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Chair

The Honourable John McKay

Standing Committee on Public Safety and National Security

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● (1530)

[*English*]

The Chair (Hon. John McKay (Scarborough—Guildwood, Lib.)): Ladies and gentlemen, let's get started. By the powers vested in me, I see that it is 3:30. The power of the chair is amazing.

(On clause 50)

My notes tell me that we left off at LIB-17.

[*Translation*]

Mr. Paul-Hus, the floor is yours.

Mr. Pierre Paul-Hus (Charlesbourg—Haute-Saint-Charles, CPC): Mr. Chair, in light of what happened today in Toronto, I would ask that we observe a minute of silence in memory of the victims.

[*English*]

The Chair: Is there consensus on that?

[*A moment of silence observed*]

The Chair: Thank you, Mr. Paul-Hus, for that suggestion.

Mr. Spengemann.

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): Chair, thank you very much.

Liberal amendments 17 and 18 go together. In fact, they go back to the theme of amendments 1, 9, and 10 from the Liberal side. Colleagues will recall that these have to do with the employment mobility of employees of the various offices and the security intelligence establishments. The logic is that the Public Service Employment Act, PSEA, should be the legislation that addresses these mobility rights.

The rights are substantively unchanged, but technical amendments are required to remove parallel prohibitions from the various pieces of legislation in front of us or embodied in Bill C-59. This one deals with the office of the intelligence commissioner, and section 9 of that act is going to be removed entirely in amendment LIB-18. LIB-17 renders the entire PSEA applicable to employees of the office of the intelligence commissioner, removing the exemption that existed previously.

Again, these are technical amendments, substance unchanged, rendering the PSEA applicable to the entirety of the provisions with respect to mobility of employees into and out of the office of the intelligence commissioner.

The Chair: Thank you, Mr. Spengemann.

Is there any debate?

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

The Chair: On LIB-18, Mr. Spengemann.

Mr. Sven Spengemann: Mr. Chair, it's the very same thing. LIB-18 is the amendment that removes section 9 from the intelligence commissioner act, thereby rendering the PSEA applicable to employees of this office.

The Chair: Is there any debate?

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

The Chair: On NDP-17, Mr. Dubé.

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

This is an amendment that seeks, after testimony we heard both from the Citizen Lab and the International Civil Liberties Monitoring Group, to give more powers to the intelligence commissioner to allow him to rule on the legality, reasonable necessity, and proportionality of any activities undertaken by CSE.

Once again, it gives order-making powers. Given the real-time oversights that the office will have again, I think it should be more than a rubber stamp or a yes or no and have some meat on the bones, and that's what this amendment seeks to do.

The Chair: Thank you, Mr. Dubé.

Is there any debate?

Mr. Picard.

[*Translation*]

Mr. Michel Picard (Montarville, Lib.): We are opposed to amendment NDP-17, given that the mandate is already in place for the National Security and Intelligence Review Agency and the National Security Intelligence Committee of Parliamentarians. The powers granted to the commissioner would be stronger outside the mandate that is intended for him.

[*English*]

The Chair: Mr. Motz.

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): Could the officials comment on whether this is in line with the current role of the commissioner in his responsibility?

● (1535)

The Chair: Mr. Davies.

Mr. John Davies (Director General, National Security Policy, Department of Public Safety and Emergency Preparedness): The amendment would not be in line with the mandate of the intelligence commissioner. The mandate of the intelligence commissioner is really to make determinations on reasonableness of ministerial authorizations, and not about review, looking at lawfulness, relative ministerial direction, and legislated authority. You have the national security intelligence review agency and the National Security Intelligence Committee of Parliamentarians, and their mandate is review.

The Chair: Mr. Motz.

Mr. Glen Motz: This certainly changes the nature of the role of the commissioner.

Mr. John Davies: Fundamentally, yes.

Mr. Glen Motz: The minister needs to be responsible, like you said, and not the commissioner.

Mr. John Davies: Yes.

Mr. Glen Motz: Okay.

The Chair: Seeing no debate, I will call the question.

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

The Chair: On NDP-18, Mr. Dubé.

Mr. Matthew Dubé: Thank you, Chair.

Amendment NDP-18 seeks to have the commissioner again undertake reviewing the conclusions that the minister has reached due to the accountability mechanism, and adds that the minister can only provide authorization after the intelligence commissioner has concluded there are reasonable grounds to believe the relevant criteria have been met for cyber operations.

Again, it's adding more meat on the bone and ensuring that we're not giving a blanket rubber stamp to activities that the minister is authorizing.

The Chair: Is there any debate?

Monsieur Picard.

[*Translation*]

Mr. Michel Picard: The bill already provides for a review by the National Security Intelligence Committee of Parliamentarians on CSE's activities. So I don't see the need to add others.

[*English*]

The Chair: Mr. Dubé.

Mr. Matthew Dubé: Mr. Chair, for the record, it seems pretty clear that we've decided we've done something that's never been done before with having real-time oversight and that we have it perfect on the first try.

I'm not sensing very much openness.

The Chair: Is there further debate?

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

The Chair: On NDP-19, Mr. Dubé.

Mr. Matthew Dubé: This amendment seeks to allow the intelligence commissioner to impose his or her own additional conditions on top of what is already prescribed by the bill before us in order for the ministerial authorization to be valid. It's pretty straightforward. It's fair in the context, again of real-time oversight, that sometimes there may be conditions that are required beyond the scope of what's presented in the bill. I think this is an important thing. For those who might be concerned about the notion that we're binding the commissioner, it is specifying this is something that the commissioner may do.

I also want to mention that this is something that was proposed by the International Civil Liberties Monitoring Group; the Canadian Civil Liberties Association; Jean-Pierre Plouffe, who is the current CSE commissioner; the Canadian Bar Association; and Citizen Lab. Clearly, there is a lot of support for this specific amendment.

The Chair: Monsieur Picard.

[*Translation*]

Mr. Michel Picard: The commissioner's role is to carry out a review; a more invasive measure would go against his mandate.

[*English*]

The Chair: Mr. Motz.

Mr. Glen Motz: If I'm hearing correctly, it would seem to be the suggestion of this NDP-19 that we're going to have the commissioner in charge so we really don't need a minister. That's how it appears, unless I'm missing something.

The Chair: Mr. Dubé.

Mr. Matthew Dubé: The authorization in the amendment is a ministerial authorization, so the minister still has responsibility to issue those authorizations.

The Chair: Is there any further debate?

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

The Chair: On PV-3, Ms. May.

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

I'm aware—and I don't know how you'd like to handle this—that my two amendments, Green Party 3 and Green Party 4, if they were to pass, would basically, in one motion, be the same as LIB-19 that Julie Dabrusin has brought forward. Julie and I had a little chat about this in the last session.

I know we're moving rather slowly through this. I'm in your hands. If you want to remove Green Party 3 and 4, and in preference just work on Liberal-19, that might be efficient. As a non-member of the committee, I want you to know that I'm dedicated to your efficiency.

● (1540)

The Chair: I wish the members were as dedicated to my efficiency as the non-members are. Thank you, Ms. May.

The ruling had been that PV-3 and LIB-19 were identical, but LIB-19 has a secondary clause. By passing LIB-19, you actually get PV-3.

Ms. Elizabeth May: And PV-4.

The Chair: Yes, and PV-4. The chair is always interested in efficiencies, so if that suits the committee, PV-3 and PV-4 are withdrawn, and we will move to debate on LIB-19. Is that fine with everyone?

Some hon. members: Agreed.

(Amendments withdrawn [See *Minutes of Proceedings*])

The Chair: On LIB-19, we have Ms. Dabrusin.

Ms. Julie Dabrusin (Toronto—Danforth, Lib.): I would like to thank Ms. May for talking to the same point, which is that the commissioner should be providing reasons not only when a decision is made in the negative but also when there is an affirming decision. That way, we have a record of what the subject was and the reasons why approval or consent was given. I would suggest that this is an addition that performs very well, and I am very happy that it goes well with the Green Party amendments.

I should add, by the way, that when the witnesses came forward they specifically said that this would not be an onerous addition as far as the responsibilities go.

The Chair: Is there any debate?

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

The Chair: The requisite PV-3 and PV-4 changes will be made.

On LIB-20, we have Monsieur Picard.

Mr. Michel Picard: I would like to withdraw my amendment, please.

The Chair: Thank you, Mr. Picard.

LIB-20 is withdrawn. I tend to think that Ms. May's speech has had some effect on committee members.

Next is NDP-20.

[*Translation*]

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

The purpose of the amendment is to allow the commissioner to request additional information rather than settling for a "yes" or a "no" basically. That could go both ways. It actually could be a "no" if the additional information showed that, at the end of the day, it is not appropriate to undertake the activities that the minister authorized.

Conversely, if the "no" is because of lack of information, the commissioner could ask for additional information that would reassure him and would allow the activity that the minister authorized to take place. Let me remind you that this amendment was suggested by Jean-Pierre Plouffe, the current CSE commissioner.

[*English*]

The Chair: Thank you, Mr. Dubé.

Debate?

Mr. Calkins.

Mr. Blaine Calkins (Red Deer—Lacombe, CPC): Thank you, Chair. Through you to our officials, notwithstanding the arguments that Mr. Dubé just made, is there any reason to suspect that if the legislation passes without this amendment the commissioner wouldn't be able to do what's being laid out here?

Mr. John Davies: No, none at all. I guess if the commissioner did not feel that he or she had the right information or needed more information, they would just reject the authorization and send it back to the minister with reasons. Given that, the minister could make a new decision in light of that. In that sense, it's akin to judicial review.

Mr. Blaine Calkins: Okay.

The Chair: Mr. Motz.

Mr. Glen Motz: To the officials, Mr. Chair, there's nothing, then, currently in the act that would prevent the commissioner from requesting additional information?

Mr. John Davies: The act is specific. If the intelligence commissioner rejects the decision, he or she will give the reasons why so the minister will know why it was rejected and have the opportunity to resubmit.

Perhaps the other issue with the drafting here is that there's no flexibility, in the sense that the commissioner "must" request information in all cases. There's no option on that.

● (1545)

The Chair: Mr. Spengemann.

Mr. Sven Spengemann: Mr. Chair, I'll be brief because the point has essentially been made by Mr. Davies. The commissioner has a binary decision in front of her or him, which is to accept or reject the decision. If the commissioner is compelled to do additional new research, then you risk having her or his responsibility sliding into that of the minister. I would echo what Mr. Davies said on that point.

The Chair: Mr. Dubé.

Mr. Matthew Dubé: Chair, I'm just wondering about this. The word "must" was being evoked as the one that gave no flexibility, and perhaps the officials can guide me here, but my reading of the bill is that with this amendment there are three options. There are currently two options. It says:

> ...the Commissioner, in a written decision,
> (a) must approve the authorization...; or
> (b) must not approve....

Those things obviously can't happen at the same time, so I don't see what harm there is in adding a third option saying "or can go back for information".

To the point that was made following the questions from my Conservative colleagues, I'm wondering if, for the sake of efficiency with real-time oversight, it is not more efficient for the commissioner to be able to ask for that additional information, rather than to say no and send it back to the minister. While this whole ping-pong is going on, national security is at play and, on the other side of the coin, potentially peoples' rights as well.

The Chair: Is there further debate?

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

The Chair: We've dealt with PV-4.

We're on CPC-16.

[*Translation*]

Mr. Pierre Paul-Hus: Amendment CPC-16 asks that the commissioner provide the decision to the person whose conclusions are being reviewed within 24 hours.

We ask that the 30 days proposed in the bill be replaced with 24 hours. We want it to be fast, because national security issues require intervention in real time and we don't have the privilege or luxury to wait 30 days to receive a decision.

Raymond Boisvert and a number of other experts have said that the time frame is paramount when making decisions related to security. That is why we are asking that the decision be made within 24 hours. I would like to know what the experts before us think so that I can figure out if it makes sense.

Mr. Davies, what do you think?

[*English*]

The Chair: You've introduced it. We will now call for debate. Members have precedence over witnesses.

Mr. Sven Spengemann: I'll defer to Mr. Davies.

The Chair: Mr. Davies again.

Mr. John Davies: This part of the act was reported exactly from the National Defence Act that dealt with the office of the CSE commissioner, where 30 days was the limit, or "as practical" is the wording. For the most part, the intelligence commissioner will be looking at authorizations that are on an annual basis, so there's going to be a natural cycle. The concern with 24 hours is that you're giving a lot of information to that commissioner. You wouldn't want that commissioner to be rushed and to make decisions on an artificial timeline. Thirty days is seen as a better time to process that information.

On the dataset issue in particular, there is a provision in Bill C-59 to allow for decisions to be made more quickly, or "as feasible".

The Chair: Mr. Spengemann, do you want to speak to this?

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

Mr. Davies' last point gives me comfort. My concern was that it's a 24-hour requirement regardless of whether the decision is needed or is urgent. It's a heavy, onerous requirement and may actually rush the commissioner. The calibration that was pointed out is adequate to instill that protection: that if there is an urgent decision, it will be taken quickly.

The Chair: Mr. Motz.

Mr. Glen Motz: I have two questions for the officials.

As witnesses today, do any of you have any experience in real-time national security protocols?

Mr. Scott Millar (Director General, Strategic Policy, Planning and Partnerships, Communications Security Establishment): The ministerial authorizations under which we operate now do not cover specific lines of inquiry, but actually cover our complete intelligence collection program. Should the annual authorizations lapse, the whole program shuts down. The ministerial authorizations give comfort and meet the test for the minister that what we're doing is reasonable and proportionate, lines up with charter requirements, and that what we're collecting is essential. It allows for the seamless, ongoing operational space by virtue of those authorizations. I just wanted to clarify that. From a CSE perspective, those authorizations allow us to conduct different types of operations as long we're within the ambit of a charter-resilient and complete ministerial program.

● (1550)

Mr. Glen Motz: Has anything changed in the National Defence Act? Has anything changed in the environment since the National Defence Act was written?

Mr. John Davies: The intelligence commissioner is switching the role from review to more oversight, as making decisions on reasonableness.

As my colleague said, the authorizations brought to the minister have an annual cycle, for the most part. You need to be careful of putting artificial deadlines on how much of a rush needs to be put on those authorizations. It may compromise the due diligence and the ability of the commissioner to respond effectively and make observations for the minister.

Mr. Glen Motz: When was the DND act written?

Mr. Scott Millar: This provision of the National Defence Act was inserted in 2001.

Mr. Glen Motz: Certainly our national and international risk on national security has changed. Does it seem reasonable that what was provided before is no longer the best for national security? Maybe we need to tighten it up, shorten it up, and deal with it in a more timely manner?

Mr. Scott Millar: I could add, though, that under Bill C-59 there is this provision that's been added in there in terms of an emergency authorization. If there is a new threat that emerges and there is not the time necessary or available to get the intelligence commissioner to review the minister's decision, we could still proceed under that emergency authorization. It would only be valid for five days, though. Then, if anything continued beyond that, it would require the review of the intelligence commissioner. That has been worked in there to deal with an emergency situation.

The Chair: Mr. Paul-Hus.

[*Translation*]

Mr. Pierre Paul-Hus: I'm trying to understand.

I imagine that the intelligence commissioner will be informed daily or a number of times per week. We feel that 30 days is a long time to make a decision since, technically, he has already been informed.

Could you tell me what the connection with the National Defence Act is when we are talking about the intelligence commissioner. Why did you start by making a connection with National Defence?

[*English*]

Mr. John Davies: I was just making the point that the National Defence Act has a 30-day time limit for the existing commissioner to respond to the authorizations of the CSE. That's pretty much the approach that was adopted for Bill C-59 for the intelligence commissioner. When you look at the duties and functions of the intelligence commissioner as expressed in clauses 13 to 20 of the proposed intelligence commissioner act, for the most part it's not going to be necessarily a rush or urgent. The issue that may be urgent is with regard to querying datasets, and you'll see in clause 19 and proposed paragraph 21(3)(a) that there are provisions for "as soon as feasible".

The Chair: Mr. Calkins.

Mr. Blaine Calkins: For lack of a better word, Mr. Millar, I'll use exigent circumstances for the five-day period, in the sense that where you have exigent circumstances, you can proceed up to five days without an authorization. Is this correct? If the clause in this piece of legislation isn't changed in the way we are asking for—for a 24-hour mandatory period—what comfort can any of you give me that something will be turned around it if needs to continue on beyond the five days? I just want to make sure that those dots can connect clearly within the legislative framework if this isn't accepted.

● (1555)

Mr. Scott Millar: There are a couple of things. One that is also worked into Bill C-59 is the element of urgent circumstances. If there's risk to life, you can proceed without ministerial authorization. The clarification that I want to provide, though, is that even with the emergency authorizations, all the tests for ministerial authorization still do have to be met before the minister approves. There just isn't that additional level of the intelligence commissioner reviewing that authorization if not available to do so—so if we just have to move quickly. There still is the element of urgent circumstances without a ministerial authorization. That's a separate kind of thing.

Mr. Blaine Calkins: But everybody here agrees that five days is a lot shorter than 30 days.

Mr. Scott Millar: Five is shorter than 30. It's been worked in, though, to provide five days to undertake those activities and to connect with the intelligence commissioner or, if it needs to proceed beyond the five days, to have that ministerial authorization reviewed by the commissioner to then make that an ongoing thing. That's how it's designed.

The Chair: Mr. Motz.

Mr. Glen Motz: This goes back to a point that we talked about last week: whether full time or part time, and the responsibilities the commissioner has. If his work is so critical and if he's going to be this busy, why aren't we still going back to consider that he should be full time, and why aren't we leaving that option even open?

Mr. John Davies: In terms of how busy, again, I just go back to the duties and functions. Again, clauses 13 to 20 of the proposed intelligence commissioner act go through all the decisions on reasonableness that the commissioner will be expected to make throughout the year. It's not at all clear that this would necessarily mean every day or every week or so on. A lot of these authorizations are done more on an annual basis and so on. In terms of the querying of datasets, the frequency that the commissioner would need to be, perhaps, ready to go in terms of making quick decisions.... It's not clear at all that this would be that often either. I think the main point is that 24 hours would be really tight for any position like this to consider all the angles in order to make a good decision on the minister's decision.

The Chair: Is there further debate?

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

The Chair: On amendment LIB-21, Mr. Picard.

[*Translation*]

Mr. Michel Picard: In a desire for the transparency of information, the amendment proposes that an annual report be produced for Parliament specifically containing statistics.

[*English*]

The Chair: Is there debate?

Mr. Dubé.

[*Translation*]

Mr. Matthew Dubé: Mr. Chair, I support the amendment, since I consider that preparing more reports is always a good thing.

However, I would like to clarify that the report would be submitted first to the Prime Minister, who will have the right of censorship on it. Perhaps we should think twice, given that parliamentarians will not necessarily know all the facts.

[*English*]

The Chair: Is there any other debate?

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

The Chair: On amendment LIB-22, Mr. Fragiskatos.

Mr. Peter Fragiskatos (London North Centre, Lib.): Thank you, Mr. Chair.

This amendment would clarify that the intelligence commissioner can receive information when evaluating ministerial decisions, subject to a privilege under the law of evidence. It seeks to address in particular any ambiguity relating to privileges under the law of evidence that would be posed by Bill C-58.

The Chair: Is there debate?

Mr. Motz.

Mr. Glen Motz: Although I am supportive of this, I want to hear from our officials on any implications this might have or any positive or negative impact.

Mr. John Davies: Again, as we went through with NSIRA, this is just a draft, and we do not quote the exact phrasing used in the CSIS Act in particular, which made it clear that the review bodies would have access to common law privileged information. It was left out. It was inadvertent. We don't want any confusion with that.

● (1600)

The Chair: There is no further debate.

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

The Chair: My goodness, it's unanimous.

LIB-23 was withdrawn.

On amendment LIB-24, Mr. Fragiskatos.

Mr. Peter Fragiskatos: This is almost exactly the same as amendment LIB-22, however this applies to CSIS and CSE and, as I said before, it deals with any potential ambiguity that Bill C-58 brings into play. It addresses a drafting error, as the official mentioned.

The Chair: Mr. Motz.

Mr. Glen Motz: I'm curious. Did the officials identify these issues when it was first drafted, which is one of the reasons it came to committee before second reading?

Mr. John Davies: It was post-tabling, maybe, as we changed the French side on the NSIRA act. You will recall there was a discussion on ”and” and *et* and *mais*, and it was changed to “*et*” and “*et*” so for consistency you may want to—

Mr. Peter Fragiskatos: That relates to something I also wanted to raise, Mr. Chair, which is the potential for a subamendment to deal with the French. I wonder whether we could include the word “*et*”. I think it might make more sense.

The Chair: That way we'll have to vote on the subamendment before we vote on the amendment.

You're going to have to get some colleague to move the subamendment, Mr. Fragiskatos, and I see the enthusiasm.

Ms. Dabrusin.

Ms. Julie Dabrusin: I move the subamendment that we add the word “*et*” into this, located exactly....

The Chair: It replaces “*mais*”.

Mr. Peter Fragiskatos: It would be between the words “*preuve*” and “*sous*”.

Ms. Julie Dabrusin: It is between “*preuve*” and “*sous*”.

The Chair: Yes.

Mr. Matthew Dubé: Is it replacing the word “*mais*” in between?

The Chair: That's what I thought it was.

Mr. Matthew Dubé: I don't know. I didn't know if that was it, or if we were just adding in....

Ms. Julie Dabrusin: No, sorry. It's replacing the word “*mais*” with “*et*“.

[*Translation*]

The Chair: So it's “*de la preuve et sous réserve*”.

[*English*]

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

The Chair: Now we have debate on LIB-24 as amended.

Mr. Motz.

Mr. Glen Motz: Was this also considered to be a drafting error?

Okay.

The Chair: Is there any further debate?

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

The Chair: On NDP-21, Mr. Dubé.

[*Translation*]

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

This report would be provided by the commissioner and submitted to Parliament by the minister, as in the amendment proposed by Mr. Picard. Once again, the goal is to have an accountability mechanism in Parliament. Such a mechanism will help us find out the number of interventions and authorizations granted and have a picture of the work that the commissioner does.

[*English*]

The Chair: Mr. Picard.

[*Translation*]

Mr. Michel Picard: Personally, I much prefer amendment LIB-21.

On a more serious note, there is no mechanism to avoid the publication of confidential information. As a precaution, I will vote against it, since amendment LIB-21 is along the same lines.

[*English*]

The Chair: Mr. Paul-Hus.

[*Translation*]

Mr. Pierre Paul-Hus: Thank you, Mr. Chair.

I would like to hear what the officials have to say. We will discuss amendment CPC-17 after amendment NDP-21. Can they tell us whether they see a major difference between those two amendments and, if so, what the difference is?

● (1605)

[*English*]

Mr. John Davies: As mentioned, LIB-21 includes the provision to net out classified information. That would be clear in law. That's not as clear with NDP-21 or CPC-17. There would be no provision in law to net out classified information of the report. I would call that the main difference.

The Chair: Mr. Dubé.

Mr. Matthew Dubé: Would it not be understood that the commissioner would have the capacity in his functions...? In the drafting of the report, would it not be understood that the commissioner is not going to be divulging all this stuff, but simply statistics and things of that nature, the number of authorizations?

Mr. John Davies: Well, yes, you would hope. Obviously, with NSIRA, the NSICOP, and so on, a lot of that was made to legislate that netting out of classified information. You would want some consistency there with public reporting in that regard.

Mr. Matthew Dubé: Chair, if I may, as part of the debate on the amendment, I do want to state that it's disappointing that we would prefer having the Prime Minister's Office vet these reports than have faith in the commissioner's ability to do that job and to provide the information to parliamentarians.

The Chair: Is there further debate?

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

The Chair: On CPC-17, we have Mr. Paul-Hus.

[*Translation*]

Mr. Pierre Paul-Hus: I feel the same way as my NDP colleague. You are saying that amendment LIB-21 is more robust, but it allows information to be controlled at the same time.

In a nutshell, our amendment lacks substance. Is that the explanation I'm hearing?

[*English*]

The Chair: I think Mr. Davies responded earlier, but I'm sure there's nothing like repetition to improve the point.

Mr. John Davies: Same issue as the last amendment. There's no direct provision in law to net out classified information.

The Chair: Any further debate?

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

The Chair: On LIB-25, Ms. Damoff.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): I'm going to withdraw this amendment, because it's similar to LIB-21, which my colleague, Mr. Picard, introduced in my absence. It deals with the report of the commissioner.

The Chair: Monsieur Dubé, you want to debate the withdrawal?

Mr. Matthew Dubé: No, I was wondering if I could move it, because I find it is different than LIB-21. If it wasn't, you would have ruled it out of order.

The Chair: That's unusual, but apparently you can move LIB-25.

Mr. Matthew Dubé: I'll move this, because a report to Parliament from the commissioner detailing his activities—in this case even better than my amendment—and making recommendations for updates to the act is a great idea.

The Chair: Any further debate on the amendment that's been withdrawn, and now moved by Mr. Dubé?

Mr. Calkins.

Mr. Blaine Calkins: Mr. Chair, I'll be happy to vote for the Liberal amendment that I think the Liberals are going to vote against.

The Chair: I'm sure you want a recorded vote as well.

Any further debate?

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

● (1610)

The Chair: Mr. Picard has withdrawn LIB-26.

Mr. Dubé.

Mr. Matthew Dubé: I will move it from the floor as well for the same reason as the previous one.

The Chair: Is there any debate?

[*Translation*]

Mr. Pierre Paul-Hus: Could we have a recorded vote, please?

[*English*]

The Chair: We will have recorded vote.

(Amendment negatived: nays 5; yeas 4 [See *Minutes of Proceedings*])

The Chair: It's amazing how the opposition is more in favour of government than government is of itself.

Those are all the amendments to clause 50.

(Clause 50 as amended agreed to)

The Chair: There are no amendments to clauses 51 through 60. May I group them for one vote?

Some hon. members: Agreed.

(Clauses 51 to 60 inclusive agreed to)

The Chair: The next amendment is CPC-18.

Mr. Motz.

Mr. Glen Motz: I'll just review this amendment. We heard about this quite extensively throughout the entire testimony from a number of individuals, Mr. Fadden, Mr. Boisvert, and others. They spoke of the issue between intel and evidence, and how we navigate that particular challenge. In the language being proposed in clause 60.1, you'll see that we're talking about appointing "a special advocate from among the persons on the list established by the Minister of Justice under subsection 85(1) of the Immigration and Refugee Protection Act", and then in subclause 60.1(2) we amend section 38.04 of the Canada Evidence Act, with, "A special advocate's role is to protect the interests of a participant in a proceeding".

The intel to evidence amends section 38 to allow trial judges, and not just special Federal Court judges, to review intelligence where it is in the best interests of justice to determine admissibility. As I said previously, we've had this issue raised by a number of people regarding the barrier of information to prosecution without compromising intelligence and the agreements for information sharing. It was recommended in the national framework discussion but not included—for some reason—in Bill C-59. Mr. Picard, I'm sure, given one of his responsibilities in his past life, would appreciate that there are times when there is important intelligence for an ongoing criminal investigation, and there are those in the intelligence community who would hesitate to have that intelligence shared because they currently have an operative who might be compromised or an entire operation that might be compromised with the release of it. We had talked at length at committee about how we bridge that gap, how we ensure, in cases where we need to prosecute someone criminally, that we can provide information without jeopardizing their rights to full answer and defence, as well as protect issues of national security or ongoing operations or things like that. This language is intended to fill that gap.

Mr. Fadden was one of those who were quite adamant about the gap in previous legislation, not just Bill C-59 as it's written, but previous ones. It's something we have to fix. I think it will help us identify some of the issues we've had with ongoing terrorist threats, potentially on returning ISIS terrorists, or ongoing threats we have locally, and we can provide an opportunity to pursue criminal charges. The idea would be that the trial judge, who in this case wouldn't necessarily be a Federal Court judge, would have access to information through a special advocate who would be available to the defence, without disclosing the information to the accused. That's the whole intent behind this: it doesn't prevent lawful prosecutions and it doesn't negatively impact ongoing operations. They can continue. That's the basis of this amendment.

● (1615)

The Chair: Thank you.

Mr. Dubé.

Mr. Matthew Dubé: I'm seeking some clarity because the issue of special advocates will come up again. I'm just wondering, for this amendment and its specific context, whether it's with regard to all activities in this bill.

The Chair: Are you directing that to the officials or to Mr. Motz?

Mr. Matthew Dubé: Whoever can best answer.

The Chair: Let's try Mr. Motz, and then we'll go with the officials.

Mr. Glen Motz: The way it was intended for this application, for this amendment, was specific to criminal charges that have been laid, or could be laid, but might not be because doing so could compromise national security or ongoing operations or an operative or whatever. Sometimes charges aren't pursued because of that. It's the introduction of the evidence that we're trying to get in. Some of that intel, which could be admissible, is not entered for fear of disclosure and things of that nature. I would certainly defer to our legal team, as well as to officials, if the language is unclear, but just to clarify the intent.

The Chair: Mr. Dubé, are you satisfied with that answer or do you want officials to respond?

Mr. Matthew Dubé: Perhaps, because I'm not clear what the interplay is with any upcoming amendments that deal with special advocates further down the road on the study of the bill.

Mr. Peter Fragiskatos: Mr. Chair, before we hear from the officials, I wonder if I could just intervene.

With all due respect to my colleague, in fact, I don't believe the amendment to be in order, because it has nothing to do with part 2 of the bill. I think there are further technical issues that arise relating to friends of the court, which perhaps Mr. Davies could speak to as well.

Mr. John Davies: I'll defer to my Justice colleague.

Mr. Douglas Breithaupt (Director and General Counsel, Criminal Law Policy Section, Department of Justice): Thank you. Yes, this particular motion to amend would seek to insert special advocates in the section 38 proceedings alone. It is the current practice of the Federal Court to appoint an amicus curiae, a friend of the court, as appropriate, to assist the court in section 38 proceedings, and they're tasked in these proceedings to perform a role, as dictated by the judge, to ensure fair proceedings.

In current practice, the amici curiae are often chosen from the list of special advocates maintained by the Minister of Justice. Current practice allows for a degree of flexibility to meet the needs of each particular case. In respect of this particular amendment, technically speaking, the wording comes from the Immigration and Refugee Protection Act, and it's used to seek to amend section 38 of the Canada Evidence Act. Section 38 proceedings rule on the national security privilege, and the extent, if any, to which sensitive or potentially injurious information as defined under section 38 is to be disclosed in the underlying proceedings. In the Immigration and Refugee Protection Act context, the special advocate's role is played in the main proceeding, so submissions as to the weight given to the information or evidence would be decided by the person presiding in the underlying or main proceeding and not by a designated judge of the Federal Court in a section 38 proceeding.

To summarize, amici curiae are appointed by the Federal Court to play a role to assist them in ensuring fairness in section 38 proceedings. They provide a degree of flexibility to meet the needs of each particular case.

I hope that provides some assistance to members.

● (1620)

The Chair: Just before I ask for further debate or put the question, I want to speak to Mr. Fragiskatos' issue as to whether this is in order. It's the ruling of the chair that it is in order, that, possibly, arguments are going to be much stronger as a referral after second reading, but after first reading there's very little that's out of order, shall we say. So in this case, it is in order.

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

The Chair: We are on CPC-19.

Mr. Motz.

Mr. Glen Motz: This is in line with CPC-18, for the same reasons, and it applies to section 38 of the Canada Evidence Act.

The Chair: Mr. Fragiskatos.

Mr. Peter Fragiskatos: I am concerned that the amendment seeks to grant powers of a judge of the Federal Court to someone who might not be a judge. I wonder if one of the officials could speak to that, or any other related technical issues that they have potentially identified.

Mr. Douglas Breithaupt: Currently only designated judges of the Federal Court, and not the adjudicator presiding over the underlying proceeding, may conduct proceedings under section 38 of the Canada Evidence Act.

This issue speaks to the larger issue of bifurcation or non-bifurcation of such proceedings, which is quite complex. There may be an underlying proceeding with the power to compel the production of information where section 38 comes into play, which is not conducted by a judge, as was mentioned. This amendment would purport to invest those persons, such as administrative tribunal members, with the powers of a Federal Court judge under section 38, if they choose to conduct section 38 proceedings.

This would be a radical departure from the current regime, which restricts section 38 decision-making not only to judges, but to designated judges of the Federal Court.

The Chair: Thank you.

Is there any further debate?

Those in favour of CPC-19?

Mr. Glen Motz: I have one question.

The Chair: I think you've missed your window.

Mr. Glen Motz: I did.

The Chair: Those opposed?

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

The Chair: We have no further amendments between clauses 61 to 72. May I group them for the purposes of the vote?

Those in favour of clauses 61—

[*Translation*]

Mr. Pierre Paul-Hus: Could we have one vote per clause?

[*English*]

The Chair: Do you want it clause by clause just for the fun of it? Okay.

Shall clause 61 carry?

(Clause 61 agreed to)

The Chair: Shall clause 62 carry?

(Clause 62 agreed to)

The Chair: Shall clause—

Sorry?

Mr. Pierre Paul-Hus: I want a recorded vote.

The Chair: You want a recorded vote? That's what I asked you, if you wanted a recorded vote.

Mr. Pierre Paul-Hus: The translation—

The Chair: I apologize.

A recorded vote for clauses 63 through 72, correct? Okay.

We've grouped clauses 63 through 72, but we're voting on a recorded vote.

(Clauses 63 to 72 inclusive agreed to: yeas, 6 nays 3)

The Chair: We are on clause 73, but NDP-9.2 was defeated. Is that correct?

Shall clause 73, clause 74, and clause 75 carry?

(Clauses 73 to 75 inclusive agreed to)

(On clause 76)

The Chair: Now on to clause 76, which brings us to NDP-22.

Mr. Dubé.

● (1625)

[*Translation*]

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

This exercise may seem symbolic, but it is extremely important, especially in light of the Canadian Bar Association's suggestion to explicitly include in the preamble to part 3, the restrictions related to any action that may be in violation of the Canadian Charter of Rights and Freedoms. This is a reminder of the importance of the establishment's actions, including the fact that it must act appropriately while honouring its responsibilities to Canadian society.

[*English*]

The Chair: Thank you, Mr. Dubé.

Ms. Dabrusin.

Ms. Julie Dabrusin: I think this is a great amendment. I'm happy to see it coming forth.

I've spoken to Mr. Dubé about this before, but the only thing was a suggested amendment to the wording, which would be, after line 27 on page 53, where we would replace the words, “exercise its powers and perform its duties and functions” with “carry out its activities”. That would make it more consistent with other legislation that we have in the CSE act. It's in the third paragraph of the proposed amendment, the third line down.

The Chair: Do you want to read that whole paragraph as you would propose it?

Ms. Julie Dabrusin: The whole paragraph as I would propose it would read:

> And whereas it is important that the communications security establishment carry out its activities in accordance with the rule of law and in a manner that respects the *Canadian Charter of Rights and Freedoms*;

The Chair: I just want to make sure that our clerk has that.

Do you have it? Is there a copy?

Ms. Julie Dabrusin: Not really.

The Chair: As Bismarck said, there are two things you shouldn't see in life: the making of sausages and the making of legislation.

I just want to make sure the clerk has it correctly.

For debate on the subamendment, we have Mr. Dubé and then Mr. Paul-Hus.

Mr. Matthew Dubé: I'm happy to support the amendment to clean up the language. As the public safety critic, I have a bit of tunnel vision. This is the wording that I propose was related to the CSIS Act. CSE is for, all intents and purposes for this committee and for my work as a critic, a relatively new thing. The wording being more in line with the CSE act is consistent, appropriate, and makes sense.

The Chair: Mr. Paul-Hus.

● (1630)

[*Translation*]

Mr. Pierre Paul-Hus: Could you tell me the wording in French, please?

I listened to the interpretation, but I want to make sure I have the exact information.

[*English*]

Mr. Matthew Dubé: Chair, I have the wording in French.

The Chair: Do you want to read it into the record for Mr. Paul-Hus and others?

Mr. Matthew Dubé: Of course.

[*Translation*]

We replace the words "*exerce ses attributions*" with "*mène ses activités*".

Mr. Pierre Paul-Hus: Okay. Thank you.

[*English*]

The Chair: Is there any further debate on the subamendment?

(Subamendment agreed to)

The Chair: Is there any debate on the amendment?

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

The Chair: It passed unanimously. Thank you.

We will see how much of a roll you're on here, Mr. Dubé. You're up next with NDP-23.

Mr. Matthew Dubé: My fingers are crossed that the unanimity continues to persist.

Thank you, Chair.

My amendment seeks to clarify what the word "intercept" means in the CSE act, to give it the same definition as in part VI of the Criminal Code. This is a recommendation from Citizen Lab following the fact that there is no set definition. We've seen some debate with foreign intelligence agencies arguing what is or isn't part of this activity of intercepting. Since we already have a definition in the Criminal Code, my amendment seeks to match that up and be consistent with an already existing definition in Canadian law.

The Chair: Mr. Fragiskatos.

Mr. Peter Fragiskatos: I won't make a joke about lottery tickets, but I don't think it's necessary to go down this road. In clause 51 the bill already states that part VI of the Criminal Code does not apply to the interception of private communications under ministerial authorization.

On top of that, where the CSE act uses the term in reference to information sharing in clause 45, that section already refers back to the definition of private communications in the Criminal Code.

The Chair: Thank you, Mr. Fragiskatos.

Is there other debate?

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

The Chair: So much for that harmony.

We'll turn to PV-5.

Ms. May.

Ms. Elizabeth May: Thank you, Chair.

We're moving to the area, and I know there's another grouping of amendments dealing with this issue of what to do about publicly available information. What we have on this in the language of the bill is found at page 55, which is that "publicly available information means information that has been published or broadcast for public consumption, is accessible to the public on the global information infrastructure or otherwise or is available to the public on request, by subscription or by purchase".

I think members will remember quite clearly that we had testimony from the Canadian Civil Liberties Association, the Canadian Bar Association Jean-Pierre Plouffe, commissioner for Communications Security Establishment, as well as Daniel Therrien as Privacy Commissioner, that the definition in the act is overly broad and doesn't attend to the concerns of information that might be publicly available and thus meet the definition, but is only publicly available because it was obtained illegally or was otherwise purchased in ways that violate the privacy of Canadians.

My amendment attempts, as you can see, by amending it to say with the preventative clause, "It does not include information that has been published or broadcast only to a selected audience or information that has been purchased illegally".

I know there are a number of similar amendments coming from both Liberals and the NDP, but I don't think they're exactly the same, so it will be up to this committee to decide whether the language I'm presenting covers things off adequately. I do think Mr. Dubé's amendment is also very strong, so it's really for the committee to find a way forward. As much as I know Pam Damoff's amendment tries to limit it to reasonable expectation of privacy, I don't think that's as strong, with all due respect. I don't think it covers off all the possible ways—and we're certainly much more aware of this than we used to be—that information about Canadians online can be mined. It's not really publicly available. There was no intention to make it publicly available or it was purchased in ways that allow it to be purchased or obtained illegally.

If you're not taking mine, I prefer Mr. Dubé's, but please take mine.

Thank you.

● (1635)

The Chair: Thank you, Ms. May.

Before I call on Mr. Dubé, it should be noted that if PV-5 passes, NDP-24 and LIB-27 cannot be moved.

Mr. Dubé.

Mr. Matthew Dubé: Chair, I can amend the...?

The Chair: Yes.

Mr. Matthew Dubé: With respect to my colleague, I would add as an amendment the last component of NDP-24, which also seeks to address the definition of publicly available information. It's my belief that the proposed wording that I have put forward is closest to what the B.C. Civil Liberties Association was recommending, so after “purchased illegally” on PV-5, we would add “or information in respect of which an individual has a reasonable expectation of privacy”.

The Chair: It's effectively the last three lines of your NDP-24.

Mr. Matthew Dubé: That's correct, which would make PV-5 identical, for all intents and purposes, to NDP-24.

The Chair: I believe that's in order, so first of all, we'll have debate on Mr. Dubé's subamendment to PV-5.

Mr. Fragiskatos.

Mr. Peter Fragiskatos: Thank you, Mr. Chair.

The concerns I've had with Ms. May's amendment and with Mr. Dubé's relate to undefined concepts and ambiguities that could be posed here as an unintended consequence. For example, what is meant by “selected audience”? Why is information "purchased illegally" excluded when information obtained illegally through other means is not?

On top of that, all of CSE's activities would also be subject to review by the proposed NSIRA and the National Security and Intelligence Committee of Parliamentarians.

The Chair: Thank you.

Mr. Dubé.

Mr. Matthew Dubé: On the point of information purchased illegally, it's simply seeking to add greater clarity, but when it comes to information that has been published or broadcast only to a selected audience, I think we have a great example in the news lately, which is Facebook. We heard officials from CSE confirm that the information obtained by firms like Cambridge Analytica would be included under the current definition of “publicly available information”. I think it's important to add that clarity to the definition.

A lot was made by officials—and we get to that later—of this concept of the reasonable expectation of privacy. Speaking to my subamendment, I think that's why it's important to have it as part of the definition. In this era of social media, when we're talking about information that could arguably be publicly available, but where the person had no intent of broadcasting it to a larger audience and then scooped up in the activities carried out under part 3 of the bill, it's pretty fair to say that, if we want to take the privacy of Canadians seriously, this is the type of robust definition that's required.

The Chair: Mr. Motz.

Mr. Glen Motz: I'd like to check with the officials on whether their opinion is that this would inhibit the ability of CSIS, CSE, and others to do their jobs. I guess in this particular case, it's CSE.

Mr. Scott Millar: I'm happy to speak to that.

I think it's important when looking at the “publicly available information” proposed amendments, as well as “a reasonable expectation of privacy”, to explain again the purpose of this provision.

First of all, we're not a domestic investigatory body. We don't build dossiers on Canadians. That's not within our mandate.

Second of all, this is meant to reflect the kind of information that we access now, reflect that transparently by way of legislation. The information that we access now in furtherance of our mandate is reviewed and reviewable by the current CSE commissioner—reviews as per privacy matters. It is not meant to broaden information that we have access to. It's basically to say that we will use information that's available to any Canadian, any other department or agency, parliamentary research or what have you, in the furtherance of our mandate.

That is there to provide clarity for those who will review us that when we're doing that kind of thing—looking at a CBC website or what have you—we are not directing our activities at Canadians. The justice charter statement around Bill C-59 makes it clear that this is information that has a low reasonable expectation of privacy. Any kind of information we would acquire that could interfere with the reasonable expectation of privacy would be done under our ministerial authorization, and that explicitly states we cannot direct those activities at Canadians.

Just to make it clear, this is not a way to broaden information; it's to reflect information that's out there that anyone can look at. When we're doing that, we're not directing that activity at a Canadian.

● (1640)

The Chair: Mr. Dubé.

Mr. Matthew Dubé: Perhaps just for the record as we debate the subamendment and the amendment, there are a few points that I again remain unconvinced on.

Proposed subsection 24(1) says that despite the subsections which lead to the prohibitions on obtaining Canadians' information.... Then, obviously we go to proposed paragraph 24(1)(a), which says “acquiring, using, analysing, retaining or disclosing”. The word “disclosing” is important, because the information-sharing regime, which has changed names from C-51 in the last Parliament, but which still remains in place, uses the word “disclosing”. When the minister appeared before our committee, he specifically said that disclosing was meant to narrow the amount of information that would be shared, under the previous wording, between departments.

I'm wondering, if you say “acquiring, using, analysing, retaining, or disclosing publicly available information”.... We've been down this rabbit hole a few times with this committee, and I'm understanding that I will no doubt lose my fight—I apologize for my cynicism—to fix that part of the bill.

In the meantime, I think the least we can do to protect Canadians' privacy is to have the most robust definition possible. I know, at least in my experience as part of this committee process—and I of course say that with all due respect to officials who come—the tendency is to be averse to change and robust definitions. Again, I say that with all due respect.

I want to perhaps go back to officials, because we're talking about the charter statement. I don't think the charter statement, or even the charter itself I dare say, would take into account some of the new realities that we're dealing with as parliamentarians, in particular the information such as the information obtained by firms like Cambridge Analytica.

I'm wondering if I can direct my question to Mr. Millar. It's the same question that I asked you last time in committee. Would that type of information from Facebook fall under the current definition, unamended, as was drafted in the bill and be obtainable as publicly available information?

Mr. Scott Millar: I can assure you that this definition, "publicly available information", would not allow us to acquire information that could interfere with the reasonable expectation of privacy of a Canadian, or anyone in Canada.

Mr. Matthew Dubé: How do we establish that? What's the test?

Chair, we've had months of talking about this, and there is uncertainty that I feel still exists around this. We can go back and forth again—and I appreciate the committee's indulgence—but I don't see a compelling argument on why you would not want to have a more robust definition.

I think when you compare what Ms. May is proposing, what I'm proposing, and then further on, the Liberal amendment, we're basically stating things that everyone keeps telling us are going to be done anyway. What harm is it in enshrining it properly in law? I do not for the life of me understand why that would be a problem, to enshrine principles that we say are going to be respected anyway and that are found in other places here and there when we start cherry-picking through the act.

The Chair: Ms. May.

Ms. Elizabeth May: Saying the charter statement protects.... I completely agree with Mr. Dubé. Many of these new areas are being litigated. The Supreme Court has confirmed that, for instance, certain cellphone conversations, electronic conversations, do have privacy protection under the charter.

As we go into new territory, we're going to be inviting legal challenges by not being very clear that we are not including in this information that has been published or broadcast only to a selected audience, or information that has been purchased illegally.

There can be no harm in having a confirmatory statement for clarity that would meet what Canadians expect. Frankly, having had the testimony from the Privacy Commissioner, Canadian Bar Association, and the Canadian Civil Liberties Association, they are concerned about the very same points raised by the NDP and Green Party.

I would love to see this section amended to better protect the privacy of Canadians, and ensure that publicly available information as a broad statement doesn't pick up things that we really don't believe should be publicly available information, either obtained illegally or only available to a specific, selected, particular audience.

● (1645)

The Chair: Mr. Dubé.

Mr. Matthew Dubé: Specificity is important in the context of these issues coming up in the digital world. Insofar as how consent is obtained by social media sites and so forth is rapidly changing concepts.

I understand the legislation needs to be nimble to that rapidly changing concept. I don't see anything in what either myself or Ms. May have proposed that would create some kind of unintended consequence down the road. The wording is vague enough when you look at things like the information that has been posted and broadcasted only to a selected audience. This can mean many things that you're not cutting it off.

Quite frankly, if anything, rejecting the amendments exacerbates the concerns that have been raised by many, including myself and Ms. May, over the course of the study of this bill.

If we don't want to have that in the definition, then what objective are we trying to achieve? I don't want to question anyone's intent, or the comportment of different agencies, so if everything is on the up and up as we're being reassured it is, then let's adopt wording that apparently meets the spirit of the law in the bill, as has been evoked by the other side.

I don't think there's any harm in doing that, if that's what everyone thinks is happening anyway.

The Chair: Any further debate? Seeing none, the first vote is on the subamendment, and then on PV-5.

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

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

The Chair: That would still leave NDP-24, but if NDP-24 is adopted, NDP-27 cannot be moved.

Mr. Dubé.

Mr. Matthew Dubé: Thank you, Chair. Before I forget, I would like a recorded vote on NDP-24, please.

[*Translation*]

I would just like to reiterate the following points.

Not only do I want to stress how disappointed I am with the rejection of the amendment and subamendment that my colleague from the Green Party and I have proposed, but I would also like to share my bewilderment about the rigidity of the definition. We are repeatedly being reassured that there is an intention behind the use of the data and the powers that we want to grant, but in what I heard about publicly available information, nothing in the definition I am proposing is contradicted by the testimony of the officials from the CSE or by what my Liberal colleagues want to see in their bill.

I leave the question open to Canadians. They are the ones who will have to put the question to the government and us, of course. If the purpose of the powers granted under clause 24 of part 3 of the bill is to do research, analyses and studies on Canada's information infrastructure, I cannot comprehend why we could not ensure that we have the most robust definition possible to protect Canadians' privacy.

[*English*]

The Chair: Is there any debate on NDP-24?

(Amendment negatived: nays 7; yeas 1 [See *Minutes of Proceedings*])

The Chair: We have LIB-27.

● (1650)

Ms. Pam Damoff: Thank you, Chair.

Similar to my colleagues with the Green Party and the NDP, this was something I asked when we had witnesses here about Canadians being caught up in the global infrastructure. This amendment ensures there's no information included around which a Canadian would have a reasonable expectation of privacy. I know we've had a fair amount of discussion about the other two amendments. I do think that what has been spoken about previously isn't encapsulated in the "reasonable expectation of privacy". I know the officials have said they're not doing this now, but I think this amendment captures the spirit of what Mr. Dubé and Ms. May were speaking about, and does ensure that Canadians know that their information won't be captured when officials may be looking at information in that global infrastructure.

The Chair: Thank you, Ms. Damoff.

Is there any debate?

Mr. Dubé.

[*Translation*]

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

I am going to support my colleague's amendment, by putting a lot of water in my wine.

That being said, I completely disagree: his amendment will not achieve the same objectives as Ms. May's amendment or mine. Clearly, since our amendments were rejected, we will have to make do with his today, which is better than nothing.

I would just like to draw your attention once again to Ms. May's argument, which I find extremely important. These issues are subject to many disputes in Canada and around the world. Reasonable privacy expectations have evolved tremendously, particularly in recent months.

When we draft a bill and propose amendments, I think we must bear in mind the possibility that the validity of any given definition may be challenged, especially in a rapidly changing context. That's what we have heard from many witnesses. The wording of the Green Party of Canada and the NDP amendments was the one that best matched what those witnesses recommended.

Mr. Chair, I conclude by reiterating that I am going to support this amendment because I would rather have what it proposes than no protection, but I think it is inadequate in the extreme.

[*English*]

The Chair: Mr. Motz.

Mr. Glen Motz: Mr. Chair, I'd like to have the officials weigh in, if they could, on providing us some context as to whether or not this amendment could have impact on the collection of intelligence.

The Chair: Mr. Millar.

Mr. Scott Millar: I'm looking at that in light of, as well, LIB-30, that looks at adding that expressed trigger around reasonable expectation of privacy, that element of when we acquire information, it could interfere with the expectation of privacy that would be included within the ministerial authorization. The only thing I would say there is that the spirit of clause 27 is certainly consistent with the charter statement around publicly available information being a low impact from a privacy perspective. I have no idea, as I'm not a legal expert, that by having that in the "publicly available information" definition, and should LIB-30 pass, whether having that in both places does an interpretation thing or not. But at the end of the day it does reflect the fact that this information has a low reasonable expectation of privacy, or that is the intent. Again, it's around ensuring the review agency will know that we are not directing our activities at Canadians when we do this stuff, so it won't really change the information collection side.

The Chair: Mr. Calkins is next.

● (1655)

Mr. Blaine Calkins: I have a question about the way the paragraph of the amendment is worded. It says "request, by subscription or by purchase. It does not include information in respect of which a Canadian or person in Canada has a reasonable expectation of privacy".

Normally reasonableness is a test or bar that is measured by somebody sitting in the judge's chair, not somebody who is sitting in the defendant's chair or anywhere else. Am I reading this correctly that it's a reasonable test in an individual Canadian's opinion? Or is it a reasonable test before the court?

Mr. Scott Millar: In terms of section 8, the charter speaks to the element of reasonable expectation of privacy. So there's that charter principle and requirement. Some elements of the charter are baked into legislation and then some elements have to be confirmed by a quasi-judicial review or judicial review where section 8 of the charter in particular is engaged, and our ministerial authorization regime is constructed in that way.

Mr. Blaine Calkins: For the purposes of this amendment, any reasonable person reading this would suggest that this is a more limited definition, in the capacity of the information that the CSE would have. Yes or no?

Mr. Charles Arnott (Senior Policy Advisor, National Security Policy, Public Safety Canada, Department of Public Safety and Emergency Preparedness): I think the reasonable expectation of privacy is a term of art that is used in conjunction with section 8 of the charter. My sense is it's fairly well understood.

Mr. Blaine Calkins: That's fair enough.

I think the amendment as proposed—and we can discuss the intent all we want—because it's more clearly defined, puts a different bar or measurement on the information that could be reasonably expected that the Communications Security Establishment would be using for its intelligence. Would you agree with that statement?

Mr. Scott Millar: I'm not a charter lawyer and expert on legal interpretation. The way C-59 has been constructed is to reflect how we operate now in terms of the elements around publicly available information, when an MA would cover it, and they are what we are familiar with.

Again, by putting this language into the definition of publicly available information it coheres with the idea of what triggers a ministerial authorization, but having them in both spots, I'm not sure what that may or may not mean. It may mean nothing from legal interpretation or it may mean something.

Mr. Blaine Calkins: So there's no difficulty with this proposed amendment then, from an operational perspective, of how business is currently conducted?

Mr. Scott Millar: It`s difficult to foresee that right now.

Mr. Blaine Calkins: Thank you.

The Chair: Mr. Motz.

Mr. Glen Motz: Thank you, Mr. Chair.

I may be splitting hairs on this but it's the last couple of words, or the second last line there: “does not include information in respect of which a Canadian or a person in Canada has a reasonable expectation of privacy”.

I'm going to throw out the scenario that we have someone visiting us from another country who arrived in Canada in whatever manner and does pose a threat to us and we have intercepted information. They're not a Canadian citizen.

As I'm reading this we aren't able to use it. Is that what I'm hearing or seeing?

Mr. John Davies: This is a change to a definition.

Mr. Glen Motz: I can appreciate that.

Mr. John Davies: This is not adjusting functions or duties of CSE. They could have ministerial authorization through warrant powers and so on that would not preclude the scenario you're talking about.

Mr. Scott Millar: CSE does not direct our activities at anyone within Canada now. There are domestic investigatory bodies, intelligence agencies that deal with those situations under their lawful authorities, but currently we would not target anyone within Canada.

The Chair: Thank you.

I see no further debate.

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

The Chair: We're now moving on to NDP-25.

The Chair: Before I ask Mr. Dubé to speak to NDP-25, I was just shown a news report about the tragedy in Toronto. Nine dead and 16 injured. That's a pretty hard thing for the folks there.

I'll pass that along to colleagues because a number of us are from Toronto. I don't know if anyone else is interested, but for us it may be a little more personal.

Mr. Dubé, you're going to speak to NDP-25.

● (1700)

Mr. Matthew Dubé: With your indulgence, Chair, I think it's safe to say that even those of us who aren't from Toronto are thinking of you and are certainly hoping that the situation doesn't get any worse. Thank you for keeping us updated.

Chair, the amendment I'm proposing seeks to require that ministerial directions be published. This is something that the minister is a fan of, so we would be codifying in law something that he himself brought up during his testimony.

The Chair: Thank you.

Is there debate?

Ms. Damoff.

Ms. Pam Damoff: Thank you, Chair.

You're right, the minister does like transparency. However, in this case, these directions often contain classified material, so publishing them could cause significant harm to Canada's national security. Therefore, we won't be supporting this.

The Chair: Mr. Dubé.

Mr. Matthew Dubé: I have just two quick points.

Again, as I said, the first is that this is something the minister is doing. We don't have to run around with access to information requests, as has been the case in the past, notably under the previous government with the ministerial directive related to information obtained under the use of torture. I'm just wondering.... I can't amend my own amendment, but while I would find it far from sufficient, if a member would propose an amendment adding wording that would protect information that “may be injurious to national security”, I would be okay with that, even though I don't think it's necessary. The minister regularly talks about directives here and directives there. We're not dealing with operational specificity, but just with broader guidelines.

Again, if someone wants to present that amendment to make it more palatable for the Liberal side, I'm willing to—I'm trying to find a new metaphor here instead of just the water in the wine—take a step back from going as far as I believe we need to go to at least get something in the bill to this effect.

The Chair: Do I see any appetite to amend?

Ms. Damoff.

Ms. Pam Damoff: No, not to amend at this point, but to the officials, can you speak to the impact of what Mr. Dubé is suggesting?

Mr. Scott Millar: In terms of ministerial directives, there are some that have been made publicly available and we're always looking.... In fact, the legislation reflects some of the things that used to be in ministerial directives and now will be transparent and enshrined in legislation, but there are some ministerial directives that do include classified information and would reveal capabilities of Canada to our adversaries.

Ms. Pam Damoff: To Mr. Dubé's point about changing it to say that it's excluding any that would impact national security...?

Mr. Scott Millar: Do you want to speak to it, John?

Mr. John Davies: I'm not sure if the *Canada Gazette* is the right vehicle to do that. The *Gazette* is usually used for advertising regulatory change and consulting Canadians in that way on change about to come.

Earlier on, there were amendments to ensure that NSIRA would be looking at and reviewing all ministerial directions. In the annual report of NSIRA, you would already see changes and any new ministerial directions that way. From that point of view, I'm not sure if the amendment is required.

Ms. Pam Damoff: Thank you.

The Chair: Mr. Motz.

Mr. Glen Motz: That answered my question. Thank you.

The Chair: Mr. Dubé.

Mr. Matthew Dubé: Just as a follow-up, for any changes that were made to NSIRA, would they be mandated with reporting back to the public or is that just something that could potentially happen?

Mr. John Davies: I would have to pull out the amendment, but I believe that there would be a requirement that in their annual report there would be some commentary on that finding.

Mr. Matthew Dubé: Is that a commentary on the directives themselves or...?

Mr. John Davies: They would be asked to review all new ministerial directions and any changes to existing ministerial directions.

Mr. Matthew Dubé: But the report could.... It's at their discretion at the end of the day as to whether they...?

Mr. John Davies: I'd have to pull out the amendment. I thought there was a requirement. There certainly would be an expectation that they would comment on that work in their annual report.

● (1705)

Mr. Matthew Dubé: If I may ask, Chair—and I should know this, but I don't off the top of my head—I believe the minister has published some ministerial directives: in what forum is that usually done?

Mr. John Davies: More recently, it would be just normally through a web release of a media relations product. Certainly, in the past it has been through access to information requests, but, obviously, there's certainly a new interest in being more proactive in explaining to Canadians ministerial directions.

Mr. Matthew Dubé: So to clarify, just may I make—

The Chair: May, may, may.... Yes.

Mr. Matthew Dubé: —some points on part of the answers I just received?

There doesn't really seem to be a clear precedent for where it would be published. I think that, given that the *Gazette* does deal with.... It's not regulatory change, but in some ways it could be seen as similar. In the absence of that, I think it's difficult to legislate what's going to appear on a minister's website or something like that. Again, I can't amend my own amendment. I'm somewhat disappointed that there's no appetite to try to make it more palatable, to at least codify what the minister says he wants to do.

The Chair: Thank you, Mr. Dubé.

Is there any other debate?

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

The Chair: Now we have LIB-28.

Mr. Spengemann.

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

This goes back to the question of the Public Service Employment Act and the mobility of federal civil servants. LIB-28 and LIB-29, in fact, go together. They are both technical amendments that require strictly the removal of certain provisions that would leave residual or duplicative provisions under the proposed CSE act. It's a technical amendment that simply removes those and, again, renders the Public Service Employment Act applicable to the federal civil servants who previously would have been governed by the proposed CSE act.

The Chair: Thank you, Mr. Spengemann.

Is there any debate?

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

The Chair: Next is LIB-29.

Mr. Sven Spengemann: Mr. Chair, the very same explanation applies to LIB-29.

The Chair: Mr. Motz.

Mr. Glen Motz: I guess it's the same thing with my bad shoulder. I failed to ask last time, and because it's the same, I will ask it this time.

I'm unsure why this is being deleted. Can you help me understand?

Mr. Sven Spengemann: In essence, there are two regimes. One is proposed under the CSE act, and another one already exists under the PSEA, the broader Public Service Employment Act. Mobility provisions of federal civil servants are, and should be, governed by that latter piece of legislation, so this seeks to remove the duplicative CSE provisions. The substantive rights of each employee, therefore, are completely unchanged.

The Chair: I see a lot of heads nodding. That seems to be a good explanation.

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

The Chair: Mr. Dubé, on NDP-26.

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

Before I go any further, I do want to state that I would have a recorded vote on this particular amendment.

Essentially, the wording as it currently is in the legislation is "defensive cyber operations or active cyber operations aspects of its"—"its" being the CSE—"mandate must not be directed at a Canadian or at any person in Canada."

My amendment would add "and must not infringe a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms*." This is in keeping with the preamble. Again, it's something that some may argue is redundant, but I feel that the more it's codified, the better.

The Chair: Thank you, Mr. Dubé.

Mr. Spengemann, do you want to speak to this amendment?

Mr. Sven Spengemann: Even though the language may be very appropriate, this amendment would introduce an unnecessary level of specificity by introducing a charter provision at the end of a very specific provision.

In fact, LIB-30 is going to add an explicit requirement in the legislation that the CSE's activities must comply with the Charter of Rights and Freedoms. It will further introduce a requirement that the CSE obtain a ministerial authorization approved by the intelligence commissioner any time it acquires information under its foreign intelligence or cybersecurity mandates that would interfere with a reasonable expectation of privacy on the part of a Canadian or a person in Canada.

It's too specific for the purpose of this amendment, and it will be covered in essence by LIB-30, which will be introduced by my colleague.

● (1710)

The Chair: Mr. Dubé.

Mr. Matthew Dubé: Mr. Chair, I find that argument kind of odd, given that the bill before us, this Liberal Bill C-59, proposes to CSIS the exact wording that I'm proposing for the aspects of the bill dealing with the CSE.

I would assume that the bill, then, would be causing the same problems that Mr. Spengemann is alluding to already in its initial drafting because it's the same wording that's being proposed to change the CSIS Act. This was brought up by the Canadian Bar Association when they appeared before committee. I'm not sure I follow, but at any rate....

The Chair: At least this time you're not asking to water any more wine.

Mr. Matthew Dubé: I don't think there's much wine left.

The Chair: I think you might be costing me a fortune.

Mr. Calkins.

Mr. Blaine Calkins: I have a question for our colleagues here.

With regard to the legislative amendment that's being proposed by my colleague sitting beside me here, are there any examples of where, had that provision been there, the behaviour or the ongoing operations of the organizations would have been different in any way? I'm assuming everybody follows the charter to the best of their abilities and that where there are questions these things get brought forward.

Is this strengthening the legislation? For the folks in the CSE who are in the employ of the Government of Canada to conduct these operations on behalf of Canadians, would this help legislatively? Would it really add anything of value, or is it simply baking into the legislation what's already known?

Mr. Scott Millar: The CSE act was constructed with the charter in mind, so the prohibitions, the tests, the protections, being reviewed, all those elements are to be compliant with the charter.

Mr. Blaine Calkins: That's what I thought.

Ms. Pam Damoff: To Mr. Dubé's point, is this wording that's already in the legislation for CSIS, and if so, what would be the difference of the impact on CSE?

Mr. Charles Arnott: I won't necessarily speak to the CSIS Act because I think that language is in there for a different reason. I'll just to go back to the point that we are already bound by the charter, and we already have to comply with the charter in employing the CSE act, so this wouldn't really add anything to the act.

The Chair: Mr. Davies.

Mr. John Davies: I would just add that, obviously, CSE is not targeting its activities to Canadians. For CSIS, that's essential to their mandate, so there's probably more attachment to the phrase of the charter in their act.

The Chair: Ms. Dabrusin.

Ms. Julie Dabrusin: I just wanted a second to read through this a bit more carefully as I go through the act. I was wondering if it would be possible for us to suspend for two minutes.

The Chair: You know how I hate to suspend.

Ms. Julie Dabrusin: I know, but you can all stay in the room.

The Chair: I know.

It may be an opportunity to canvass. I think this meeting is supposed to finish at 5:30 p.m. Is there any appetite to push this for another half hour to six o'clock? We have votes at 7 p.m., and everybody has to be here anyway.

Mr. Blaine Calkins: Sorry, I have other commitments at 5:30 p.m.

The Chair: Okay. Without unanimous consent, we'll have to put it off until Thursday afternoon.

We are suspended for two minutes.

● (1710)

(Pause)

● (1715)

The Chair: Okay, we're back in session.

I think Mr. Dubé is before Ms. Dabrusin.

Mr. Matthew Dubé: Thank you, Chair.

Just for the benefit of the record, on page 100 of the bill, under "98 Subsections 12.1(2) and (3) of the Act are replaced by the following...," if we go down we see, under Canadian Charter of Rights and Freedoms, "(3.1) The *Canadian Charter of Rights and Freedoms* is...", and I'll spare everyone reading it through. I've indicated where it is.

That's in addition to the preamble of part 4, which deals with CSIS. As with what I'm proposing here, we're seeing a situation where there's a preamble mentioning the charter and also further in the legislation, in relation to the mandate, and that's where the inspiration comes from. That's on page 100, line 29 through....

The Chair: Ms. Dabrusin.

Ms. Julie Dabrusin: I'm sorry, I haven't had the chance to speak directly to Mr. Dubé about this, but I was going to suggest a possible subamendment that might help, which is that instead the amendment would read, "...directed at a Canadian or at any person in Canada and must not infringe the *Canadian Charter of Rights and Freedoms*."

So, I'd be removing the words "a right or freedom guaranteed by", but it would still read, "...directed at a Canadian or at any person in Canada and must not infringe the *Canadian Charter of Rights and Freedoms*."

The Chair: Before we debate that, I just want to make sure that our legislative clerk has that.

Okay, the debate is on the subamendment.

Mr. Dubé, you're up first.

Mr. Matthew Dubé: Can my colleague perhaps explain the rationale behind removing "a right or freedom guaranteed by" the charter? I'm wondering what....

Ms. Julie Dabrusin: It's for clarity. You're still keeping that the charter must be respected, but it's just a clarity of removing those words that are a bit extraneous and may cause charter problems if you're going toward charter analysis. It's a legal analysis kind of thing. It just seems that it would be clearer and it still maintains exactly what you're trying to get at, which is that you cannot infringe the Canadian Charter of Rights and Freedoms, which is what we're trying to get at here.

● (1720)

The Chair: Mr. Dubé.

Mr. Matthew Dubé: Chair, if colleagues would go back to page 100 and part 4 relating to the CSIS Act, with regard to warrants and threat disruption powers, that's the exact wording that's used in the opposite sense, in infringing on rights with the obtention of warrant, but it says "The Service may take measures under subsection (1) that would limit a right or freedom guaranteed by the *Canadian Charter of Rights and Freedoms* only if..." and so on and so forth.

I think the wording I've proposed, even though the sense is different, going from a positive to a negative, infringing on the right or protecting it, regardless if that's the wording that's there, I don't see the need to change my amendment.

The Chair: Mr. Calkins.

Mr. Blaine Calkins: Not that I have any skin in this game per se, but just for the sake of my knowing what's coming up before it comes up, for the sake of consistency, I've always been a fan of consistency in the legislation.

If I've missed any clauses, because I have been absent a few times during clause-by-clause, where the language is consistent with what's being proposed right now by Mr. Dubé, or if there are any subsequent clauses that are coming forward that would be consistent with your proposal to amend it, Ms. Dabrusin, would we have consistency in the legislation going forward? Is that the plan? I'm just asking.

Ms. Julie Dabrusin: Going back to NDP-22, which was the part where we referred to the charter, in that one we referred to "respects the *Canadian Charter of Rights and Freedoms*." That was the wording we used in that one. It's more similar to keep it the way I propose and not actually start parsing it out.

Mr. Blaine Calkins: So can we expect an amendment, then, when we get to page 100 of the legislation? Is that what I'm hearing?

The Chair: I don't believe there's any amendment there.

Mr. Blaine Calkins: That's why I'm asking, Mr. Chair.

The Chair: We're not there yet.

Mr. Blaine Calkins: I just want to be consistent and clear in the legislation across the board. If we're going to do it one way, we should do it always that way, if it's the right way to do it.

Ms. Julie Dabrusin: Perhaps we can get some assistance, but it seems to me that this is actually a much more specific subclause, which is dealing with something different.

The Chair: Mr. Spengemann.

Mr. Sven Spengemann: Mr. Chair, I would like to solicit some advice from the officials here. I think the logic is that the charter itself is triggered, engaged, or infringed all the time, but often it's upheld as being a reasonable step under section 1. I think that's what the discussion is getting at. How do we capture the language that will be clear enough to give confidence to the Canadian public that their charter rights are protected? I think that should be the essence of our question.

Mr. Scott Millar: Yes, absolutely. The section with CSIS is subsumed within the court warrants that they do get there. We have a different mandate than they have. We all have to adhere to the charter, and we have things in this legislation, in the CSE act, that reflect our mandate.

The charter statement does walk through what the charter.... In active and defensive cyber-operations, it makes very clear that prohibitions against...can't direct at Canadians or anyone in Canada; that it's essential to international affairs, defence, and security—so the compelling nature in terms of a section 1 justification that this be done—prohibitions around obstruction of justice and democracy; prohibitions around death and bodily harm; reasonable and proportionate review, and the like.

I would say that the spirit of what's being looked at here is reflected within that preamble, reflected for what's to come around the reasonable expectation trigger, because I think that shows a desire to make explicit what implicitly we're already required to do under the charter. But all the other elements baked into the CSE act are in response to the charter. They're just straight prohibitions and tests and tests against which will be reviewed....

In terms of doing this in the CSE act, I don't know the impact of that, frankly. Where, let's say, the charter is engaged under "ministerial authorizations", it's making very clear what the state of action is there, which is acquiring information for which there is reasonable expectation. On the element of "not infringe" and where that will fall in, separate from being subsumed under some other kind of regime as you have with the CSIS warrants, I'm just not sure what the impact would be. I fear there could be an unintended consequence in terms of that amendment.

● (1725)

The Chair: Mr. Dubé.

Mr. Matthew Dubé: I'm just wondering what those types of unintended consequences could be.

CSIS, in the legislation under Bill C-51 in the last Parliament, obtained the power to, through a warrant, infringe on the charter. If not, it was understood that they couldn't. I'm just making sure. Is there a situation where you wouldn't want to have this kind of safeguard in place?

Again, I feel we're in a situation where if these things are being done and the spirit is there, then why oppose it? The section that's being amended is related to the activities. I think there is a distinction that Canadians' rights and freedoms and directing at a Canadian or a person in Canada.... Your rights and freedoms can be violated even if CSE is conducting activities related to something or someone else who's not a Canadian or a person in Canada.

The Chair: Mr. Picard.

Mr. Matthew Dubé: Mr. Chair, I was wondering if Mr. Millar was able to answer the question I posed about unintended consequences?

The Chair: I'm sorry. I didn't realize you were directing a question. I thought you were making a commentary.

Mr. Matthew Dubé: It was both.

Mr. Scott Millar: The CSE act does not allow for a warrant to infringe on the charter.

Mr. Matthew Dubé: Pardon me?

Mr. Scott Millar: In terms of the CSE act, we don't operate under warrant, and we don't have a warrant authority to infringe upon the charter.

Again, I think the CSIS Act element speaks to that part of their regime and, I would say, that unique charter quantum as it relates to them as a domestic investigatory body with that kind of authority, should a judge grant it.

The Chair: Mr. Picard.

Mr. Michel Picard: I think the idea is to make sure we don't work against the Charter of Rights. Everyone agrees with that.

Maybe the expert will explain why we use different verbs. When you read the paragraph Mr. Dubé refers to, using the verb.... In the paragraph, we say "limit" in CSIS, "limit a right", where, I guess, in English—and I'm a French-speaking person—you cannot limit a charter. You can limit something of a charter, like limit a right, whereas in our case, we just say "infringe". We don't cause prejudice to a charter, which is the sense of what she says. Maybe that explains why we have a bit different wording. The use of the verb is not the same. But the idea, at the end of the day, is to prevent infringement against the charter. Maybe the expert can confirm if this makes sense.

Mr. Scott Millar: I would say that, within the CSE ministerial authorization construct, we cannot direct our activities at Canadians, which is a big difference here, so that element of not infringing.... We don't have something proposed in the CSE act that would allow us to infringe upon a right. Things are being structured to cohere with the charter and the "not directed at" is that protection or extra level of protection as it relates to section 8 in particular in terms of not directing at....

I don't know if that helps, but that's a clarification I thought was important to share.

Ms. Cherie Henderson (Director General, Policy and Foreign Relations, Canadian Security Intelligence Service): I'll just clarify, for the service—and it's written in the Bill C-59—the Canadian Charter of Rights and Freedoms is the supreme law of Canada, and everything that we take or any measures shall comply with the charter. If we do want to limit, then we are required to go and get judicial authorization in order to be able to do that, so everything is bound by the judge. Within the service, we fully respect the charter and operate under that.

The Chair: Ms. Dabrusin.

Ms. Julie Dabrusin: I think we've turned that circle.

The Chair: Mr. Calkins.

Mr. Blaine Calkins: It takes me back to the point now where we seem to be, as a committee, twisting in the wind trying to explain away why the wording of the supreme law of Canada, which is the Charter of Rights and Freedoms, would be worded differently in the Canadian Security Intelligence Service Act legislation than it would be in the CSE legislation of the same bill. This is what Mr. Dubé quoted, on page 100.

If it's the supreme law of all the laws we have, why are we trying to explain and twist away in the wind why it would be worded differently? The nuance of language would be different on page 100 of this piece of legislation versus what Mr. Dubé is proposing right now, and I haven't got a satisfactory answer to that. Again, I don't have any skin in this game. I just want it to be consistent. If we're going to do it right, we should do it right all the way through, and I just want some assurances on that front.

● (1730)

The Chair: Mr. Dubé.

Mr. Matthew Dubé: In a situation where, if we look at section 24, where we can acquire and disclose publicly available information and then we have information acquired incidentally, activities aren't being directed at Canadians or persons in Canada, but it could be an infringement on a right or a freedom guaranteed by the charter.

I think there's a distinction, which is why I think my amendment is important here. I think it's important to protect Canadians in a context of CSE's activities, even if they're not being directed directly at a Canadian or a person in Canada.

The Chair: Ms. Damoff.

Ms. Pam Damoff: I have two things just quickly. The section with regard to CSIS is completely different because it's dealing with where a judge has issued a warrant, so to Mr. Calkins' concerns, they're two totally different situations.

I think my colleague Julie has put an amendment forward to remove the words “a right or freedom guaranteed by”.

The Chair: That's right.

Ms. Pam Damoff: You've put that amendment forward?

Ms. Julie Dabrusin: The subamendment.

Ms. Pam Damoff: The subamendment? Okay, so I think we're prepared to support that subamendment and then support the amendment with those words removed.

The Chair: Is there any further debate?

The initial vote is on the subamendment which deletes “a right or freedom guaranteed by”.

Mr. Matthew Dubé: Can we have a recorded vote?

The Chair: I think we are going to anyway, aren't we? You asked for that at the beginning, so it's a recorded vote.

(Subamendment agreed to: yeas 5; nays 3)

The Chair: Now we move to the amendment as amended. We're now voting on NDP-26 as amended. Do you still require a recorded vote?

Mr. Matthew Dubé: No, that's fine, Chair.

The Chair: Okay. Those in favour of NDP-26 as amended?

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

The Chair: Okay, well, it's remarkable how unanimity breaks out on the last amendment.

It is 5:30, and while I could push this committee meeting without unanimous consent, I don't think that's necessarily wise, so tomorrow morning at 9:00 we will start back with NDP-27.

Thank you all.

The meeting is adjourned.