HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Public Safety and National Security

SECU • NUMBER 107 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Tuesday, April 24, 2018

Chair

The Honourable John McKay

Standing Committee on Public Safety and National Security

Tuesday, April 24, 2018

● (0900)

[*English*]

The Chair (Hon. John McKay (Scarborough—Guildwood, Lib.)): Ladies and gentlemen, we're ready to begin.

We are on NDP-27 with Mr. Dubé.

(On clause 76)

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

NDP-27 seeks to remove any and all references to "active cyber operations". I'm going to explain my motivation and reasoning for this.

Obviously, Bill C-59 is a response to a Liberal campaign promise, and something that the Liberals made hay of in the last Parliament, about supporting the then Conservative Bill C-51 in exchange for the promise that the most egregious elements would be fixed.

Now—and we'll get to some of those elements later—I don't believe the bill achieves that objective. That being said, in the consultations that both this committee and the minister did, and the debate on Bill C-51 in the previous Parliament, CSE was obviously never part of it, being enacted by the National Defence Act, which is something not normally dealt with by this committee. I understand that with the new cybersecurity reality and the different issues that we face on a day-to-day basis, that's become something that's necessary.

However, given that it hasn't really been part of the consultations, and as you know, Chair, you acknowledged that CSE took on a life of its own as part of this study. With all due respect to our colleagues here from CSE, that is very new. The committee didn't necessarily, as far as I'm concerned, have the institutional memory to appropriately address all those elements in this omnibus legislation. Several witnesses even made the comment saying that the remarks would have to be limited to one part of the bill given its size and scope.

For that reason, notwithstanding a position I may or may not take in the future on active cyber operations, we have just not had adequate reassurance as to the purpose of this nor have we had the chance to properly study it. I would welcome it as a stand-alone piece of legislation. In the meantime, while it's important to have the defensive capabilities, the active capabilities are a slippery slope that I don't believe this committee or parliamentarians are yet ready to be engaged on.

I move this amendment to remove that aspect from the bill.

The Chair: Thank you, Mr. Dubé.

Before I engage debate, please note that if NDP-27 is adopted, CPC-20 and NDP-35 cannot be moved.

Mr. Spengemann.

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): Good morning, Mr. Chair. Thank you.

In my view, this amendment is contrary to the fundamental goal of Bill C-59, which is essentially to give our security agencies the tools they need to protect Canada and Canadians while respecting our rights and freedoms.

The amendment seems to achieve two things. It retains CSE's active cyber operations mandate under proposed section 20, but it then removes the ability of the minister to issue authorizations that would allow the CSE to undertake activities in this regard that would otherwise contravene an act of Parliament or any foreign state.

The authority to conduct active cyber operations is needed to support strategic objectives that go outside of a military or domestic threat context. The deletion of these sections as proposed in the amendment would limit Canada's options to respond to threats. It should also be noted that the authorities under the proposed bill would only take place within very strict legal parameters and approvals at the highest level of government.

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): It's early to be agreeing with my Liberal colleagues, but I would have to echo Mr. Spengemann's comments. Mr. Fadden told us, when he testified before the committee, that he assumed there were in excess of 200,000 persons operating within China on cyberspace in one capacity or another. Some were in government, in the armed forces, while others were in the private sector. This reveals an entirely different frame of mind than what we have become accustomed to as Canadians at this point in time.

If we do not embrace the concept of offensive cyber operations, we're going to be probably way behind our Five Eyes partners. For that reason, I certainly cannot support this amendment.

● (0905)

Mr. Matthew Dubé: I think it's important. Mr. Spengemann spoke of the purpose of Bill C-59. As I said, this stems from a discussion that was long overdue about fixing the most egregious elements of the former Bill C-51, and in none of the consultations were we engaged properly on the cybersecurity aspect.

To Mr. Motz's point, that's exactly why I'm not seeking to remove the defensive capabilities with any amendment. This is the notion of active cyber operations.

The committee will recall that I asked several questions, including to the Minister of National Defence, related to this notion of what, in this digital age, represents an attack on a foreign actor or sovereignty. How will the capability sharing in this bill between the armed forces and CSE, a civilian organization, be taking place?

It's even more problematic to me in the context that we have a budget that's announced a creation of a cybersecurity centre. The minister has promised legislation to that effect in the fall. In that context, I think it's even more important to have a proper study of these elements that are far from leading to unanimity. I believe more studies are required.

As I said, with this amendment, I am not discounting the urgency of having measures in place to protect our cybersecurity to address these threats, nor am I inclined to say that we should never have any active capabilities. Given the way in which the committee and the ministry were engaged in the public consultations and the way the debate has evolved on this particular issue, starting in the last Parliament with Bill C-51, I don't believe we're properly equipped as parliamentarians to be offering this kind of new power with so many unanswered questions.

As I said, the amendment goes along with the statement that I believe it should have been a separate piece of legislation to begin with.

The Chair: Thank you.

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

The Chair: We're on amendment CPC-20.

Mr. Paul-Hus is not here. I'm assuming Mr. Motz is going to move CPC-20.

Mr. Blaine Calkins (Red Deer—Lacombe, CPC): It's dangerous to make assumptions, Mr. Chair.

The Chair: Okay.

Mr. Calkins.

Mr. Blaine Calkins: Good morning, everyone.

Just so you know, by the time we're done this four-hour session of the committee, Mr. Motz and I would have had time to fly home, or to Ottawa from Alberta. We're just going to set in and I'm going to treat this like a long flight and enjoy myself, so if you see me watching a couple of movies, you'll know what's happening.

The Chair: There might be some among us who would encourage that, Mr. Calkins.

Some hon. members: Oh, oh!

Mr. Blaine Calkins: I can assure you that it might actually go that way. Anyway, I digress.

Mr. Chair, in the discussion we had when the Minister of National Defence appeared before the committee, I and a number of my colleagues asked the question as to why we would codify. There are several examples of previous amendments where the justification was used that we shouldn't codify normal practices because it limits flexibility. I want to make a similar argument now. Why would we codify here that there is a mandatory requirement for the Minister of National Defence to consult with the Minister of Foreign Affairs, when the minister said that as members of cabinet, they do this on an ongoing basis?

When it comes to cybersecurity and the cyber-attacks, where the jurisdiction ultimately falls with the Minister of National Defence, having the minister become almost seemingly a junior minister to the Minister of Foreign Affairs might not be in the best interests or provide the flexibility that might be required.

We're using this amendment to withdraw those references on the assumption that the Minister of National Defence would always be in consultation with cabinet colleagues and have the ability to consult with either the Prime Minister or other cabinet ministers as may be appropriate. We don't even know if it would always be the Minister of Foreign Affairs who would need to be consulted. Threats change and evolve. We used to be worried about symmetric threats or nation threats. Now we're worried about asymmetric threats. We don't know where the future is going, what the nature of the threats might be, and which ministers might be involved in consulting with the Minister of National Defence.

I'm hoping level heads will prevail here and we wouldn't inadvertently handcuff the Minister of National Defence in any way, shape, or form.

● (0910)

The Chair: Thank you, Mr. Calkins.

Before I engage debate, please note that if CPC-20 is adopted, NDP-35 cannot be moved.

Ms. Dabrusin.

Ms. Julie Dabrusin (Toronto—Danforth, Lib.): Mr. Chair, this goes to exactly the balance issue that's so important to people across this country. It's about making sure that we have checks and balances in the system. If we went ahead with CPC-20 we would be weakening the authorization regime for active and defensive cyber operations. That's not a desirable outcome. I would actually say that this is not the proper way to go. In fact, the active and defensive cyber operations would fall within issues that are related to what the Minister of Foreign Affairs or Global Affairs is working on. We need to have a proper authorization regime.

To me, keeping that in place is essential to the balance in this act.

Mr. Blaine Calkins: In an asymmetric threat perspective, the RCMP and the Minister of Public Safety ought to have the same kind of consultative process. I don't see them included in this legislation. I suppose we can ask the officials for their opinions on whether the changes that are being proposed or the amendments would be beneficial or not beneficial. I don't think anybody here has a crystal ball, but the argument that this is the kind of expected inclusiveness....

Just yesterday, the Liberal members of this committee voted down several amendments that would require reports by the commissioner to be tabled before Parliament, so I'm not buying the inclusiveness and the transparency arguments for this. This should be about good governance. This is very important stuff. This is about as serious as it gets, and if we don't have the legislation right, there could be serious consequences, ramifications for our Canadian economy, our defence systems, and virtually all aspects of Canadian life, which are, as you know, Mr. Chair, readily available and online.

Can our officials weigh in on this?

The Chair: Who wishes to respond?

Mr. Millar.

Mr. Scott Millar (Director General, Strategic Policy, Planning and Partnerships, Communications Security Establishment): These are serious authorities who require serious accountabilities, oversight, and review. The intent behind including the Minister of Foreign Affairs is the fact that there are international policy and international law implications to these kinds of activities that need to be considered. We are a clandestine agency acting covertly against foreign threat adversaries, not always with their permission. Therefore, the element that the Minister of Foreign Affairs can consider the international policy and international law implications was seen as an important part of that. As well, in the legislation, the Minister of Foreign Affairs can request that CSE undertake these kinds of activities, so that request, and also approving how ultimately they would be conducted, that is the reason for that provision being in there.

Mr. Blaine Calkins: How does it work right now, Mr. Millar?

Mr. Scott Millar: Right now in terms of our intelligence collection activities, we can only collect in accordance with government cabinet-approved intelligence priorities. That involves cabinet and obviously the Minister of Foreign Affairs as part of those discussions and considers those implications at that time. But we do not conduct these active cyber operations right now. It's proposed in the legislation.

Mr. Blaine Calkins: I understand that. The current cabinet process already works, as has been testified to, and I just hope that if —sadly—this amendment is defeated, there aren't consequences because of the requirement to involve an extra ministry in the case where the Minister of National Defence ought to be able to make these decisions as a full minister of the crown, as a top minister of the crown.

The Chair: Is there further debate?

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

The Chair: We are now on NDP-28.

Mr. Dubé.

[*Translation*]

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

The amendment aims to create more certainty about the constitutionality of the bill, particularly following Craig Forcese's suggestions. According to him, a better ceiling—or a better floor, that is—needs to be created for the intervention of the intelligence commissioner, in order to authorize various activities and better protect the privacy of Canadians.

● (0915)

[*English*]

The Chair: Thank you.

Before I ask for debate, please note that if NDP-28 is adopted, PV-6 and LIB-30 cannot be moved. With that, is there any debate?

Ms. Damoff.

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

We have three amendments that are all very similar. I think we all have the same intent. We've just come up with wording that's slightly different. It also dovetails on a discussion we had earlier on Green Party, Liberal, and NDP amendments. It all has to do with protecting Canadians and people in Canada when CSE is dealing with the global infrastructure. I asked a number of questions of officials, as did my colleagues across the way. In our opinion, LIB-30 does a better job of ensuring that we are protecting Canadians' rights.

I think I'll cover all three at once to say that we won't be supporting NDP-28 or PV-6 because we feel LIB-30 is the one that does the best job of addressing something that stakeholders asked for.

The Chair: Is there further debate?

I'd like to recognize Madam May, so I will.

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

I'm required under the terms of your motion to be here to speak to my amendments, but since Pam has opened the door on the fact that these three are similar, we could talk about them as a cluster. I appreciate the chance to speak to that.

I'm really pleased—and I've seen this over and over in this committee—with the extent to which Liberal members have been listening to experts. With all due respect, I would never describe Professor Forcese as a stakeholder, but as one of the pre-eminent security and anti-terrorism law experts in Canada, he certainly played a very important role when the 41st Parliament was going through Bill C-51. He and Kent Roach both were involved in the Air India inquiry and have a lot of legal expertise. You've captured it quite well, Pam, but I want to go back to his evidence.

With all due respect to our experts here from the department, as he describes it, there's a technical problem, “the inevitability of incidental acquisition of Canadian information.” That's what we're looking at. We know that in CSE's access, it's only supposed to be looking at collecting foreign information. It's not supposed to be looking at Canadians at all, but when you're collecting metadata you just don't know. It's inevitable, as Professor Forcese says, that you will incidentally end up with Canadian information, so how do we protect Canadians from significant violations of our right to privacy and of section 8 of the charter?

I'm pleased with the language in LIB-30. I know the language in Matthew Dubé's and my amendments is stronger and covers off more of the possibilities, but certainly the legislation is stronger once any one of these three motions is accepted by the committee. That's my only comment on it. When we went through it with the drafters, we looked at the testimony from Craig Forcese and from Amnesty International and Alex Neve, and tried to satisfy the drafters and draft as closely as possible to the recommendation we had from those experts.

That's all I have at this point, Mr. Chair. Thank you for the time.

The Chair: Thank you.

Mr. Dubé.

Mr. Matthew Dubé: Thank you, Chair.

I appreciate the points that have been made, but I would disagree that LIB-30 is the one that best encapsulates this for the simple reason that LIB-30 makes it very specific by saying, "or involve the acquisition by the Establishment of information from or through the global information infrastructure that interferes with the reasonable expectation of privacy". On the other hand, my amendment and the Green Party amendment from Ms. May both say, "the acquisition of information in respect of which there is a reasonable expectation of privacy".

The wording is not exactly identical, but suffice it to say that they do not limit it to information acquired from the global information infrastructure. I don't know why we would want to limit the types of information that are covered by this protection. As far as I'm concerned, a Canadian's information, where there is a reasonable expectation of privacy, should be all that information and not just information acquired in that way.

Moreover, given that we've heard numerous times both from the experts who are here and from members across the way that more specificity is not always good because it's the spirit and all these types of things, I don't know why we would suddenly be engaging in specificity if not to create loopholes that can be problematic for Canadians' rights and privacy.

● (0920)

Mr. Glen Motz: I'd like to ask the officials a question, and I asked them a similar question yesterday. If we have a Russian spy operating in the Canadian network, does that mean that he or his activities will have a reasonable expectation of privacy? Would that be protected with this amendment?

Mr. Scott Millar: If he or she is located in Canada, we would not be directing our activities at that person.

Mr. Glen Motz: Who would be?

Ms. Cherie Henderson (Director General, Policy and Foreign Relations, Canadian Security Intelligence Service): CSIS would be.

Mr. Glen Motz: Are we speaking to all right now—

The Chair: Technically, we're only speaking to NDP-28, but Ms. May has expanded our definition of "technically", as has Ms. Damoff. There is plenty of blame to go around.

Is there any further debate on this?

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

The Chair: On PV-6, Ms. May, please go ahead.

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

In my amendment—and I know we've already opened the door to comparing amendments—unlike the LIB-30 amendment, I have language that looks at where there is the objective of "the acquisition of information in respect of which there is a reasonable expectation of privacy". That language is crafted to be as close as possible to what Professor Forcese had recommended, which was the word "involve". The drafters didn't feel that "involve" was a term that would work in the legislation to guide the application of a law on metadata. We're certainly moving beyond the narrow language that we currently have, which is if something violates an act of Parliament. There is a recognition in all three amendments that we need to go further to encapsulate and protect against the collection of information that was foreseeable but incidental.

I spoke to my amendment before, so I won't go on about it. I think my amendment is so close to the excellent amendment from Mr. Dubé that inexplicably just went down in defeat that I have no great hopes at this point for my amendment, but I submit it to you, eternally hopeful.

The Chair: Does anyone want to speak to Ms. May's hopefulness?

Ms. Damoff.

Ms. Pam Damoff: It's always a pleasure to have her here. I appreciated the correction she made on what I had said earlier—that they are experts and not stakeholders—because she is absolutely correct. They are the foremost experts on national security issues. I appreciate the correction on that one, but I still think LIB-30 is better.

The Chair: Is there any other debate?

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

The Chair: We are on LIB-30.

Ms. Pam Damoff: I don't I need to say a lot more. We've talked about it during the discussion on the other two. I think it's important that we ensure that Canadians have an expectation of privacy when they go on the Internet when there is metadata out there. I don't have anything more to say.

Mr. Matthew Dubé: I just want to say that I've heard a lot about how LIB-30 is better, but I have yet to hear why the Liberal members of the committee feel it is appropriate to be so specific in the types of information that would be protected by their amendment, unlike the more open-ended version that both Ms. May and I proposed. I've heard it's better. I haven't heard why. I don't know if I will, but I'm stating that for the record.

● (0925)

Mr. Glen Motz: I would like to find out from the officials if this really hampers any data collection or if it's just a superfluous word change.

Mr. Scott Millar: We operate this way already, that the ministerial authorization in terms of.... Again, I think I made the comment when I was here a few weeks back that this would make explicit implicitly how we would operate under ministerial authorization. When there is that specific state action of acquisition of information that's going to interfere and engage that right, that could only be collected by a ministerial authorization with the approval of the intelligence commissioner and not directed at Canadians.

Mr. Glen Motz: If I'm hearing you correctly, then, sir, you're suggesting that upon further examination and review of this bill, this is what the officials came up with as amendments.

Mr. Scott Millar: I would say that this came up during committee consideration in terms of looking at what Mr. Forcese and others had recommended around making explicit what that implicit trigger is. We would already operate this way, so it's not inconsistent, in terms of it being put forward, with how we would operate under a ministerial authorization.

Mr. Charles Arnott (Manager, Strategic Policy, Communications Security Establishment): As Scott said, it was always the intent to operate in this manner. It wasn't explicitly included originally because the drafting convention is that you don't normally have to put charter obligations into a statute. We're always bound by the charter. But some folks, including Mr. Forcese, have suggested that maybe it's worth putting in explicitly. This just codifies that.

The Chair: Mr. Calkins.

Mr. Blaine Calkins: No, I'm good.

The Chair: Is there any further debate?

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

The Chair: We'll now go to LIB-31.

Monsieur Picard.

Mr. Michel Picard (Montarville, Lib.): Let's withdraw this one.

The Chair: It's always dangerous, withdrawing.

Mr. Michel Picard: I live dangerously.

The Chair: Are you wishing to speak to a withdrawn amendment, Mr. Dubé?

Mr. Matthew Dubé: Absolutely.

I think the wording more closely resembles the Green Party and NDP amendments, so I would be very happy to move LIB-31.

The Chair: Having enjoyed this movie yesterday, we're going to try to do it again today.

Mr. Matthew Dubé: It is a four-hour flight.

Voices: Oh, oh!

The Chair: Is there any debate?

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

The Chair: Apparently, Mr. Dubé is the only one in favour of his amendment. LIB-31 is defeated as opposed to withdrawn.

Now we move to NDP-29.

[*Translation*]

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

Amendment NDP-29 seeks to remove the words “Despite subsections 23(1) and (2)”. The purpose of this amendment is to maintain the protections of Canadians. Section 23 of the Communications Security Establishment Act, which is enacted in part 3 of the bill, protects Canadians from CSE activities. By removing the words “Despite subsections 23(1) and (2)”, we are making sure that the activities carried out in the context of what is set out in section 24 of the same act will not target Canadians.

The subsequent amendments will round it all out.

[*English*]

The Chair: Is there any debate?

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

The Chair: Next is NDP-30.

● (0930)

Mr. Matthew Dubé: Thank you, Chair.

It's unfortunate not to hear the rationale of the government members—not technically government members, in the committee context, but Liberal members—for voting against some of these amendments.

At any rate, amendment 30 seeks to remove the word “disclosing”. As I mentioned yesterday in another context of the debate, disclosure is the new wording that's used as part of the information-sharing regime that was brought in during the last Parliament under Bill C-51.

This is a suggestion that the Citizen Lab made to ensure that the information that CSE is collecting in the context of any research it's doing under proposed section 24.... By removing “disclosing” we're limiting the risk that the information that's been collected in that context can be shared with other agencies. If the stated goal is to really be studying the information infrastructure in Canada and to be conducting that type of research, then this way we'll be limiting the potential sharing of information where profiles might have been created, even if inadvertently, of Canadians.

The Chair: Is there any debate?

[*Translation*]

Go ahead, Mr. Picard.

Mr. Michel Picard: In the interest of transparency, which our opponents ask of us quite often, we want to keep this provision as it is. I therefore oppose this amendment.

[*English*]

The Chair: Is there any debate?

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

The Chair: We'll move on to NDP-31.

Mr. Matthew Dubé: Thank you, Chair.

Amendment NDP-31 seeks to amend proposed paragraph 24(1)(b), so that activities it authorizes may only occur on electronic information and information infrastructure as described in proposed paragraph 18(a) of the CSE act. This in only in furtherance of its cybersecurity information assurance mandate. We've heard a lot of this notion of cyber-weapons. The idea here is that we're making sure the establishment is not collecting this type of information in the use of more offensive capabilities, because any back door that exists being used by the good guys—and I don't always care for these terms—could potentially be exploited by bad actors as well.

Mr. Glen Motz: I'd like to ask the officials how these proposed changes might impact this legislation.

Mr. Scott Millar: This reflects what we do now, and these kinds of activities we've reviewed for the last 21 years. The infrastructure information definition, or the way it's bounded, is to make it clear this does not include information that's linked to an identifiable Canadian. The concern about adding electronic information is that it could be electronic information on those infrastructures and could work against the intent of the whole section, which would possibly pull in information related to a Canadian without meaning to do so. I think infrastructure information keeps it outside that sphere.

Mr. Glen Motz: I'm curious. Mr. Dubé suggested that without this amendment it's possible that, as he indicted, the good guys' information could also be exploited. You're not suggesting that. You're not thinking that is a possibility.

Mr. Charles Arnott: The way we read this, it would expand in an unclear way what CSE could do. The section we're talking about is saying that certain specific things are not subject to the restriction of not directing it at Canadians or people in Canada. The intent here is to focus on things that have a low expectation of privacy or no expectation of privacy. That's why the definition of infrastructure information explicitly excludes any information that could be linked to an identifiable individual, so again something that has a very low or no expectation of privacy is not connected to a person.

By adding “electronic information”, you're expanding it to all information in electronic form. You're adding that to the carve-out so it will expand what CSE can do. In addition, at the end of that section, I think this amendment would change where it says it's using that infrastructure information to provide information assurance activities on the infrastructure from which the information was acquired. Whereas doing the second part of this amendment, and saying it has to be in accordance with section 18, section 18 is our entire mandate, so again it's broadening that significantly as well.

● (0935)

Mr. Scott Millar: If I may also add, this is not a back door through which information flows to other folks outside our mandate. Everything we do here still has to be bound within our foreign intelligence and cybersecurity mandate, and the furtherance of that mandate.

The Chair: Is there further debate?

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

The Chair: We'll move on to NDP-32.

[*Translation*]

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

This amendment seeks to clarify the activities that the CSE may undertake. In light of information leaks by Edward Snowden, in particular, we have seen that such tests can cause problems in computer systems.

This amendment seeks to ensure that these tests will be done with the knowledge of the people concerned, even though this is certainly already common practice, which I hope. This would impose the legal obligation to obtain the consent, for example, of a telecommunications company or any person who could be targeted by a system, software or component of the IT infrastructure. This would minimize the impact of any potential problems during these tests that could be detrimental to a Canadian using the same infrastructure.

[*English*]

The Chair: Thank you, Mr. Dubé.

[*Translation*]

Mr. Michel Picard: I'm going to ask the department for help because I have a hard time figuring out what it would be like to ask permission from everyone. It seems physically difficult to me.

[*English*]

Mr. Scott Millar: Yes. I could expand on that, but essentially that would be a challenge.

Mr. Michel Picard: No need. I like his answer.

The Chair: We can encourage those pointed answers.

Mr. Motz, do you have a pointed question?

Mr. Glen Motz: Should CSE be in a position where they are going to be testing telecommunications equipment, and let's just say that this equipment was made in China, and you're testing that equipment for backdoor software, you would need China's approval to do that, based on this amendment. Is that what I'm hearing basically? A yes or no answer would suffice.

Mr. Scott Millar: In that hypothetical situation, yes, that would be my reading of it.

Mr. Matthew Dubé: My understanding is that since this is about the work that CSE is doing within Canada to ensure the information infrastructure, I don't know if that would be the case, but perhaps we can seek clarity from officials.

The Chair: Does anyone want to respond to Mr. Dubé's response?

Mr. Scott Millar: I guess an example of where this would be used would be testing things that are going to be deployed in government systems to make sure, from a supply chain perspective, that there aren't back doors or the like built into them. Should somebody build in those back doors and we ask them whether it's fine to test those systems and so on, it just seems from an operational perspective to be challenging and maybe it's more contrary to the purpose of why we do this kind of thing.

The Chair: Thank you.

Mr. Matthew Dubé: I just want to say, Chair, for the record, that some of the tests that have been conducted before, we know from leaks, have been disruptive. Again, this is the reason that Citizen Lab recommended this type of amendment, to ensure we're minimizing the impact this type of research can have on Canadians. Perhaps it's a large undertaking to find the consent of everyone, but it's whose product software and systems are concerned. I think if you're testing telecom X's infrastructure here in Canada, not to name any of them, it makes sense that they would be advised. As I said, I would hope that's already something that would be taking place. I would expect that type of public-private partnership would be happening when it comes to cybersecurity. If it's not, it is problematic, as is not having an amendment such as this, in my mind.

● (0940)

Mr. Blaine Calkins: This is a further question for Mr. Millar, given the fact that the Department of National Defence and other various organizations—Public Safety, whoever it might be—are constantly acquiring software, hardware, and outside expertise. That expertise or that equipment would generally be brought in through a contract. We buy fighter jets from Lockheed or whatever the case might be.

In virtually every one of those cases, they are not obviously contracts about making sure the proprietary technology, the NATO technology, and all these other kinds of technologies would be protected to a certain degree. How involved would CSE be in testing some of that equipment? Where do you guys do your work? Do you work in that space, or do you leave that up to the nature of the contract to govern that? Do you do an ad hoc upon request, or do you use your intelligence to figure out where you need to go? How does that work?

Mr. Scott Millar: Unfortunately, I'm not personally an expert on military procurement and the like, but I would say we're basically available when called upon to do this kind of testing evaluation. Obviously, there are other measures that are built into contracts and works that perhaps PSPC and other folks would do to do that. There are experts in our organization that would help support that in terms of an advice and guidance perspective, but in terms of when we do this kind of thing, it wouldn't necessarily be in all cases where that would happen.

Mr. Blaine Calkins: You would have to have a suspicion or a reason to do it. Is that correct?

Mr. Scott Millar: Someone would ask us to do that, or it would depend on what element of.... Obviously core networks are things at the periphery or at the core. You basically would do a risk assessment. That is my understanding.

Mr. Blaine Calkins: How would you be able to maintain your clandestine notions if you had to make it known to everybody whose products or software you would be testing and that you were going to do so?

Mr. Scott Millar: That would be a challenge.

Mr. Blaine Calkins: No kidding.

Mr. Matthew Dubé: I'm wondering if I can ask the folks from CSE who are here whether some of the activities done under proposed section 24 include the use of malware being introduced into systems or software.

Mr. Scott Millar: Can you repeat that, just so I make sure—

Mr. Matthew Dubé: Would you be introducing malware as part of the...?

Mr. Scott Millar: Would we introduce malware? No, this is the test for vulnerabilities of the system. This isn't for us. This is in the cybersecurity part of our mandate. At the end of the day, I'm not an expert on the testing evaluation of it. I should say again that the purpose is to protect cybersecurity systems, not to introduce something that will put those systems at risk.

With regard to how those things are tested and stress tested, there would be experts in our organization who could speak to that. The element of this is to capture something that we do now, something for which we're reviewed now, and to make it clear that when we're doing these kinds of things, we're not directing our activities at Canadians. That's the purpose of these provisions, to make it clear for review agencies that will be reviewing these things for reasonableness and proportionality, and to know that when we're doing this, we're not directing our activities at Canadians. It's making that specific reference there to help with legal clarity around this.

Mr. Matthew Dubé: I'm confused. Again, proposed subsection 24(1) says, “Despite subsections 23(1) and (2)”, which are the sections that specifically say no activities against Canadians and persons in Canada. I don't want to rehash what we've already had a lot of back and forth about over the course of the study of this bill. I'm just wondering if you're not exploiting vulnerabilities.

How then do you go about research and development for the purpose of testing systems or conducting cybersecurity information assurance activities on the infrastructure without inevitably creating a strain on those systems? How do you measure...? You can't measure the strength of a bridge until someone has actually driven over it.

Mr. Scott Millar: I see what you're getting at. I guess there are two things to talk about here. One is that we test things within the labs as well. It's not like we're going on to Canada's networks and stress testing networks in a way that's going to interfere with something.

The other thing that's very much worth mentioning is that with LIB-30 that has just passed, anything we could do that could interfere with a reasonable expectation of privacy, again would be triggered under that ministerial authorization and would have to be captured within that.

● (0945)

Mr. Matthew Dubé: I'll end here, Chair. I appreciate the indulgence.

Given the potential disruptive nature of this, I'm wondering, with any of these activities under proposed paragraph 24(1)(b) that are being conducted, say on a network here, Bell or Rogers or Telus or whatever, is it the normal practice to advise them that these tests are taking place on their network—if you're even allowed to say?

Mr. Scott Millar: To tell you the truth, I don't know enough about the specifics of how that works. I just don't know.

Mr. Matthew Dubé: Thank you for that.

I'll end here by saying, for the sake of colleagues, that this is what the amendment seeks to do. In that type of situation, it's to ensure the companies or owners of software are aware when these types of tests are taking place, and they have that certainty that if there is going to be disruption, it's done in a consensual way.

Thank you.

The Chair: Mr. Millar, did you want to make a final comment?

Mr. Scott Millar: No, I just want to underscore again that we are there to preserve, and to support through advice, guidance, and services, cybersecurity for Canada, not to undermine that. We have strong relationships with the telecom sectors and other folks who work very hard to protect networks.

I don't want to give a sense that this is a breach or a new kind of thing, where we're working to undermine that security or to not work in good partnership with folks who are necessary to having a national and resilient system.

The Chair: Is there any further debate?

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

The Chair: On NDP-33, we have Mr. Dubé, again.

[*Translation*]

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

[*English*]

This amendment deals with information acquired "incidentally", which is under proposed subsection 24(4). What we're seeking to do here is to ensure that we're not retaining information. You could call it a catch-and-release principle. We understand that through the activities that CSE is engaged in, we don't want it to be illegal the minute the information comes into their possession, but we want to create a situation where there's an obligation to get rid of that information afterwards. It's allowing them to conduct their activities, but without retaining information acquired incidentally.

[*Translation*]

Mr. Michel Picard: I would like to ask our panel two questions.

When we acquire foreign information and it concerns Canadians, isn't there already a procedure in place to destroy or not to retain this information?

[*English*]

Mr. Scott Millar: That's right. That information cannot be retained unless it's essential to international affairs, defence, or security.

[*Translation*]

Mr. Michel Picard: So this procedure is already established.

[*English*]

Mr. Scott Millar: That's right, and that's reviewed annually by the CSE commission.

[*Translation*]

Mr. Michel Picard: I will now go to my second question.

When we intercept a communication, is it possible to establish immediately, as soon as the information is captured, that one of the two people involved is Canadian?

[*English*]

Mr. Scott Millar: In terms of an interception, incidentally acquiring, ultimately, we are always looking at a foreign target. If that foreign target calls somebody it knows in Canada, we know it has called somebody in Canada, even though we're focusing on the foreign target. Again, if it is saying, "Say hi to whomever", we don't need to keep that. If it is saying, "Let's organize a plot", obviously, we're going to keep that.

Mr. Michel Picard: But at the time you get the information, you are listening to the information and you don't have two speaker icons that this one is foreign and this one is Canadian. You have to—

Mr. Scott Millar: No. The way we structure the foreign intelligence collection program is to stay off those networks, and to target those areas where we're less likely to pick up on a Canadian. The way telecommunications move throughout the world, you could call me and that might route through another country before coming to me.

So yes, we don't have that a priori knowledge. Helping to understand infrastructures, how things move, collecting in accordance with intelligence priorities, and having information that lets us know if somebody is a Canadian, that helps us.

● (0950)

Mr. Michel Picard: My conclusion is that it's not feasible, so we'll vote against that.

The Chair: Is there further debate?

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

The Chair: Next is NDP-34.

Mr. Matthew Dubé: Thank you, Chair.

This amendment would have gone with previous amendment NDP-18, which did not get adopted. It is to expand the activities that require approval by the intelligence commissioner, including cyber operations. Those are the subsections that have been added for the authorizations issue.

The Chair: Seeing no further debate, those in favour of NDP-34?

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

The Chair: We're on to NDP-35.

Mr. Matthew Dubé: Thank you, Chair.

Here we are seeking to ensure that the prohibitions from causing harm or subverting democracy, which are obviously important in the context of the activities being carried out, apply to all of CSE's mandates. This was a recommendation from Citizen Lab.

Mr. Glen Motz: I'm concerned about expanding that, to be honest with you.

The activities listed already prohibit criminal negligence, bodily harm, perverting justice, so it's unclear how adding these clauses would actually change anything. I'm at a loss, and I would certainly defer to the experts, to see whether the language being proposed in NDP-35 would strengthen this bill.

Mr. Scott Millar: They were not added to those elements of our intelligence collection, because they were deemed unnecessary, given the nature of those activities that would be undertaken under those authorizations, as compared with the ones that would happen where, in fact, instead of intelligence collection, we would be called upon to achieve an outcome. It's that outcome element that triggers these prohibitions.

The Chair: Thank you.

Is there any debate? I'm seeing none.

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

The Chair: We'll move now to NDP-36.

[*Translation*]

Mr. Matthew Dubé: Mr. Chair, with this amendment, we want to strengthen the definition of democracy by adding the words "including in relation to any judicial proceeding or electoral process". We want to make sure that the Communications Security Establishment will have the same limits on what it can do in a country that we don't think is a democracy. By adding these words, it's clear whether it's a democracy or not. We are making sure that we don't interfere in the activities of another country.

The Chair: Mr. Picard, you have the floor.

Mr. Michel Picard: I agree with my colleague about the importance of specifying what a democracy is. However, I will make a bit of a zany comparison.

At this time of year, we have to file our tax returns, and I encourage everyone to do so. We don't say that tax returns are taxes because it is obvious that it is. The same is true when we talk about democracy. Judicial proceedings and the electoral process are democratic processes. So it isn't necessary to repeat in detail what the general term already includes. At this point, it doesn't seem necessary to repeat it in an amendment.

[*English*]

Mr. Glen Motz: As I understand this legislation, I would suggest that it is already illegal for the CSE to participate in the activities being mentioned in this amendment, so I'm stretched to see why this amendment would be necessary. I don't know offhand, but do you know where in the act it says that the sorts of activities mentioned in this amendment are illegal?

● (0955)

Mr. Scott Millar: To get at your first statement with respect to the mention of obstructing the course of justice or democracy, we have been informed by the Department of Justice that judicial proceedings would already be covered within the ambit of that clause, so that does exist as it relates to active and defensive cyber operations in terms of the conditions around that. We would have to meet those. The element is that it adds an unnecessary precision when those kinds of things are already captured by the prohibition that's in there now.

Mr. Glen Motz: Can you just refresh my memory again as to where those prohibitions are listed?

Mr. Charles Arnott: Yes. They're on page 67, proposed paragraph 33(1)(b).

The Chair: That's what we're talking about.

Mr. Glen Motz: That's the amendment we're talking about. Someone had mentioned previously that this act already prohibits these activities outside of this section.

Mr. Scott Millar: This is a new thing that has been proposed with respect to the CSE's legal authorities. It has only been proposed in the Bill C-59 context, given that the two new elements of our mandate around defensive and active cyber operations would be present. From a charter perspective, these prohibitions were viewed as necessary prohibitions to limit the impact upon those charter rights.

Mr. Matthew Dubé: Not being a lawyer myself, I was just wondering how democracy is defined in law. When we use the words "not subverting democracy", how is "democracy" defined?

Mr. Scott Millar: I'm not a legal expert or a charter expert. I'm an enthusiast.

Mr. Matthew Dubé: So am I.

Mr. Scott Millar: I've been told that, at the end of the day, the kinds of things that are being proposed in this amendment would be included within that definition, but I don't have any information or analysis to further unpack that.

Mr. Matthew Dubé: In the context of the things enumerated in my amendment, what would be included? Would there be any harm to the work that you do in having greater clarity in the legislation?

Mr. Scott Millar: No. It would make explicit what is already implicit there.

Mr. Matthew Dubé: Thank you.

The Chair: We'll go back to Mr. Motz.

Mr. Glen Motz: If I understand it, these activities are currently prohibited in law, are they not?

Mr. Scott Millar: For organizations within Canada that would undertake activities that would engage this charter right, I would assume that the prohibition is there. This is new for CSE, in that these are new elements to our mandate that have been added on active and defensive. That provision is not in the National Defence Act that reflects CSE.

We do intelligence collection, and that's collection that's not affecting an outcome. It's by virtue that we are affecting an outcome that two prohibitions have been added around not wilfully or by negligence causing death or bodily harm, or obstructing the course of justice or democracy.

The Chair: I see no further debate.

(Amendment negatived [See Minutes of Proceedings])

The Chair: We'll go to NDP-37.

Mr. Dubé.

Mr. Matthew Dubé: Thank you, Chair.

Here we were inspired by the CSIS Act and sought again, for greater clarity, to have an exhaustive list of prohibited activities.

The Chair: Is there debate?

[*Translation*]

Mr. Michel Picard: In the same vein, we must realize that paragraph 33(1)(d) suggested by my colleague has already been approved in the context of amendment LIB-16, which contains measures against torture.

With respect to paragraph 33(1)(c), unless the experts can confirm otherwise, I have difficulty in seeing how the physical and sexual integrity of an individual can be achieved when a telephone communication is intercepted. This situation does not affect the physical aspect of people.

I would point out that subclause 35(1) deals with the reasonableness of the measures to be taken and the fact that it would prevent that kind of activity. I would also point out that the entire bill is subject to the Canadian Charter of Rights and Freedoms. It is therefore not conceivable to put these provisions into effect.

For those reasons, I will oppose the amendment.

● (1000)

[*English*]

The Chair: Mr. Dubé is first, Mr. Motz second.

[*Translation*]

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

Although I supported and appreciated amendment LIB-16, I think the bill still needs many clarifications regarding the use of information acquired through torture. I hope that, on the pretext that an amendment that talks about departmental directives will inevitably become the law, we won't feel obligated any longer to include in an amendment explicit provisions such as the following, which seeks to prohibit "subjecting an individual to torture or cruel, inhuman or degrading treatment or punishment, within the meaning of the Convention Against Torture".

I hope this won't be used as a way out every time such wording is proposed. In the case of such an important issue, I think there is a huge difference between departmental directives and the fact that these provisions are specifically expressed in the legislation.

[*English*]

Mr. Glen Motz: I think that in the amendment, (c), (d), and (f) are prohibitions that I believe are already in the legislation, and are prohibited. I am intrigued with (g) and whether the officials can tell us if these sorts of activities would be of value to us as a government, as Canadians, and if there's ever a time or condition when we might actually attack a hostile government's telecommunications system.

Mr. Scott Millar: If there were a threat actor targeting a Canadian electoral process using the computer, I think this might make it tricky, in terms of this prohibition, for CSE to be called upon to take actions to thwart that.

Mr. Glen Motz: I'm confused by that.

Mr. Scott Millar: Maybe can you repeat your question, just to make sure I'm...?

Mr. Glen Motz: Proposed new paragraph (g) says that we won't:

> engage in activities that are likely to undermine the integrity of supply chains, telecommunications, equipment and services used by the public, including by weakening or interfering with security standards and protocols.

Now, that might apply to Canadian soil, but CSE's mandate is anything off Canadian soil. So, it goes back to my question.

I guess you can't answer if there will ever be a time, but do you think there will be a time or condition when it would be in Canada's best interests to engage in activities that could undermine the telecommunications system of another hostile government or entity?

Mr. Scott Millar: You're getting at an important point there, which is the difference between us and CSIS in terms of CSIS being able to direct their activities at Canadians. They operate more in the physical world than the online world. They are an investigatory body. There is a prohibition proposed in Bill C-59 that says we cannot target Canadians or Canadian infrastructure. That prohibition is already proposed in Bill C-59 right now.

Mr. Glen Motz: For CSIS....

Mr. Scott Millar: For CSE, there is a prohibition.

Mr. Glen Motz: As we know, CSE does all of their work, according to the current and proposed bill, on people outside of Canada, entities outside of Canada. My question is on not targeting Canadian infrastructure. It is focusing on a hostile environment in a government or entity outside of Canada.

● (1005)

Mr. Scott Millar: That's right, in a reasonable and proportionate way and in a way that couldn't be achieved by any other means. Both are required under the ministerial authorization.

Mr. Glen Motz: Then this amendment might limit that potential.

Mr. Scott Millar: It could, from an interpretation perspective, absolutely do that. It would depend case by case, and each operation would have to be looked at.

Mr. Glen Motz: It could be a disadvantage to Canada to have proposed new paragraph (g) in this amendment.

Mr. Scott Millar: Yes, it could be.

Mr. Glen Motz: Thank you.

The Chair: Is there further debate?

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

The Chair: Now we are on NDP-38

[*Translation*]

Mr. Matthew Dubé: Mr. Chair, this amendment seeks to ensure that the authorizations and extensions for CSE activities as defined in the bill and the commissioner's authorizations are for six months rather than one year, and that any extension or change to what has been requested is also reviewed and approved by the commissioner.

This is a recommendation of several witnesses who wrote to us or who appeared before us, including, again, a suggestion from Jean-Pierre Plouffe himself who will most likely be the person who will occupy this position and who currently occupies the position most resembling what is proposed here.

[*English*]

The Chair: Thank you, Mr. Dubé.

Is there debate?

Mr. Picard.

[*Translation*]

Mr. Michel Picard: My first concern is operational. I think it is a misnomer for foreign intelligence field work. Reducing the period by six months would be more difficult than anything else in the day-to-day operations because the operations sometimes take time, meaning that the information does not arrive on a regular basis. This administrative game that interferes in the process seems to be more like sand in the gear of the current operations of the organization.

[*English*]

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

[*Translation*]

Mr. Matthew Dubé: Yes, I would simply like to reply that it is possible that I, myself, don't serve the operational needs on the ground well, but that it can't be presumed that Mr. Plouffe does not serve these needs well, given that he occupies a very similar position right now as CSE commissioner. I think that not considering his recommendation—it's my amendment, but it's his recommendation and not mine—would be disappointing to say the least.

[*English*]

Mr. Glen Motz: I would suggest that ministers are responsible to Canadians through Parliament and need to be accountable. The commissioner shouldn't authorize these things. I don't see any need for the amendment, to be honest with you.

The Chair: Is there any further debate?

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

The Chair: We are now on LIB-32.

Mr. Michel Picard: I will not withdraw this one.

The Chair: Under any circumstances.

[*Translation*]

Mr. Michel Picard: Thank you.

[*English*]

It says:

> The Minister must, as soon as feasible, notify the Commissioner of any extension of an authorization.

[*Translation*]

This amendment seeks to ensure that communication with the commissioner is done in a reasonable time frame, given the practical context that an adjustment can sometimes require. This ensures that communication with the commissioner occurs within a reasonable amount of time.

[*English*]

The Chair: Before we commence debate, take note that if LIB-32 is passed, NDP-39 cannot be moved.

Ms. Damoff.

Ms. Pam Damoff: Thank you, Chair.

I want to propose a subamendment to my colleague's amendment. After discussion with him, we came to the conclusion that he actually doesn't want to delete proposed subsection 37(3). He wants to add to it. My subamendment would be that LIB-32 be amended by substituting the following, for reference to proposed subsection 37 (3), and it would be proposed subsection 37(4). It's creating a new subsection.

The Chair: You're adding that. What does proposed subsection 37(4) say?

Ms. Pam Damoff: It says what he says. Proposed subsection 37 (4) is his amendment.

● (1010)

Mr. Michel Picard: My amendment is for proposed subsection 37 (4) instead of proposed subsection 37(3).

The Chair: I'm sorry. Before we go to any debate, just so I understand, you're changing proposed subsection 37(3) to a new proposed subsection 37(4).

Ms. Pam Damoff: That's correct.

Mr. Blaine Calkins: No. Actually, she's changing more than that, Mr. Chair. Ms. Damoff, are you not—

Ms. Pam Damoff: No.

Mr. Blaine Calkins: Can I finish? Actually, in your amendment it has, “That Bill C-59, in clause 76, be amended by replacing lines 8 to 10...”. You're saying “by adding after line 10 the following”. Is that what you're saying? Are you adding? Or are you replacing and adding?

Mr. Michel Picard: Do you mind if I answer the question?

Mr. Blaine Calkins: I'm just asking. Is that...?

Ms. Pam Damoff: I'll have Mr. Picard answer.

[*Translation*]

Mr. Michel Picard: The purpose wasn't to remove subsection 3, but to add that the notification to the commissioner be done in a timely manner. This confusion means that we can't add this to subsection 3, but instead have to create a subsection 4.

[*English*]

Mr. Blaine Calkins: I'm right. You're welcome.

Mr. Michel Picard: Yes. It's a new proposed subsection. Thank you.

The Chair: Maybe I could call on the clerk to clarify what you think you mean.

A voice: We're not clear enough.

Mr. Blaine Calkins: You're adding, right? You're not replacing.

Mr. Michel Picard: It's an additional proposed subsection.

Mr. Blaine Calkins: Yes, so you're adding.

Mr. Michel Picard: Yes.

Mr. Blaine Calkins: Okay.

The Chair: Mr. Dubé.

Mr. Matthew Dubé: I want to clarify this. I just want to make sure. For the sake of NDP-39, I would propose that the previous ruling would no longer apply, because my amendment seeks to change proposed subsection 37(3). If we're creating a new proposed subsection 37(4), then I can still move my amendment.

The Chair: There may be some truth to that, but let me deal with this first—

Mr. Matthew Dubé: I'm just putting that out there.

The Chair: —and then I'll deal with your concern after that.

I'm confused, and if I'm confused, this is a bad thing. Could we ask the clerk to clarify for all of us?

Mr. Philippe Méla (Legislative Clerk): I can try. The amendment as it reads right now, says, basically "That Bill C-59, in clause 76, be amended by replacing lines 8 to 10", but we don't want to do that anymore. What you want to do is add, so it should read, "by adding, after line 11 on page 71, the following", and then the proposed subsection 37(3) would become a new proposed subsection 37(4).

Mr. Michel Picard: Yes.

Mr. Philippe Méla (Legislative Clerk): That's what you want to do.

If I may answer Mr. Dubé's question at the same time...?

The Chair: You may.

Mr. Philippe Méla (Legislative Clerk): You would be right.

Mr. Blaine Calkins: I just want to know why that is.

The Chair: Because we're changing lines. If we're changing lines, then you're in order.

Is everyone clear about what we're doing? Then we are on to debate.

Mr. Glen Motz: I have a question.

The Chair: We have a question from Mr. Motz.

Mr. Glen Motz: Currently proposed subsection 37(3) says:

> The Minister's decision to extend a period of validity is not subject to review by the Commissioner under the Intelligence Commissioner Act.

I appreciate that. That makes sense. Then, in the amendment to add proposed subsection 37(4), you're saying:

> The Minister must, as soon as feasible, notify the Commissioner of any extension of an authorization.

Are we saying, then, that this amendment holds the minister accountable to the commissioner?

Mr. Michel Picard: It would just guarantee full communication between the minister and the commissioner.

Mr. Glen Motz: Basically, it's a courtesy. That's what you're doing.

Mr. Michel Picard: I won't call that courtesy in the legal system, but you can call it that. Why not?

Mr. Blaine Calkins: Would this be the normal practice?

Mr. Scott Millar: Absolutely.

Mr. Blaine Calkins: Okay.

The Chair: Is there any other debate?

Mr. Dubé.

[*Translation*]

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

I'm going to support the sub-amendment again because I think it's a small step in the right direction, but I must still express my disappointment that we didn't want to ensure, through amendment NDP-38, that this isn't just the minister's opinion, but that extensions or any change to an authorization be approved directly by the commissioner.

[*English*]

The Chair: Any further debate?

(Subamendment agreed to)

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

The Chair: The ruling that I initially had suggested is now incorrect, given the change of adding to the clause. Therefore, we are not amending the same line. Therefore, NDP-39 is in order.

● (1015)

[*Translation*]

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

We can see that extensions of the validity period don't need to be reviewed by the commissioner. Several groups, witnesses and experts have told us that, on the contrary, this should be the case.

There is the International Civil Liberties Monitoring Group, Professor Wesley Wark, Commissioner Jean-Pierre Plouffe, the Canadian Civil Liberties Association, and so on.

I think that's entirely appropriate, especially since the amendment to reduce authorizations to six months instead of a year has been negatived. This means that, if there is an extension, it will go more than a year without review by the commissioner.

This amendment is appropriate, and it responds to what the experts proposed.

[*English*]

The Chair: Mr. Spengemann.

Mr. Sven Spengemann: I'd like to hear from the experts on this but my initial thoughts are the following. It basically blurs the distinction between an authorization and an extension because the purpose of an extension of a ministerial authorization is to ensure that the CSE can continue in the event of a commissioner's absence or incapacity. An extension doesn't provide CSE with any new authority. It simply continues what was already previously reviewed and approved by the intelligence commissioner. I'd just like to have the experts confirm that this is in fact a correct understanding.

Mr. Scott Millar: That is accurate, and I would say that under that extension CSE, of course, would still be subject to review by the new review agency in terms of the activities undertaken as well.

Mr. Sven Spengemann: Thank you for that.

The Chair: Any further debate?

Mr. Matthew Dubé: I'd just like to add to that point. Certainly, while CSE's activities would be subject to review, it's important to remember that the commissioner is operating in real-time oversight. At least having the ability to review an extended, off-period validity for an authorization, as I said, means that, by the time the review agency gets the opportunity to deal with whatever authorization might be in question, we're talking way down the road. We're already keeping authorizations at one year, plus this extension without review, which is specifically exempt from review by the commissioner. This means that we could be talking years down the road by the time the review agency has the opportunity to review this type of authorization. To me, there is no blurred line there. I think it's pretty clear that the intelligence commissioner has a different role, to make sure that he's able to keep an eye on these types of authorizations that are clearly extending in this particular provision over a lengthy period of time.

The Chair: Any further debate?

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

The Chair: We have Ms. May and PV-7.

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

This amendment deals with a different proposed section of the act in the case of the question of whether the decision of the minister is subject to a review by the intelligence commissioner. My amendment is similar to the one that follows from Mr. Dubé. In my amendment I delete the whole proposed subsection that specifically exempts that decision from review by the intelligence commissioner. I'm doing this based on evidence from Jean-Pierre Plouffe and from Citizen Lab at U of T. Basically, there's no reason to exempt that decision from the minister by review by the intelligence commissioner.

My approach just leaves it open. It doesn't say you must do it. It just says the exemption is deleted. It also opens up the opportunity for after-the-fact scrutiny by the intelligence commissioner, which is certainly wise.

The Chair: Thank you, Ms. May.

Prior to asking Mr. Spengemann to weigh in on this, if PV-7 is adopted, NDP-40 cannot be moved.

● (1020)

Mr. Sven Spengemann: Thank you very much.

This amendment goes to the logic of an emergency authorization. In fact, these authorizations are typically only issued when the minister has reasonable grounds to believe that the time required to obtain the commissioner's approval would defeat the purpose of issuing the authorization. So this is a very quick process by which the minister says that, in the absence of the intelligence commissioner, emergency authorization should be granted. It's limited to only up to five days, and after that period has expired CSE would then require a standard commissioner-approved ministerial authorization.

Again, to subject this to review would more or less defeat the purpose of having the separate category of emergency authorizations.

Mr. Matthew Dubé: I support my colleague's amendment. I proposed the next amendment, which, depending on the fate of this one, sought to, at the minimum, have review. My colleague's approach is just as appropriate and comes from a number of testimonies. She mentioned Mr. Plouffe. We also had Professor Wark and the Citizen Lab share the same concerns. I think that an emergency authorization without review is a pretty big loophole. When does that end? How many activities can be undertaken without review under this, on top of having extensions, as we were discussing in the previous debate, not being subject to review? There are quite a few loopholes suddenly that exist here with what the intelligence commissioner can approve and review, which is quite problematic.

Ms. Elizabeth May: If the effect of my amendment was as expressed by Sven, then I wouldn't be in favour of my amendment, either.

By deleting this section there is no requirement that before an emergency order can be put in place the intelligence commissioner has to weigh in. By removing the specific exemption from any review we create the opportunity to do what they do in the U.K., which is to look at it after the fact. The minister can make an emergency order. The intelligence commissioner can look at it and decide, should this emergency order continue? Was this a mistake?

As a matter of fact, our Communications Security Establishment Commissioner also suggested in his testimony that a review within five days might be appropriate. We're leaving open the door here, not requiring that the intelligence commissioner sign off before the minister can take action in an emergency. We're leaving open the door to the possibility that there be an ex-post review sometime after the emergency order. The emergency order might be something that we need to reflect upon and decide whether we can halt that action now, or whether it was appropriately taken.

By deleting the provision that exempts the decision from any review, we leave open the possibility that it will be reviewed after the fact.

The Chair: Is there any further debate?

Seeing none, those in favour of PV-7?

Ms. Elizabeth May: I don't know why they're not voting for me.

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

The Chair: PV-7 is defeated, in spite of the profound representations of Ms. May.

We move to NDP-40.

Mr. Matthew Dubé: Thank you, Chair.

I don't want to repeat the great points that were just made my colleague, but this is indeed the point, understanding that national security does require quick action, at times, in emergency situations. The fact that the commissioner would be reviewing and not authorizing gives that nimbleness, if I may, to the minister in the types of situations that are being alluded to in this section of the bill. Again, if we want to talk about how we're listening to the experts and such, this is something that was raised repeatedly and is not something that would infringe in any way on the minister's ability to authorize, in emergencies, certain actions. This would simply make it reviewable after the fact, and I think, for the rest, Ms. May put it quite succinctly and appropriately.

The Chair: Thank you, Mr. Dubé.

Mr. Spengemann.

Mr. Sven Spengemann: Chair, thank you.

It's essentially the same arguments as made under the previous amendments. I just want to add that any emergency authorization and any activities carried out by the CSE under that authorization are also reviewable under NSIRA and the national security and intelligence committee of parliamentarians as additional safeguards and backstops.

● (1025)

The Chair: Mr. Calkins.

Mr. Blaine Calkins: Mr. Chair, if I may ask the officials, is it possible that an emergency authorization could somehow become part of an ongoing, annual cyber operation, in which case, if this amendment isn't accepted, we could end up having an authorization that has never been reviewed by the commissioner?

Mr. Charles Arnott: As much as I understand the intent as described, I think the issue from our perspective is that simply deleting that clause doesn't really make it clear what happens. It says that it's not not subject to review by the IC, but there are no matching clauses in the intelligence commissioner act to clarify exactly what the intelligence commissioner's role would be vis-à-vis these types of authorizations. It just kind of leaves that all open to interpretation. My sense is that the five-day limit would still apply, if I'm not mistaken.

I don't know if that answers your question.

Mr. Scott Millar: This is about a five-day limit at the end of the day—at the end of the five days.

Mr. Blaine Calkins: This is a five-day authorization.

Mr. Scott Millar: You cannot continue without an authorization that has been reviewed by the intelligence commissioner.

Mr. Blaine Calkins: That only has to happen within 30 days.

Mr. Scott Millar: He has 30 days to respond to the decision that the—

Mr. Blaine Calkins: It's the five and 30 thing again, right? But it's going to happen.

What I want assurance on is that, for any authorization, whether it starts out as an ongoing annual authorization or as an emergency authorization, it's mandatory at some point in time along that chain that the commissioner will review that authorization.

Mr. Scott Millar: With respect to emergency authorization, it is only there for the extenuating circumstances exigent. There would not be a requirement for the commissioner to review that. He or she would certainly be free to opine on that. NSIRA themselves would review it. That would inform the intelligence commissioner in terms of going forward with any other kind of ministerial authorization.

Ultimately, the only reason this was created—and this isn't an elegant way to put it—is as a hedge. For extenuating circumstances, in an emergency, if you cannot get the intelligence commissioner—the post might be vacant or the commissioner might not be available—you need to proceed quickly.

Mr. Blaine Calkins: I'm not worried about the five-day start and stop. It ends. It's over. It's done.

Mr. Scott Millar: Yes.

Mr. Blaine Calkins: I'm not worried about that. I'm just worried about the ones that start as an emergency and then become "Okay, we've done the five days. Now we're asking for an extension on that" or "We'll create a new authorization."

Mr. Scott Millar: Okay.

Mr. Blaine Calkins: Those are the ones that I want to make sure get captured by a review by the commissioner.

Mr. Scott Millar: Emergency authorizations cannot be extended. If we were going to continue those activities, we would have to do a ministerial authorization and proceed.

The other element that I think is important to underscore is that emergency ministerial authorization, even though it's not reviewed by the intelligence commissioner, still has to meet all the tests of a ministerial authorization, so the reasonable, proportionate necessity of the privacy protections all have to be in there and will all be reviewed.

Mr. Matthew Dubé: I'm just wondering why then we would specify that there's no review by the commissioner.

Mr. Scott Millar: Again, it's only there for the extenuating circumstances.

The way the intelligence commissioner's role is laid out in part 2 of the act is that it is reviewing the minister's decision before CSE can undertake the activity. If we can't undertake that activity because the intelligence commissioner is unavailable and there's an emergency occurring, then there's a challenge around that.

The role of the intelligence commissioner is to review that authorization before CSE proceeds. This allows us to proceed under extenuating circumstances without that review. To Charlie's point, that's is coherent with the structure of part 2.

Mr. Matthew Dubé: If my amendment says "subject to review", isn't it a review after the fact anyway? It's not real-time oversight.

Mr. Scott Millar: It's a different role because what the intelligence commissioner does to address engaging section 8 of the charter is to review the reasonableness of the minister's decision. It's not oversight of CSE's activities. It's either a quasi-judicial review or I, as the intelligence commissioner, would have come to the same reasonable decision that the minister made, given all the tests that are required, but it does not review CSE's activities. That is the role of NSIRA, to review for reasonableness, proportionality, privacy, and compliance with the law.

● (1030)

Mr. Matthew Dubé: Hypotheticals can be a dangerous exercise in this line of work, but if the minister is going forward with authorizing an emergency action or operation and then the commissioner gets the chance to review it afterwards, before authorizing other activities that would be subject to his authorization but that may be connected, would there not be a need for that narrative to stretch out, potentially, with connected activities?

As a follow-up question to that, how long would we be waiting before NSIRA would be reviewing it? It could potentially be far down the road, depending on what's on their plate.

Mr. Scott Millar: I would hesitate to comment on what the intelligence commissioner or NSIRA would or wouldn't do in terms of the pace at which they would do things. It does not appear to me that there's anything in Bill C-59 right now—I'm happy to be corrected by Public Safety—that would prohibit the intelligence commissioner from seeing the emergency ministerial authorization to inform, if there were a continuation of that kind of activity under a full ministerial authorization.

Mr. Matthew Dubé: At the end of the day, there's no harm in this amendment having the subject to review. It just codifies something that's already doable anyway.

Mr. Scott Millar: I think the problem is that the nature of the provision is to allow CSE to undertake the activities without review. If you leave "review" in, at the end of the day, it appears to defeat or run contrary to why the provision or the section is there in the first place.

The Chair: Thank you. Is there any further debate on NDP-40?

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

The Chair: Colleagues, we've been at this for an hour and a half. We have two and a half hours to go. I'm proposing a short suspension while we do whatever.

Mr. Calkins and Mr. Motz can check on their booking, and the rest of us can do whatever we need to do for the next five minutes. We'll have a five-minute suspension.

● (Pause) ●

● (1040)

The Chair: Colleagues, let's resume.

We have some Liberal amendments here that Mr. Dubé wants to move. I think people already are talking.

Okay, we are back in session, and we are moving LIB-33.

Mr. Spengemann.

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

This is the amendment that will provide the completion of proposed section 44. Proposed section 44 of the proposed CSE act allows the CSE to disclose "information that could be used to identify a Canadian or a person in Canada and that has been used, analysed or retained" under a foreign intelligence ministerial authorization under proposed subsection 27(1).

What this amendment does is bring in proposed subsection 41(1) as well, which is the disclosure of Canadian identifying information obtained under an emergency ministerial authorization. Without this amendment, a situation could result in which the CSE could not disclose Canadian identifying information obtained pursuant to an emergency authorization to designated persons in the event of an emergency such as an imminent terrorist attack.

I should also add that this is a very limited five-day emergency authorization, as discussed in previous amendments, that would only be used in truly exigent circumstances and when the intelligence commissioner is incapacitated or unavailable to render an approval.

The Chair: Thank you, Mr. Spengemann.

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

The Chair: Now we have LIB-34.

Mr. Sven Spengemann: Liberal amendment 34 is an amendment that provides clarifying language. It adds language to proposed subsection 45(1) to clarify that the provision only applies to the disclosure of information relating to a Canadian or a person in Canada. Proposed section 45 is meant to provide an appropriate statutory scheme that would allow the CSE to disclose information in which a Canadian or a person in Canada may have a privacy interest when necessary to protect networks from cyber-intrusions.

This section is not meant to apply to any information that does not carry that privacy interest, so the language that is being provided in the amendment is basically to clarify that point.

The Chair: Thank you, Mr. Spengemann.

Mr. Glen Motz: It's a good explanation. It's fine.

The Chair: It was all in the explanation.

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

The Chair: Now we have NDP-41. We'll see whether Mr. Dubé is as persuasive as Mr. Spengemann.

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

Some of the amendments are sometimes more difficult to read because we get into language about subsections and deleting lines and such. However, I think this one is worth reading into the record for those following along, since the folks who follow us don't see the text of all of the amendments. That can make the process challenging.

This amendment proposes that Bill C-59, in clause 76, be amended by adding after line 5 on page 75 the following:

47.1 (1) The Establishment is prohibited from

(a) disclosing information obtained in the performance of its duties and functions under this Act, or requesting information, if the disclosure or the request would subject an individual to a danger, believed on substantial grounds to exist, of mistreatment; or

(b) using information that is believed on reasonable grounds to have been obtained as a result of mistreatment of an individual.

(2) For the purposes of this section, mistreatment means torture or cruel, inhuman or degrading treatment or punishment within the meaning of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed at New York on December 10, 1984.

● (1045)

The Chair: Thank you, Mr. Dubé.

Is there debate?

Ms. Dabrusin.

Ms. Julie Dabrusin: I appreciate that we're taking on this issue of making sure there is no complicity in the mistreatment of people in torture. That was something that was a key to amendment LIB-16, and we put in all of these amendments at the same time, but we do have amendment LIB-16 and to speak to what Mr. Dubé raised, if I go back to amendment LIB-16 and part of the preamble, we, in fact, do refer specifically to the conventions in that. It says:

Whereas Canada is a party to a number of international agreements that prohibit torture and other cruel, inhuman or degrading treatment or punishment, including the Geneva Conventions, the International Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

Whereas torture is an offence under the Criminal Code, which Act also prohibits aiding and abetting the commission of torture, counselling the commission of torture, conspiring to commit torture, attempting to commit torture and being an accessory after the fact to torture;

It goes on. It's a fairly long amendment. I will not read out all of amendment LIB-16.

We did adopt that, and it captures what is being sought by NDP-41. It makes very clear what the process is and how we're going to ensure that there isn't complicity. I would state that this captures the field for the purposes of what we're talking about.

Mr. Matthew Dubé: I would respectfully disagree with my colleague. As I said, I supported the amendment because it is a nice preamble and it's good to have it in law, but at the end of the day, LIB-16 also says with regard to directions—because that's what is being talked about, ministerial directions—that:

The Governor in Council may, on the recommendation of the appropriate minister, issue written directions to any deputy head in respect of

It then goes on to enumerate the circumstances under which information may have been obtained through the use of torture.

Again, I support that amendment because I'll support any effort of the government that is moving in that direction, but clearly NDP-41 is much stronger and more explicit that there is in law no way that CSE can neither obtain nor share information that has any connection to the mistreatment of people.

I would also ask to have a recorded vote on this, please.

Mr. Blaine Calkins: For our officials, is there any reason that any member of this committee would suspect that currently the CSE actually acts or behaves in a way that would require this legislation to be implicit or explicit?

Mr. Scott Millar: I don't know, John, whether you want to speak to the overall regime.

One thing I would say is just by way of background, obviously recent approaches to ministerial directives more broadly will speak to that. CSE is operated under a ministerial directive prohibiting us from contributing to torture or using information derived from torture—since 2012, I believe, although it might be 2011—and we've been reviewed every year on our compliance with that ministerial directive.

Mr. John Davies (Director General, National Security Policy, Department of Public Safety and Emergency Preparedness): I'll just add to that. As was already said, the law is already clear in the charter of rights, the Criminal Code, and international law, all of which are noted in the preamble in LIB-16, so we think the law in this area is pretty clear.

The Chair: Mr. Motz.

Mr. Glen Motz: He's answered my question, Mr. Chair.

The Chair: We strayed a little close to asking officials their opinions about matters and I think they answered with facts, but the opinion part of it is usually that of their political masters as to whether we should or shouldn't have this sort of thing. Anyway, I think Mr. Calkins' and Mr. Motz's questions have been satisfied.

We'll have a recorded vote.

(Amendment negatived: nays 8; yeas 1)

The Chair: On amendment NDP-42, we have Mr. Dubé.

● (1050)

Mr. Matthew Dubé: Thank you, Chair.

If I may, I will read parts of this amendment, which seeks to amend proposed section 55 so that CSE is prohibited from knowingly entering into arrangements with institutions of foreign states or other entities suspected of engaging in torture and require approval of the IC to do so, and so we say:

The entities referred to in subsection (1) include entities that are institutions of foreign states or that are international organizations of states or institutions of those organizations but do not include entities that subject, or are suspected by the Establishment to subject, individuals to torture or cruel, inhuman or degrading treatment or punishment, within the meaning of the Convention Against Torture

And so forth.... The other piece that's important is, “The Minister must not approve an arrangement described in subsection (2) without the approval of the Commissioner.”

This is obviously complementary to NDP-41 in a way, where again we're seeking to maximize the legal protections and legal framework around the comportment of CSE and to ensure that we're not in a situation where we might be party to other state actors or organizations whose standards for human rights are far less great than our own.

I would also ask for a recorded vote on this, as well, please.

The Chair: Is there debate?

Ms. Dabrusin.

Ms. Julie Dabrusin: Here's the thing. In the interest of time, I do not have the ability to read in all of LIB-16. I'm not going to make us listen to it all, but I want to underline that we are going toward the same objectives here.

The reason we have adopted LIB-16 was to deal with the specific issue of torture and mistreatment, and I'll read the definition of mistreatment as it is incorporated within the act so there is no misunderstanding. Mistreatment under LIB-16 means:

> torture or other cruel, inhuman or degrading treatment or punishment, within the meaning of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, signed at New York on December 10, 1984.

Mistreatment includes all of what's in LIB-16, which is that act. I want to make sure there's no misunderstanding. We have previously adopted an amendment that deals specifically with these issues and covers this ground, so I wouldn't want it to be misunderstood.

In addition, there's a question of the intelligence commissioner's role, which is to review authorizations but it's not to be reviewing CSE's arrangements with other entities, so there's a question of whether this even oversteps what we would see as the intelligence commissioner's role in this.

Mr. Glen Motz: I'd like to ask the officials. China's international reputation is certainly known. Under this amendment would state-controlled companies be subject to what this amendment is suggesting? That's one part of my question.

Mr. Scott Millar: In terms of the interpretation around this wording, I'm not... I could guess at things in terms of how they would be interpreted. It would seem this would cover.... It's a pretty broad scope in terms of entities and institutions of foreign states.

● (1055)

Mr. Glen Motz: The amendment to proposed subsection (3) says, “The minister must not approve an arrangement described in subsection (2) without the approval of the Commissioner”. I'm curious to know, this amendment seems to suggest that the commissioner is now in charge of the minister.

Mr. Scott Millar: It changes the role of the intelligence commissioner.

Mr. Glen Motz: Okay. That doesn't work.

Mr. Matthew Dubé: I want to make it clear that I do understand what LIB-16 is. It's great for definitions and preambles but at the end of the day, it concerns ministerial directives and allows wiggle room for another government, or even this government, to change those ministerial directives that are still permitted. My support is on the fact that it's a good first step, but if it's only going to be one step, with no other follow-up and no other legal framework around it, then it's not good enough. When we support things on good faith, hoping that we're going to keep going in that direction, that's one thing. When we use these things to pat ourselves on the back and say the job is complete when clearly more needs to be done with this expanding national security apparatus, and the fact that many of these situations involve state actors who—not to inappropriately paraphrase them but as Mr. Motz was alluding—have less than stellar reputations on the international stage, I think it is absolutely appropriate.

Again, I would happily put my amendment side by side with LIB-16, in front of anyone in the Canadian public, and be very comfortable with the fact that these go even further and do more than LIB-16 to protect Canadians' rights, and quite frankly, human rights, more generally speaking.

Ms. Julie Dabrusin: The important part of this amendment—and I think Mr. Motz covered it—is the fact that it goes beyond just adding prohibitions and changes the role of the intelligence commissioner fundamentally. That's an important piece to keep in mind.

We're talking about stand-alone pieces as we look through this act. We can't lose sight of the fact that there is a robust oversight system that has been put in place that covers this entire bill, C-59. We can't understate the role of NSIRA or the role of the parliamentary oversight committee that has been put into place. What fundamentally makes Bill C-59 a strong act, in my mind, is the fact that we have introduced such strong oversight. Sometimes we get lost looking at the trees, but we need to take into account that part as well, which is LIB-16 and the oversight, and the fact that this specific amendment oversteps what would be the role of the intelligence commissioner.

The Chair: Thank you.

(Amendment negatived: nays 8; yeas 1 [See *Minutes of Proceedings*])

The Chair: We are now on NDP-43.

Mr. Dubé.

[*Translation*]

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

This amendment simply seeks to require the CSE to include in its annual report the number of defensive and active cyber operations conducted and the number of times that it has offered assistance to other entities. Once again, this is in the spirit of transparency. It's even more interesting because active cyber operations are a very new concept, as I said earlier. So it is important to understand the frequency of these cyber operations. It would be a great help to parliamentarians in their future work, in particular.

[*English*]

Ms. Julie Dabrusin: I've been talking about balance throughout the day. This goes back to the balance piece, which is that public disclosure of these statistics could reveal information to our adversaries about operations that were intended to remain covert. That would undermine CSE's operations and Canada's national security. We have to take that into account.

On the other part of that balance, CSE is already required to report to the minister on its active cyber operations and defensive cyber operations within 90 days of the expiry of ministerial authorization. A copy of these reports must be provided to the national security and intelligence review agency. That's the oversight piece. That's your balance.

I would submit that this isn't a feasible amendment.

● (1100)

The Chair: Is there any debate?

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

The Chair: Next is CPC-21.

Mr. Glen Motz: Thank you, Chair.

I move that Bill C-59, in clause 76, be amended by adding after line 35 on page 79 the following:

> 60.1 (1) Within the first four months after the commencement of each fiscal year, the Establishment must submit to the Minister a report on the administrative costs of meeting the requirements imposed on the Establishment under the National Security and Intelligence Review Agency Act and the National Security and Intelligence Committee of Parliamentarians Act for the preceding fiscal year.
>
> (2) The Minister shall, within 15 days after a report is submitted under subsection (1), publish the report on its Internet site.

This was really brought forward to address issues raised by a number of national security experts with regard to, basically, a budget cut to our national security agencies. Under Bill C-59, the new reporting requirements, without new funding, effectively means a funding cut for CSIS and CSE, and could actually put Canadians at risk during heightened security threats.

With regard to Dr. Leuprecht, Mr. Boisvert, as well as Mr. Fadden, and based on other conversations that my office has had, I would propose that CSE and CSIS provide to Parliament through the minister—which is what this talks about—an actual accounting of the administrative costs with compliance, to ensure that we are informed as to how much the government has cut from national security.

Ms. Julie Dabrusin: This seems like almost a budget debate rather than going through the sections of this act, but NSIRA is essentially going to be replacing the office of CSE commissioner. It's not even putting on another layer of administrative burden necessarily, because it's in fact replacing what's already there, just elevating it as far as how it works, and I mean as to quality when I say elevating.

There shouldn't necessarily be an increase because of that replacement. CSE is already subject to existing reporting requirements as it is under its current system. It seems like having people drafting reports is, in fact, adding to an administrative burden there, so it doesn't actually serve that purpose.

The Chair: Thank you.

[*Translation*]

Mr. Berthold, welcome to the committee.

Mr. Luc Berthold (Mégantic—L'Érable, CPC): Thank you very much, Mr. Chair.

I am pleased to be here, dear colleagues. You work very hard in this committee. The bill you are studying is quite extensive and a number of amendments have been proposed, all in a spirit of goodwill. For someone who is beginning, I admit that it's quite difficult to dive into this all at once.

I'm a little surprised by the answer from my colleague on the importance of knowing how much the amendments and this new oversight mechanism will cost.

Ms. Dabrusin, if as you just said, it won't cost anything, we will have the opportunity to see that in the first report and to see the importance of the numbers. It's perfectly legitimate to add that to the act. We'll see how these new measures will affect the budget.

We want to improve national security, but it's important not to do the opposite by devoting the money that could be used to protect us from these threats to the surveillance of people who are working so that we don't face various threats. So I'm very much in favour of the amendment introduced by my colleague Mr. Motz.

I sincerely invite the Liberals to reconsider their thoughts on this amendment because it is legitimate and perfectly relevant when we are changing so much in a national security bill.

● (1105)

[*English*]

Mr. Glen Motz: I would like to comment on Ms. Dabrusin's statement. If there are no increased costs, then it shouldn't be a problem to report them.

To the officials, currently—we don't know yet because it hasn't played out completely—NSIRA and the committee of parliamentarians can compel any information they want. There's no reporting down to NSIRA and the parliamentary committee. Is that correct?

Mr. John Davies: There's no reporting down. They're encouraged to co-operate and deconflict and so on. There is a way to move information that's necessary between them.

Mr. Glen Motz: What this amendment is asking for is really not any new work at all. It's just the type of work that we're asking for.

Mr. John Davies: As was said, CSE has been dealing with review as a distinct unit in its agency for the last 20 years to manage oversight and review. It's the same thing with CSIS and with SERC for the last 30 years. They are already conditioned to deal with review. There is certainly more thematic or sectoral reporting implied with Bill C-59 in the amendments, whether that's the LIB-16 reporting link to information sharing with a foreign entity, threat reduction, and so on. It's difficult to speculate what the real cost would be from doing this. They're already used to doing this.

Mr. Glen Motz: I asked my questions confusingly and I apologize for that.

Right now, NSIRA is going to be new and the parliamentary committee is going to be new.

Mr. John Davies: Again, NSIRA is not new for CSE and CSIS in the sense that they already have a review. The new parts of NSIRA are inter-agency review.

Mr. Glen Motz: What I'm getting at, Mr. Davies, is that because the committee of parliamentarians is new and some components of this act are going to be new, it would appear as if there's going to be additional work required and there are going to be additional reporting requirements. As a result, you're going to have additional administrative costs. All this amendment is asking for is for an accounting of the additional costs for administrative purposes, so that we can know exactly how much money is spent on the actual work of national security and how much is spent on administrative costs. That's really what this is asking for.

Mr. John Davies: I understand that.

One comment would be that I think behind this is some concern that if there's so much administrative burden on the agencies, it would affect the normal national security activities. If that was ever apparent, obviously, the committee of parliamentarians or NSIRA would probably want to investigate that more clearly, such as how much of an administrative burden is it that it is actually crowding out normal national security activities. Those two review bodies would be free to investigate that if they wanted.

Mr. Glen Motz: Unless the government doesn't want to necessarily release that.

You don't have to answer that. It's just a statement.

The Chair: You've been here a couple of years, Mr. Motz.

[*Translation*]

Mr. Matthew Dubé: Mr. Chair, I find it dangerous and in bad faith to call the accountability and review requirements an administrative burden. In my opinion, it is instead a burden that comes under our national security. We always say that we must also protect the rights and freedoms of Canadians, and it is in that context that these mechanisms are imposed.

Since I have been a member of this committee, I have noticed that the representatives of the various agencies are always ready to have their activities subjected to more scrutiny. Obviously, we can't expect them to say anything other than that. This is the exercise to regain public confidence, which has been much undermined in recent years.

This amendment worries me. We don't do the opposite, meaning that we don't ask to understand the financial burden imposed on the review agency because of a lack of cooperation from the other side.

We need to be consistent. I think this amendment paves the way for a potential witch hunt, where we look for ways to undermine the credibility of these agencies. I find this extremely problematic, dangerous even. I won't support this amendment.

● (1110)

[*English*]

Mr. Blaine Calkins: My thoughts on this are from the perspective of what our role is as parliamentarians. We are legislators, first and foremost. Actually, this work that we're doing right now is primarily the reason we got elected in the first place. The second reason, not any less important than this one, is to watch over the expenditures of the taxes that are collected from Canadians. While I can understand there might be some hesitation, and it doesn't look like the government members of the committee are going to be in favour of this amendment, if it's possible, could we get some consensus on this? If we were to add a sunsetting clause to it, we would know after the first couple of years what the actual cost might be of these changes. I think that's responsible governance and I think it's our responsibility as parliamentarians, first and foremost.

I'd be happy to move an amendment to it if I had any indication from my colleagues across the way for a sunset clause. We'll do this for the first three to five years and see what it costs, and then have it sunset automatically in the legislation.

I'm not seeing a lot of interest.

The Chair: Go ahead, Ms. Dabrusin.

[*Translation*]

Ms. Julie Dabrusin: First of all, I would like to say that I absolutely agree with what Mr. Dubé said. He expressed it well.

[*English*]

I'm not going to add to that, but I think it's a little bit rich for the Conservatives to be very concerned about making sure that the funding is available right now, when in their last mandate, they cut about $1 billion from our security agencies. Let's put that straightforward and down. In fact, under this government, in this Parliament, we have been putting money back in, so it's a bit rich to be taking that position at this point. However, I'm also concerned about having NSIRA well-positioned there, which was one of the most important parts of this act for me, yet as Mr. Dubé points out, this seems to be setting up some framework for undermining their work.

Thank you.

Mr. Glen Motz: First of all, I take exception to the suggestion that was just made, because this amendment is about administrative costs. We can put all the money we want into the fluff. It's the actual work on national security that gets done that we want to ensure is properly addressed. This clause does nothing more than separate administrative costs from what is actually involved in the administration of national security.

[*Translation*]

The Chair: Mr. Berthold, you have the floor.

Mr. Luc Berthold: Thank you very much, Mr. Chair.

I think this amendment is very simple and very easy to understand. When new measures or provisions are put into effect, it's important to know what costs and what repercussions are involved. I don't really understand my colleague's position on this. In recent days, I have heard that border measures have been reduced and slashed everywhere. I must remember that we haven't created problems everywhere, at the borders. If the needs are so serious today, it means that you should perhaps look at your Prime Minister's statements on Twitter. The needs might not be so big.

I know it's not the same issue. I don't mind going back to the past, but you have created different situations that, of course, require different obligations. That's what we are facing now. The act is amended, new measures are adopted, and we want to know how much it will cost. I think it's perfectly legitimate, and Canadians expect this level of transparency. If I remember correctly, you talked about an open and transparent government in your election platform.

This is a transparency measure that is absolutely necessary. Again, I say that I will support my colleague's amendment.

● (1115)

The Chair: Thank you.

[*English*]

Is there any debate?

[*Translation*]

Mr. Luc Berthold: Mr. Chair, I ask for a recorded vote.

[*English*]

The Chair: Okay. We'll have a recorded vote.

(Amendment negatived: nays 6; yeas 3)

The Chair: I declare CPC-21 defeated.

Before I ask Mr. Dubé to introduce NDP-44, just take note that we've been at this for something in order of eight hours cumulatively and thus far, we have largely avoided partisanship. I would say to all colleagues that, unless they want this thing to go on for ever—

Mr. Glen Motz: Which it will.

The Chair: —we should avoid as much partisanship as possible.

Thank you.

Mr. Glen Motz: We just started.

The Chair: I don't think we need to go into who started what.

On NDP-44, the floor is yours, Mr. Dubé.

Mr. Matthew Dubé: Thank you, Chair. Hopefully, you've given me some good luck to work on here with your comments.

My amendment seeks to remove proposed paragraph 61(c) on page 80, which says:

> amending the definition of any term defined in section 2 or subsection 24 (5) or 45(3) to respond, directly or indirectly, to any technological change.

I should add that's in the context of regulations. Regulatory power is always a funny thing when we have these debates. It has its place. It can be particularly frustrating, at times, for opposition MPs. We don't necessarily like to see things being put into regulation, although we understand the need for it at times.

However, we have heard numerous times throughout this study that the definitions are already designed in a way to be as nimble as possible with regard to things like technological change. I think that kind of change is far too substantive for it to simply be left up to regulation. I think that—"respond, directly or indirectly, to any technological change"—is crazy, as far as I'm concerned, with all due respect, and apologies for my choice of words.

It could be a very slippery slope. I think that type of change should be one that is legislative and voted on by parliamentarians. We've heard enough testimony from officials, and from experts, and from all sides of this debate, agreeing that if there's one thing that's close to a consensus from folks on both sides of this debate, it's that the definitions are relatively good when they come to addressing the needs of this. I don't think it's appropriate to have it as a regulatory change. I move to remove that proposed paragraph.

The Chair: Thank you, Mr. Dubé.

I should note that if NDP-44 is adopted, CPC-22 cannot be moved as it tries to amend the same line.

Mr. Glen Motz: Yes, these two amendments are absolutely identical. Just to expand upon the comments of my NDP colleague, the government has asked Parliament to basically hand over its role to cabinet, in what has traditionally been called the Henry VIII amendment or clause. It takes from Old English that when in a time of crisis, the government takes power over everything. Parliament is and remains the appropriate vetting for any changes to legislation.

We've heard it was written to allow cabinet to make changes quickly. I understand the need to be nimble in this legislation. However, I don't think, as I raised with the minister when he was here, that the purpose of regulations.... Perhaps it's worth discussing what regulations are needed instead of this clause, but we should never be handing over authority to cabinet for what Parliament is responsible for. To be frank, cabinet should never be asking Parliament to do that, to be honest with you. I have a huge problem with this particular clause.

Just to work on the good graces of my Liberal colleagues, they have noticed, probably, we've been very supportive of a number of theirs, and probably will be of a number of theirs coming up. I think this is a reasonable exchange, with the understanding that it could easily still accomplish the goals of Bill C-59 on being nimble when nimbleness is required, yet not take the power or the responsibility away from Parliament and leaving it solely up to cabinet.

Thank you.

● (1120)

Mr. Blaine Calkins: Notwithstanding the comments that were just made by Mr. Motz, I do find it very odd that this proposed paragraph is here, given the fact that proposed section 2 doesn't seem to have any reference in its definitions to "information technology". Proposed subsection 24(5) does. I'm just trying to work my way down to proposed subsection 45(3).

My question to my colleagues across the way is, do you actually want to give the regulatory authority to cabinet to change the definition of the act through regulations? I think it seems, actually, incoherent in the nature of how law is supposed to work. Regulations should only have the authorities granted in them that are granted within the act.

If we're asking for this particular proposed paragraph to be in here, somebody somewhere thought that this was a good idea. Otherwise, it wouldn't be here. If we're drafting legislation to deal with, basically, cybersecurity, which is largely in the realm of information technology.... When I was the chair of the Standing Committee on Access to Information, Privacy and Ethics and all of that type of stuff, we would try to draft technologically neutral legislation. I'm guessing there's somebody somewhere thinking that maybe the legislation is not technologically neutral enough in its definitions that this would need to happen.

This is my question to the officials. Is this something that would not be covered or be exempted in an emergency, one of those emergency situations we referred to earlier? Why is this necessary? It just seems counterproductive to the democratic process and I'm a little worried about the precedent it sets.

Mr. Scott Millar: Sure. I'll speak to the intent of it.

First of all, in terms of the proposed CSE act, it was drafted to take into account the fact that we're in a 2018 world as opposed to 2001, and technology has rapidly evolved. To the point around nimbleness, the definitions did make sure that they can accommodate for changes in technology. The idea here is to allow flexibility for definitions to be adapted to reflect technological change. It's—again, I hate to use the word—a hedge, if you will, for where perhaps technology and the definitions are not lining up to allow some mechanism for that to happen. It's not meant to evade privacy responsibilities, accountabilities, or requirements under the Privacy Act or the CSE act. It is solely for the definitional nimbleness.

Mr. Blaine Calkins: My problem with this, if I may continue, Mr. Chair, is that what is being proposed to be removed—and for good reason, I think—is the part about amending the definition of any term defined in proposed section 2 or proposed subsections 24 (5) or 45(3). Proposed subsection 45(3) in the legislation says that private communication has the same meaning as section 183 of the Criminal Code. Now, we're not talking about changing the definition of another piece of this particular act. We're now using this act to change the definition and meaning in the Criminal Code. Now we're three times removed from where the definition and legislation actually appear.

I'm just wondering about the structure. If we're going to have the definitions subject to change through regulation, why wouldn't we just define them in the regulations, rather than have the definitions appear in law? Wouldn't it make more sense to have a clause in the law that says that the regulations can make the definitions? It seems to be structurally inappropriate to do this. That's my concern.

It may be something that is better suited to some legal advice. I'm not trying to put an opinion question in front of—

Mr. Scott Millar: Sure.

Mr. Blaine Calkins: —the witnesses who are here. It just seems that from a legal perspective, this might be a very difficult thing to propose.

Is there anybody here with the expertise to answer, or is it just us enthusiasts?

Mr. Scott Millar: Again...a legal enthusiast.

In terms of understanding the structure, all the jurilinguists and the rest look through these things in terms of how to structure them, so I can't speak to how that follows in terms of legislative drafting rules.

Charlie, do you have something?

● (1125)

Mr. Charles Arnott: I'm not an expert in those types of structural issues, but this is drafted by experts in legislative drafting.

Mr. Blaine Calkins: Mr. Breithaupt, have you been following along?

Mr. Douglas Breithaupt (Director and General Counsel, Criminal Law Policy Section, Department of Justice): Yes, I have, but I don't have any comments and wasn't involved in the drafting of this particular provision.

Mr. Blaine Calkins: Would you have liked to be?

The Chair: Wisely, he would not liked to have been.

Ms. Julie Dabrusin: I think we've talked out a good part of it on either side as to why this would be important. It's about keeping definitions nimble in a quickly changing world.

Just to clarify, regulations aren't done in private. It's public. It's through consultations that have been published in the gazettes. It's not one of those things that happens as a surprise to people. It is a public process as well. I just wanted to clarify that. Thanks.

Mr. Sven Spengemann: I appreciate the concern raised by colleagues on the other side. I recall having asked the question of witnesses a number of times in the process to get their views on whether this legislation is sufficiently flexible to address what are essentially unknown unknowns—the eyes beyond the horizon, the questions of artificial intelligence, the questions of quantum computing. As far as I could gauge, the witnesses had confidence that the apparatus as currently framed had that flexibility, and I would assume that's in part because of the presence of this provision. I don't imagine the core logic will be changed by technology, in the sense that this legislation is aimed at both providing good security for Canadians and protecting rights and freedoms under the charter. Those principles will remain standing no matter what the technological change is going to be.

I'm wondering if, to address the concerns that were raised by colleagues on the other side, it's at all valuable to ask witnesses if they're prepared to give a potential example of how a regulation may be changed in the face of changing technology. If that's not possible, I'll understand, but maybe there are some hypotheticals that have already been contemplated.

Mr. Scott Millar: I'm a political science major so in terms of the fourth industrial revolution and how 5G and quantum computing will change our understanding of what is a core and peripheral network and the like, I think it's just this kind of thing for that. Foresight is great, but it's way out there and reality happens. Again, I think it's just to preserve that flexibility for those changes when they occur.

The Chair: Before I ask Mr. Dubé and Mr. Motz to weigh in, out of curiosity would any changes in these regulations be published or subject to the scrutiny of the regulations committee?

Mr. Charles Arnott: They all would. It's a standard regulation process.

The Chair: In that respect, there's nothing different from anything else.

Mr. Charles Arnott: That's correct.

The Chair: My former colleagues Derek Lee and Tom Wappel would be greatly interested in that.

Mr. Matthew Dubé: Not to fuel any cynicism, but I think it's fair to say there's a big difference between a publicly available change to regulation and a debate on legislation. I think Mr. Calkins explained it well with regard to being technologically neutral. However, I'm also looking at something like the Justice Noël decision from 2016 where you have CSIS gathering bulk metadata. Metadata is a concept that was fixed in this legislation. Would that be considered a technological change, directly or indirectly?

I ask that question rhetorically because I think everyone agrees on this. Every piece of legislation has something built in for regulatory changes. There's a reason for that, as Mr. Motz explained, but at the end of the day there's the reasonableness of it. I think this is so vast.

It's funny how hearing Mr. Spengemann's intervention makes me even happier to have this amendment. With things like AI coming forward, I certainly don't want the ability of national security agencies to operate with that rapidly changing technology to be subject to the whims of regulatory change. Let's not forget that the person ultimately making the regulatory change is the minister, who, while he gets good advice, is at the end of the day a political actor.

There are grave concerns about this. In this study and our framework review, the tone, the narrative, and certain ideas we were dealing with changed on the fly because of things we were learning on the go. If we can't even get through a study of a bill without being faced with these kinds of changes, then I don't see how we can give this all-encompassing term and then leave it for decades to come. I think that's irresponsible and dangerous.

● (1130)

Mr. Glen Motz: I would like to find out from the officials where else in Canadian legislation a clause like this exists, and why it was enacted in that circumstance.

Mr. John Davies: I think we would have to talk to our justice colleagues and get back to you on that. I'm not aware of any.

Mr. Glen Motz: I don't mean to suggest what your saying, but am I to infer from this that it may not be that common?

Mr. John Davies: I'm not sure how to answer that. I'm not sure. It may be common; it may not be common.

Mr. Sven Spengemann: I would add one additional consideration that wasn't raised yet. Absent this definition, it is very likely that it would be placed in the hands of the judiciary to define changing interpretations of definitions under the act. In light of changing technology and potential litigation that may come forward, is the judiciary really the best place for these kinds of decisions to be taken, or should they be taken at the ministerial level where we have experts in national security who are fully cognizant that those decisions can be challenged under the Charter of Rights and Freedoms if there are violations or infringements?

The Chair: It's a comment not a question.

Mr. Sven Spengemann: It's a rhetorical question, but if anybody else is interested in taking this on, the fundamental question is this. Is the judiciary the right institution to make those decisions?

The Chair: You're asking for their opinion and that's beyond their scope.

Mr. Sven Spengemann: Fair enough.

Mr. Glen Motz: I would add to my friend's comment that maybe Parliament is the proper place to have the debate on this issue, as opposed to being tied up in a regulation that somebody else makes that's not debatable.

The Chair: I think this has been a thorough canvas....

I guess it hasn't been thorough enough.

Mr. Dubé.

Mr. Matthew Dubé: If we're envisioning it being taken on at the judiciary, then that's a legal question, not a regulatory one. That is an acknowledgement that it would require legislative changes.

Look at the situation with cellphones at the border. The access to information and ethics committee studied that issue. One consensus there is the notion of the suitcase. You have a reasonable expectation of giving up your privacy at the border, but that has changed in the advent of cellphones. As Ms. May and I pointed out yesterday in debating the definition of “publicly available information”, right now the courts are trying to sort out that notion. There have been several cases of people being asked to unlock their cellphones at the border.

I think this is relevant to the issue before us, this amendment, because at the end of the day, the solution to that issue is legislation, just as it would be with this bill. I don't want the minister deciding through regulation whether or not CBSA...and the same issue on the other side. I don't want the president—he has anyway but that's another discussion—signing executive orders that allow the searching of cellphones. That kind of purview should be in the hands of lawmakers and parliamentarians, and not decided through regulation.

I would say to Mr. Spengemann's point that, despite the expertise around ministers, it has been known to happen in the history of this country and other places that they don't always listen to those people around them. At the end of the day, they have political considerations to account for as well.

This is too much of a slippery slope and I think there are a multitude of examples that illustrate that.

[*Translation*]

Mr. Luc Berthold: Thank you very much, Mr. Chair. I have a quick comment.

Isn't this why we are here, in committee? We study bills precisely to make good decisions and not to let another institution make them in our place. I'm a little surprised that we are proposing to allow judges to rule on this issue. It's up to us, parliamentarians, to make the right decisions right away and to ensure that we maintain our legislative autonomy.

If I've understood correctly, hypothetically, we would refer this situation to a judge who would eventually ask Parliament to rule on a piece of legislation. Obviously, this argument doesn't hold water.

● (1135)

[*English*]

Mr. Blaine Calkins: The proposed paragraph that's being proposed to be removed says, “amending the definition of any term defined” in the three proposed sections of the legislation where a definition actually occurs. It doesn't put any limitations on amending a definition so it stays within the scope or diminishes the scope. It could imply amending a definition to broaden the scope.

I'm concerned that this flies in the face of the democratic process, in which a regulation seems to now confer more power than the law that gives birth to that regulation. I'm not sure that this proposed paragraph, without passing the amendment, is in good practice, or technically in order.

I don't know how we would get that legal clarification. I don't propose that we ask the witnesses that are here any more. Perhaps the committee does not have the resources it needs to become fully versed on the implications of not passing this amendment.

The Chair: The proposed paragraph is in order. Part of it has to do with the fact that this is referral after first reading. Therefore, there's no defining principle. In that respect, it's in order. As to whether this is judicially in order is another issue altogether and beyond my competence.

Mr. Glen Motz: As I understand it, it is the courts' role to interpret or enforce the laws. It's Parliament's role to enact legislation. The minister is a parliamentarian. He's not a separate entity. That would be a statement I would make.

The Chair: Is there any further debate?

I remind colleagues that if NDP-44 is adopted, CPC-22 cannot be moved, and the corollary is that if NDP-44 is defeated so is CPC-22.

We'll have a recorded vote.

(Amendment negatived: nays 5; yeas 4)

(Clause 76 as amended agreed to on division)

The Chair: There are no amendments to clauses 77 to 81. May I group them for the purposes of voting?

Some hon. members: Agreed.

(Clauses 77 to 81 inclusive agreed to on division)

(On clause 82)

The Chair: We're now on clause 82. We now move to LIB-35.

Mr. Spengemann.

● (1140)

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

I may be proven otherwise, but this is probably the least controversial and least partisan amendment of the entire exercise.

Proposed subsection 82(1) is a provision that states that a reference to the former department, CSE, i.e., CSE under the National Defence Act, is deemed to be a reference to the new department, i.e. CSE under the CSE act, under all the following circumstances and it sets out some half-dozen or so incidents. This list is under-inclusive, because it could exclude, for example, orders in council and other delegated legislation.

LIB-35 adds a provision that, unless the context requires otherwise, every reference to the former department is deemed to be a reference to the new department.

Thank you, Mr. Chair.

The Chair: Is there any debate, intensive or otherwise, on this?

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

(Clause 82 as amended agreed to on division.

The Chair: We have no amendments to clauses 83 to 88. May I group them for the purposes of voting?

Seeing no objection to that, I'm going to proceed.

(Clauses 83 to 88 inclusive agreed to on division)

The Chair: Clause 89 was dealt with during amendment NDP-4 so that's no longer in play. Therefore, there are no amendments to clauses 89, 90, and 91.

(Clauses 89 to 91 inclusive agreed to on division)

(On clause 92)

The Chair: On clause 92, the first amendment is LIB-36.

[*Translation*]

Mr. Michel Picard: Thank you, Mr. Chair.

This amendment amends the preamble. Essentially, it emphasizes respect for rights and freedoms and includes a commitment by Canada to encourage the international community to do the same. This is similar to LIB-16 in particular, which says that Canada must be a leader in countering torture. This also shows that Canada also wants to be a leader on rights and freedoms and wants to influence or have a positive impact on other countries around the world.

[*English*]

The Chair: Thank you, Mr. Picard.

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

(Clause 92 as amended agreed to)

(Clauses 93 and 94 agreed to on division)

The Chair: The next amendment is NDP-45.

We will hear from you, Mr. Dubé, but before you commence, it's quarter to 12. We have an hour and 15 minutes left. I'm in the hands of the committee as to whether we want to suspend for any further or just keep going.

We should just keep on going? Mr. Calkins is ready to rock and roll here.

Mr. Glen Motz: We're on our descent.

The Chair: I see. We're all hoping to land Bill C-59.

Mr. Dubé, go ahead, please.

Mr. Matthew Dubé: Thank you, Chair.

This amendment seeks to drop the word “lawful” from what's called “lawful advocacy” in the CSIS Act, the reason being that when there are “on the fly” determinations being made, we feel that “advocacy” protects more rights, as opposed to having CSIS make the determination of whether the advocacy is lawful.

Moreover, it also protects groups that may have certain individuals associating themselves with said groups and comporting themselves in an unlawful way. It would not have the group be targeted that way for what is lawful advocacy with perhaps individuals committing unlawful behaviour.

By removing the word “lawful” and keeping it as “advocacy”, there is a more robust rights protection. This was a recommendation by the Canadian Civil Liberties Association.

● (1145)

The Chair: I can only imagine that Ms. May might have an opinion about that, but we're not going to ask her.

Is there any debate?

Ms. Pam Damoff: I'm just wondering if the officials could weigh in on the impact of removing “lawful”, and, I believe, adding the term “artistic expression”. Is that right?

Ms. Cherie Henderson: It is. It's adding the term “artistic expression” and also “by an individual or a group whose intent is to threaten the security”.

The definition of threats to the security of Canada has withstood a long history with the service. It has been in our act since its inception, and it has been well recognized and it's well understood. One of our concerns would be that if we did remove the word “lawful”, it could create a bit of ambiguity.

Also, as we know, intent is a concept in criminal law for prosecution. The purpose of CSIS is to investigate a suspected threat to determine the intent. If we had to know what the intent was before we started the investigation, we might be a bit too late in getting where we need to be to protect the national security interests of Canada.

Also, all of our activities are subject to review to ensure that we are in compliance with everything that we engage on, so it ensures that we engage appropriately in all of our investigative activities and that we've reached the appropriate threshold to suspect that there is an activity that could be detrimental to national security before we begin.

The Chair: Is there any further debate?

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

(On clause 95)

The Chair: We're on amendment NDP-46.

[*Translation*]

Mr. Matthew Dubé: Mr. Chair, the purpose of this amendment is the same as that of the similar amendment I presented regarding part 3 of the bill, that is, the publication of ministerial directions.

[*English*]

The Chair: Before I ask for debate, please note that if NDP-46 is adopted, NDP-47 cannot be moved.

Is there debate?

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

The Chair: We're on NDP-47, Mr. Dubé.

Mr. Matthew Dubé: Thank you, Chair.

There may be some amendments that are consequential, so I'm seeking clarity as to whether we're dealing with this one individually or...?

The Chair: I was going to ask you, in all collegiality, whether amendments 48, 51, 54, 56, 57, 58, 59—oh my goodness, on and on—60, 61, 63, and 64 could also be grouped, if you will, for voting purposes.

Mr. Matthew Dubé: Yes, I'm okay with that, Chair. They do all deal with the same topic. At the end of the day, as much as people think that people in our profession like to hear ourselves talk, I'm okay making the point once.

Obviously, this amendment and the others you mention deal with the threat reduction powers that were given to CSIS by Bill C-51 in the previous Parliament. This is obviously one of the most controversial elements, in particular because the raison d'être of CSIS was initially to separate intelligence gathering and law enforcement from the RCMP after a number of scandals and problematic situations, which have been debated quite extensively in the different commissions that followed. This is one of the key points—which is why I'll ask for a recorded vote—on which the bill fails to correct the problems that were brought forward by the former bill, Bill C-51.

● (1150)

[*Translation*]

As to the powers of interference, while the purpose is clearly to protect national security through a wide range of existing mechanisms, including security certificates and police resources—or lack thereof, if I may say so—, there is a role for the police to play in that.

That is what we said in the last Parliament during debate on Bill C-51. We said that we must give the RCMP more support so it can do its work, and increase our capacity to fight radicalization. There is a whole range of national security measures available without having to turn back the clock and give CSIS powers that go against the agency's purpose. It is an intelligence service and, with all due respect, it should not be engaged in work that, as a result of these powers, gradually becomes police work.

[*English*]

The Chair: Is there debate?

Ms. Pam Damoff: I'm respectful of the NDP's position on this. Throughout our study of the national security framework and then on this bill, I think we've disagreed on where we fall on this. In our opinion, Bill C-59 respects the rights and freedoms of Canadians while also giving our security agencies the tools they need to protect Canadians. We have taken steps to increase the rights and freedoms aspect of the legislation while at the same time providing the security agencies those tools that they do need.

For that reason and because, as the chair mentioned, this is part of a number of amendments that would have removed that threat reduction provision in the bill, we won't be supporting those changes.

Ms. Julie Dabrusin: Because this was a controversial issue and I heard a fair bit about it, I looked to Professor Roach and a lot of what he'd written. I was interested in something that I saw in an article, “A report card on the national security bill”, from June 23, 2017.

On the disruption powers, I was hoping to get this out there because I thought it was interesting for me, as to how I would feel about it. This is just an excerpt:

> Bill C-51 was widely criticized for the open-ended new “threat reduction” powers it gave CSIS—the ability to intervene physically to reduce threats to the security of Canada.

> ...Bill C-59 reins in those powers. It adds a bar on torture, cruel, inhuman or degrading treatment, detention and serious property damage endangering a person. We do not believe CSIS ever wanted this authority, and so this is both a principled and entirely rational change.
>
> ...Bill C-59 stresses (repeatedly) that threat reduction powers must comply with the Charter, and it provides a closed list of what those powers are: altering or disrupting communications and goods, fabricating documents, disrupting financial transactions, impersonating persons.... This approach allows the government to argue that threat reduction powers are prescribed by law and are a reasonable and justified limit on Charter rights.

It's quite a strong statement within this article about how threat disruption powers remain, but it says they have been clarified and that they are a stronger piece. I don't want to leave the impression that this is exactly as it was in the previous legislation. There can be further discussion on the point, but this is an improved piece that does point out the prescribed limits on those powers.

Mr. Glen Motz: I would ask the officials if they could weigh in on this. I have a couple of questions.

What would be the value of adding this type of information to a report? That's one. Second, will this specific information, if added to the report, be relevant down the road in the future? Third, is it possible that foreign threats could use the kind of specific information this amendment is speaking about to better attack Canada down the road? Is that a good enough reason, or a justification, to block it or to oppose the amendment?

● (1155)

Mr. John Davies: Just talking about NDP-47, which is just one component in the broader threat reduction and elimination in the mandate, at least the warranted reduction, what NDP-47 does is take out the reporting that was already in Bill C-51. In subsection 6(5) of the CSIS Act, there already is threat reduction reporting required in law on pretty detailed things, in addressing issues or concerns that you've raised in terms of the number of warrants and so on. That's already in the act. That's traditional. It exists on the collection-side warrants as well, so I don't think there's a big issue here.

Mr. Glen Motz: Can you explain that last statement? You don't think there's a big issue here, which means that you don't think the amendment is a big issue?

Mr. John Davies: It's in the sense that the numbers of warrants on the collection side are already public, for example. They're already issued in SIRC's annual report. For the provisions to ensure the committee of parliamentarians and the NSIRA are also alerted to how CSIS goes about implementing its threat reduction powers, both for warrants and for non-warrants, there would be redacted unclassified reports of all of that. Any concern related to what foreign adversaries could have would be taken care of in that process.

Mr. Glen Motz: Okay.

The Chair: Seeing no further wish to debate, I'll call the question.

Before I do, I want to make sure that colleagues know what it is they're voting on. It's NDP-47. If NDP-47 is defeated, so also are NDP-48, NDP-51, NDP-54, NDP-56, NDP-57, NDP-58, NDP-59, NDP-60, NDP-61, NDP-62, NDP-63, NDP-64, and NDP-66, so also are PV-8, PV-9, PV-16, PV-17, PV-18, PV-19, PV-20, PV-21, and PV-26.

Mr. Matthew Dubé: One of the amendments in that grouping....

The Chair: One of the amendments.... Which one?

Mr. Matthew Dubé: NDP-51 actually acts as if the powers are still there and does not eliminate threat reduction powers, so it's like a plan B, so to speak.

The Chair: In the event that the vote goes the way you think it might go...?

Mr. Matthew Dubé: It's my optimism showing.

The Chair: Without expressing an opinion, which I don't have, would it be at all useful to extract NDP-51 out of that list, and then debate NDP-51 as a separate amendment thereafter? Would that work?

Mr. Matthew Dubé: Yes.

Mr. Blaine Calkins: We won't challenge you on that, Mr. Chair.

The Chair: I am on a roll with Mr. Calkins here today.

I know Ms. May had one, but I want to make sure I'm procedurally correct, having said that.

Colleagues, the list I read now does not include NDP-51.

Ms. May.

Ms. Elizabeth May: Mr. Chair, I recognize that you have ruled, but as you'll recall, the wording of the motion this committee passed, which requires me to be here to present my amendments, and forgoes the right I otherwise would have to present at report stage, included that I have the right to speak to my amendments, even briefly.

I didn't know that when you didn't want to hear from me in the rubric of Mr. Dubé's amendments that I'd be foreclosed to speak to them at all.

I really would request a short opportunity to speak to all of my amendments. I'm prepared to see our rules more flexibly and not stick to the wording of the motion this committee passed, that I have a right to speak to each one of my amendments, PV-8 to PV-12, PV-15 to PV-22, and PV-24 to PV-26, separately. I am prepared to speak to them all at once in the interest of letting the committee move ahead.

The Chair: In the interest of letting the committee move ahead, and in the interest of collegiality, and now that I have gotten myself in a procedural jam, having called the vote, I'm going to walk that back and ask Ms. May to speak to her amendments: PV-8, PV-9, PV-16, PV-17, PV-18, PV-19, PV-20, PV-21, and PV-26.

● (1200)

Ms. Elizabeth May: Yes. I have them grouped as PV-8 to PV-12, PV-15 to PV-22, and PV-24 to PV-26. They all refer to the same point. They may not all be exactly the same as Mr. Dubé's, but I am prepared to deal with all of them at once.

The Chair: However, some of them are still alive.

Ms. Elizabeth May: Yes.

The Chair: Apparently, I don't have to walk back. We can deal with the ones I've enumerated, but you are still alive on a number of others. The only reason you are being defeated, if you will, on this one is that they are similar to Mr. Dubé's.

Ms. Elizabeth May: That works for me, Mr. Chair. You don't have to walk anything back, and I'll still have a chance to speak to my amendments after the vote.

The Chair: It preserves the dignity of the chair, and that's all-important.

Ms. Elizabeth May: That's paramount.

The Chair: Yes, it is.

Having gone through this back and forth, colleagues, with the exception of NDP-51, which is Mr. Dubé's fallback position, we are voting on all of the enumerated PV and NDP amendments that were read into the record.

Mr. Matthew Dubé: I'd like a recorded vote.

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

The Chair: With that, NDP-47 is defeated, and all of those amendments enumerated previously along with the PV ones enumerated previously.

I'm going to have to call on our clerk here to keep us in line.

Mr. Glen Motz: If you don't mind, could you just slowly go through the NDP and PV amendments that are no longer in play, please?

The Chair: NDP-48 is no longer in play. NDP-51 is. NDP-54 is out, and NDP-56 is out.

Ms. Pam Damoff: Slow down.

The Chair: Sorry. NDP-56, NDP-57, NDP-58, NDP-59, NDP-60, NDP-61, NDP-62, NDP-63, NDP-64, and NDP-66 are defeated.

Mr. Glen Motz: That's one way to get past clause-by-clause.

The Chair: It's to be recommended.

On the PV amendments, they are PV-8, PV-9, PV-16, PV-17, PV-18, PV-19, PV-20, PV-21, and PV-26.

● (1205)

Mr. Blaine Calkins: Are those the ones that are in or out?

The Chair: Those are all out.

Now, the next vote in light of the defeat of NDP-47 is on clause 95. This is not a recorded vote.

(Clause 95 agreed to on division)

(Clause 96 agreed to on division)

(On clause 97)

The Chair: I think PV-10 is still alive.

Ms. May.

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

I propose—and the clerk can check if I've got this right—to deal with amendments PV-10, PV-11, PV-12, PV-13, PV-14, PV-15, PV-22 et PV-25.

[*Translation*]

I think those are all the amendments in this regard.

[*English*]

These amendments all speak to the same point, and I think those are all the ones that remain extant after the slaughter of Mr. Dubé's amendments. Sorry. It's a ritualized slaughter. We appreciate the effort.

I think those are the ones I could speak to all at once and, with the chair's permission, speak to the fundamental point these amendments are trying to achieve. I hope, because of the unusual nature of this process before second reading, that some of my words might reach ministers' offices as well, and that members of the committee might consider whether it isn't wise to actually have a fundamental rethink of the structure of our security intelligence legislation.

This is an important moment, as we all know. This is the most fundamental review we have had in years. It's really good legislation insofar as it sets up the national security intelligence and review agency. Having NSIRA is a big change, but in my view, Mr. Chair, it doesn't take away from the fundamental mistake that was made in Bill C-51.

Forgive me, but having been through the hearings at Bill C-51, I know there were witnesses this committee didn't hear talking about the risks of CSIS having kinetic powers at all. That's what I want to speak to. I will be brief.

This legislation reduces the wrongs that could be done by CSIS agents having these new powers to disrupt plots, but it doesn't deal with something quite fundamental that we grappled with in committee on Bill C-51. It was certainly raised by witnesses and experts like Craig Forcese and John Major, former Supreme Court justice, and also in the Senate. Actually one of the most important witnesses on Bill C-51 was heard on the Senate side. His name's Joe Fogarty. He was the U.K. security liaison with Canada. He was an MI5 agent from the U.K. What he pointed to was the big risk of the RCMP and CSIS not talking to each other, and when you then give CSIS powers to actually disrupt plots, you have an accident waiting to happen, basically.

In his evidence, he referred the committee only to those things that are publicly known, but he assured the committee that, from his work as a U.K. security liaison in the Five Eyes system with Canada, there were more examples of which he could not speak. He directed us to the 2009 case of R. vs. Ahmad where, on the evidence, CSIS discovered the location of a suspected terrorist training camp within Canada and decided not to tell the RCMP.

There's another example, which was in the Canadian Press, to which Joe Fogarty also referred. In the case of Jeffrey Delisle, which we all know—the navy officer who sold secrets—apparently CSIS knew of the spying operations of Delisle for a very long time and decided not to tell the RCMP. Delisle was arrested when the RCMP was tipped off by the FBI.

There's a fundamental problem here, which John Major at the time referred to in this committee and its predecessor in the 41st Parliament. It's human nature not to want to share information, so what have we done now? I think we've compounded the problem because CSIS now has the powers to take action, but we haven't dealt with the fundamentals that it still may not want to tell the RCMP.

The situation is much improved because NSIRA can supervise what's going on. If it sees a problem, it can maybe intervene, but there still has never been a public policy rationale put forward by anyone, ever, for why CSIS needs the power to disrupt plots. CSIS was created, as Mr. Dubé referred to moments ago, in order to create a security and intelligence gathering, to give that information to the RCMP. That's the purpose. It was to separate it out, so that you wouldn't have the RCMP burning down barns and so on.

I don't see to this day why we want CSIS agents to have the capacity to disrupt plots within Canada.

● (1210)

The RCMP and CSIS need to work together and NSIRA needs to supervise them. All my amendments take out of our legislation the right of CSIS agents to have kinetic powers. Again, Bill C-59 improves on Bill C-51 in important ways, reducing and better balancing what CSIS agents are likely to do. I know we don't have anyone here from the RCMP on our witness roster but the RCMP job of disrupting plots will be complicated by the fact that CSIS doesn't share information with the RCMP. That's a pattern. That's our history. Things are improved in what CSIS agents can do. Thanks to Liberal amendment 16, we won't be worrying about torture, but there's still no public policy rationale for CSIS agents having these new powers to take kinetic action to disrupt plots.

I'm raising a different issue. The issue of whether we are undermining our own security intelligence operations by having different intelligence agencies tripping over each other, not talking to each other, when they're taking active steps to disrupt a plot. I'd rather have CSIS continue to do what it's always done since its creation, which is to collect the information and give it to the RCMP in a timely manner, which is what they haven't always done, so that the RCMP can arrest the Jeffrey Delisles of this world, not wait to be tipped off by the FBI or trip over CSIS agents who are trying to do the same thing.

Thank you.

The Chair: Thank you, Ms. May.

Before I open it up for debate, I just want to clarify what a vote will mean on PV-10, making sure that you and we are on the same page. In the unlikely event that it might be defeated, PV-10 applies to PV-11, PV-12, PV-15, PV-22, PV-24 and PV-25. Is that correct?

Ms. Elizabeth May: Technically I've spoken to one of my amendments only. You can either decide that the vote applies to them all or you can decide to go ahead and vote against them without giving me the opportunity to speak, which is fine in this case because I've spoken to them as a group.

However you want to handle this administratively within collecting the votes, I've spoken to them as a group. You can vote on them as a group or leave them in the same order but I won't speak to them again.

The Chair: I don't think speaking is the issue. I think voting is the issue here.

Ms. Elizabeth May: Okay.

The Chair: As long as we're all on the same page with respect to the numbers....

With that, I'll open the debate.

[*Translation*]

Mr. Michel Picard: The depth of Ms. May's concerns is entirely justified by the need to find appropriate ways for agencies to work together in order to reduce this kind of threat. That is the very spirit of Bill C-59, which seeks to give those people the appropriate tools, to give the agencies the right to exchange information, and for all of that to be done under the supervision of a parliamentary committee, especially the exchange of information. We already have the necessary tools to do this. We are still affected by the errors of the past and fearful of the future. That is normal. Of course, there will likely be more errors. Field work being what it is, we will have other experiences.

I would now like to digress and talk about two aspects that should not be taken at face value.

In light of recent events, it would be hard for me to convince my fellow citizens that these events are ultimately not as serious as they seem, given that threat mitigation measures are to be reduced. My fellow citizens would not accept that. In order not to react emotionally to such an event, I remind myself that all operations are conducted under the very strong authority of the Canadian Charter of Rights and Freedoms. Returning to yesterday's events, I would probably not have said anything if, for instance, that person had left home with two flat tires instead of four brand new tires. In short, an unfortunate event might have been avoided.

We are not aware of what has been prevented. For CSIS— and to its great credit—, the hardest thing is not taking pride in preventing situations that we are not aware of. Its role is to protect us and its success depends on the number of events it is able to prevent, with the help of the RCMP. I think the structure of Bill C-59 addresses this kind of need on the whole.

● (1215)

[*English*]

The Chair: Is there further debate?

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

The Chair: Amendment PV-10 is defeated, and that vote applies to amendments PV -11, PV-12, PV-15, PV-22, PV-24 and PV-25.

Now we are on to amendment NDP-49, which I think is still alive.

Mr. Dubé.

[*Translation*]

Mr. Matthew Dubé: Mr. Chair, I am proposing the same definition as I proposed with regard to the publicly available information mentioned in part 3 of the bill, namely, to replace those words with “publicly available dataset”. This is in order to be consistent with what is proposed in part 4 regarding CSIS. We have repeatedly heard concerns about the definition of publicly available information in various parts of the bill.

[*English*]

The Chair: Is there debate?

Ms. Dabrusin.

Ms. Julie Dabrusin: I'm wondering if perhaps the officials could help me to understand what the impact of this would be on how CSIS would operate.

Ms. Merydee Duthie (Special Advisor, Canadian Security Intelligence Service): I'd like to start by saying that CSIS and CSE are very different agencies, operating under different mandates, and the context in which the definition of "publicly available" is applied in the CSE portion of Bill C-59 is different from the context in which it's applied in the CSIS Act. Bill C-59 establishes proposed sections 11.01 to 11.25 of the CSIS Act, which is a robust framework for the service's collection, retention, and use of datasets in support of our investigations. Essentially Bill C-59 creates three types of datasets: publicly available datasets, predominantly foreign datasets, and predominantly Canadian datasets. It establishes a system of safeguards that govern their use. The safeguards are, in general, applied in consideration of the reasonable expectation of privacy of the different types of datasets. The lowest reasonable expectation of privacy is associated with publicly available datasets, so the safeguards are the lightest but they exist.

The intention of Bill C-59 within the dataset framework is to create three mutually exclusive categories of datasets. A dataset is either publicly available or it's Canadian or it's foreign. If we took the proposed definition of "publicly available dataset", it would take out any dataset that has a reasonable expectation of privacy. We are told by our legal experts that when you assess reasonable expectation of privacy, you have to take context into consideration, so for a dataset collected by the service, the reasonable expectation of privacy might be different if it were used by someone else.

By adopting this definition, it is possible that we could eliminate the category of "publicly available", but there is no dataset that can be collected by the service for which there is absolutely no reasonable expectation of privacy. There are a lot for which it is very low, but reaching the standard of zero expectation of privacy would mean not having the category of publicly available datasets. In the extreme, you would create a situation in which if the service wanted to collect the Saskatoon phone book, it would have to apply to get the Federal Court's authorization to do so. From a service perspective, that is simply administratively impossible given the burden it would create for us.

● (1220)

Ms. Julie Dabrusin: I love that you use the example of a phone book. I haven't seen one in a little bit.

Ms. Merydee Duthie: That's the electronic version. I should have specified, because Bill C-59 does talk about electronic datasets and most of the phone books or Info-direct kind of share that.

Ms. Julie Dabrusin: I wasn't trying to pick on you. It's just kind of a funny vision.

Ms. Merydee Duthie: It's a good clarification.

Ms. Julie Dabrusin: If I understand correctly as well, CSIS has stated to this committee that it won't collect hacked or stolen datasets as publicly available datasets.

Ms. Merydee Duthie: That's correct.

Ms. Julie Dabrusin: All right. It seems as though this amendment, from what I've heard from the officials, actually could very much hinder what they're trying to do and their ability to do things, and actually take away the definition of "publicly available dataset" as a whole, that entire collection, so I don't really see the value in this amendment.

The Chair: Is there further debate?

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

The Chair: We're now on to LIB-37.

Mr. Fragiskatos does not appear to be here, but Ms. Dabrusin is doing an able imitation of Mr. Fragiskatos.

Ms. Julie Dabrusin: It is great for me to take this one for Mr. Fragiskatos.

Amendment LIB-37 would allow Canadian information found in a foreign dataset to be added as an update to a Canadian dataset. This is becoming very technical. It would do that if the addition is permitted under the Canadian datasets judicial authorization.

The reason we're proposing this is that it ensures CSIS would be able to update an existing Canadian dataset with additional information removed from a foreign dataset. It seems like it's a transfer from one to the other, but this is only when it is explicitly authorized by the Canadian datasets judicial authorization. Nothing in this proposed amendment alters or reduces the safeguards in place for the Canadian dataset, including the requirement for judicial authorization for CSIS to retain Canadian information. I really want to underline that piece. It doesn't alter or reduce the safeguards. It's transferring between two datasets.

The Chair: Is there any further debate?

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

The Chair: We are now on LIB-38.

Madam Dabrusin.

Ms. Julie Dabrusin: Thank you.

LIB-38 is an amendment that clarifies that the director of CSIS or a CSIS employee can be designated by the minister to authorize the retention of foreign datasets. It will help to clarify the current wording of Bill C-59 to meet the original intent that the minister can designate the director of CSIS or the CSIS employee as a designated person. Of note, the minister-designated person's decision to authorize the retention of a foreign dataset is subject to the approval of the intelligence commissioner. This ensures independent oversight of a designated person's decision to authorize CSIS's retention of a foreign dataset. To me it's always important to have the role of the intelligence commissioner incorporated.

The Chair: Is there any debate?

Monsieur Paul-Hus, welcome back to the committee.

[*Translation*]

Mr. Pierre Paul-Hus (Charlesbourg—Haute-Saint-Charles, CPC): Hello.

We are not necessarily opposed to the amendment, but we would like some clarification. We do not see why this addition is necessary.

Could you please explain?

[*English*]

Ms. Merydee Duthie: It's a very technical clarification. It has always been the intent of the drafting of Bill C-59 to allow this. The original wording, which states "The minister or the designated person may, upon the request of the Service, authorize the Service". It seemed to imply that it couldn't be the director or someone in the service. This amendment is just to clarify that the designated person can be the director or someone in the service. It's a technical clarification based on the drafting wording.

● (1225)

The Chair: Is there further debate?

Seeing none, I shall put the question on amendment LIB-38.

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

The Chair: Amendment NDP-50 is, I believe, still alive.

Mr. Dubé.

[*Translation*]

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

For the initial authorization, the amendment proposes a period of one year rather than the five years proposed in the bill. The commissioner could subsequently approve an extension of the authorization, but for one year only.

[*English*]

The Chair: Is there debate?

Mr. Picard.

[*Translation*]

Mr. Michel Picard: We can keep information about criminals in databases for up to 10 years. So five years seems entirely reasonable to me, and I would not want security to be compromised because the relevant information had not been kept long enough.

[*English*]

The Chair: Is there further debate?

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

The Chair: Amendment LIB-39 is withdrawn, unless Mr. Dubé wishes it otherwise. We are on amendment LIB-40.

Ms. Damoff.

Ms. Pam Damoff: Thank you, Chair.

This amendment responds to comments the minister made when he appeared before the committee on March 1 to clarify that the wording in the bill itself is a drafting error. It rectifies that the threshold for CSIS is being "likely" to produce desired intelligence rather than that it would in fact produce it. It's just acting upon the comments the minister made when he came to committee.

The Chair: Is there debate?

Mr. Motz.

Mr. Glen Motz: I want to confirm with officials that this loosening of the language is actually going to work.

Ms. Cherie Henderson: Yes. It reduces the threshold. If you were trying to know exactly what was in before you did your query, you would never be able to do a query.

Mr. Glen Motz: Okay.

The Chair: Mr. Dubé, do you want to comment?

Mr. Matthew Dubé: I was just going to ask a question in that context.

I'm wondering what the threshold is. How do we define "likely"? Are we using previous evidence from other aspects of the investigatory powers?

Ms. Merydee Duthie: It's more of a legal issue. The common interpretation is "odds are" but I can't comment on a legal interpretation of the threshold.

The Chair: Is there further debate?

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

[*Translation*]

Mr. Michel Picard: We heard the testimony of Craig Forcese regarding the importance of keeping foreign information. The part stipulating how that data would be gathered and analyzed was missing. The document that has been provided to you fills in that gap.

[*English*]

The Chair: Is there debate?

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

(Clause 97 as amended agreed to on division)

(On clause 98)

The Chair: NDP-51 is Mr. Dubé's fallback position, and PV-11 is out.

Go ahead, Mr. Dubé.

● (1230)

Mr. Matthew Dubé: Thank you, Chair.

This is based on the testimony of the Canadian Bar Association that said that the right to infringe on the charter, as was actually brought up yesterday by a Liberal colleague, is already built into the charter through section 1. The Canadian Bar Association argued that the ruling of the court in giving the warrant is already acknowledging a certain infringement in a way or a "reasonableness", to perhaps use the more legally appropriate term. This amendment seeks to bring better language and avoid discussions of contravening the charter in any way, understanding that the charter allows for it within itself. Again, this is just going on the recommendation of the Canadian Bar Association.

The Chair: Is there debate?

Go ahead, Mr. Spengemann.

Mr. Sven Spengemann: This amendment partially extinguishes the ability on the part of CSIS to undertake threat reductions under warrant. The amendment replaces the provisions of proposed subsections 12.1(3.2) to 12.1(3.4) with the requirement that CSIS does not undertake any threat reduction measures that are contrary to Canadian law, not even under judicial warrant. In my view, that is an unjustifiable reduction of the powers that CSIS requires to do its job. There are protections that we've built in through recognition of the charter. There are protections that we've built in through Mr. Picard's amendment on torture, which is very important. There are all sorts of other limitations, beyond the processes described here, that would allow CSIS to go forward with the confidence of Canadians that they're not violating their rights in an undue fashion and are still able to provide protection in a very uncertain environment.

The Chair: Is there any further debate?

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

(Clause 98 agreed to)

(On clause 99)

The Chair: PV-13 is still alive, so I'll call upon Ms. May.

Ms. Elizabeth May: This amendment attempts to ensure the absolute centrality of the charter in the entire act. It amends this act to ensure that any actions are essentially—I'll read it out. It is amended by adding:

(g) limit a right or freedom guaranteed by the Canadian Charter of Rights and Freedoms; or

(h) violate international human rights law.

I know this is the intent of the government. I hear that through many amendments and through the substance of the act. This is reflecting the testimony of Alex Neve of Amnesty International. It would be the only one that inserts a specific reference to the charter and international human rights law. As that is the intent of the government, I would urge you to pass it, just to make sure that it's abundantly clear at every stage that no actions can violate the Charter of Rights and Freedoms.

The Chair: Mr. Picard.

[*Translation*]

Mr. Michel Picard: The intention is along the same lines as what Ms. May is proposing, but the bill already includes protection, and has done so from the outset. Amendment LIB-16 offers the same protection with respect to torture. The bill as a whole already includes a guarantee. In any case, the list indicates the activities authorized under special warrants. So there is no need to add an additional guarantee to the guarantee that is already in the bill.

So I do not see why the paragraphs proposed in the amendment should be added.

● (1235)

The Chair: Mr. Paul-Hus, you have the floor.

Mr. Pierre Paul-Hus: My question is for our experts.

Does the inclusion of international law not conflict with our own laws? Does that not create a constitutional problem?

In my opinion, it is not admissible at all from a constitutional point of view.

[*English*]

Mr. John Davies: I may not directly be answering your question, but international human rights law is already ported into domestic law. It's already part of Canadian law.

[*Translation*]

Mr. Pierre Paul-Hus: Okay.

[*English*]

The Chair: Ms. May, do you want to debate this?

Ms. Elizabeth May: I do, only to the extent that the operations are also now allowed to be international. What if Canadian human rights law applies in Canada when we're operating overseas? This also allows CSIS to operate overseas. Do we not also want to ensure that we're observing international human rights law throughout?

It's just to absolutely nail down Canada's commitment within our boundaries to the Charter of Rights and Freedoms and outside our boundaries to international human rights law.

The Chair: Is there further debate on amendment PV-13?

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

(Clause 99 agreed to on division)

(On clause 100)

The Chair: We're now on clause 100. As my clerk has noted, we are precisely halfway through. Isn't that comforting?

Mr. Matthew Dubé: There's hope.

The Chair: On clause 100, we have amendment NDP-52.

Mr. Dubé.

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

This seeks to repeal certain sections of the CSIS Act to provide informer privilege and complete confidentiality as part of the accountability process. It's something that was brought up by Professor Roach when he was here. It's complementary. I don't want to wade into grouping—they are two separate amendments—but it works with amendment NDP-65 as well, which completes the work that amendment NDP-52 begins.

The Chair: Indeed, a vote on amendment NDP-52 will be also a vote on amendment NDP-65.

Is there any debate?

Ms. Damoff.

Ms. Pam Damoff: I have a comment. Then I'd like the officials to weigh in a bit.

My understanding is that it's critical for CSIS to be able to guarantee protection of human source identities. I'm wondering whether you could comment on the impact that this amendment would have.

Ms. Cherie Henderson: CSIS sources are an extremely important tool. We are a humint agency, a human intelligence agency. What this amendment would do is take away the ability to protect our sources in a way similar to the way the RCMP can protect their assets.

If we couldn't ensure and build trust with our human sources that we would be able to protect their identity, it would put us in an extremely difficult situation for recruiting sources. We would not have trust built with the individual.

Ms. Pam Damoff: Thank you.

The Chair: Is there further debate?

Seeing none, I call the question on amendment NDP-52, knowing full well that if NDP-52 is defeated so also is amendment NDP-65.

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

(Clause 100 agreed to on division)

The Chair: We move to amendment NDP-53.

Ms. Elizabeth May: Mr. Chair, just to flag this, I believe my amendment next following is identical. Before you call the vote, it would be great if I could speak to it.

The Chair: Out of the generosity of the chair, I would certainly be happy to have you speak to it, but I think Mr. Dubé should at least move his motion.

[*Translation*]

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

As I did with regard to part 3, at the risk of repeating myself, I recognize that LIB-16 is a step in the right direction, but nothing more. I think it is essential for the bill to clearly indicate that it is prohibited to obtain or convey information that may have been obtained by torture. As I said earlier, this goes beyond the ministerial directions mentioned in the Liberal amendment, but it must be firmly established in the legislative framework.

I will not reread the amendments because they are nearly identical, as is Ms. May's amendment, to the ones I proposed earlier today regarding the CSE.

I would like a recorded division.

● (1240)

[*English*]

The Chair: Thank you.

As Ms. May has noted, a negative or positive vote on amendment NDP-53 disposes of amendment PV-14 as well. I'm thus going to have Ms. May speak so that we have some efficiency here.

Ms. Elizabeth May: Thank you. I'll be brief.

This is consistent with the amendment that was previously passed, which was amendment LIB-16. I don't think it's duplicative. It just nails down that with any ministerial directive we are to ensure that there is no torture, so that we have a legislative anchor here. Certainly this is the testimony from Alex Neve of Amnesty International and from both Craig Forcese and Kent Roach.

Again, as we noted, it's identical to the NDP motion and will enshrine the ministerial directive on torture in the legislation at this point.

The Chair: Thank you.

Is there any debate?

Ms. Damoff.

Ms. Pam Damoff: We have had this conversation previously, and my colleague Ms. Dabrusin read the definition from amendment LIB-16 into the record, so I won't repeat it. However, with that amendment and with existing Criminal Code law, and given the fact that torture is prohibited both in the charter and under international law, it's not necessary, especially given the amendment that my colleague Mr. Picard brought forward in LIB-16. We just don't feel it's necessary.

The Chair: Is there any further debate? I'm seeing none.

Recognizing that a vote on NDP-53 will also be a vote on PV-14, will those in favour of amendment NDP-53—

Mr. Matthew Dubé: I'd like a recorded vote.

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

The Chair: Amendment NDP-53 is defeated, and therefore, amendment PV-14 has been dealt with.

We're now on clause 101 and amendment LIB-42.

(On clause 101)

Ms. Pam Damoff: Thank you, Chair. With your indulgence, I'm going to speak to amendment LIB-42, but it would also cover LIB-44 when we get there, so I won't speak to it again.

My colleague Mr. Picard is going to propose a subamendment—if you like, he can do it now—to put this in line with amendment LIB-44 and also align it with what CSIS currently does. The way I worded this would cause an issue for CSIS in terms of the timing of their year end.

Do you want the subamendment?

The Chair: I'm going to work under the assumption that you have moved amendment LIB-42.

Ms. Pam Damoff: I've moved LIB-42, yes.

The Chair: Okay. It is therefore in order for Mr. Picard to move a subamendment to amendment LIB-42.

Mr. Michel Picard: Thank you. It's to align this with CSIS's fiscal year and with amendment LIB-44, which is coming.

The subamendment would be removing, in the first line of the amendment, the part that reads “not later than September 30 in each fiscal year” and replacing it with “within three months after the end of each calendar year”. This is consistent with the rest, and it's clear and coherent.

Again, it would be removing “not later than September 30 in each fiscal year”—the part between the commas—and replacing that part with “within three months after the end of each calendar year”.

● (1245)

The Chair: Do colleagues understand the amendment?

[*Translation*]

Mr. Pierre Paul-Hus: I would like you to clarify something. We are talking about September 30, but the amendment says "within three months after the end of each calendar year". So that is before March 31.

[*English*]

Mr. Michel Picard: It's the calendar year, the civil year.

[*Translation*]

So it is December 31.

Mr. Pierre Paul-Hus: It is the end of the year, December 31. Is that right?

Mr. Michel Picard: Yes, and that is consistent with various other provisions, including the subsequent amendment.

[*English*]

The Chair: Okay. The amendment is understood, and it is in order.

Is there any further debate?

Ms. Pam Damoff: Just very briefly, this amendment requires CSIS to produce an annual report, and this particular amendment, LIB-42, will require that it be provided to the minister and put before Parliament.

Amendment LIB-44 concerns a public annual report, but amendment LIB-42 is requiring reporting to Parliament. It was something that we heard in testimony, in particular from Micheal Vonn, about the need for CSIS to provide a report.

Mr. Michel Picard: Could I anticipate my colleague's question and ask the experts what the technical points are concerning this?

Mr. John Davies: Just to be sure we have understood, in fixing the front part, I think you need to fix the back part of the phrase too, because it also says "preceding fiscal year". You'd probably want to amend, as you go down, "preceding calendar year" so that you're not comparing apples and oranges.

Ms. Pam Damoff: Yes.

Mr. Michel Picard: You're right.

The Chair: Okay, that's an amendment to the amendment to the amendment.

Mr. Michel Picard: That was bad English on my part.

The Chair: I'll work on the assumption that you are moving this, Mr. Picard, as your amendment to your amendment.

Mr. Michel Picard: Yes.

The Chair: Is there anything else? Is there any other debate?

[*Translation*]

Mr. Pierre Paul-Hus: Could we reread the last amended version?

In the end, it's hard to know which version it is.

[*English*]

The Chair: Certainly. Let me have the clerk read it so that everybody understands what we're going to be voting on.

Mr. Philippe Méla (Legislative Clerk): Do you want me to read the new amendment twice amended?

Mr. Blaine Calkins: Yes, the one we're voting on.

Mr. Philippe Méla (Legislative Clerk): Okay.

In English, proposed subparagraph 20.2(1) reads:

> The Service shall, within three months after the end of each calendar year, submit to the Minister a report of the activities of the Service during the preceding calendar year, and the Minister shall cause the report to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the Minister receives it.

The Chair: Is that clear, Monsieur Picard?

Mr. Michel Picard: I wonder whether he could read it once again for the benefit of our experts. We want to change "calendar" to "fiscal" to be in line with everything. Was that your comment?

The Chair: No, it's the other way around.

Mr. Michel Picard: Okay, good. I fixed it. Thank you.

The Chair: Yes, you fixed it. Excellent.

Yes, it was from "fiscal" to "calendar", not the other way around.

May I group these votes, the subamendments and the amendment, for the purposes of our voting, so that we're all voting on one thing?

Mr. Blaine Calkins: There's only one amendment.

The Chair: No, there were two amendments.

Mr. Blaine Calkins: There's the amendment to the amendment.

The Chair: There was also an amendment to the amendment to the amendment.

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

(Clause 101 as amended agreed to on division)

(Clause 102 agreed to on division)

(On clause 103)

The Chair: Amendment NDP-54 and amendment PV-16 were dealt with.

Amendment NDP-55 is in order. Mr. Dubé will speak to it.

● (1250)

Mr. Matthew Dubé: Thank you, Chair. This just seeks to have greater clarity in the list of measures that CSIS can engage in.

When we speak of interfering with the movement of any person, we want to exclude detention. There's obviously, in the legal realm, a lot of talk about the concept of detention in law versus movement. This is for greater clarity in an instance such as that.

I have had a collegial offline conversation with Ms. Dabrusin and she would propose a more workable way of bringing this forward—another amendment to an amendment.

The Chair: I'm sure you don't want to withdraw it so that Mr. Picard can amend it.

Mr. Michel Picard: I'd like that.

Mr. Matthew Dubé: He can say yes.

The Chair: We're all in favour of collegial offline amendments, so I'm going to ask Ms. Dabrusin to speak to the amendment to the amendment.

Ms. Julie Dabrusin: I fully agree with the intent behind this. It's just a matter of trying to make it easier to read.

The amendment, as it's currently worded, would add proposed paragraph 21.1(1.1)(f) in there. It didn't seem to read well, so my suggestion, and I can hand this to the legislative clerk to show where I popped in the wording, is that at proposed paragraph 21.1(1.1)(f) on page 110, which currently reads, "interfering with the movement of any person" we would add ", excluding the detention of an individual; and". It's the same wording. It's just placed differently within the paragraph to make it clearer.

The Chair: That's pretty substantial. You are eliminating NDP-55's proposed new subsection 21.1(1.2):

> Paragraph (1. l)(f) does not authorize the Service to detain an individual.

I'm not quite sure how it—

Mr. Matthew Dubé: Mr. Chair, I don't know whether this is in order. I could perhaps withdraw my amendment and then move from the floor what Ms. Dabrusin has just proposed, or she can move it regardless.

The Chair: You can always withdraw an amendment.

Mr. Matthew Dubé: Would it be easier for her to just move this as its own amendment from the floor?

The Chair: If the clerk says it's in order, then it's order.

Mr. Matthew Dubé: I'll do that. It will make her own case much easier.

The Chair: Ms. Dabrusin has now moved....

Can you read that?

Mr. Philippe Méla (Legislative Clerk): It would read that Bill C-59, in clause 103, be amended by replacing paragraph 1.1(f) with the following:

> (f) interfering with the movement of any person, excluding the detention of an individual; and

Ms. Julie Dabrusin: That is correct. Thank you.

The Chair: Okay, we all know what's on the table. Is it understood?

Mr. Paul-Hus.

[*Translation*]

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

As I understand it, the amendment withdraws certain powers from CSIS officers. I would like to know first whether CSIS officers detain people. I do not think that is part of their mandate or their approach. We often debate these issues, and I think the work of agents is misunderstood.

With regard to CSIS, do you think this amendment is relevant?

[*English*]

Ms. Cherie Henderson: Within Bill C-59 or within the threat reduction measurements, we already cannot detain. It's already clearly laid out. Therefore, this is just clarifying. It won't have a negative impact.

● (1255)

The Chair: Is there any further debate?

The question is on the amendment as put forward by Ms. Dabrusin.

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

(Clause 103 as amended agreed to on division)

(Clauses 104 to 106 inclusive agreed to on division)

(On clause 107)

The Chair: We are on clause 107 and amendment LIB-43.

Ms. Julie Dabrusin: This wording is just an amendment for CSIS to produce reports: "An application for a judicial authorization under section 11.13".

I'm sorry. Let me just take a moment, because my notes are all messed up, and I'm filling in for Mr. Fragiskatos.

The Chair: I think pretty well all of our notes are messed up right now.

Ms. Julie Dabrusin: We jumped ahead a fair bit. Because I'm filling in for another amendment, I would like to make sure I have the proper notes before I start speaking.

Thank you.

This isn't a substantive amendment. It will correct a cross-referencing error. This is actually just a technical amendment.

The Chair: Is there debate?

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

The Chair: Amendment PV-23 is next.

Ms. May.

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

This is dealing with a proposed section that we find on page 111, dealing with the process before a judge in looking at the issuance of a warrant, the collection of information, and so on.

What we're trying to do here is to ensure that when issues of charter rights are being adjudicated—and this is essentially a very private and secret hearing before one judge alone, and it may never be subject to an appeal—we're inserting into the section the presence of a special advocate.

A special advocate, of course, is present, from the Chrétien era changes to anti-terrorism legislation, when security certificates are issued. The special advocate is there obviously not in the interest of any accused, because the accused can't know about the hearings against them, in this case for the issuance of a warrant. Obviously, you don't want to have the person under suspicion notified of the proceeding. That's why it's *ex parte* and why it's secret. But the public interest should be represented. In this case, the public interest would be represented by a special advocate.

This was recommended by the Canadian Civil Liberties Association as well as by Professor Michael Nesbitt. I think it's appropriate that we import into this section the presence of a special advocate.

● (1300)

The Chair: Is there debate?

Ms. Dabrusin.

Ms. Julie Dabrusin: There are two parts.

Firstly, this would require royal recommendation, as it's a new role that would have to be funded. Aside from that, there is already a system in place whereby an amicus curiae can be appointed, a system by which judges can get that extra opinion that isn't necessarily being presented before them. An amicus curiae can be appointed, and it is part of a judge's role to undertake any special considerations.

We would submit that this is not necessary.

The Chair: I take note that it is one o'clock. I frankly don't want to interrupt the discussion about clause 107, so with some indulgence I will let the debate go on. Let us go to the vote and end at 1:07.

Is that all right with everyone?

Mr. Dubé.

Mr. Matthew Dubé: I would just say ditto to what Ms. May said.

The Chair: Somebody wants to get out of here.

[*Translation*]

Mr. Pierre Paul-Hus: I have nothing to add. You said it was done.

[*English*]

The Chair: No, it's not entirely done, but anyway....

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

(Clause 107 as amended agreed to on division)

The Chair: All right, thank you colleagues.

Mr. Michel Picard: Don't you want to ask a question about this week's schedule?

The Chair: I do. I thought I was handed the schedule.

We're going to have a meeting from 5:30 to 8:30 on Wednesday and on Thursday from 9:00 to 1:00, so we have another seven hours to go.

I'm rather hoping we don't use all seven hours. After Wednesday's meeting, we'll make a decision as to whether we need four hours on a Thursday or two hours on a Thursday.

[*Translation*]

Mr. Pierre Paul-Hus: Mr. Chair, as you can see, our work is proceeding smoothly. I think we can cancel the meeting tomorrow and meet only on Thursday at 4 p.m.

[*English*]

The Chair: I would normally agree with you, but I don't want to walk away from the extra time if we need the extra time, especially in light of the fact that we have lined up the minister to come the following week. I think that with any kind of serious good faith among colleagues, we can wrap this up by the end of the week. At this point I'm not going to drop the Wednesday time or the Thursday time in the hope that we will finish on time.

[*Translation*]

Mr. Pierre Paul-Hus: It is up to you.

[*English*]

The Chair: I know that with Mr. Paul-Hus's co-operation, it will happen.

[*Translation*]

Mr. Pierre Paul-Hus: I was willing to finish up today.

[*English*]

The Chair: The meeting is adjourned.