendments, because you can present them in the full House and there aren't conflicts.

I would signal now, Mr. Chair, that I will have conflicts. Because my motions are deemed, when I leave, the motions will go forward without my being here. This remains controversial. The Speaker has decided that it accommodates the rights of members in parties with members fewer than 12. Personally, I find it onerous. I wish that this route, as it was invented by Mr. Harper, hadn't been taken by the Liberals.

Thank you.

The Chair: Are there any other questions?

We will proceed.

As a reminder, we will not deal with clause 1. Pursuant to Standing Order 75(1), we will deal with clause 1 at the very end of the proceeding, when everything else has been voted on, as a final act of clause-by-clause consideration.

Turning first to clause 2, I want to call members' attention to two options we have with respect to dealing with clause 2. We have received two motions, amendment motions LIB-1 and LIB-2, with respect to clause 2.

Before they're moved, I just want you to consider that the committee can decide by a motion to stand clause 2 and leave it until we come to the very end. If the committee decided to do that, the reason would be that amendments LIB-1 and LIB-2 would automatically put amendment LIB-10 into play, and it would then be deemed to have been moved and approved, changing clause 15.

If we do that, then amendment CPC-7 would not be admissible to be heard, because it would be in contradiction with LIB-10.

We have two options. Option one is to stand clause 2 and leave it to the end, thus allowing us to go on to clause 3, and then we would hear amendments LIB-1 and LIB-2 at the end of the meeting. Option two is that we could hear amendments LIB-1 and LIB-2 now, which would then take clause 10 into consideration and negate amendment CPC-7.

It is your decision whether you would like to do that. I don't need unanimous consent; I could have a motion to stand clause 2 until the end so that we could deal with all related motions further on in the meeting.

Hon. Tony Clement (Parry Sound—Muskoka, CPC): I so move.

The Chair: Mr. Clement moves that we stand clause 2 until later in the meeting.

Is there any discussion on that?

(Clause 2 allowed to stand)

The Chair: We are going to stand clause 2 in a wonderful, harmonious action of making sure that amendment CPC-10 is actually heard.

We move now to clause 3. We have no amendments to clause 3.

(Clause 3 agreed to)

(On clause 4)

The Chair: This will be a fast meeting.

Moving to clause 4, we have received one amendment.

Would someone like to move that amendment?

Mr. Matthew Dubé (Beloeil—Chambly, NDP): Thanks, Chair. I'll leave it unmoved in favour of a later, similar amendment that we prefer.

● (1545)

The Chair: Okay.

Are there any other amendments to clause 4?

Is there any discussion on clause 4?

(Clause 4 agreed to)

(On clause 5)

The Chair: Moving to clause 5, there are a number of proposed amendments.

We'll begin in the order that you have received them. Amendment CPC-1 would be moved first, if it is going to be moved, followed by LIB-3, LIB-3.1, CPC-2, and BQ-1.

Mr. Marco Mendicino: Mr. Chair, just before we proceed, at this time I would like to introduce an additional amendment. Just to give members of the committee some time to reflect on the language, I wonder whether I could have this proposed amendment circulated now. Then, when we come to it in the proper sequence under consideration of clause 5, we can vote as the committee sees fit.

The Chair: Is it in both languages?

Mr. Marco Mendicino: It is, as a matter of fact.

The Chair: Okay. Thank you.

Mr. Marco Mendicino: Thank you.

The Chair: We now have LIB-3.1 in front of us. It's "3.1" because it comes between 3 and 4.

Before we consider LIB-3.1, however, or LIB-3, we would entertain someone moving CPC-1.

Hon. Tony Clement: I so move.

The Chair: Mr. Clement moves CPC-1.

Would you like to comment on that, Mr. Clement?

Hon. Tony Clement: This makes it clear that there's a process for the government party to recommend its members, but there's also a process for the parties that are not the government party. It would go to the leader of that party, after consultation with the Prime Minister.

The Chair: Is there any discussion?

Go ahead, Mr. Rankin.

Mr. Murray Rankin (Victoria, NDP): We would certainly support that amendment, Chair. We would point out that it's entirely consistent with the 1981 report of the McDonald commission. Paragraph 38, page 897, is exactly in line with what Mr. Clement has proposed.

The Chair: Go ahead, Mr. Mendicino.

Mr. Marco Mendicino: While I don't doubt the accuracy with which Mr. Rankin has cited the McDonald commission report, I do take issue with whether or not this proposed amendment is consistent with the object and the purposes of this bill.

To be specific, if this amendment were to be passed, the Prime Minister would no longer have full responsibility or accountability for recommending appointments to the committee. As this committee is an extension of the executive, which would report to the Prime Minister and the Prime Minister's Office, it would be contrary to the purpose of this bill.

Hon. Tony Clement: I must disagree with that. This is a parliamentary oversight committee. It was specifically designed to allow Parliament to pierce the veil of the executive branch. It was specifically designed for that purpose. My amendment is actually more consistent with that than the original drafting of the bill.

Mr. Marco Mendicino: I must say that I'm inspired by Mr. Clement's conversion since the last session in being a strong advocate for parliamentary oversight. However, this committee is independent insofar as the parliamentarians who sit on this committee will fulfill their purpose and their responsibilities independently, but it is still a statutory creature that will report to the Prime Minister. Passing this amendment runs contrary to that, and that is why I'm against it.

● (1550)

The Chair: Go ahead, Mr. Dubé.

Mr. Matthew Dubé: Thank you.

Just for the record, I will read the quote from the McDonald commission:

> To ensure that the Committee has the confidence of the recognized parties in Parliament,

—I would add, on my own personal note, "and the public", which is a key objective of this bill—

> the leaders of opposition parties should personally select members of their party....

"Making Parliament work" is what the House leader said, I believe, in her testimony. While understanding that the Prime Minister does have some prerogative, I'm sure he would consult anyway with those leaders, so I don't see how it hurts to include it formally in the bill.

[*Translation*]

The Chair: Are there any other questions or comments?

[*English*]

Hearing none, I will call the vote on CPC-1.

Shall the amendment carry?

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

The Chair: We are on amendment LIB-3.

Go ahead, Ms. Damoff.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): This amendment is to ensure that the committee is reconstituted within 60 days. I think that's fairly straightforward.

The Chair: Just so long as you moved it.

Ms. Pam Damoff: I moved it. You didn't hear that part.

The Chair: Ms. Damoff has moved amendment LIB-3, an amendment to clause 5.

Are there other questions or comments or concerns?

Seeing none, I will put the question. Shall the amendment carry?

(Amendment agreed to)

The Chair This would be the opportunity, if Mr. Mendicino wished to move amendment LIB-3.1.

Mr. Marco Mendicino: Yes, Mr. Chair, I would like to move it.

The Chair: Are there any questions about it?

Would you like to explain why we are entertaining such an amendment?

Mr. Marco Mendicino: What amendment LIB-3.1 would do is amend clause 5 by replacing lines 10 to 12 on page 3, for those who wish to follow along, with a subclause 5(2), which would read as follows:

> (2) A member of the Senate may be appointed to the Committee only after the Prime Minister has consulted with the persons referred to in paragraphs 62(a) and 62(b) of the Parliament of Canada Act and the leader of every caucus and of every recognized group in the Senate.

I believe the reasons for putting such an amendment forward are self-evident. They reflect the changing dynamics of the Senate. They also expressly require the Prime Minister to consult with both the Leader of the Government in the Senate as well as the Leader of the Opposition in the Senate. I believe that is an enhancement that is not currently reflected in the plain language of the bill.

I would also suggest that the latter part of my proposed amendment, which reads, “and the leader of every caucus and of every recognized group in the Senate” is reflective of a recommendation in the modernization report for the Senate, which takes into account new and emerging caucuses within the Senate. It would require the Prime Minister to consult with the leaders of these caucuses in attempting to constitute this new parliamentary oversight committee.

The Chair: Are there any other questions or commentary?

(Amendment agreed to)

The Chair: We would entertain amendment CPC-2.

● (1555)

Hon. Tony Clement: I move it.

The Chair: Mr. Clement moves a change to clause 5. Would you like to comment on it?

Hon. Tony Clement: It is fairly self-evident, involving consultation with leaders of the House of Commons to ensure that this has the support of the House and is recognized for its oversight role by having that consultation take place.

The Chair: Are there any other comments?

[*Translation*]

Are there any other comments?

[*English*]

Seeing none, shall the amendment carry?

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

[*Translation*]

The Chair: We will now move on to the next amendment, which is from the Bloc Québécois.

Mr. Michel Boudrias (Terrebonne, BQ): Thank you, Mr. Chair.

As a whole, the bill provides a mechanism whereby the appointment of members is the prerogative of the Prime Minister. Furthermore, there is a restriction that excludes members of parties that are not recognized and independent members.

The proposed amendment is essentially intended, in a very liberal spirit of statutory interpretation, to allow the nomination of third party members while retaining the Prime Minister's decision-making mechanism under the bill. Technically, this should not be a problem because it respects the letter and the spirit of the act.

The Chair: Any other comments?

Mr. Miller?

[*English*]

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Thank you, Mr. Chair. I'm going to vote against this motion. When the voters of Canada elect a government, there are rules in place for the numbers required to constitute a party. In this case, I don't believe that I can support it.

[*Translation*]

The Chair: Are there any other comments?

[*English*]

Seeing none, shall the amendment carry?

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

The Chair: Now we consider the whole of the fifth clause at this point.

(Clause 5 as amended agreed to)

(On clause 6)

The Chair: We'll move now to clause 6, designation of the chair.

I will just note that there are some line conflicts in the amendments as presented. If PV-1 is adopted, then NDP-2, BQ-2, and CPC-3 cannot be moved, as they amend the same lines. NDP-2, BQ-2, and CPC-3 would not be eligible to be moved because they are essentially the same as PV-1. Well, they amend the same line, but they're not the same.

If it's defeated, we can move to the next one.

All right, that is deemed moved. Ms. May, would you like to comment on it?

Ms. Elizabeth May: Yes, thank you, Mr. Chair, and thank you to the members of the committee.

I'll just take a moment to say that on November 18, under your deadline, I submitted to this committee a brief on the substance of what was formerly known as Bill C-51, in which I made commentary on this piece and particularly on how Bill C-22 is a much-appreciated bill. However, in and of itself it is insufficient to remedy the damage done to our security system by Bill C-51. You may not have that in your inboxes yet because I didn't submit it in both official languages. I hope you will take the time to consider it.

This amendment is very straightforward, and as you noted, Mr. Chair, it's similar to that put forward by other committee members. It deals with the current version of Bill C-22, which says that the Governor in Council is to designate the chair of the committee. As you will know from evidence before this committee, the committee process of the Parliament of Westminster, upon which Bill C-22 is based, does not have the appointment of the chair by the government of the day. In fact, based on a revision of their committee in 2013, the chair of the committee is elected by members of the committee. That is entirely the purpose of amendment PV-1. It is to ensure that the chair is elected by the members of the committee, and of course, the members of the committee, as you've previously approved in clause 5, are appointed by the Governor in Council.

Thank you, Mr. Chair.

● (1600)

The Chair: Mr. Dubé, go ahead.

[*Translation*]

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

I would like to mention that we don't think the amendment goes far enough.

Once again, according to paragraph 38 of the McDonald report, we see that the Standing Committee on Public Accounts is used as an example. The Standing Committee on Access to Information, Privacy and Ethics also comes to mind. Both of these committees have chairs from opposition parties.

Since this is an oversight committee, I find it much more relevant to have a chair from the opposition, which isn't specified in the amendment before us at the moment.

[*English*]

The Chair: Are there any other thoughts?

Shall this amendment carry?

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

The Chair: Let's move then to NDP-2, which may be moved.

Mr. Dubé, do you move that?

Mr. Matthew Dubé: Yes, I do move it.

[*Translation*]

One of the reasons we are creating this committee is that we need to regain the public's trust in our national security and the various institutions. I would like to reiterate that many witnesses, including the chair of the committee in the United Kingdom who appeared before us, explained how much electing the committee chair was positive and boosted public confidence in the committee.

We believe that electing the chair is a step in the right direction, obviously, but it would be even better to elect a chair from the opposition. We know that the Standing Committee on Public Accounts and the Standing Committee on Access to Information, Privacy and Ethics, namely, two oversight committees among others where the chair is from the opposition, work very well. The members understand their mandate very well.

That's why we think it's important to have an elected chair, but from an opposition party.

[*English*]

The Chair: Are there any comments?

Mr. Mendicino, go ahead.

Mr. Marco Mendicino: I would point out that while I am mindful of the comments of both Mr. Dubé and Ms. May regarding the U.K. experience, it did take roughly 20 years for that jurisdiction to evolve from an appointment-based committee to an elected model. Obviously this bill, once passed, will have a review provision. I don't think there's any assumption that in perpetuity the committee will always remain as it is right now.

The second thing I would point out is that based on the language put forward by Mr. Rankin, as articulated through Mr. Dubé, the chair of the committee would be disqualified by virtue of membership in one party, which seems to run also contrary to the spirit of having an inclusive committee of parliamentarians.

Thank you, Mr. Chair.

The Chair: Go ahead, Mr. Dubé.

Mr. Matthew Dubé: Thank you, Chair.

We are disappointed in the government's position on this. The idea that the U.K. advanced that way shows that there's a closed-mindedness to learning lessons from our Five Eyes allies in something that has worked very well. Lessons from our own committees, including the public accounts committee, as I mentioned....

I'll read in for the record the quote from the McDonald commission. It says:

> If the parties are represented on the Committee roughly in proportion...

We've already defeated that amendment.

> ...the Committee should be chaired by a member of an opposition party . We understand that the combination of a government majority and an opposition chairman has worked well with the Public Accounts Committees . We think a similar balance would contribute to the effectiveness and credibility...

Those are two things that we believe are key to this, and it's unfortunate that the government doesn't seem to think so.

● (1605)

The Chair: Are there any other comments?

Seeing none, shall this amendment carry?

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

The Chair: Moving now to the Conservative Party amendment CPC-3, who would like to move that?

Hon. Tony Clement: I so move—

The Chair: I'm sorry; it's BQ-2. It is deemed to have been moved.

Are there any questions or comments on the the Bloc Québécois amendment BQ-2?

Go ahead, Mr. Di Iorio.

[*Translation*]

Mr. Nicola Di Iorio (Saint-Léonard—Saint-Michel, Lib.): Thank you, Mr. Chair.

A legislative scheme has been developed here, and it is important to remember that this amendment does not fit the scheme that was put forward.

It's important to keep in mind that this is a committee of parliamentarians that performs an oversight function in relation to executive functioning, and so falls under governance.

Since this runs directly counter to this concept, I would suggest that we should vote against this amendment.

[*English*]

The Chair: Are there any other comments?

Seeing none, shall this amendment carry?

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

The Chair: Now comes CPC-3, the moment we've been waiting for.

Hon. Tony Clement: I so move.

The Chair: It has been moved. Would you like to...?

Hon. Tony Clement: Well, it just improves the language to indicate that there's a vacancy. If the chair is vacant, there is a provision for designating another member, and it must be done within 90 days.

The Chair: It's good construction to look at all the contingencies. I'm sure Mr. Mendicino feels the same way about it.

Hon. Tony Clement: I doubt it.

The Chair: Are there any comments? Seeing none, shall this amendment carry?

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

(Clause 6 agreed to)

(Clause 7 agreed to)

(On clause 8)

The Chair: We will move now to clause 8, which has a number of competing motions.

We will begin with BQ-3, and then, just for your knowledge, we will go to NDP-3, CPC-4, LIB-4, and Green Party 2. If BQ-3 is adopted, then NDP-3, CPC-4 and LIB-4 cannot be moved, as they amend the same line. If BQ-3 is defeated, the next amendment that can be moved would be NDP-3, and so on.

First, it is deemed that BQ-3 has been moved. Are there any comments on BQ-3?

Go ahead, Mr. Di Iorio.

[*Translation*]

Mr. Nicola Di Iorio: Thank you, Mr. Chair.

When we look at the suggested amendment, we see that it is inconsistent with the intent of the bill. The amendment seeks to remove the proposed committee's mandate to review, at its discretion, government-wide activities related to national security and intelligence.

I also note that the amendment would reduce the committee's capacity to ensure that the activities of our national security agencies respect the legislation and Canadian values.

I'd also like to point out that adding an obligation to report to the public is unnecessary, since the bill already sets out detailed requirements in this respect. In fact, the committee must table public reports to Parliament at least once a year.

● (1610)

[*English*]

The Chair: Okay. Are there other comments? Hearing none with respect to BQ-3, shall the amendment carry?

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

The Chair: That would move us then to NDP-3.

Mr. Matthew Dubé: It is so moved, and I'll leave the honours to Mr. Rankin to explain.

Mr. Murray Rankin: Thanks, Mr. Chair.

I think members will remember that Craig Forcese, among others, called the access provisions in this bill a “triple lock” that could “make the committee...stumble.” This is right in the middle of the mandate, giving any appropriate minister the ability to simply unilaterally determine that any review would be injurious to national security. I am pleased to see that an identical amendment has been moved by the Conservatives as CPC-4.

The objective of this amendment is to try to provide more credibility to this committee. It would grant the oversight committee essentially the same powers that the Security Intelligence Review Committee has had for many years and that the CSE commissioner enjoys today.

The issue of oversight interfering with operations is, indeed, a real concern—that's acknowledged—but it is hardly a new problem. SIRC and CSIS have testified that they resolve these disagreements routinely and have done so for decades. I am simply proposing that this committee conduct itself with the same powers and discretion that SIRC has had.

I just want to remind the committee of two key points of witness testimony. Ron Atkey, who was the first chair of SIRC, said that this ministerial veto “reflects a reluctance to have the committee...act as a true watchdog.”

Second, the Information Commissioner said this: “This override essentially turns the committee's broad mandate into a mirage. It will undermine any goodwill and public trust that may have been built up towards the committee and, by extension, the national security agencies it oversees.”

Mr. Chair, I would urge members to heed her warning and adopt this amendment, which is endorsed by Kent Roach, Craig Forcese, and the Privacy Commissioner of Canada.

The Chair: Thank you, Mr. Rankin.

Next is Mr. Clement, and then Mr. Mendicino.

Hon. Tony Clement: Thank you.

It's eerily similar to my amendment, so we were obviously thinking the same way. As a consequence of that, I would support Mr. Rankin's amendment and merely add to the record that if we are going to go ahead and have an oversight committee, which was a Liberal campaign idea and something they pursued in the election campaign as part of their response to Bill C-51, then let's make sure it is actually capable of doing its job.

Mr. Mendicino or anybody else can say, “When you were in power, you said this or did that.” That's all ancient history. They ran on this platform, Mr. Chair, and they were elected, and now I think they have been turned away from their own campaign pledge by the skittishness of the advice they are getting from bureaucrats. It's kind of sad to see, really.

I would encourage members on the other side to remember their campaign pledges and the principles upon which they sought election and were elected, and to vote in favour of this amendment.

The Chair: Mr. Mendicino, go ahead.

Mr. Marco Mendicino: Let me just begin by saying that in short course I will be moving an amendment that I think does reflect some of the testimony we heard from the likes of Professor Forcese and Mr. Atkey.

I had an exchange with Mr. Forcese about his use of the metaphor of the “triple lock”. I think it really misconstrues a proper understanding of what ministerial discretion is, and it conflates discretion with automatic exclusion.

You can't have an automatic triple lock if there is some proper exercise of ministerial discretion. I think he acknowledged that in our exchange. As public trust and confidence are enhanced over time as this committee get its footing, even Professor Forcese did take a moment to say, in evidence, that he understood the minister would have the ability to exercise his or her discretion, under clause 8 or clause 16, in a manner consistent with the purpose and the broad mandate of this committee as drafted.

The other thing I would say is that in the evidence given by Professor Forcese and Mr. Atkey, there were moments.... We wouldn't want to see an ongoing national security activity potentially compromised by sharing this information with the committee. I don't see that as necessarily interfering with the mandate of the committee, although I accept that the committee will be security-cleared.

If we are going to be referring to the stated evidence saying that it has to be balanced, certainly completely deleting any ministerial discretion under clause 8 would not be consistent with what this committee heard.

● (1615)

The Chair: Ms. Watts is next.

Ms. Dianne L. Watts (South Surrey—White Rock, CPC): To that point, we heard over and over again, and from the Canadian Bar Association, citing the same thing:

> In our view, the parliamentary committee should be able to set its own agenda, with input from Ministers...8(c) is problematic partially because it allows Ministers to influence the agenda and the priorities of the Parliamentary Committee.

I think we heard that over and over again from testimony.

I sit here and wonder why we spent the time going across Canada, having witness after witness read into testimony the very things that we're trying to put in place here, only to have it thrown out the window. It's a colossal waste of everybody's time.

I'm not sure what the intent was through this entire exercise. I don't know that there was one person who gave testimony that we heard contrary to this. I'm at a loss, Mr. Chair.

Those are my comments.

The Chair: Go ahead, Mr. Rankin.

Mr. Murray Rankin: Thank you.

I certainly agree with what Ms. Watts has said. If you just look at the language, you see it's so different from other legislation. It's been around for 30 or 40 years. The Access to Information Act and the Privacy Act use words like “reasonably be expected to be injurious”, which gives a certain discretion and an ability to meet an objective test. Here it allows any appropriate minister—the Minister for CBSA, or the 17 agencies to which this bill is subject—to roll in and say, “This review would be injurious to national security.” There would be no opportunity to address that anywhere else. It could be a unilateral reason, which certainly this government wouldn't use to hide things simply because they were embarrassing, but other governments might do so, and this is a bill that's here for a long time. It's not going to be amended anytime soon.

It also has to be understood, in response to Mr. Mendicino, in the context of the existence of sections 14 and 16; hence the triple lock. Just to refresh the committee's memory about what Ron Atkey said, he said we've had this open-ended power, and it's not ever been abused. He said there have been tensions from time to time, but matters have been worked out, and to his knowledge, security operations have not been compromised.

I don't understand why the government wants a triple lock and why they would erode so dramatically the credibility of this entire exercise.

The Chair: Are there any other comments?

Mr. Matthew Dubé: Mr. Chair, could I ask for a recorded vote?

● (1620)

The Chair: Certainly. We will do that.

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

The Chair: We now can move to amendment CPC-4.

Hon. Tony Clement: I would like to move it and ask for a recorded vote.

The Chair: Are there comments on amendment CPC-4, which you have before you now?

We've had a request for a recorded vote as well, so I'll turn to the clerk.

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

The Chair: We're moving now to amendment LIB-4.

Is there someone to move that?

Mr. Marco Mendicino: Yes, Mr. Chair, I'd like to move that.

In many ways, expanding on the dialogue that we just had with respect to clause 8, my amendment would be responsive to some of the evidence that has been cited by my colleagues on the opposition side.

What I propose is that we begin by amending clause 8, replacing lines 11 and 12 on page 4, for those who wish to read along, with the following language:

> [re]lates to national security or intelligence, unless the activity is an ongoing activity and the appropriate Minister determines that the review would

be injurious to national security.

The next part of my amendment would add, after line 16 on page 4, the following: a new subsection, which would become subsection 8(2). It would read as follows:

> If the appropriate Minister determines that a review would be injurious to national security, he or she must inform the Committee of his or her determination and the reasons for it.

It would also create a new subsection 8(3), which would read as follows.

> If the appropriate Minister determines that the review would no longer be injurious to national security or if the appropriate Minister is informed that the activity is no longer ongoing, he or she must inform the Committee that the review may be conducted.

There would be a concurrent amendment, which will likely come up later in the day, under clause 31.

Mr. Chair, I'm in your hands as to whether I should wait to advocate for that at the appropriate time or whether we should just leave it to my moving the amendments under clause 8.

The Chair: Thank you.

Mr. Marco Mendicino: I'm sorry, Mr. Chair; I was asking for your guidance as to whether you wanted me to address concurrent amendments under clause 31 or just move—

The Chair: No—

Mr. Marco Mendicino: —the amendments.

I haven't given my reasons in favour of this, so I hope you'll permit me to do so very briefly.

I think this is responsive to some of the testimony we heard before this committee. It would limit the application of the ministerial discretion to stop reviews or stop proceeding to reviews of those ongoing national security activities; it would not provide for the stoppage of a concluded activity; and furthermore, it would require the minister to provide reasons when there is a refusal on the basis of an activity's being ongoing—which is, I think, consistent with what the minister said would be the committee of parliamentarians' bully pulpit function.

The other thing my amendments do is put a positive obligation on the minister to remain apprised of and up to date on the status of those activities that have been requested by the committee. If the status of those ongoing activities is that they are stopped, for whatever reason, then the minister must report back to the committee; this would then ostensibly allow them to conduct a review, which is part of their mandate.

● (1625)

The Chair: Thank you.

As a member of the clergy, I always worry about “bully pulpit” being used.

Go ahead, Monsieur Dubé.

Mr. Matthew Dubé: Thanks, Mr. Chair.

I'm just asking for your guidance on how to proceed. I have four subamendments to the amendments that I'd like to move. Do you want me to do them as a block, or one at a time?

The Chair: One at a time would be my preference. You might want to alert us to the four before you move them; I think that may be helpful for the committee. Then we'll move one at a time.

Mr. Matthew Dubé: Sure.

The Chair: I'm just going to leave you a little leeway to give some narrative, if it's important to set a context for the four of them, if you think that's helpful. It's not exact procedure. Then we'll have the four in a row.

Mr. Matthew Dubé: Sure, I can—

Mr. Marco Mendicino: Mr. Chair, are these in writing?

The Chair: Do you have them in writing?

Mr. Matthew Dubé: No. It's just words being added, one word here, one word.... Each one is essentially a word. There's one that might be seven words.

If members want to follow along, I'll keep Mr. Mendicino's amendment in front of me, and then we can read along.

The overarching narrative of the four subamendments is adding clarity to the language, in keeping with some of the concerns we've raised in our discussion of the powers that are conferred on the minister.

With that in mind, the first subamendment I would move is to part (a) of Mr. Mendicino's amendment. After the word “ongoing”, we would add the word “operational”, to read: “to national security or intelligence, unless the activity is an ongoing operational activity and the appropriate Minister determines that the review would”.

Mr. Chair, if I may offer an explanation for this, it is simply that it avoids a situation such as with Air India, about which it could be argued that it's an ongoing activity but not an operational one. It allows the committee the latitude, in that kind of instance.

I'll wait for your cue to move on, or do you want me to...?

The Chair: I think we'll take one at a time.

Mr. Matthew Dubé: Okay.

The Chair: It sounds as though they're going to go sequentially quite easily.

Is there any discussion, then, on the subamendment?

Mr. Marco Mendicino: I would just say that in adding "operational" it has the very strong likelihood of defeating or running contrary to clause 16 of the bill, where there is a separate but related ministerial discretion to refuse requested access to information if it meets the definition of special operational information.

About the rest of the amendments, I'll obviously wait to hear from Mr. Dubé.

The Chair: Mr. Erskine-Smith is next.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): The subamendment seems consistent with.... You'll hear me talk about more access to information later, but Mr. Mendicino's amendment and the subamendment together strike a balance, it seems to me.

We had Mr. Coulombe testify from CSIS, and I think he provided a pretty compelling reason for limiting the ability of the committee to review a project. It was because you don't want people who are in an ongoing operational activity being pulled off the field and testifying in front of the committee.

Together these make sense to me, though I'm open to argument.

The Chair: Mr. Clement is next, and then Ms. Damoff.

Hon. Tony Clement: I would agree with Mr. Erskine-Smith and the NDP caucus as well. The whole point here is that none of us wants to be in a situation in which in real time there's an activity going on and the committee is meddling in the success of that activity. I don't think any of us wants to be put in that position. However, we also heard that sometimes an activity is not "operational" but is "ongoing", such as was the case with Air India. I think this subamendment strikes the right balance to ensure that the committee can do its job while at the same time not interfering with ongoing operations to the detriment of the national security of the country.

The Chair: Go ahead, Ms. Damoff.

● (1630)

Ms. Pam Damoff: I wonder whether the officials could comment on what unintended consequences this could have, if any.

Mr. Allen Sutherland (Assistant Secretary, Machinery of Government, Privy Council Office): Consistent with what Mr. Mendicino mentioned, the effect of adding the word "operational" would be to narrow the scope. We'd have to think about how it would relate to point 16, which also deals with the same sort of activities.

Ms. Pam Damoff: Except that we need to decide now. To Mr. Dubé's point, if he's trying to refine it to be "operational" as opposed to any "ongoing" activity, I think we need some input from you.

Mr. John Davies (Director General, National Security Policy, Department of Public Safety and Emergency Preparedness): My concern is that unless the definition of "operational" is anchored in the act, you may find your way to viewing anything that is ongoing as operational. If "ongoing", as I think, implies "operational" by nature, whether you put it in or not will not, I think, have a great effect, but I think you would have to look at the draft. Your jurilinguists would probably want to weigh in on that, and you may want to anchor the word "operational" in the definition in the act.

The Chair: Go ahead, Mr. Spengemann.

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): This is directed to the officials.

I wonder whether the "ongoing" aspect of Air India is the investigation, which is still ongoing.

Mr. John Davies: Again, I think there are operational aspects to any kind of report that means something's ongoing and people are doing work in real time. The issue is, from a policy discussion standpoint, whether or not you want that kind of thing brought in front of the committee.

The Chair: May I ask a clarifying question?

Mr. Sutherland, I couldn't tell whether, when you said clause 16—

Mr. Allen Sutherland: Yes.

The Chair: —you were talking about its being in contradiction with or consistent with clause 16.

Mr. Allen Sutherland: It covers the same sort of territory, and more cleanly. The worry that we have with "operational" is that it has components of activity in it, and it's just vague and unclear to us. It's interpretation.

The Chair: But it's in clause 16?

Mr. Allen Sutherland: Yes, but there it has some specific language attached to it that makes it clear.

The Chair: Okay.

Then, Mr. Davies, I heard from you that it could be redundant but not problematic.

Mr. John Davies: My first reaction is that it would be redundant, but I think you'd want to ideally define the word "operational" in the act, if you're going to put it in, because the effect of the narrowing is not clear either way.

The Chair: But it's in the act at clause 16.

Mr. John Davies: It's anchored in the SOI Act.

The Chair: Okay, thank you.

Go ahead, Ms. Damoff.

Ms. Pam Damoff: I'm just looking at paragraph 16(1)(a), and it reads:

> operational information, as defined in subsection 8(1) of the Security of Information Act.

Is that...?

Mr. John Davies: Yes, that's a copy.

The Chair: I'll just wait for Mr. Davies.

Were you going to comment?

Mr. John Davies: No.

The Chair: Okay. Go ahead, Mr. Mendicino.

Mr. Marco Mendicino: That is exactly the point that I was driving at in my first comment. I think it's unclear on the face of the language what category of information we're talking about and whether it is the same as that intended under clause 16, which has a very specific definition under a specific statute.

It may indeed be redundant, in which case we don't need the subamendment, as Mr. Dubé is proposing, because it would be covered under clause 16. On the other hand, if it's not redundant and if it's intended to cover some other category or subcategory of activity, then I would agree with the comments made by Mr. Davies and Mr. Sutherland that we would want it anchored in some kind of definition that currently does not exist. That's why I think there is the prospect, which is my original concern, that there could be unintended consequences and contradictions that flow from adding this new term to the act.

Do I have that right?

Mr. John Davies: Yes.

The Chair: Are there any other comments?

Mr. Matthew Dubé: Our concern is just what the word.... If we're talking about redundancies or vagueness, then my feeling is that the word "activity" is, in itself, vague. Perhaps I should withdraw that subamendment and move on to make the following change instead, or we could change Mr. Mendicino's wording, "ongoing operation" as opposed to "activity" and just strike "activity" entirely and replace it with "operation".

● (1635)

The Chair: Just before we do that, if you want to withdraw it, it would have to be unanimous consent, because it's been duly moved.

Is there unanimous consent to have that withdrawn?

Some hon. members: Agreed.

(Amendment withdrawn)

The Chair: Okay, and now the second proposal you're making is —

Mr. Matthew Dubé: It is to change the wording. Once again, if we're following Mr. Mendicino's amendment, use the words "unless the activity is an ongoing operation", and strike out "activity" entirely.

The Chair: All right. That is a subamendment on the floor.

Go ahead, Ms. Damoff.

Ms. Pam Damoff: How is "operation" defined? I don't know if you have a definition, and that's also to the officials.

Mr. John Davies: That's my point. The Security of Information Act defines "operational information", but it doesn't define "operations". On the face of it, "operations" and "activities" are synonyms, but it's not something that's defined in law or is anchored in this act.

Ms. Pam Damoff: If it was amended so that it was an ongoing operation, as defined under the Security of Information Act, would that help?

Mr. John Davies: The Security of Information Act doesn't define "operations"; it defines "operational information", which is different from "operations". Am I right on that?

Mr. Allen Sutherland: The other thing we would note is simply that the word "activity" is used throughout the act, so if you're going to change it here, then you might need to change it everywhere.

The Chair: Mr. Erskine-Smith is next.

Mr. Nathaniel Erskine-Smith: May I ask what the concern would be with changing this to "operation"? It doesn't need to be defined in the act. I think we can all agree, for the lawyers in the room, that a judge would look at this if it ever came to them, and the minister gets to interpret whether it's an ongoing operation and there is no judicial review, so "operation"....

We had Michel Coulombe testify before us and talk about ongoing operations. The whole idea to strike this balance is that we're not taking people out of the field of a particular operation. If it's just semantics, we're talking activity or operation, and since it's in the minister's discretion anyway, then it seems to me to be more specific and accurate in addressing what the agency's concern was in the first place.

I wonder if you would comment on that.

Mr. John Davies: I don't have a comment on the difference between "activity" and "operations".

Ms. Nancy Miles (Senior Legal Counsel, Privy Council Office): As "operations" is not defined in the statute, then you would have to look to what the ordinary language would be, the ordinary meaning of "operation". That's not necessarily going to be sufficient to give clarity to what an "ongoing" operation is. It can have a number of different definitions, and before a judge it could mean any one of a number of things.

There is always an attempt to try to define a term that may have a number of different interpretations.

The Chair: I just want to clarify something. How could it go to a judge, Ms. Miles? There is no judicial review in this.

Ms. Nancy Miles: Your point is taken. It's just that it's an issue of whether we are being clear enough in the statute and whether Parliament knows what it means by each of the words being used.

The Chair: We have Mr. Di Iorio, Mr. Rankin, and Mr. Mendicino.

[*Translation*]

Mr. Nicola Di Iorio: Thank you, Mr. Chair.

Paragraph 14(e) of the English version uses the expression "ongoing investigation". I would like to ask Mr. Dubé if this is what he was referring to when he proposed replacing "ongoing activity" with "ongoing operational activity", then with "ongoing operation". Is he referring to the expression "ongoing investigation"? That expression is used in the bill already. It would avoid the risk of creating confusion in the very structure of the bill by introducing new terminology through an amendment.

[*English*]

The Chair: Perhaps either Mr. Rankin or Mr. Dubé would like to comment on Mr. Di Iorio's comment.

● (1640)

Mr. Matthew Dubé: I'll just comment on the point.

The first thing is “activity” is very vague and we're not talking about investigations because, once again, we're talking about jeopardizing operations and operational resources that are in the field. It's a point that's been raised. Again, the two best examples we've heard from witnesses of situations where arguably there are still investigations are Air India and the Afghan detainees. Therefore, we really are talking about operations. If anything, Mr. Di Iorio's point raises our concern of the vagueness of “activity”, because it could be operations and investigations. I know Mr. Rankin wants to address this as well.

The Chair: Mr. Rankin is next, and then Mr. Mendicino.

Mr. Murray Rankin: Thanks, Chair. I have just three quick points.

First, “activity” is undefined and it seems broader than “operation”.

Second, when the Security of Information Act talks about “special operational information”, it's clear what they are talking about. In paragraphs 14(a) through (g) it is sources, military plans, methods, targets, agents, and the like. I think in the community, under the security tent, there's a pretty good understanding of what that means.

Third, remember that the Information Commissioner came here and testified that CSIS refused to give information on a campus outreach program. It had nothing to do with operational information. That's precisely why we need to narrow this.

Mr. Marco Mendicino: Well, my primary concern stems from the inconsistency of language, which is where this conversation began.

The first thing I would note is that my amendment only deals with, I believe, lines 11 and 12, where the ministerial discretion is defined. The operative word there—and I'm sorry to use “operative”—says “relates to national security or intelligence unless the activity is an ongoing activity”. The proposal now is to change “activity” to “operations”, but it does not deal with the first part of paragraph 8 (b), which refers to “any activity”, so there is an inconsistency of terminology that I think would lead to confusion.

Whether or not it's judicial or ministerial, if we start trying to wordsmith without really understanding what it is that the opposition intends to define in its use of the term “operations”.... I take Mr. Rankin's point about wanting to broaden the limits of curtailing the ministerial discretion, but it is going to lead to a lot of confusion if we start just parachuting new words and terminology into these clauses with subamendments.

The Chair: We have Mr. Dubé and then Mr. Spengemann.

Mr. Matthew Dubé: Thanks, Chair.

I would argue that while we are drafting legislation for this power to be there and there is no judicial review and it's a discretionary power for a minister, I think the word is important, because it deals with the political costs attached to using this discretionary power. The fact is that we have a committee of parliamentarians, and when the minister is exercising this power, there is a cost attached to that.

Given, as has been stated numerous times and as I just said, that there's no judicial review, I'm less concerned about how a judge interprets “operation” and more concerned about how a minister interprets it and how the committee will receive that decision. It certainly changes the dynamics there, and it's a dynamic that's important to be mindful of in the drafting of this legislation, given that we want to give the minister these powers.

Mr. Sven Spengemann: Mr. Chair, my point has been largely addressed, except that we should keep in mind what it is we're trying to address with both the “injurious to national security” side and the “ongoing operation” side.

I think it's also a problem of the capacity of the committee to pursue or to go alongside maybe numerous ongoing operations or investigations. Simply from a capacity perspective, how could the committee engage in that?

The Chair: Go ahead, Mr. Miller.

Mr. Larry Miller: Mr. Chair, I certainly could have supported Mr. Dubé's first subamendment, but at his wishes I'm certainly going to support this one.

Mr. Chair, based on Mr. Erskine-Smith's question to the bureaucrats here, there was nothing in Ms. Miles's answer that would indicate to me that there's any problem here. I'd remind you, Mr. Chair, that the government has indicated they're very flexible and willing to look at some amendments. I haven't seen much of that today, so I'm hoping to see it here.

Some hon. members: Oh, oh!

The Chair: Be patient, Larry, be patient.

Go ahead, Mr. Clement.

Hon. Tony Clement: Mr. Chair, are these proceedings part of the record of this committee?

● (1645)

The Chair: Yes. We're not in camera.

Hon. Tony Clement: Right, so my point to Mr. Mendicino is that if he's worried about how this will be interpreted by a minister, the minister—she or he—will have access to the debate we've had and will know the intention of the committee, and Bob's your uncle—metaphorically, of course.

Ms. Pam Damoff: Turning back to the officials, I think all of us know the intent of the direction in which Mr. Dubé is going—that “activity” is too broad—and you don't like the word “operation”. Is there, then, a word that you could suggest we could amend it to, other than “activity” and “operation”?

Mr. John Davies: I think “activity” is the best word up front, because you're talking about review overall; you're not talking about specific pieces of information, potentially injurious to national security or not. I think “activity” captures what the intent is here.

Ms. Pam Damoff: But if you listen to our witness testimony, you'll find that they talked about “operation”. Nobody wants to interfere with an active, ongoing operation. That's where Mr. Dubé is coming from.

I think the feeling is that “activity” is too broad a word to define that, and there's also the witnesses' testimony talking about not interfering with an ongoing operation.

Is there a middle ground that is more definitive than “activity”? If there isn't, that's fine, but I'm trying to find a middle ground here.

Mr. John Davies: I'm personally hesitant to draft on the fly. I think one of the points here is that whatever the minister's decision is, that decision will be reported on. There are incentives to be narrow and not overuse this clause down the road anyway. You have to give the rationale.

Moreover, there's a temporal aspect to this, because it's “ongoing”. Eventually the ongoingness will stop and the committee will be free to report.

Ms. Pam Damoff: Okay.

The Chair: Ms. Watts is next.

Ms. Dianne L. Watts: Was it your group of individuals that crafted the original legislation?

Mr. Allen Sutherland: Yes.

Ms. Dianne L. Watts: Obviously, then, you would have an intention as to what you want in the legislation and as to what will or will not be amended, based on what directions you were given. What was your intent when you put “activity” in there?

Mr. Allen Sutherland: The intent was really more on the focus, as it says, of “injurious to national security”. As Minister Goodale said to this committee earlier, it's intended not to be used very often, but the focus really is whether there is injury to national security.

You've cottoned on to the fine difference in definition between “operation” and “activity”. I would say that overall, “activity” is broader, and that breadth may be required, but the real focus is whether there is injury to national security, and if there is, I offer a reminder that it's meant to be used very rarely. If the committee has a problem with it, they can report it in the annual report and they can complain about it in Parliament.

Ms. Dianne L. Watts: Right. My next question, based on that explanation, is to ask where I would find that in the legislation that you crafted originally.

Mr. Allen Sutherland: Where you would find what?

Ms. Dianne L. Watts: You just explained your intention around this. Where would I find it?

Mr. Allen Sutherland: It's in the construction of it as a whole.

Ms. Dianne L. Watts: Is it defined anywhere in here?

Mr. Allen Sutherland: No.

The Chair: Mr. Spengemann, go ahead.

Mr. Sven Spengemann: Thank you, Mr. Chair.

It might be helpful if we read portion (a) together with portion (b)(3).

In portion (a), two things have to happen. The activity is ongoing. It has to be ongoing, whether it's an operation or not, and the appropriate minister has to determine that it is injurious to national security, so that's a tight lens. In (b)(3), the release of that tight lens is quick because, in that case, it says “or” the review is no longer injurious “or” it has discontinued. I think we can take comfort in the fact that the minister has to let go of the objection quicker than she would be forced to accept the restriction.

It is quite deliberate that the first one says “and” and in the second section we have “or”, which means the committee would be free to study as long as either of the two limits are met, but both of them have to be met in part (a) for the information to be excluded.

The Chair: Go ahead, Monsieur Dubé.

Mr. Matthew Dubé: I'm having a hard time understanding why we're objecting to changing a word because we don't know how it's defined, but we're referring to undefined discretion of the minister and using powers sparingly. I don't feel that those two thoughts jibe together.

If we're afraid of the definition of the word and its vagueness, we should also be afraid of the vagueness on how often the power should be used, because it's being referred to but it's nowhere written in the bill.

● (1650)

The Chair: Mr. Erskine-Smith is next.

Mr. Nathaniel Erskine-Smith: I have a quick question.

I tend to agree with Mr. Sutherland that “activity” is broader than “operation”. Can you give the committee an example where we have an ongoing activity that would be injurious to national security, but it isn't an ongoing operation?

Mr. Allen Sutherland: I really hesitate to do this. An operation tends to have a specific duration attached to it, and it tends to have a specific goal. An activity could be general strategic planning of a department. That's an ongoing activity. That's an activity they do all the time, but it's not a specific operation.

To me, when I hear the two words, I think of an operation as being something more specific. An activity is more general.

Mr. Nathaniel Erskine-Smith: I was agreeing with you that it is general. I was just wondering, to comfort myself, if we're sticking with “activity”. You said there may be some instances where it's necessary to have that broader definition. I was looking for an example or two of where that breadth was necessary.

Mr. John Davies: I don't want to use Air India exactly, but obviously the criminal investigation around Air India would be an ongoing operation, for example, as a lead-up prior to the Toronto 18. After the fact, maybe it would be an ongoing activity as the national security community tried to piece together what happened, and so on. Obviously it would consume a lot of time. In the national security community, there would be different conclusions being made, so I would probably put that as an activity.

Mr. Nathaniel Erskine-Smith: Thanks.

The Chair: Go ahead, Mr. Mendicino.

Mr. Marco Mendicino: By answering Mr. Erskine-Smith's questions, you've in effect eased the burden on the mover of the amendment to whom we look for some guidance as to what he or she intends to capture by way of the subamendment.

Having gotten an example or two and understanding the parameters intended by the word “activity” as opposed to “operations” a little more, at the end of the day the rationale for the discretion is to ensure that information that is potentially injurious to national security is not shared. Am I right about that?

Mr. John Davies: Yes.

Mr. Marco Mendicino: Thank you.

The Chair: Go ahead, Mr. Rankin.

Mr. Murray Rankin: If the question is directed at me from Mr. Mendicino, I go to the Information Commissioner's story that she wanted information about a campus outreach program that CSIS was conducting. It's surely not an operation but surely an activity. That's, I would have thought, something a committee oversight of CSIS would want to be able to look at and not to let the government come in *ab initio* and simply say, “You can't go anywhere near there.” They have all of clauses 14 and 16 still outstanding, but to be able to say no to something like that.... I, for one, if I were on the committee, would like to know what they are doing on the campuses of our land. That is exactly what a parliamentarian should be doing, but it's not an operation. It's an activity.

The Chair: Go ahead, Ms. Damoff.

Ms. Pam Damoff: You're agreeing that is an activity. I saw you shaking your heads.

Mr. John Davies: Yes.

The Chair: Go ahead, Mr. Mendicino.

Mr. Marco Mendicino: There's some irony that we got stuck on one word here, but I guess it's reflective of the significance of the debate. I assume at some point you're going to be drawing this subamendment debate to a close, but—

The Chair: Only when the debate is finished. Thank you; I will take care of that.

Mr. Marco Mendicino: Thank you, Mr. Chair.

I would say, though, that Mr. Rankin's last comments have a lot to do with understanding the ambit and the parameters of the mandate of this committee. Having asked the Information Commissioner about some of the distinctions between her mandate and what the committee of parliamentarians' mandate would be, she accepted that there were distinctions.

For instance, the Information Commissioner accepts complaints. The committee of parliamentarians does not. There is more of a focus on the domain of information that is related to activities that are purely national security intelligence, whereas the Information Commissioner has access to information right across the whole of government.

I think it is through understanding the distinctions between the committee of parliamentarians and that particular oversight entity that we start to get some understanding about access to information and then ministerial discretion that is used to refuse access to information in the interest of national security. Understanding that distinction sheds some light on the importance of consistency of language.

The Chair: Okay. I'm hearing no more comments.

Go ahead, Ms. Damoff.

● (1655)

Ms. Pam Damoff: Can we have two minutes for us to have a brief chat?

The Chair: Yes. You can suspend. Nothing happens in two minutes. Let's suspend for five minutes. It's 4:55. We'll reconvene at 5 o'clock.

● (1655)

(Pause)

● (1700)

The Chair: You may begin, Ms. Damoff.

Ms. Pam Damoff: I have another question. How many times is “activity” or “operation” used in the bill? Is this word used elsewhere? If we change it here, I'm wondering if it is going to impact other places in the bill.

Ms. Heather Sheehy (Director of Operations, Machinery of Government, Privy Council Office): Yes. The word is used elsewhere in the bill, and we would have to go and see whether or not there would be implications for where it's used elsewhere in the bill.

The Chair: It's your turn, Mr. Miller.

Mr. Larry Miller: Having heard the answer to Ms. Damoff's question, that really isn't a problem, so we shouldn't hang our hat on that. It's easy enough to change it when we come to it.

The Chair: Are there any other questions, comments, or thoughts on this subamendment, which is to insert the word “operation” in place of the word “activity”?

We'll have a recorded vote. This is on the subamendment changing the word “activity” to “operation.”

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

The Chair: Mr. Dubé, I think you still have three more subamendments. We're looking forward to them.

Mr. Matthew Dubé: I thank the committee for their support of the first one. I'll have to reword the second one because it has the word “activity” in it, and we want to be mindful of that, I suppose.

The second one remaining in paragraph 8(a) will be the longest of the subamendments. It's about a dozen words or so. It would add after “Minister” the following phrase: “after consulting with the chair of the committee on all options to mitigate harm to the efficacy of the”, and instead of “activity”, we'll say “operation”, in keeping with the last one.

The Chair: Could you just repeat that?

Leave the word “Minister”, and before the word “determines”...?

Mr. Matthew Dubé: After “determines”—excuse me; before “that” we say, “after consulting with the chair of the committee on all options to mitigate harm to the efficacy of the operation”.

The Chair: Would you like to elaborate on your thoughts?

Mr. Matthew Dubé: By way of explanation, despite the fact that we've lost the fight for the elected chair, we do think that nonetheless the relationship between the committee and the minister and Prime Minster, depending what the case may be, is important. We feel it's a good way of building trust with the committee and with the public having that kind of consultation. It doesn't behold the minister to anything; it's just to keep that dialogue going.

The Chair: I'm just looking at your staff. Perhaps they can help with some written notes for our legislative clerk. I think people got the comment.

Go ahead, Mr. Di Iorio.

[*Translation*]

Mr. Nicola Di Iorio: I didn't note the amendment, Mr. Chair.

The Chair: Just a moment, please.

[*English*]

I will read it for the committee.

This is continuing in paragraph 8(a). After the words "the appropriate Minister determines" at line 12, a comma is added and then I believe it is "after consulting with the chair of the committee on all options to mitigate harm to the efficacy of the operation", and then it continues on with "that the review would". This is a consultation with the chair regarding making sure that there is a mitigation effort.

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

The Chair: It is defeated. Can we have your third subamendment?

● (1705)

Mr. Matthew Dubé: Thank you, Chair. I guess everyone got fed up with the debate on the first one.

Kidding aside, this would be in subclause 8(2). Staying with Mr. Mendicino's amendment, we would add after the word "Committee", the following: "and the appropriate review body if applicable".

Mr. Marco Mendicino: Sorry, Mr. Dubé; can you just repeat that, please?

Mr. Matthew Dubé: Yes, of course.

In proposed subclause 8(2), after the word "Committee", add "and the appropriate review body if applicable".

The Chair: I will just read it as it would stand; I think it's helpful.

> If the appropriate Minister determines that a review would be injurious to national security, he or she must inform the Committee and the appropriate review body if applicable of his or her determination and the reasons for it.

That would be informing SIRC if it was the one—

Mr. Matthew Dubé: Of course. This is in keeping with this notion of horizontal integration and working together with the other review bodies.

(Subamendment negatived)

The Chair: It is defeated.

Mr. Matthew Dubé: The final subamendment, Chair, is in proposed subclause 8(3).

Once again, after the word "Committee", we would add the following three words: "within seven days".

The Chair: Okay, that's pretty clear.

Are there any questions?

(Subamendment negatived)

The Chair: That's one out of four. Not bad.

Hon. Tony Clement: You're obviously a Leafs fan.

The Chair: We were in last place, but it wasn't bad.

We are continuing with amendment LIB-4. We've had some subamendments. One has been accepted. Are there any other comments on the actual amendment?

Mr. Clement, go ahead.

Hon. Tony Clement: I appreciate the mover's trying to be responsive. I would state for the record, however, that this is a pretty thin rule. When hearing the testimony from the deponents, from the expert witnesses.... This Liberal government seems to luxuriate in and pride itself on wanting to abide by expertise, yet after the experts came forward with legitimate complaints about how this bill was framed, they nonetheless are proposing a very limited fix, not even close to being in the spirit of the testimony that we heard. If the honourable member Mr. Mendicino or anybody else thinks that they are going to be able to go out to the public and say, because of this amendment, that they heard the expert testimony and they responded, I want to signal to them that I will be disagreeing vehemently with that rhetorical approach to this bill.

On the other hand, I will be supporting the amendment.

● (1710)

The Chair: Understandably.

Are there any other comments? Ms. Watts, go ahead.

Ms. Dianne L. Watts: I just want to build on what Mr. Clement was saying.

We have heard testimony from some pretty credible people: "This override essentially turns the committee's broad mandate into a mirage. It will undermine any goodwill and public trust that may have been built up towards the committee and, by extension, the national security agencies it oversees." That's just one. We have page after page after page. Again, I am just astounded by this exercise in futility, and saddened. I am profoundly disappointed.

I'd vote with you guys if....[*Inaudible—Editor*]

The Chair: I know our officials are just now realizing what a great committee we have. I can tell by the look on their faces.

Are there any other questions or comments about Liberal amendment 4 in its entirety, as amended with the subamendment from Mr. Dubé?

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

The Chair: We have one more amendment on clause 8, and that is from the Green Party, which I believe is still eligible, because the others above it did not.... It would add a subclause 8(2) regarding the minister taking into account the fact that members of the committee are bound by the Security of Information Act.

Does anybody care to speak to that?

Hon. Tony Clement: I am not going to be voting for this, because it is not necessary. It's clear that this is the state of the facts on the ground. I don't think it's necessary.

The Chair: Does anybody else wish to speak?

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

The Chair: Now we are going to move to the amended clause 8.

(Clause 8 as amended agreed to)

The Chair: Okay.

We have a new clause proposed between clause 8 and clause 9, which would then become clause 8.1. This is NDP-4.

Mr. Murray Rankin: If it's okay with the chair, we ask for that to be addressed later in the proceedings. I understand that has some better merit, as far as the government side is concerned. We would ask that it be deferred until later.

The Chair: We can do that. We would stand that.

I would need to vote on that.

Mr. Murray Rankin: If it would help you, Chair, after Liberal-15, I think, would be the appropriate placement.

The Chair: The motion is to consider this after we consider Liberal-15.

All in favour with standing this?

(Amendment allowed to stand)

(On clause 9)

The Chair: We're moving now to clause 9, which we have not received any amendments for.

(Clause 9 agreed to)

(On clause 10)

The Chair: Moving to clause 10, we do have an amendment that has been submitted by the Green Party, which is PV-3. It causes two lines to be deleted, lines 23 and 24 on page 4.

(Amendment negatived)

The Chair: That takes us to clause 10 in its entirety.

(Clause 10 agreed to)

(Clause 11 agreed to)

The Chair: Moving to clause 12, we have an amendment from the Green Party, which is PV-4, deleting lines 14 to 19 of clause 12, regarding evidence.

Does anybody care to speak in favour of or in opposition to this amendment?

● (1715)

Hon. Tony Clement: To be clear, this eliminates parliamentary privilege then. Is that right?

The Chair: The mover is not here, but I would not be wanting to.... We could ask the officials to comment.

Ms. Nancy Miles: What it does is make explicit that statements made that would normally be subject to parliamentary privilege could be used in evidence against them if there was, for example, a prosecution under the Security of Information Act for a person who was otherwise permanently bound to secrecy. It's not as wholesale as saying parliamentary privilege does not apply, but it is being expressed as to what use can be made of a statement that would otherwise be subject to parliamentary privilege.

Hon. Tony Clement: Does anybody know whether there's any other provision in any other act that's similar to this, or is this groundbreaking?

The Chair: Perhaps the officials or our clerks might know this.

Ms. Nancy Miles: I'm not aware of any other, no.

Hon. Tony Clement: This is going to make for interesting—

An hon. member: What is the specific question?

The Chair: Mr. Clement has raised the question around amendment PV-4, which would delete lines 14 through 19. These lines deal with evidence in connection with subclause 12(1) on parliamentary privilege.

Go ahead, Ms. Sheehy.

Ms. Heather Sheehy: Yes. This is consistent with a body that is a committee of parliamentarians—

● (1720)

The Chair: You're saying “this” meaning the clause, not the amendment?

Ms. Heather Sheehy: That's correct. The clause is consistent with a committee of parliamentarians, as opposed to a committee of Parliament. As Ms. Miles has pointed out, it would allow for parliamentary privilege not applying in the same way to matters before the committee.

The Chair: Are there any other questions or comments with respect to the amendment?

Mr. Larry Miller: Mr. Chair, just so I'm clear, did Ms. Sheehy say a committee of parliamentarians and a committee of Parliament?

Ms. Heather Sheehy: This committee is a committee of parliamentarians, as distinct from a committee of Parliament. The subclause that limits parliamentary privilege is consistent with a committee of parliamentarians, as distinct from a committee of Parliament.

The Chair: Is there any other committee of parliamentarians in Canada?

Ms. Heather Sheehy: No.

Hon. Tony Clement: Do we know whether in the U.K. Parliament or the House of Representatives in the United States there are similar provisions?

Ms. Heather Sheehy: I don't know offhand; I'm sorry. Let me just see whether I have that information before me.

Ms. Nancy Miles: I want to add that it's not unprecedented for Parliament to determine some circumscription of their parliamentary privilege. The Parliamentary Protective Service legislation that was recently passed was another example of something whereby, from a parliamentary privilege standpoint, the Speakers would have been vested with that exclusive power, and it would have been one of their parliamentary privileges. They ceded some of that power to put together the parliamentary precinct service. This, then, is not atypical of an ability to circumscribe parliamentary privilege.

The Chair: Ms. Damoff is next, then Mr. Miller, and then Mr. Di lorio .

Ms. Pam Damoff: Given the type of information that this committee is going to be receiving and the security clearance they will have, is it not critical that they be bound to secrecy?

Mr. Allen Sutherland: Yes. In fact, that's the intention. Given the highly sensitive information that the committee will be receiving, it's necessary to circumscribe parliamentary privilege. They've done it in a contained way, and that's outlined in the clause.

The Chair: Just before we go on, the analyst has shown us that in New Zealand, parliamentary privilege is expressly preserved. It is not in the other models that we have.

Hon. Tony Clement: That's to say the Australian or the U.K. situations are consistent with proposed section 12?

The Chair: I'm not sure it is implicitly or explicitly even referred to in those situations. It's not expressly provided in the U.K., but it is preserved because it's not mentioned not to have been provided.

Hon. Tony Clement: I didn't pick this up earlier, but colleagues, I would put it to you that to abridge our fellow members' parliamentary privilege is not something we just do on a whim. I know that many of you are new to this place, but it doesn't sit right with me that we, as members of this committee, are going to automatically say, “Your rights as a parliamentarian are abridged by virtue of this bill.” I wish we had better precedents for this.

I understand what the drafters are trying to do. I understand that, but you're coming right up against centuries of rights for parliamentarians to do our job, and it's not sitting well with me.

The Chair: I have Mr. Miller, then Mr. Di Iorio, and then Ms. Damoff.

I would just like to ask whether the drafters were aware that New Zealand had expressly preserved privilege, and this bill took it out?

● (1725)

Ms. Heather Sheehy: In Australia, there's an express override of the Parliamentary Papers Act 1908, to support disclosure restrictions and offence provisions for members, so there are other international examples, and we are aware of the international comparisons.

The Chair: Okay.

Go ahead, Mr. Miller.

Mr. Larry Miller: Thank you.

When I put my hand up to get on the speakers list, I didn't realize the situation in New Zealand. I was going to suggest that we suspend or defer the debate on this clause until maybe after the vote, to give the clerk or somebody time to find that out.

I'm not going to ask for that now. Hearing that there is at least one country that upholds the protection of parliamentary privilege has made up my mind on how I'm going to vote.

I would further comment, Mr. Chair, that through this bill and other avenues, if the drafters or the government is worried about confidentiality and what have you, I think there are enough tools in place, if I can use the word “tools”, that this will happen regardless. I intend to support this.

The Chair: Mr. Di Iorio has attempted to raise this issue many times in our debate, so he will now shed some light on this for us.

[*Translation*]

Mr. Nicola Di Iorio: Thank you, Mr. Chair.

First of all, I must say that I am well aware of the remarks that the Honourable Tony Clement made. We must use tremendous caution in addressing the issue of this privilege, which is called parliamentary immunity, a privilege many centuries old that goes back a long way in British parliamentary history. If this exception is made, I think it should be done in the most restrictive way possible.

This is what I suggest by way of solution.

I understand from subclause 12(2) that the restriction or exception to parliamentary immunity applies essentially and only to the situation where a member of the committee of parliamentarians would rise in the House and disclose government secrets. That is the only place where it would apply.

obviously, if we want to prove it, we have to be able to extract the statement made in the House, with supporting evidence. It's recorded on television, it's written down, so there are other forms of testimony or evidence. It is only from this perspective that a restriction is placed on parliamentary privilege.

For the rest, all other privileges of parliamentarians are not affected by this bill, because constitutional principles are involved.

I say this, but I don't even know if the exception I provided earlier is allowed in Canadian constitutional law.

So while I'm voting in favour of this provision, I understand that it is an extremely limited restriction that serves only to put into evidence the disclosure that a committee member would make to the House or the Senate.

[*English*]

The Chair: Go ahead, Ms. Damoff—Sorry. Please continue, Mr. Di Iorio.

[*Translation*]

Mr. Nicola Di Iorio: There are also disclosures that could be made in committee because the public can be present when the committee is sitting. It is not necessarily in camera. So if the parliamentarian discloses government secrets to the public, the disclosure made must be admitted as evidence.

[*English*]

The Chair: We have a comment just before we move on to Ms. Damoff. Go ahead, Ms. Sheehy.

Ms. Heather Sheehy: I would just clarify that the approach in the bill only restricts members' immunity under parliamentary privilege. If they disclose classified information that they have received through their participation on the committee of parliamentarians, it does not restrict. Just to be very clear, it does not restrict their parliamentary privilege for other matters. It is only related to information that they have received through their participation in the committee.

I should also say, if I could, that it would not limit members' ability to draw perceived deficiencies in government performance to the attention of Parliament, as long as they did not reveal the details of that classified information.

● (1730)

The Chair: Okay.

Ms. Damoff is next, and then Mr. Dubé, and then Mr. Erskine-Smith.

Ms. Pam Damoff: I'll be very brief, but I think without this clause in the bill, the committee will not get any information. I have the utmost respect for parliamentary privilege and its importance, but if someone were to stand up in the House and say something, it would be too late by then. You can't take it back once it's public. I just think you will completely limit the information that's shared with this committee if this clause is not left in there. You're going to completely gut the bill itself.

Mr. Matthew Dubé: Chair, I'm just seeking some clarity. I know we're public, so I don't want to go too much into what we discuss in committee business, but is this an open-ended meeting, or are we just going until clause by clause is over, because I see they're arriving with food?

The Chair: I did mention at the last meeting that notwithstanding a vote, we would attempt to go through clause by clause, because we have another meeting scheduled. I'm not going to be insensitive to human needs, and my hope is that we would go now until the bells ring, because we were asked to be in this building in case there was a vote. We're in this building, so we may be able to stay a little longer once the bells start ringing.

It's a 30-minute bell, and we do have supper. I was seeing how far we would get, how the tone was, and those kind of things, but I'm hoping we can push on, because we're getting through the bill.

[*Translation*]

Mr. Nicola Di Iorio: Mr. Chair, do you include heating in the human needs you're talking about?

Some hon. members: Oh! Oh!

The Chair: Yes, heating too.

Mr. Nicola Di Iorio: I would be grateful if you would consider this need in this room.

The Chair: What do you say, Mr. Clerk?

[*English*]

You can look into it. Maybe we'll get some sweaters.

I have Mr. Erskine-Smith and Mr. Mendicino on the amendment from the Green Party.

Mr. Nathaniel Erskine-Smith: I think Ms. Sheehy's evidence is pretty compelling. It's very much limited to disclosing state secrets that they've learned through the committee. You're not going to get trust from the agencies and the committee is not going to effectively do its job. There's narrowly a limit to that. I think we should move on.

Ms. Dianne L. Watts: Expand it a bit so that it's very clear when you read it and we don't have to have this discussion about what it means. Why should we...?

The language in there should be very clear.

The Chair: As Mr. Clement really appropriately put out, because this is a public record, our discussion here will inform it. It is a strange thing, but testimony in our hearing as to what was in our minds when this bill was passed at committee stage could be used even in a court of law if it needed to be. This is a note to drafters in the future that it would be helpful, but I think our committee has done its work.

I know, Mr. Mendicino, that you wanted to speak, but I have a feeling we've reached something on this. We have an amendment from the Green Party, and I just want to see how many are in favour. Are you in favour of the amendment carrying?

(Amendment negatived)

(Clause 12 agreed to)

(On clause 13)

The Chair: I'm going to try to plow through clause 13. My goal was to get to clause 13 before the vote, so I'm right on schedule.

We have three amendments for clause 13. NDP-5 is the first one. Would you like to present that?

● (1735)

[*Translation*]

Mr. Matthew Dubé: Yes, Mr. Chair, I am proposing the amendment.

I will leave it to my colleague Mr. Rankin to present it.

[*English*]

Mr. Murray Rankin: Thanks, Chair.

I guess this is pretty straightforward. In our view and the view of most witnesses who dealt with this issue, the committee lacks a very basic power, namely the power to compel witness testimony and the production of documents. Both the CSE commissioner and SIRC have that power. Indeed, this committee would have had that power, but as Ms. Sheehy pointed out, we're not a parliamentary committee. Since the committee we're creating here is not a parliamentary committee, it doesn't automatically inherit the powers of a parliamentary committee. We need to specify this very basic power.

My amendment to grant the power is supported by Craig Forcese, Kent Roach, and Ron Atkey, who testified, as well as others. If we don't pass this amendment, then we're forcing the oversight committee to rely entirely on requests to government minsters as their sole channel for getting information. In my view, as well as that of Messrs. Forcese, Roach, and Atkey, that places much too much power in the hands of the government of the day and undermines the faith Canadians would have in this new committee.

Lastly, Mr. Chairman, I note that this power is necessary on its own merits, regardless of the decisions we take in a few moments on amendments to the committee's access to information, proposed sections 14 and 16. To be clear, it is not inconsistent for the committee to fall short of unrestricted access to information and have the power to call and hear directly from witnesses.

Mr. Atkey said this, when he talked about the power to compel documents and testimony:

> This may be necessary where public servants are reluctant to respond to reasonable requests by the committee, or in situations where private sector individuals have particular knowledge about a security activity being carried out by a particular department

For those reasons, Mr. Chair, I think this is perhaps an oversight, but I think it's necessary for us to correct this deficiency.

The Chair: Mr. Di Iorio is next.

[*Translation*]

Mr. Nicola Di Iorio: Mr. Chair, the amendment proposed by my wise colleague and the remarks that he is making have made me prick up my ears. I must tell you that I, myself, have given much thought to this issue and that I was inclined to propose an amendment like this.

However, as I was thinking about it, I realized something. The power to subpoena witnesses is mostly found when an entity exercises judicial or quasi-judicial functions. We must not forget that we are looking at it from the committee's perspective. We demand and give the opportunity to demand that people come and testify and bring documents. In doing so, we would significantly restrict the freedom of individuals in Canada. We would end up judicializing the process. The subpoenas would be challenged in the courts. That is precisely what we wanted to avoid. We wanted the parliamentary committee to be able to manage its own way of governing.

We expect the committee to be able to develop rules. There will certainly be rules that could be developed. What won't appear is the power of constraint. The power of constraint is precisely what would bring us into a sphere other than revision, in a sphere other than the oversight of entities. Here we want to see how entities that depend on the federal government do their job. With respect to these entities, the committee is inevitably leveraged through the executive, through the government, to ensure the presence of individuals and the production of documents.

Thank you.

[*English*]

The Chair: I have Mr. Clement and Mr. Rankin.

Hon. Tony Clement: Chair, this is not an ideological issue. It's not a partisan issue, as far as I'm concerned. This is just a common sense tweaking of the legislation to restore what we would as parliamentarians recognize as a right of a collection of parliamentarians sitting as a body such as this. I don't see any downside whatsoever. I see it as common sense, and that's why I would be supportive of this amendment.

● (1740)

The Chair: Go ahead, Mr. Rankin.

Mr. Murray Rankin: Thanks.

I appreciate the thoughtful comments of Mr. Di Iorio. I just want to say, though, that many of our parliamentary committees would never be seen as judicial or quasi-judicial, but they all enjoy the power to make sure people come and testify before them.

I was counsel to SIRC for many years, and I don't think they ever needed to use the power to compel, but the fact that it was there made it obvious that people would come and testify. Sometimes, Mr. Chair, the agency may choose to send the head honcho or they may send a public relations person, but what the committee needs is the Calgary analyst or some individual down the chain in order to do the job. If they choose to balk at that and we never get the person who is really at issue, then we can't do our job for Canadians.

I think Mr. Clement has nailed it. This is a common sense provision, without which I do not see the credibility of this committee.

The Chair: Mr. Erskine-Smith is next.

Mr. Nathaniel Erskine-Smith: I wanted to pick up on Mr. Rankin's comment.

My understanding is that Standing Order 108 gives every standing committee subpoena powers. They're rarely exercised, but they're there in the event that they're ever needed. It makes good sense to me that this committee wouldn't typically exercise such powers, but they're there if they're ever needed. There's going to be compliance and co-operation, because everyone knows that in the end they are there. I'm supportive of subpoena powers as a result, in principle, but I just wonder about the language.

Mr. Rankin, the amendment would change section 13 for access to information. I think a more elegant way to keep the crux of clause 13's subclauses on access to information and protected information and inconsistency or conflict would be to have it read—and I'm open to your thoughts—"Despite any other Act of Parliament, but subject to sections 14 and 16, the Committee is entitled to send for persons, papers, and records"—that mirrors Standing Order 108—"and to have access to any information that is under the control", and on it goes.

In my opinion, that would be a simpler way. It wouldn't change subsequent sections in such a serious way.

Mr. Murray Rankin: I think that's an excellent suggestion, and I would be happy to proceed along those lines.

The Chair: We probably don't know what those lines are.

Mr. Nathaniel Erskine-Smith: I'll just reread it.

Ignore for the moment amendment NDP-5, and just look at subsection 13(1). It says, “Despite any other Act of Parliament but subject to sections 14 and 16, the Committee is entitled to”, and then we would insert “send for persons, papers, and records, and to have access to any information”, and on it would go as it is.

That empowers the committee in the same way Standing Order 108 does for other parliamentary committees, although this is, of course, a committee of parliamentarians. It would provide the powers that the Conservative amendment and the NDP amendment are seeking, but it would make it easier going forward.

The Chair: Just to clarify, that is language from Standing Order 108?

Mr. Nathaniel Erskine-Smith: Correct.

The Chair: Okay.

Procedurally, I'm going to check with our legislative clerk here, because we have an amendment on the floor.

We could have unanimous consent to withdraw it and have it replaced by this amendment. Am I correct on that?

Mr. Larry Miller: I have a point of order, Mr. Chair.

I may be wrong on this, but could this not be considered a friendly amendment?

● (1745)

The Chair: We don't really have friendly amendments. I know we do in life, but in parliamentary procedure they don't really exist.

We're not amending a subamendment to the amendment, so we would have to have unanimous consent to withdraw that amendment. We then would need unanimous consent to consider it before we considered the Bloc Québécois and the Conservative amendments, which may end up being withdrawn anyway, I suspect. I intuit that may be where we are.

Hon. Tony Clement: We want a recorded vote on that. Just kidding.

The Chair: Yes, minister.

Let me just test this. Let's first start with knowing what could happen—and I would give you leeway to put it back in, if something went wrong—if we have unanimous consent for amendment NDP-5 to be withdrawn.

Mr. Larry Miller: Can I speak?

The Chair: Yes.

Mr. Larry Miller: I believe, Mr. Chair, that we should ask for unanimous support for both topics. I don't think we should be asking two individual questions seeking unanimous support. I think the motion should ask whether we have unanimous support to replace Mr. Rankin's with Mr. Erskine-Smith's.

The Chair: I would probably word it this way. Do we have unanimous support to have NDP-5 withdrawn and to consider an amendment from Mr. Erskine-Smith immediately?

I am seeing a nodding—a nodding off?

I think, then, we now have before us an amendment from Mr. Erskine-Smith, which inserts about 10 words.

We have bells going, so I need unanimous consent to finish this, if you'll give it to me in the next five minutes. Is that okay?

Some hon. members: Agreed.

The Chair: Good.

We'd like Mr. Erskine-Smith to repeat his insertion, which comes from Standing Order 108.

An hon. member: There is no unanimous consent on that.

The Chair: There is no unanimous consent on...?

Mr. Marco Mendicino: On finishing in the next five minutes.

The Chair: Okay. That's not really what I asked. Do we have unanimous consent to continue while the bells are ringing?

Mr. Matthew Dubé: You asked for unanimous consent and you got it, and the motion is deemed adopted. Someone can't come in late like that and say “no” randomly.

The Chair: This will continue right after we come back.

Mr. Matthew Dubé: I know, but didn't you ask to continue for five minutes, and we said “yes”?

The Chair: I did....

Mr. Marco Mendicino: I'm sorry, Mr. Chair. I'm not trying to stymie debate on this amendment. I just don't think we're going to be able to address it in the next five minutes, and given that the bells are ringing, it just makes sense to use that time to reflect on a substantive amendment, which is a departure from the one put forward by the NDP. That's all.

We can come back and resume the debate.

The Chair: I don't have unanimous consent to continue. I think what happens is I do not have the unanimous consent to continue while the bells are ringing. That's all I'm going to be able to rule on right now.

However, I do have unanimous consent to withdraw the amendment and then consider first an amendment from Mr. Erskine-Smith. It gives him time to write it out, too, and make sure that the clerks have it.

We are into a vote. We will return following the vote, and I'm going to plod on for a little bit after the vote.

We are suspended.

● (1745)

(Pause)

● (1845)

The Chair: I call this meeting back to order after our brief suspension.

We're on clause 13. Just to review where we are, an amendment that was presented by Mr. Dubé was withdrawn. We agreed unanimously that a substitute could be presented by Mr. Erskine-Smith, which is where we are at this point.

Let's now debate the amendment from Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: In proposing subpoena powers, I had a conversation with Mr. Sutherland, Ms. Miles, and Ms. Sheehy. I'd like the committee to hear the same answers, and the committee can then determine whether the answers are sufficient.

Ms. Miles, perhaps you can explain to the committee why subpoena powers, both for requiring witnesses to attend and for requiring the production of documents, are either unnecessary, redundant, or problematic.

Ms. Nancy Miles: Okay. I'll just give you the legal underpinnings.

Usually a subpoena power and a power to compel documents is in relation to a review body that either has adjudicative powers or has an individually initiated complaint review power. That is the case with respect to SIRC, to the commissioner of CSE, and to the RCMP complaints commission. In all three cases, that's why they have subpoena powers. It's because it's important to have an individual appear before them and give testimony with respect to something.

In this case, we've crafted the act in a different way, in a high-level Westminster model that would have the minister accountable for the documentation that would be presented. In that regard—and you'll see it further on in the text of the bill—in section 13 we have the right to access, obviously, but also in section 15 the obligation of the minister to provide the information that's relevant and within the mandate of the committee, and also the ability of the minister to present it orally before the committee, if that's the way it is most efficient, or if the minister so chooses.

You already have, then, an obligation to compel the documentation, and as well there is the ability to appear before the committee.

Mr. Nathaniel Erskine-Smith: As I understood it from our discussion previously and just to confirm it, the subpoena power to compel the production of documents is redundant because proposed subsection 15(3) requires them to be provided in any event through the minister. Is that fair to say?

● (1850)

Mr. Allen Sutherland: I think it is, yes.

Mr. Nathaniel Erskine-Smith: I note that in part II of the Inquiries Act, the CSE commissioner has the authority to subpoena individuals to testify before him.

Can you explain why it would be problematic, if it is problematic, to provide this committee with the same authority?

Ms. Nancy Miles: What would happen with respect to giving them subpoena powers is that it would result in having a process that has become more judicialized, if I may say so. The subpoena would have to be enforced somehow. That would normally take the form of a court order. That is against the whole concept of how we've tried to draft the bill.

We've tried to draft it as a very high-level Westminster-style bill in which ministerial responsibility and trust between the minister and the committee will provide for the flow of information. We also have an express provision, as you know, in clause 31 that indicates that a decision of the minister is final and would not be adjudicated.

Introducing a subpoena power into it would necessitate the judiciary's taking a look at the process and might very well have them take a look at section 31 and say, “This really isn't an overall structure in which we are looking for political solutions. The courts are entitled to take a look at every decision that is being made here, including high-level ministerial decisions as to what is injurious to national security.” It's contrary to what the bill is proposed to do and really does defeat the purpose of proposed section 31.

Mr. Allen Sutherland: If I can just build off one thing, it's easy to be lost in the amendments and the clauses, but just observe that this would be the biggest change in a generation to the intelligence review system in Canada. This is something big and important, and part of what would make it a success is if it can build trust. It's what we heard from the British parliamentarians. It's what Minister Goodale heard when he looked at different models: build trust in the committee of parliamentarians so that the information flows effectively. It's trust within the committee, it's trust with the public service, and it's trust between the committee and the public service.

What we're trying to build here, then, is something that uses the role of the minister and a minister's central role in the Westminster system to provide the flow of information through to the committee. If we do it right, we know that the committee would receive information that they have certainly never seen before, and it would help inform the debate in Parliament and indeed within the country.

I would say too that if the committee is not satisfied with the information it's receiving, it's very important that it does have remedies. It can complain in Parliament. It can complain to the Prime Minister. It can complain publicly in the annual reports, and indeed, it can complain it its special reports. It has remedies.

As we get up the learning curve on how to ensure there is a good flow of information, it's important that rather than judicializing it—which, I would argue, will set different parts of the system against each other—we can work it through together and build a trust environment.

By the way, you also have a five-year review mechanism, so if you're finding that this isn't giving the committee of parliamentarians the access that is anticipated, it can be reviewed within five years and adjusted.

The Chair: Go ahead, Mr. Clement.

Hon. Tony Clement: Thank you.

There are a couple of things I'd like to say in response to the interventions.

First of all, this is an oversight committee. It's not just an arm of the Prime Minister or his office. It's deliberately created to provide oversight, so it does need tools—always exercised reasonably, of course—in order to fulfill that function. I know what you're saying about building trust within the security apparatus, but the committee also has to build trust with the people of Canada and to illustrate that it is serious, because the public will not have the information available to it. It will be this oversight committee, and so you have to build a trust network on that side of the equation as well. Otherwise, it will come to naught, in my view.

That's my first point. It's an oversight committee.

The second point, if I may say so—and I know it's spilled milk and water under the bridge—is that to build trust with all members of the political parties that will have representatives on this committee, one of the things you may want to consider is not appointing the chairman of the committee before the bill is even past the stages of debate and approval in the House. However, that is what has been done, so I would put it to members that in order to build trust with us, other things to build that trust would be appreciated, including this clause-by-clause review.

We all want to take this seriously. We all understand this is a very serious responsibility, but it doesn't help if opposition views are not taken seriously. I would just relate to my colleagues on the other side of the table here that trust works in both directions. It's not just trust in the process. We would like to trust the process too, but you have to have some trust in us and in our ability to do our job.

Is it going to be necessary to have subpoena power? It may not be. I don't know. To be honest, none of us knows. We're trying to predict the future, but why remove a perfectly reasonable and responsible tool that is not just used in judicialized functions? It's used in legislative functions, it's used in deliberative functions, and it certainly should be used in oversight functions.

● (1855)

The Chair: Mr. Miller is next, and then Mr. Rankin.

Mr. Larry Miller: Thank you.

With everything that I've heard up to now.... We heard from Mr. Sullivan, who said that when Minister Goodale talked to his British counterpart, they didn't agree with having this kind of power to subpoena, but did he talk to the counterpart in New Zealand? I don't think so, from the comment I heard, and this isn't new stuff.

I would point out to the members across the way that if the government, Mr. Chair, is worried about this process—and for the life of me, I really can't figure out why—remember that the government has the majority, and if the majority of the committee decides it doesn't want to subpoena somebody, the person isn't subpoenaed. It's that simple. It's a numbers game. We all know that.

The government won't always be the government, and we have to look at this in a fair way. At the end of the day, the powers are there for a reason at our regular committees today, and the powers should be there for this committee. There isn't really a downside to it.

Anyway, there's not much more to say on it.

Mr. Murray Rankin: I fear we're pushing uphill here and may not be able to succeed, but I just would note—and the point was made by Mr. Clement—that there are all sorts of examples in which non-judicial or quasi-judicial bodies have the power to summon witnesses or to get information. Standing Order 108 would be a pretty good place to start.

Second, there appears to be nothing that would allow the committee to summon an individual here. Subclause 15(4) says that information may be provided orally—the official "may appear before the Committee"—but there is nothing to say that if an agency wanted to stonewall this committee and bring only somebody who is their PR person when the committee felt it needed to have an individual who knew what they were doing on the file, there's no way we can get that information that I can see in the bill, short of having a summons power. I don't see anything in the bill that would allow that.

● (1900)

The Chair: Go ahead, Ms. Miles.

Ms. Nancy Miles: It's true that there is no individual subpoena power; it is an entitlement to information, and that information flows from the minister. Much as in the case of parliamentary committees in general, the minister will determine who he or she feels is most acceptable to appear before the committee, if it's to give information orally; otherwise, it can be given in writing exclusively.

The Chair: Go ahead, Ms. Watts.

Ms. Dianne L. Watts: Finish your thought, Murray.

Mr. Murray Rankin: All the lawyers on this committee surely know from your slip and fall at the Safeway store that to get the PR person for Safeway to come in, first it's a case of getting the janitor who caused that can that's broken to be on the floor, which caused me to break my back. You don't want the head honcho from head office; you want the person who knows what's going on. To not get that is to make this a joke.

Ms. Nancy Miles: What you're suggesting is an individual complaint process and not an overview review of activities.

Mr. Murray Rankin: With respect, I entirely disagree. Once we have before us a certain subject area that the committee thinks is important, it has the ability and should have the tools to delve into it, not simply to take the minister's idea as to who the most appropriate person to come would be. It's part of the mandate of the committee to do its job and to delve where it has to and to go where the evidence takes it.

The Chair: Go ahead, Ms. Watts.

Ms. Dianne L. Watts: After listening, Ms. Miles, to what you were saying earlier, I have a couple of questions. The underlying premise of your group in crafting this legislation was not around independence of the committee, correct?

Ms. Nancy Miles: I don't understand.

Ms. Dianne L. Watts: Concerning oversight and the independence of the committee, what I'm hearing you say is that it's not about being independent, because the minister will determine what the committee will see, what it won't see, who it will call in, who it won't call in, and the veto powers of the minister or the Prime Minister are embedded in that.

Mr. Allen Sutherland: I think—

Oh, sorry.

Ms. Dianne L. Watts: I'll just finish.

If the underlying objective of the bill was not to look at oversight and independence, can you explain to me what that vision looked like?

Ms. Nancy Miles: I don't agree that I said it was ignoring the independence of the committee at all—

Ms. Dianne L. Watts: Oh, I didn't say you were ignoring independence.

Ms. Nancy Miles: —but rather, in fact, the mandate is quite large for them to deal with a review of both the framework and any activity that relates to their mandate, national security and intelligence.

Mr. Allen Sutherland: It's independent in lots of ways. One is just the wide breadth of information from any department or agency. It's independent as to where it chooses to focus its activities and it's independent in that it gets a vast amount of information and can come up with findings that it determines are relevant.

Ms. Dianne L. Watts: But the information is deemed by the minister, vetoed by the minister.

Mr. Allen Sutherland: It is, subject to some very tight constraints.

Ms. Dianne L. Watts: That's my point: it's not an independent oversight body in any way, shape, or form.

Mr. Allen Sutherland: It is just part of the Westminster system that ministers decide. The minister, as head of the organization, decides for the organization.

Ms. Dianne L. Watts: Okay. You took the Westminster system and just applied it for us, whether it's applicable or not.

I don't mean to be combative; I'm just trying to understand. What I hear, and what we've heard through this whole process, had to do with the oversight and independence of the committee, meaning that the committee could determine what it needs to look at, where it needs to go, who it can call before it. What I'm seeing and hearing here is that this is not the underlying objective of it at all, because the independence aspect is not there.

Ms. Nancy Miles: There are a number of models you could choose, and you could become very restrictive or you could go very wide. What we're saying is that in the drafting of the bill we have tried to apply the Westminster model as much as we can to provide for a large amount of information being available, but also for attaching the ministerial responsibility to that access to information.

● (1905)

Ms. Dianne L. Watts: Fair enough. I'm just trying to square this off because of the witnesses who came before us time and time again talking about the need for independence. We all sat through all the meetings and went across the country. That's why I'm asking you what the underlying objective was, because it's very different from what we heard.

My question has been answered. Thank you.

The Chair: I have Mr. Mendicino, Mr. Erskine-Smith, and Mr. Spengemann.

Mr. Marco Mendicino: Thanks, Mr. Chair.

I can synthesize, having answered questions from colleagues on both sides of the committee.

In drafting this legislation, there was an attempt to be faithful to the Westminster model; therefore, instead of using subpoena language and infusing subpoena powers, we went with a model that would engender public trust and confidence, with good communication between the minister and the committee of parliamentarians.

That said, a request is not just a request out of politeness. There is an underlying entitlement to that request. In Mr. Rankin's hypothetical case, you would still be able to ask to have the victim produced, and not just the janitor. You would be entitled to get the victim there. If you didn't get the victim, you would be able to use the bully pulpit to demonstrate your concern about being at an impasse through the lack of that particular individual's being produced. That is in keeping with the Westminster model.

Using subpoena powers imports all other potential consequences, including judicial review, which quite clearly the bill is attempting to avoid, for a number of reasons.

Is that a fair summary?

The Chair: I have Mr. Erskine-Smith, Mr. Spengemann, and then, I'm feeling, Mr. Rankin.

Mr. Nathaniel Erskine-Smith: I just want to say that this is the first time I have heard at this committee, I think, a useful explanation as to why the subpoena powers may not be necessary. All of the other testimony—and we spent a lot of time at this—has suggested that they're important. I am a bit conflicted on this now, but I will say, to Mr. Rankin's point and Ms. Watts' point, that I think it's best we err on the side of caution to say that we should empower this committee as much as possible, and so I will be voting for the amendment.

I don't know that it's the right language. It may be reversed at report stage, but take this vote as direction to go back and see whether you can find a way to empower this committee to tackle the concerns that Ms. Watts and Mr. Rankin have mentioned.

Whether a subpoena power is drafted the way this amendment is drafted or some other way, I think it is important that we empower the committee to access individuals—obviously, proposed subsection 15(3) gives access to records—in a more serious way.

That's all I'll say. I will support the amendment.

Mr. Sven Spengemann: Mr. Chairman, I listened to the exchange between Ms. Watts and Mr. Sutherland, bearing in mind that the chair, according to the testimony of several witnesses, should have significant public communications and moral suasion powers by which to engage the public as well as colleagues and counterparts.

Mr. Sutherland, in your view, what would happen if the committee requested information from a minister or requested the attendance of a lower-level official to shine some light on an issue that official would be familiar with, and the minister declined to respond positively to that request? How would that play itself out in the context of having a Westminister model in which trust really is the essence?

Ms. Heather Sheehy: I'll respond, if that's all right.

● (1910)

Mr. Sven Spengemann: Sure.

Ms. Heather Sheehy: The committee of parliamentarians is entitled to the information that it requests, and the minister under proposed subsection 15(3)....

I will read it, actually:

> After the appropriate Minister receives the request, he or she must provide or cause to be provided to the Committee, in a timely manner, the requested information to which it is entitled to have access.

It's very clear.

There are provisions that we haven't reached in this clause-by-clause study that allow for statutory provisions. Proposed section 14 sets out information that cannot be provided to the committee, and proposed section 16 has some very limited discretionary provisions that allow a minister, if information is special operational information or would be injurious to national security, to not provide that information.

Those are the only two clauses, other than what I just read to you.

Mr. Sven Spengemann: Right, though what I was getting at is not so much the clauses of the bill but whether, if the committee feels that probably the best evidence comes from a lower-level official and the minister decides she doesn't want to bring that official to the table at time X, it would be within the committee's purview to communicate that publicly or put pressure on the minister in some other fashion to make sure that the person is sent to the committee.

Ms. Heather Sheehy: In their reports the committee of parliamentarians can make...I'll use the word “complaints” that they're not getting access to the information they required, if that is their interpretation of it. The minister, however, does have to provide the information asked for.

Mr. Sven Spengemann: Is it fair to say that those powers perhaps are as influential, if not more so, than a legal subpoena power?

Ms. Heather Sheehy: I like to think of them as a court of public opinion.

Mr. Sven Spengemann: Thank you very much. That's helpful.

Ms. Pam Damoff: I have just a quick question, because I'm not a lawyer, and a few times I wondered whether you're using a term that, because we're not lawyers or drafters of bills.... You keep going back to “entitled”. It's in here twice. Subclause 13(1) says “the Committee is entitled to have access”, and then you were just talking about subclause 15(3), where again it's “the requested information to which it is entitled to have access”.

Is there any way they can get out of that?

Ms. Heather Sheehy: Again, the committee is entitled.... I'm trying to find another word to use. The committee has the right—I'll use that language, though it's always dangerous language—to the information that it requests within the construct of the bill. There are clauses within the bill that limit the information—clause 14, clause 16—but other than within those constructs, the minister must give the committee of parliamentarians the information.

Ms. Pam Damoff: Under Mr. Rankin's example, in which the committee wanted to speak to a specific person or had concerns about the information it was receiving, it says here that the minister must provide that information. Is it not, then, actually stronger than a subpoena?

Ms. Heather Sheehy: The bill says that the information must be provided; it does not say that a specific person must be provided. Again, if there is concern that information is not being provided that is relevant to the deliberations of the committee of parliamentarians, the committee of parliamentarians has the capacity, through its reports and otherwise, to make those concerns known.

Ms. Pam Damoff: Okay. Thank you.

The Chair: Ms. Watts, do you have a question?

Ms. Dianne L. Watts: I'm good, thanks.

The Chair: I'm going to ask the vice-chair to take the chair for a moment, because I would like to make a comment.

Mr. Robert Oliphant: Thank you to the witnesses.

I just want to address, and have on record, the issue of trust. It is a reminder to the committee that this bill has come out of a study done by this committee in 2009 with respect to the conditions of Mr. Maher Arar and Mr. Almalki, Mr. Abou-Elmaati, and Mr. Nureddin.

The trust issue was not whether parliamentarians could be trusted with information. That was not the issue. The issue was whether our security and intelligence agencies could be trusted with the care and concerns of Canadian citizens. The trust we are attempting to engender by somehow saying that we have to build the trust of our agencies toward parliamentarians, I need to tell you, I find very difficult to stomach. I worked on this committee to present our report to Parliament regarding the need for oversight, by parliamentarians, of our security and intelligence agencies. That's the genesis of this bill. That's the first issue of trust.

The second issue of trust I think the committee needs to be aware of is that the report went to Parliament, to the House of Commons, and was concurred in, and Parliament decided that we should have a committee of parliamentarians. That did not take place throughout the whole last government. To hear at this committee that somehow the opposition needs to build trust in what the government has finally undertaken, which is to get a committee of parliamentarians to put this in place, perfect or not perfect, I need to say is a little bit rich for me after waiting for seven years to get this work done. We are ready to do it, and I think the time has come for us to do it.

That's enough said. I feel better.

● (1915)

The Chair: Are we ready to vote? I just need to remind you that if we vote in the affirmative on this amendment, then amendments BQ-4 and CPC-5 would not be introduced.

Right now we have an amendment from Mr. Erskine-Smith that would change the language in clause 13.

(Amendment agreed to)

The Chair: We now have an amended clause 13. Shall clause 13 carry as amended?

(Clause 13 as amended agreed to [See *Minutes of Proceedings*])

(On clause 14)

The Chair: There are many consequential activities as we go through clause 14. We will begin with NDP-6. If it is adopted, it would also apply to NDP-13, on clause 47. BQ-5 would not be moved if NDP-6 passes. I will continue like that, but let's begin with NDP-6.

Mr. Matthew Dubé: I move the amendment, Chair.

Let me say that this is, if not the key issue, certainly one of the key issues for us. It's something we've been hearing from witnesses, of course, but it's also, interestingly enough, the same language as in a Liberal MP's bill from the previous Parliament, a bill tabled by our colleague Joyce Murray—Bill C-622—and of course Bill S-220, sponsored by former Senator Segal, whom we had the chance of hearing in Toronto. Wesley Wark, whom we heard during the study, called the amendment we're proposing "an ideal scheme".

I think it's challenging, because on the one hand we have the discretionary powers of blocking investigations and on the other hand we have this situation concerning what information is already available to begin with to the committee. We heard SIRC, for example, say that they can collaborate with the committee and that it's okay and the committee doesn't need the same powers, but the fact of the matter is that a great many bodies covered by this bill don't actually have oversight—we can think of CBSA, among others—and this committee will be the only review body available.

We can look at this narrow view of saying that SIRC already has access to this information and therefore the committee doesn't need it, but it's much broader than that, and that is certainly something we've heard from witnesses.

While I know that the process on this bill has been perhaps more difficult than we had hoped it would be, it's hard for me to envision a scenario whereby we can gain public trust as well as the trust of the parliamentarians on the committee. As well, as Mr. Rankin pointed out earlier today, while we may trust the current government, we don't know what the future holds for us. We need to get this right, and now, and I think that this full access to information is the way to do it.

● (1920)

The Chair: Okay.

Are there any comments?

Mr. Nathaniel Erskine-Smith: I won't be supporting this particular amendment, but that's simply because I have a differently worded but similar amendment, LIB-6.

I agree that the only mandatory exclusion should be cabinet confidences, exactly as Mr. Dubé has outlined here. Subclause 14(1) is no longer necessary, in my view, because we kept that language in clause13, whereas my amendment to clause 14 reduces it to:

> The Committee is not entitled to have access to *a confidence of the Queen's Privy Council for Canada,* as defined in subsection 39(2) of the *Canada Evidence Act*.

I would note that we heard from a number of witnesses, especially from the minister, that this is baby steps. Certainly the experience of the U.K. has been that they deny information when the providing of information would be injurious to national security. They have different language, but effectively that's it.

My compromise solution between the government's position and full access is to move paragraphs 14(b) to 14(g), leaving cabinet confidence in clause 14—that's the mandatory exclusion—and moving all of the other items to clause 16, which is the subject of a subsequent amendment, LIB-11.

The advantage is that, first, it's discretionary and requires the minister to give reasons, and the other advantage is that it requires not just that it be that information, but also that the provision of that information be injurious to national security, which I think is a very high bar.

As I say, then, I won't be supporting NDP-6 but will be supporting amendment LIB-6.

I will also note that I don't want to get into the uncomfortable position of individuals voting for amendment LIB-6 but then not voting to put information back into clause 16. I thus need some assurance from the other side that if you are supportive of amendment LIB-6 or amendment NDP-6—the idea of limiting mandatory exclusions to cabinet confidence—whether it's through amendment NDP-6 or amendment LIB-6, I need some assurance that we are all willing to put these items back into clause 16 under amendment LIB-11.

The Chair: Go ahead, Mr. Clement.

Hon. Tony Clement: Thanks, Nathaniel, for your intervention. I can give you that assurance, certainly, on behalf of our caucus, but there are still some problems. I don't want to suggest that if that's the nature of how these votes go and then we're left with your potential amendments, that's the land of milk and honey for us, because it's not.

We're still very concerned over the ability and the authority of ministers to exclude information. We think it's quite.... I know you're trying to hem that in and I respect that, but it's still quite broad, in our estimation. It takes a strong minister to withstand the pressure from her or his department to take a certain course of action. It takes a strong minister, and I know this may sound like apostasy, but not every minister is strong. Not every minister can withstand the bureaucratic pressures that she or he is under. I'm just stating that from my own experience in life. That's where the problem lies.

Having said all of that, I'll say that sometimes one has to put a little bit of water in the wine and then hope for the best. I still support NDP-6 as a better solution. I think it's a more direct solution. When the time comes, if it comes, then certainly I would respect both of your motions as one package.

The Chair: Monsieur Dubé is next.

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

I'm certainly not opposed; quite the opposite. I would be supportive of Mr. Erskine-Smith's amendments on the one hand, but we're not there yet. I don't want to get too ahead of myself, but there is one for which we will have a proposal for a subamendment, and we'll get to that.

I would echo Mr. Clement, in that I appreciate the effort at compromise, but it's hard for me.... It's not in terms of any particular member, but in looking at the government's vision for this bill, it's hard for me to imagine that anyone listening to the testimony we heard, with quotes like those of Kent Roach, who was saying that "full access to information" is one of several "critical criteria for success".... For me, when we hear things like that, it's difficult to fathom that the government wouldn't recognize their importance.

Some of the stuff we've debated today might seem cosmetic, such as the election of a chair and things like that. It's very inside baseball to folks, some of that procedural stuff. I don't want to diminish the importance of those points, because we certainly still consider them essential, but access to information is what this is all about.

Unfortunately, I wasn't here at the last meeting, when we heard from the Information Commissioner, but I did read her testimony. Reading between the lines of what she was saying, I could see she was basically asking this question rhetorically: how can the committee be expected to accomplish its objectives without this full access? To think that as a parliamentarian, whether it's me or another colleague around the table sitting on that committee, we would have less access than other review bodies, I would pose the question that you would have to ask yourself: what the heck is the point?

That said, if we can take a smaller step in the right direction, I certainly won't be opposed to it, but I think it bears saying on the record that this is the heart of what's wrong with this bill. Certainly it bears mentioning today, and it won't be the last time that we mention it.

● (1925)

The Chair: Go ahead, Ms. Damoff.

Ms. Pam Damoff: My question might be directed towards the chair. I listened to Mr. Erskine-Smith and I want to compliment him on what I think is a very reasonable compromise on clause 14; however, I'm being asked to remove paragraphs (b) through (g) in clause 14 before I'm voting on clause 16. I know that he was just asking that question, but procedurally how do we have an assurance that we can insert those paragraphs back into clause 16 after we've voted on it?

The Chair: We're not quite there yet. We're just at NDP-6, so once we get to LIB-6, there is no guarantee procedurally, because we have a procedure of going through....

We could stand clause 14 until we get to clause 16, and then go back to clause 14. That is a way to do it.

Ms. Pam Damoff: If we do that, are we still voting on clause 14 first, and then on clause 16?

The Chair: Not necessarily. We can stand the whole of clause 14. Yes, we'd have to stand the whole of clause 14 and do clause 16 first.

Ms. Pam Damoff: Okay.

An hon. member: But if they have their—

Hon. Tony Clement: This is the central question, of course. This is what we've been debating for hours now. You have to have a certain amount of trust in parliamentarians. I just gave you my undertaking that we wouldn't vote for one and against another. We won't do that.

Ms. Pam Damoff: But I didn't hear the same undertaking from the NDP.

Hon. Tony Clement: Okay, but—

Ms. Pam Damoff: No, but with the votes, I just want to make sure that we're not removing it in one place and not adding it in, so if both parties have agreed to that, it's fine.

Mr. Larry Miller: You have the numbers.

Ms. Pam Damoff: That's true. Okay.

Mr. Matthew Dubé: Just in response to that, I don't want to get into the weeds here, but I did say I would support the amendment. The point I'm trying to make is...I'm debating our amendment and I feel that I'm not going to fall into this trap, in supporting Mr. Erskine-Smith's amendments, of not making a point that for us is the key to this issue.

The problem is when we're moving.... We're going to try to improve the bill, but when you want full access, it's difficult to think of what a compromise could be. All we're asking is the same thing that Joyce Murray proposed, the same thing Hugh Segal proposed, and the same thing as the other review bodies.

The Chair: Let's keep to the current amendment for now.

I think the reality is that this committee is better than average, frankly, at working our things out as we go. Parliamentary procedure is helpful to keep order, but it's not always helpful in making logical sense of what you're trying to do.

We're going to stick to it, but I think you've had an undertaking. We know we have a long life ahead of us in this Parliament, and that would not be forgotten quickly.

Go ahead, Mr. Di Iorio.

● (1930)

[*Translation*]

Mr. Nicola Di Iorio: Thank you, Mr. Chair.

Let's look at clause 14.

Paragraph (a) involves confidences of the Queen's Privy Council for Canada, which includes Cabinet. Everyone here agrees on excluding this.

Paragraph (b) involves information about ongoing activities. In the English version, it appears as “information respecting ongoing”. Every witness, aside from the Privacy Commissioner of Canada, agreed that the committee did not need such information.

Paragraph (c) concerns witnesses and identity. All witnesses, even the Privacy Commissioner of Canada, said that we did not need information of this nature.

Then, paragraph (d) again concerns identity. The witnesses gave the same answer.

Paragraph (e) uses the words “renseignements qui ont un lien direct avec une enquête en cours” in the French version. The English version reads “ongoing investigation”. Again, almost all witnesses unanimously agreed.

I'd like to make you understand that the government, as we will see a little later, has amendments that will respond to the concerns that have been expressed. Basically, it's important to keep in mind that this is a committee that oversees organizations that gather information and that, from the outset, both ministers promoting this bill have clearly indicated that we also need to find a balance.

I would suggest that the balance has been found. There may be a number of ways to find a balance, but the model we have here finds the balance, and restores it. It may even be perfect a little later after a few more amendments.

I don't think we should adopt this amendment.

[*English*]

The Chair: Go ahead, Mr. Dubé.

Mr. Matthew Dubé: Thank you.

The Chair: I'm sensing that we've come to the end of the discussion on amendment NDP-6.

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

The Chair: It is defeated.

Because it was presented, Bloc Québécois amendment BQ-5 cannot be moved.

We will move now to amendment CPC-6.

Would you like to move it?

Hon. Tony Clement: I would.

The Chair: Would you like to speak on it?

Hon. Tony Clement: No, I'm good.

The Chair: You're good? All right. I'm sensing that we could call the question on amendment CPC-6.

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

The Chair: We will move to amendment LIB-6. Who is moving that? Would you like to speak to it?

Mr. Nathaniel Erskine-Smith: I so move.

I would simply reiterate what I've said with respect to Mr. Dubé's motion. I agree that more access in necessary. Full access sounds great. I think this is a middle ground that I hope the government will maintain, especially if there is agreement from members of all parties who will be supporting this. Again, as discussed, it's to import paragraphs 14(b) to 14(g) into clause 16 through amendment LIB-11.

The Chair: Is there any other discussion?

Before we vote on it, I want to note that it will apply to amendment LIB-16, which is an amendment to clause 47, which we might get to sometime later this year.

Voices: Oh, oh!

(Amendment agreed to)

The Chair: We don't need to do amendments LIB-7 and LIB-8. Shall clause 14 as amended carry?

(Clause 14 as amended agreed to)

(On clause 15)

The Chair: Amendment NDP-7 would be ruled inadmissible because it would strike a whole section. You would be voting to delete clause 15.

We now have amendment CPC-7.

● (1935)

Hon. Tony Clement: I so move.

The Chair: This is the one that was implicated in clause 2. Am I right?

No, it doesn't affect clause 2. We'd have to go back to clause 2 as well.

Okay. It has been moved by Mr. Clement. Is there any discussion?

Hon. Tony Clement: Chair, this goes to the evidence we heard at committee from people who wanted the bill to be a better bill, including people who had direct knowledge of how security agencies operate. I'm thinking of Mr. Atkey. I think it's a reasonable amendment that is consistent with the testimony we heard.

The Chair: Are there other comments? Not seeing any, I call the question on amendment CPC-7.

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

The Chair: Amendment LIB-9 may be moved.

Mr. Sven Spengemann: Chair, I so move.

It is an amendment that would narrow the scope of the information that is requested to that of identifiable persons. It's consistent with the government's intent to have the broadest possible access to government information relevant to the mandate of the committee. It's also important, Mr. Chair, to protect the personal information of law-abiding Canadians from unnecessary disclosure. It's relatively straightforward amendment.

The Chair: Is there any comment? All in favour?

(Amendment agreed to)

The Chair: I love unanimity.

On amendment LIB-10, go ahead, Mr. Spengemann.

Mr. Sven Spengemann: Before moving this amendment, I have a question to you.

Should this also be stood, along with the clause 2 amendments that we have decided to postpone for a later discussion, because it is really implicating them?

The Chair: We will do it now, and it would be then okay to go back to clause 2. We won't go immediately back to clause 2, but that's why we allowed clause 2 to stand.

Mr. Sven Spengemann: Okay.

Mr. Chair, I move this amendment, then.

It's essentially extending the scope of the committee's reach to parent crown corporations, just to make sure that we are consistent with the government's intent to have a whole-of-government mandate for this committee. As we discussed, there are several subsequent technical amendments in clause 2 that go to that same point.

The Chair: Is there any discussion?

(Amendment agreed to)

(Clause 15 as amended agreed to)

(On Clause 16)

The Chair: Moving to clause 16, again I would rule NDP-8 as inadmissible because it strikes a whole clause.

Moving to amendment CPC-8, just a note that if it were to be adopted, Liberal-11 could not be moved, as it amends the same lines.

Would you like it to be moved, Mr. Clement?

● (1940)

Hon. Tony Clement: Yes, please.

The Chair: Is there any discussion?

Hon. Tony Clement: Again, Chair, the purpose of this amendment is to continue our so far failed assault on the triple lock that restricts the amount of information that is withheld from the committee. That's consistent with the testimony we heard. It's also consistent with the committee being useful and playing the role that certainly the rhetoric on the Liberal side wishes it to play.

For those reasons, I'm happy to move it.

The Chair: Is there any further comment?

All those in favour? Opposed?

Hon. Tony Clement: I think that was a tie, wasn't it, Chair? It was a tie. I declare a tie.

The Chair: I don't believe that Mr. Miller voted either.

I just want to make sure I have all the votes counted that want to be counted on CPC-8.

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

The Chair: It is defeated.

Okay, now—

Mr. Nicola Di Iorio: It's official that Mr. Clement is more Liberal than Mr. Erskine-Smith.

An hon. member: Oh, oh!

Mr. Nicola Di Iorio: We have living proof.

The Chair: Okay, amendment LIB-11 may be moved because amendment CPC-8 was not adopted.

Go ahead, Mr. Erskine-Smith.

Mr. Nathaniel Erskine-Smith: This follows on from my previous proposal to remove paragraphs14(b) to 14(g) and to import them into clause 16.

The Chair: I think we've had much discussion on that. Would you like more discussion?

Go ahead, Mr. Dubé.

Mr. Matthew Dubé: I'm going to try my luck and move a subamendment that would delete subparagraphs i, ii, v, vi, and vii from the amendment. The reason is that it brings it in line with the recommendation of the Privacy Commissioner, who said, and I quote:

> I would also recommend that exceptions to access in sections 14 and 16 should be reduced extensively, so as to potentially include only the identity of sources and witnesses who require protection.

There's obviously much more witness testimony, but it feels at this rate, given how unanimous witnesses were.... We've spent our time quoting and quoting ad nauseam, so I think the public can see the forgone conclusion that I feel the witnesses presented. However, I will nonetheless use that particular quote for this subamendment.

The Chair: Is there any other comment?

[*Translation*]

Mr. Nicola Di Iorio: Mr. Chair, I will repeat what I said earlier, but I will add something. In terms of paragraph 14(b), to which we are now referring here, there is no proof that it was presented before the committee. It's important to have this in mind. No one from the military came to explain how this worked or anything. Some people speculated about the situation.

[*English*]

The Chair: Seeing no other comments, all in favour of the subamendment, which deletes a whole bunch of things?

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

The Chair: Now we move to amendment LIB-11, which would transfer paragraphs 14(b) through to 14(g) to clause 16 for ministerial discretion.

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

The Chair: That carries, with one abstention.

We can still do Green Party amendment PV-5, amending after line 17. It is deemed moved. It's similar to an earlier motion, I believe, binding people to secrecy.

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

The Chair: Now we are looking at clause 16 in its totality. Clause 16 has been amended by LIB-11. Shall clause 16 as amended carry?

All in favour? All opposed?

Let me check this again: all in favour?

I honestly can't tell how people are voting, because they've changed their votes.

All in favour? Any opposed?

(Clause 16 as amended negatived)

The Chair: The clause is defeated. There is no clause 16.

● (1945)

Hon. Tony Clement: That wasn't me. That was those guys. Don't look at me.

An hon. member: [*Inaudible—Editor*]

The Chair: Okay. We're going to then....

An hon. member: [*Inaudible—Editor*]

Hon. Tony Clement: No, no, I undertook to vote for the amendment. I didn't say about the clause—and I didn't vote against it, either.

The Chair: Okay. We'll move on.

Hon. Tony Clement: I'm not exactly an expert [*Inaudible—Editor*]. I haven't been in opposition before, so....

An hon. member: So there's no clause 16.

Hon. Tony Clement: There is no clause 16.

An hon. member: [*Inaudible—Editor*]

The Chair: Yes.

Ms. Pam Damoff: This is exactly what I had asked about with regard to voting on clause 14 first and then voting on clause 16 second. I was told not to worry about it. It was exactly the question I put to you. Now we're left with clause 14 passing and clause 16 not. I expressed my concerns on it, and now we're in exactly that situation.

I'm more than a little disappointed that I was assured that I didn't have to worry, and now we've done exactly what I said.

Hon. Tony Clement: If you're going to attack my—

Ms. Pam Damoff: No, but this is exactly what I had asked about.

Hon. Tony Clement: I did vote for the clause 16 amendment. I voted for the amendment. That's what I promised to do. I thought we'd have clause 16 passed.

Ms. Pam Damoff: So procedurally, we should have—

Hon. Tony Clement: If you guys are not going to support your fellow members, that's not my problem.

Ms. Pam Damoff: I did support him, but I was given an assurance that we didn't have to vote on clause 16 first.

Hon. Tony Clement: Well, do you want to have another...?

I move that we have another vote on clause 16.

Ms. Pam Damoff: We would have voted on clause 16 first had we not been in this situation. That was what I—

Hon. Tony Clement: Well, you're a genius and I'm not, I guess, so thank you very much.

This is what happens when we are voting at 7:50, by the way. We are all getting a little short. I don't need to take this kind of abuse from you, thank you very much.

Is there anything else you want to say? No. Okay.

I will move that we have another vote on clause 16, if it pleases the chair.

The Chair: I need unanimous consent to have a vote on clause 16.

Mr. Nicola Di Iorio: I oppose.

● (1950)

The Chair: All right, do you want to close now?

An hon. member: I was offering to vote for it.

Hon. Tony Clement: Chair, in this confused state, I move adjournment. We'll carry on with it on Thursday.

The Chair: It's a valid motion.

(Motion agreed to)

The Chair: The meeting is adjourned.