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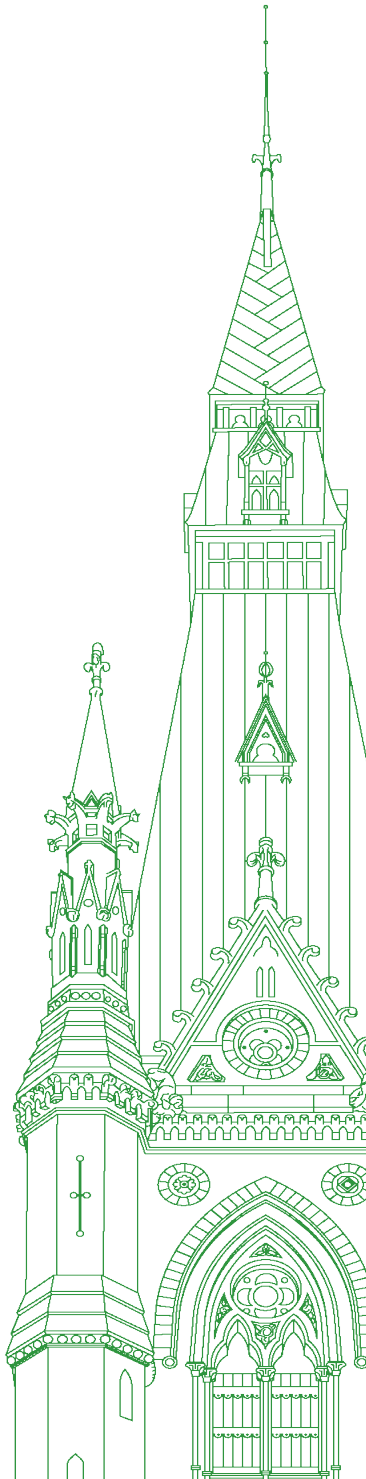

Chair: Mr. Joël Lightbound

Standing Committee on Industry and Technology

Tuesday, November 28, 2023

● (1540)

[*Translation*]

The Chair: I call this meeting to order.

Good afternoon, everyone. Welcome to meeting No. 99 of the House of Commons Standing Committee on Industry and Technology.

I appreciate the cheery atmosphere and hope it will last for the entire meeting.

Pursuant to the order of reference of Monday, April 24, 2023, the committee is resuming consideration of Bill C-27, An Act to Enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other acts.

I'd like to welcome our witnesses today.

[*English*]

We have with us today in person Mr. Barry Sookman, senior counsel for McCarthy Tétrault. Online, we have Elizabeth Denham, chief strategy officer with the Women's Legal Education and Action Fund. We have Kristen Thomasen, assistant professor at the Peter A. Allard school of law at UBC, who is also joining us by video conference.

Thank you to all of our witnesses. Each will have five minutes.

Before we start, I see that Mr. Perkins has a point of order.

Mr. Perkins.

Mr. Rick Perkins (South Shore—St. Margarets, CPC): Thank you, Mr. Chair.

On a quick point of order, the motion we passed to produce the draft amendments for PIPEDA—in the long, compromising meetings that we had—was also done with the understanding that, before we start AIDA, the government would table the draft AIDA amendments as well. We gave an extra six weeks for the study.

I would just like an update from the government, if possible, about the tabling of the draft AIDA amendments from the minister.

The Chair: Thank you, Mr. Perkins. We'll will follow up with the department. The clerk and I will see where the department and the minister's office are on the said amendments.

It is true that we are nearing the end of the privacy part of our study on Bill C-27, so it would forthcoming. It would be good to have these amendments forthcoming. I'll reach out to the department.

Thank you, Mr. Perkins.

Ms. Thomasen, I believe you're also with the Women's Legal Education and Action Fund, so my apologies for that.

We'll start, without further ado, with Mr. Sookman for five minutes.

The floor is yours.

Mr. Barry Sookman (Senior Counsel, McCarthy Tétrault, As an Individual): Thank you very much for the opportunity to appear.

I am senior counsel at McCarthy Tétrault, with a practice focused on technology, intellectual property and privacy. I'm the author of several books in the field, including an eight-volume treatise on computer, Internet and electronic commerce law. I'm here in my personal capacity.

Although my remarks will focus on AIDA, I've submitted to the clerk articles published related to CPPA and AIDA, which contain much-needed improvements. You can see that my submission is substantial.

My remarks are going to focus on AIDA, as I've mentioned. In my view, AIDA is fundamentally flawed.

Any law that is intended to regulate an emerging transformative technology like AI should meet certain basic criteria. It should protect the public from significant risks and harms and be effective in promoting and not hindering innovation. It must also be intelligible—that is, members of Parliament and the public must be able to know what is being regulated and how the law will apply. It must respect parliamentary sovereignty and the constitutional division of powers and employ an efficient and accountable regulatory framework. AIDA either fails or its impact is unknowable in every respect.

AIDA has no definition of “high-impact system”, and even with the minister's letter that was delivered, has no criteria and no guiding principles for how AI systems will be regulated. We don't know what the public will be protected from, how the regulations will affect innovation or what the administrative monetary penalties will be. We know that fines for violating the regulations can reach $10 million or 3% of gross revenues, but we have no idea what the regulations will require that will trigger the mammoth fines against both small and large businesses that operate in this country.

In short, none of the key criteria to assess AIDA are knowable. In its current form, AIDA is unintelligible.

AIDA is, in my view, an affront to parliamentary sovereignty. AIDA sets a dangerous precedent. What will be next? Fiat by regulation for quantum computing, blockchain, the climate crisis or other threats? We have no idea.

AIDA also invokes a centralized regulatory framework that leaves all regulation to ISED. This departs from the sensible, decentralized, hub and spoke pro-innovation approach being taken so far in the United Kingdom and the United States, which leverages existing agencies and their expertise and avoids overlapping regulation. It recognizes that AI systems of all types will pervade all aspects of society and that one regulatory authority alone is ill-suited to regulate them. Rather, what is needed is a regulatory framework for a centralized body that sets standards and policies, coordinates regulation within Canada and internationally, and has a mechanism for addressing areas where there are gaps, if there are any.

AIDA also paves the way for a bloated and unaccountable bureaucracy within ISED. ISED will make and enforce the regulations, and they will be administered and enforced by the AI and data commissioner, who is not accountable to Parliament like the Privacy Commissioner. The commissioner is also not subject to any express judicial oversight, even though the commissioner has the power to shut down businesses and to levy substantial fines.

Last, a major problem with AIDA is that its lack of intelligibility and guiding principles make it impossible to evaluate its impact on innovation. We need to recognize that Canada is a middle country. It is risky for Canada to be out in front of our major trading partners with a law that may not be interoperable with those of our partners and may inadvertently and unnecessarily create barriers to trade. Our AI entrepreneurs are heavily dependent on being able to access and exploit AI models like ChatGPT from the United States. We should not risk creating obstacles that inhibit adoption, the realizing of the maximum potential of AI or the continued growth of AI and the ecosystem and the high-paying jobs it will create.

● (1545)

AI is going to be as transformative and as important as the steam engine, electricity and the microchip in prior generations. Canadian organizations in all sectors need open access to AI systems to support adoption and innovation and to be competitive in world markets. If we fail to get this right, there could be significant long-term detrimental consequences for this country.

To go back to my first point, there is nothing in AIDA to provide comfort that these risks will be avoided. While my opening remarks, Mr. Chairman, relate to AIDA, I also have concerns about the CPPA. I would be glad to answer any questions you may have about AIDA or the CPPA.

Thank you again for the opportunity to appear.

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

I'll now yield the floor to Elizabeth Denham with the Information Accountability Foundation. My apologies for the mistake in my presentation. There was a bit of confusion.

The floor is yours.

Ms. Elizabeth Denham (Chief Strategy Officer, Information Accountability Foundation): Thank you very much.

Good afternoon, Chair.

Good afternoon, committee members and Madam Clerk.

Thank you for the invitation to appear before you today. Hopefully my input will benefit the committee's important work.

I speak from decades of experience as a privacy professional and from 15 years as an information rights regulator in four jurisdictions. My ongoing work takes place really on the international stage, but it's backed by long-standing familiarity with our own federal and provincial privacy laws.

When I became the information commissioner for the United Kingdom in 2016, that role really brought me into the EU's oversight board that administered the GDPR implementation. That brought me into direct collaboration with all EU member states, and that experience greatly expanded my view of data protection and privacy that was first cultivated at the federal level in Canada, in Alberta and British Columbia.

During my five years as the U.K. information commissioner, I also served three years as the chair of the Global Privacy Assembly. That position greatly expanded my horizons once again and enhanced my knowledge of other laws and other cultures, including the global south, the Middle East and the Asia-Pacific. To this day, the work I do spans continents.

The issues of pressing concern are largely the same, and those are children's privacy and safety and the regulation of artificial intelligence.

Looking first at Canada's CPPA from a global perspective, I see a big missing piece, and the legislation's language, in my view, needs adjusting so that it explicitly declares privacy as a fundamental right for Canadians. Its absence really puts us behind nations who lead the way in privacy and data protection.

The legislative package goes some way towards establishing expectations for AI governance, but it lacks specific and much-needed protections for children and youth. In a study I conducted through my work with an international law firm, Baker McKenzie, which surveyed 1,000 policy influencers across five jurisdictions, we found that all those surveyed came to a single point of agreement: The Internet was not created and not designed with children in mind.

All those policy influencers felt that we need to do better to protect children and youth online. Canada is a signatory to the United Nations Convention on the Rights of the Child, and I think Canada owes it to our young people to enshrine the right for them to learn and to play, to explore, to develop their agency and to be protected from harms online.

In the U.K., I oversaw the creation of a children's age-appropriate design code, which is a statutory enforceable code, and the design of that code has influenced laws, guidance and codes around the world. I'd be happy to answer more questions about that.

Additionally, I believe the legislature should go further than it does to provide the Privacy Commissioner with robust enforcement powers. I exported my career from Canada to the U.K. in large part because I wanted to gain hands-on experience administering laws with real powers and meaningful sanctions.

In Britain, privacy harms are treated as real harms ever since the GDPR came into effect. One result was the leap in the U.K. information commissioner's fining authority, but other enforcement powers were equally powerful: stop processing orders, orders to destroy data, streamlined search and seizure powers, mandatory audit powers and so on.

● (1550)

These enforcement powers were mandated by a comprehensive law that covers all types of organizations, not just digital services but a business of any kind, a charity or a political party. By comparison with the GDPR, Bill C-27 lacks broad scope. It doesn't cover charitable organizations, which are not above misusing personal data in the name of their worthy causes. Neither does Bill C-27 cover political parties. It leaves data and data-driven campaigns off the table for regulatory oversight.

Serving as a privacy commissioner at the federal and provincial levels in Canada exposed me to towering figures in my field. I think of Jennifer Stoddart, the former federal privacy commissioner, and David Flaherty, the former B.C. information and privacy commissioner. Their names recall a time when Canadian regulators and Canadian law were deeply respected internationally, when our laws and our regulators really served the world as a bridge between the U.S. and Europe. Although commissioners who followed, Daniel Therrien and Philippe Dufresne, have continued to contribute internationally, Canada’s laws have fallen behind any global benchmark.

I think we can recover some ground by returning to fundamental Canadian values, by remembering that our laws once led the way for installing accountability as the cornerstone of the law. Enforceable accountability means companies taking responsibility and standing ready to demonstrate that the risks they are creating for others are being mitigated. That's increasingly part of reformed laws around the world, including AI regulation. The current draft of the CPPA does not have enforceable accountability. Neither does it require mandatory privacy impact assessments. That puts us alarmingly behind peer nations when it comes to governing emerging technologies like AI and quantum.

My last point is that Bill C-27 creates a tribunal that would review recommendations from the Privacy Commissioner, such as the amount of an administrative fine, and it inserts a new administrative layer between the commissioner and the courts. It limits the independence and the order-making powers of the commissioner. Many witnesses have spoken against this development, but a similar arrangement does function in the U.K.

Companies can appeal commissioner decisions, assessment notices and sanctions to what is called the first-tier tribunal. That tribunal is not there to mark the commissioner’s homework or to conduct *de novo* hearings. I would suggest that, if Parliament proceeds with a tribunal, it has to be structured appropriately, according to the standard of review and with independence and political neutrality baked in.

As a witness before you today, I have a strong sense of what Canada can learn from other countries and what we can bring to the world. Today, Canada needs to do more to protect its citizens’ data. Bill C-27 may bring us into the present, but it seems to me inadequate for limiting, controlling or making sure we have responsible emerging technologies.

Thank you for hearing my perspective this afternoon. I very much look forward to your questions.

● (1555)

[*Translation*]

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

I'll now yield the floor to Kristen Thomasen for five minutes.

[*English*]

Dr. Kristen Thomasen (Assistant Professor, Peter A. Allard School of Law, University of British Columbia, Women's Legal Education and Action Fund): Thank you so much, Mr. Chair, Madam Clerk and committee members, for this opportunity to speak with you today about centring human rights and substantive equality in Canadian AI legislation.

I am a law professor at UBC. I have been researching and writing in the areas of—

[*Translation*]

Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ): Mr. Chair, I apologize for interrupting Ms. Thomasen. We aren't getting the French interpretation.

[*English*]

The Chair: Just one second, Ms. Thomasen. We'll just make sure that the interpretation is working.

[*Translation*]

Mr. Sébastien Lemire: It's working now. Thank you.

[*English*]

The Chair: You can resume.

Dr. Kristen Thomasen: Thank you.

I have been researching and writing in the areas of tort law, privacy law and the regulation of automated technologies for over a decade, with a particular focus on rights and substantive equality, including recent publications on safety in AI and robotics governance in Canada and work with the B.C. Law Institute's civil liability and AI project.

I'm here today representing the Women's Legal Education and Action Fund. LEAF is a national charitable, non-profit organization that works toward ensuring that the law guarantees substantive equality for all women, girls, trans and non-binary people. I'm a member of LEAF's technology-facilitated violence advisory committee and will speak to LEAF's written submissions, which I co-authored with LEAF senior staff lawyer Rosel Kim. Our submission and my comments today focus on the proposed AI and data act.

You've heard this before, but if we're going to regulate AI in Canada, we need to get it right. LEAF agrees with previous submissions emphasizing that AI legislation must be given the special attention it deserves and should not be rushed through with privacy reform. To the extent that this committee can do so, we urge that AIDA be separated from this bill and wholly revisited. We also urge that any new law be built from a foundation of human rights and must centre substantive equality.

If the AI and data act is to proceed, it will require amendments. We examined this law with an acute awareness that many of the harms already arising from the introduction of AI into social contexts are inequitably experienced by people who are already marginalized within society, including on the grounds of gender, race and class. If the law is not cognizant of the inequitable distribution of harm and profit from AI, then despite its written neutrality, it will offer inequitable protection. The companion document to AIDA suggests that the drafters are cognizant of this.

In our written submission, we made five recommendations, accompanied by textual amendments, to allow this law to better recognize at least some of the inequalities that will be exacerbated by the growing use of AI.

The act is structured to encourage the identification and mitigation of foreseeable harm. It does not require perfection and, in fact, is likely to be limited by the extent to which harms are not considered foreseeable to the developers and operators of AI systems.

In this vein, and most urgently, the definitions of “biased output” and “harm” need to be expanded to capture more of the many ways in which AI systems can negatively impact people, for instance, through proxies for protected grounds and through harm experienced at the group or collective level.

As we note in our submission, the introduction of one AI system can cause harm and discriminatory bias in a complex and multifaceted manner. Take the example we cite of frontline care workers at an eating disorder clinic who had voted to unionize and were then replaced by an AI chatbot system. Through an equity lens, we can see how this would cause not just personal economic harm to those who lost their jobs but also collective harm to those workers and others considering collective action.

Additionally, the system threatened harm to care-seeking clients, who were left to access important medical services through an impersonal and ill-equipped AI system. When we consider equity, we should emphasize not only the vulnerable position of care workers and patients, but also the gendered, racialized and class dimensions of frontline work and experience with eating disorders. The act as currently framed does not seem to prompt a fulsome understanding nor a mitigation of the different complex harms engaged here.

Furthermore, as you've already heard, the keystone concept in this legislation, “high-impact system”, is not defined. Creating only one threshold for the application of the act and setting it at a high bar undermines any regulatory flexibility that might be intended by this. At this stage in the drafting, absent a rethinking of the law, we would recommend removing this threshold concept and allowing the regulations to develop in various ways to apply to different systems.

Finally, a key challenge with a risk mitigation approach, such as the one represented in this act, is that many of the harms of AI that have already materialized were unforeseeable to the developers and operators of the systems, including in the initial decision to build a given tool. For this reason, our submission also recommends a requirement for privacy and equity audits that are transparent to the public and that bring the attention of the persons responsible to as extensive as possible prevention and mitigation.

Finally, I would emphasize that concerns about the resources required to mitigate harm should not dissuade this committee from ensuring that the act will mitigate as much harm and discrimination as possible. We should not look to expand an AI industry that causes inequitable harm. Among many other reasons, we need a human rights approach to regulating AI for any chance of an actually flourishing industry in this country.

● (1600)

Industries will also suffer if workers in small enterprises are not protected against harm and discrimination by AI.

Public resistance to a new technology is often based on an understanding that a select few stand to benefit, while many stand to lose out. To the extent possible, this bill should try to mitigate some of that inequity.

Thank you for your time, and I look forward to your questions and the conversation.

The Chair: Thank you very much.

To start the discussion, I will now yield the floor to MP Williams.

Mr. Ryan Williams (Bay of Quinte, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for being part of this important discussion, online and in person.

Mr. Sookman, Bill C-27 introduces a large number of new terms to our privacy protection regime, and then leaves them undefined and open to interpretation. For example, the bill gives extra protection to the sensitive information of a minor, but it does not define who a minor is or what sensitive information is. The list goes on: reasonable person, legitimate business interest, appropriate purposes and appropriate circumstances for data collection.

Do we need to define these terms in the legislation. If so, how would you do so?

Mr. Barry Sookman: Thank you very much for the question. It's a very good one.

One of the concerns I have about the CPPA, in particular, is that it creates these ambiguous new standards and requirements with open-ended tests, such as what would be appropriate or what a reasonable person would think. This is very hard for any organization that seriously wants to comply to know how to comply. “Appropriate Purposes” is a good example.

As for “minor”, I think it would be useful to have a common definition that applies throughout.

In terms of “sensitive information”, I think there are already sufficient cases for what “sensitive” is. I think “sensitive” is contextual, depending on the circumstances. There is a lot of guidance from the Privacy Commissioner on that. I don't think it would hurt to have criteria, but I think the courts are well suited to figuring that one out.

Mr. Ryan Williams: Could you submit specific wording to the clerk for any of these definitions? I'll give them to you again before you go on: reasonable person, legitimate business interest, appropriate purposes and appropriate circumstances for data collection. If you have that and can submit it, it helps with our amendments to the bill, sir.

Something else we believe, on the Conservative side, is that there needs to be a balance between protecting a Canadian's fundamental right to privacy and ensuring the ability of businesses to use data for good.

Do you feel Bill C-27, as written, achieves that balance?

Mr. Barry Sookman: Thank you for that follow-up question.

I have reviewed the amendments proposed by the minister, which make it clear that the joint purposes of the act are the protection of the fundamental right of privacy and the legitimate interests of business. I think that's an appropriate way to do it. One has to understand that every fundamental right, including the fundamental rights in the charter, is subject to the Oakes test, which is a balancing exercise. The purpose clause makes it clear that we have to balance that fundamental right and the interests of business. This gives the courts the appropriate tools to solve the problem.

I'll also point out that the “Appropriate Purposes” section is an override section. If there is something an organization does that, frankly, is offside, this trumps everything. When you put together the purposes of the act and “Appropriate Purposes”, the public is adequately protected.

I won't get into the fact that, also, the Privacy Commissioner has huge discretionary powers as to how to enforce it, with very limited rights to appeal. If the Privacy Commissioner believes a fundamental right has been violated and that it's an inappropriate purpose, the commissioner has all the powers required to do the proper calibration to protect the public.

● (1605)

Mr. Ryan Williams: Thank you, sir.

Ms. Denham, the GDPR has been criticized for imposing a high cost of compliance on small businesses.

Do you feel Bill C-27 creates a burden for small businesses when it comes to complying with the data protection and filing obligations?

Ms. Elizabeth Denham: I heard that criticism about the GDPR being burdensome on small businesses. I think organizations like the EU Data Protection Supervisor and the Information Commissioner's Office of the U.K. have really focused on small businesses and innovators to help them with their compliance.

I suppose there isn't such a strict category line that we can draw between a small business and a medium-sized business in terms of the harms that they could create. I'll just remind you that Cambridge Analytica was a small business.

Therefore, I think what is more appropriately in context is the sensitivity and the amount of data that's being processed, whether it's two people working in their garage or a small political consultancy. There are many larger companies that aren't processing sensitive personal data. I think the point is to be able to delineate the potential harms and risks that a business is creating for Canadians and to make sure that those risks are properly mitigated.

Mr. Ryan Williams: Ms. Denham, there are two sections of the GDPR that Bill C-27 copied. It ended up with a copy that, strangely, looks like it has been AI-generated. That would be “sensitive information” and the “legitimate interest” exemption.

In the GDPR, legitimate interest is meant to be a rare exception—not used normally, as it is in Bill C-27. The GDPR has a legitimate interest analysis that must be submitted and approved. Do we need to reform Bill C-27 to better copy the GDPR?

Ms. Elizabeth Denham: Yes, I believe so. Legitimate interest is one of six legal bases that a company can use to process personal information—the others being required by contract, informed consent, binding corporate rules and public tasks. There are many legitimate bases for processing personal information. Legitimate interest is not meant to be an exception. It's one type of legal basis for collecting and processing data.

I think what has happened in Bill C-27—

[*Translation*]

Mr. Sébastien Lemire: Mr. Chair, I have to interrupt the discussion because we're being told we have poor-quality sound.

The Chair: Yes, I just heard that, Mr. Lemire. The sound doesn't seem to be good enough.

[*English*]

Ms. Denham, is it possible to maybe move the boom of your microphone up a little bit and say a few words?

Ms. Elizabeth Denham: Is that better? Can you hear me now?

[*Translation*]

Mr. Sébastien Lemire: I'm being told no.

[*English*]

The Chair: Just give me one second.

[*Translation*]

I'm consulting the technical staff.

Can you try to say a few words again, Ms. Denham?

[*English*]

Ms. Elizabeth Denham: Yes. I was discussing the various legal bases for processing personal information.

The Chair: Just give me one second, colleagues.

● (1610)

Mr. Barry Sookman: Mr. Chair, while we're waiting, can I respond to the question from Mr. Williams on legitimate interest?

The Chair: I think that would be a good use of our committee's time, Mr. Sookman.

You can go ahead.

Mr. Barry Sookman: Thank you very much for that question. I have concerns about legitimate interest as well.

As to whether it is weaker or stronger than the GDPR, it is substantially weaker than the GDPR in its wording. The GDPR, like the CPPA proposal, has a balancing.... It has no “get out of jail free” card. There must be a balance and the use must be appropriate, and it can't adversely affect individuals.

However, unlike the GDPR, it doesn't apply to disclosures, which is very significant. For example, search engines or AI companies are either not going to be able to operate in this country without an amendment, or they'll operate and they won't be subject to the law. This section needs to be fixed.

The other thing is that it has additional tests, which aren't in the GDPR, about a reasonable person having to expect the collection of such activity. That is tethered to an old technology—a known technology—rather than a technologically neutral approach. We want something that's going to work in the future, and this language doesn't work.

I think the problem is actually the opposite of what you were asking for. We need to fix it so that it works properly but still protects the public.

The Chair: Thank you very much, Mr. Sookman and Mr. Williams.

I will now turn it over to MP Gaheer.

Mr. Iqwinder Gaheer (Mississauga—Malton, Lib.): Thank you, Chair.

Thank you to all the witnesses for making time for the committee and appearing in person or virtually. My questions are for Ms. Denham.

Your expertise is very comparative, so I want to ask those sorts of questions. You mentioned the global south in your opening testimony, and that you're familiar with the privacy regime in the global south. Is there anything we can learn from the global south in how its privacy regime is levied?

Ms. Elizabeth Denham: My experience with countries in the global south is.... If you take Africa, for example, and South America, many of those nations are not copying and pasting the GDPR, but they are certainly taking inspiration from the GDPR.

I think the GDPR is a global standard. There are different cultures and different legal systems, which means that it's not going to look the same as the GDPR, but certainly the principles are the same. Respect and the need for privacy and data protection are fundamental rights.

The Middle East is different again. I was recently in Dubai. I met with the minister for AI and talked to many businesses in the Middle East about their approach to data protection and transporter data flows. It certainly is innovation-forward. It's taking a different track than what I see happening in the global south. India's law is also being amended, reformed and passed. It's a very exciting time to see what's happening in that country.

Mr. Iqwinder Gaheer: Thank you.

You also mentioned enforcement powers and sanctions. What sorts of enforcement powers and sanctions would you like to see?

Ms. Elizabeth Denham: I think fines are important. There's a lot of focus in this legislation on providing the commissioner with fining power, but fines are so 20th century. Although you need to have fines available for the worst cases and for the bad actors that continue to contravene the legislation, what's more impactful and where I see more modern tools are things like stopping processing orders or the disgorgement of data. This would mean that a company can no longer use its algorithmic models, that it has to destroy data that was fed into a model, because it was collected illegally.

We see the Federal Trade Commission in the U.S. using these kinds of powers. You see that happening in Europe and the U.K., because at the end of the day what is most impactful for significant contraventions of the law is what actually impacts a business model, and not a fine that is just the cost of doing business.

I think there's a rethink that's needed to give the commissioner modern tools, and I look at fines as a last resort.

● (1615)

Mr. Iqwinder Gaheer: In meetings past, we have heard folks speak on both sides of the issue of the personal information and data protection tribunal and the Privacy Commissioner directly imposing fines. You spoke about that briefly in your opening testimony.

If you don't like that structure, what kind of a structure would you rather have?

Ms. Elizabeth Denham: As I said, in the U.K. there is a tribunal system, and administrative tribunals are used across many areas of law. In the U.K., when it comes to freedom of information, data protection, cybersecurity or electronic marketing—all of those areas the commissioner is responsible for—the decisions that the commissioner fines and sanctions are subject to a review by the first-tier tribunal. Then the case can actually go to appeal at the second-tier tribunal, and then on to the court.

That sounds like what could be a very lengthy process. However, I think that over time the tribunals have become expert tribunals, so you're not taking a very specialist policy area like data protection and having a general court look at the issues.

I think there are pluses and minuses. Obviously, the government wants to make sure there is administrative fairness and an appeal system, because otherwise you have too much power concentrated in a government body.

You could understand why there should be appeals, but my argument is that, if there is going to be a tribunal, then the standard of review needs to be reasonableness, as it is in British Columbia. Also, the members of the tribunal need to be independent and appointed that way. Finally, I think it's really important that the tribunals not conduct an inquiry from scratch, because I think that undermines the commissioner's expertise.

If there is no tribunal, then I agree with the Privacy Commissioner's recommendation that an appeal go directly to the Federal Court of Appeal, rather than starting at the tribunal and then going to Federal Court.

Mr. Barry Sookman: The structure of the adjudication of issues, where they start and how they get appealed, is a very important question. We have to recognize that, with the importance of privacy and the amount at stake for the public and organizations, getting it right is really important.

The powers of the Privacy Commissioner are very broad. There's really only anorexic protection procedurally, yet the Privacy Commissioner makes the determination as to whether there's a breach and can make a recommendation as to whether there are penalties.

The appeal goes to the tribunal, but the tribunal only has the power to order a reversal if it's an error of law. It has no power to do anything if it's a mixed question of fact and law or a question of fact. When you look at the way the CPPA operates, there are going to be huge numbers, almost invariably a huge number of questions of fact and law. This means that, effectively, there are almost no procedural protections before the Privacy Commissioner, and any decisions are virtually unappealable. Also, the constitution of a tribunal doesn't require a judge, which is required in other contexts. I do think there needs to be procedural protection in front of the Privacy Commissioner.

As for the appeal, you heard Ms. Denham talk about at least a reasonableness standard. That doesn't even exist before the tribunal. That would only exist on a further judicial review, but it's almost impossible to get there.

I do think the structure really needs to be changed to provide at least a modicum of procedural protection.

Mr. Iqwinder Gaheer: Thank you.

[*Translation*]

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

Mr. Lemire, the floor is yours.

Mr. Sébastien Lemire: Thank you, Mr. Chair.

Mr. Sookman, you expressed your thoughts in an article on artificial intelligence that was published three days ago, if I'm not mistaken, in which you analyzed the AI Regulation Bill in the UK House of Lords.

In that analysis, you noted that the British bill could provide a roadmap as to how to improve the Artificial Intelligence and Data Act.

You outlined issues such as parliamentary sovereignty, the creation of an artificial intelligence authority and regulatory principles.

What lessons can we, as legislators, learn from the British bill, and what specific aspects would you recommend should be incorporated in the framework of the Artificial Intelligence and Data Act to strengthen AI regulations in Canada?

● (1620)

Mr. Barry Sookman: Thank you for your question.

[*English*]

I think that is a fantastic question.

The private member's bill that you referred to is also an attempt to have an agile mechanism for the regulation of AI. There are two things about that bill that I think are fundamentally important. If this committee is going to make recommendations for improvements, two things can be taken from that bill, which I would strongly recommend.

First, the secretary had the power to enact regulations in the first instance. The regulations only become effective when they're passed by a resolution in both Houses of Parliament. Regulations that don't have that procedure can be annulled by either House of Parliament.

In my mind, that is a way to give effect to the important principle of parliamentary sovereignty. That way, the government can go ahead with its regulatory analysis, but at the end of the day, it's still regulated by a mechanism of Parliament. I think that's a brilliant approach to solving the problem of parliamentary sovereignty.

The second thing about the draft AI bill that I think is really important is that it contains the principles for guiding the legislation. If you look at AIDA, it doesn't define “high impact” and it tells you nothing about what the principles should be that would guide regulation. What this bill does is provide a good first look at what could be an approach.

It starts off with saying the principles should be fundamental ethical principles for responsible AI. They should deliver safety, security, robustness and those sorts of things. Secondly, any business that's going to engage in AI—in this case, I would say a high-impact system—should test it thoroughly and should be transparent about its testing. Thirdly, it has to comply with equalities legislation—that is, discrimination, which is extremely important.

Lastly—and this is completely missing in our bill—a consideration has to be that the regulation benefits outweigh the burdens and that the burdens of the restriction don't prejudice and would enhance the international competition of the U.K.

I think having a set of principles like that to guide the regulatory framework would be very useful. When I saw that bill, I thought, this is genuis. This is from a private member.

[*Translation*]

Mr. Sébastien Lemire: Ms. Denham, I want to let you react, since we're talking about a British bill. Do you also think the bill is genius?

[*English*]

Ms. Elizabeth Denham: That's a private member's bill, as my colleague has just said, so I haven't studied that.

The government's direction right now is not to regulate AI, but rather to give existing regulators the powers that they need, which includes running sandboxes to beta-test generative AI and machine learning applications.

The government has said that yes, there's a set of principles. The U.K. government of the day has said that it's not going to regulate a specific technology at this point. Instead, it's creating an AI institute to look over all digital regulation and to encourage digital regulators to work together. That is in contrast with the EU, which is in trilogue right now, as you know. The EU has an AI act that is comprehensive and reads like a product safety statute.

There may be a brilliant private member's bill, but the government's preference is really to support existing regulators when it comes to this new technology. It's taking a “wait and see” approach.

● (1625)

[*Translation*]

Mr. Sébastien Lemire: Ms. Denham, I was in England a few weeks ago to take part in the AI security summit.

What lessons has England learned from holding that summit at Bletchley a few weeks ago?

[*English*]

Ms. Elizabeth Denham: Yes, the global summit that was sponsored by the Prime Minister in the U.K. was really important, because there was an outcome that was an agreement of leading nations around the world around the approach towards AI. There was a declaration that came out of that meeting, and it included China. I think that is quite astonishing to a lot of people.

You see, ultimately, I think what we're going to need is an international solution. In the same way that we regulate civil aviation around the world, I can see that we need a world where we are regulating AI, at least to a high level of principles and standards. I think that's what was achieved at the British meeting a few weeks ago, and I think dialogue is a good thing.

[*Translation*]

Mr. Sébastien Lemire: Yes.

And by the way, China surprised me, especially by raising the issue of human rights in artificial intelligence.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Lemire.

Go ahead, Mr. Masse.

[*English*]

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

I'll start with Mr. Sookman, who's here, and then I'll go to our two virtual witnesses.

With regard to the process, one of the things that's been difficult is that we still don't have some of the amendments. That was brought up at the beginning of the meeting here.

Mr. Sookman, I'm kind of curious. When you were preparing to come here today, how well could you be prepared for testimony on the full bill itself and whether or not it's your opinion that...? Will you submit more documents or information later on, or will the committee have to circle around again to our original witnesses? We've tried to compartmentalize these things the best that we can. In fact, we split the bill for voting purposes into two sections, but it's still one bill here.

I'm just curious about a witness coming here and the process that we've engaged in. Tell us what you think.

Second, what are we going to have to do once we get the other part of the bill in front of us?

Mr. Barry Sookman: Mr. Masse, I don't envy the predicament you're in. In fact, the predicament you're in is a microcosm of the whole public who's interested in the regulation of artificial intelligence.

It was quite clear from the minister's statement that there were amendments. We haven't seen the amendments on AIDA. All we have right now is the letter of the minister, which describes in a very amorphous, open-ended form what the first focus of the government's going to be, but it's quite clear that there's no definition of what the factors are for what will be “high-impact”, and there's no criteria for future systems.

The reality is that we still have no idea. What really concerns me is that, at the last minute—you know, even if it's next week—we're going to get draft amendments, and those amendments are probably only going to be half of the amendments, because they're probably only going to relate to the pieces that were in the minister's letter. Everything else is going to be, I think, saved for clause-by-clause.

When you look at the work that's gone on around the world trying to come up with an appropriate regulatory framework, it has taken years. The British have really studied this issue and, as Ms. Denham said, had taken the view that what's needed is a hub and spoke, decentralized regulatory framework.

The committee may get amendments, and you're going to get a couple of weeks to review something that should have taken a year or years to evaluate. Also we're in the process of still finding out what the Europeans are doing and exactly what the U.S. Congress is going to do. We are making a big mistake, I believe, if we think that we can get dropped amendments, do a thorough analysis of them and make policy for the country that's going to affect jobs, the protection of the public and innovation for decades.

In my view, whatever comes out is not going to give this committee enough time to study it, and my strong recommendation would be to step back. The government's already said that it's going to take two years to do the regulations. They cannot go ahead with this part. Do the study and introduce a proper bill. We won't lose any time, but we'll get something that's thought through and debated by the public and Parliament.

● (1630)

Mr. Brian Masse: Thank you for that.

I'm glad you mentioned Ms. Denham. I do want to move on to a question for her.

You mentioned a little bit about where Canada's privacy record is in the world. I was glad to hear you mention Ms. Stoddart. She really set the standard in many respects for a lot of different things that we saw.

Can you give us more detail on how we can reclaim where we're at with regard to our international reputation on privacy and protection for workers? I always thought this was an advantage for investment in Canada as well. I know that some businesses are a little concerned with some of the things that are potentially in this, but at the same time if we have clear, transparent rules that are consistent, it could be of benefit.

Could you please give us a little road map on how we get back?

Ms. Elizabeth Denham: Yes, Jennifer Stoddart is a personal hero of mine. I worked closely with her in Ottawa as her assistant commissioner.

One of the benefits of Canada is that Canada has been a hard-working member of the OECD, so Jennifer Stoddart was the chair of the privacy and security committee of the OECD for many years. I think she was very influential in that role in bringing together various members of the OECD and others around the world.

As a Canadian working in the U.K., I was able to chair the Global Privacy Assembly, which is the group that brings together 135 privacy authorities from around the world. Again, that was an influential post because it took me to G7 meetings and meeting with the ministers of industry, technology and trade. The privacy commissioners can fulfill a really important diplomatic and bridge-building role around the world.

We have a great example in our current privacy commissioner. He's very well regarded already in international circles, but I think the investment has to go to influence other places and countries around the world. Given the fact that data knows no borders and we're all dealing with the same big companies, there needs to be some collaboration and co-operation.

I can see that Canada can continue to play that role but not when our laws are so 20th century. The update of the laws is so important because, with the Privacy Commissioner in Canada, it's not sustainable to have ombudsman and recommendation-only powers when data is the greatest asset of the 21st century.

Mr. Brian Masse: I know I'm out of time, but I'll come back to you later, Ms. Thomasen, so you're not left out.

Thank you, Mr. Chair.

I'll come back to you in my second round, Ms. Thomasen.

Thank you.

[*Translation*]

The Chair: Thank you, Mr. Masse.

Mr. Généreux, the floor is yours.

Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC): Thank you, Mr. Chair.

Thanks to the witnesses. I'm going to ask my questions in quick succession, and witnesses may answer them after that.

Mr. Sookman, the comments you've made from the outset lead me to believe that we're working backwards. We've heard that many times since we began our study. Do you think there are any positive or useful aspects that should be retained? Are there any that we should develop further?

Earlier you talked about the tribunal. Among the various opinions we've heard to date, certain individuals believe that the tribunal should exist, while others, on the contrary, believe we should immediately go to an appellate court. I would like to hear your opinion on that.

Ms. Denham, attendees at the conference that was held in the UK a few weeks ago came to a certain consensus that there should be a voluntary code. In fact, I believe we've already signed the agreement regarding such a code.

Will that voluntary code replace certain bills in certain countries? Will some countries back off on certain elements that they've already put in place to make room for the voluntary code?

I'll let you go first, Mr. Sookman.

● (1635)

[*English*]

Mr. Barry Sookman: Thank you very much for those questions.

When I looked at the minister's letter, which provides some guidance, what I was very pleased to see are the new areas that are proposed to be regulated. We don't know how they're going to be regulated, but there was a proposal to add in dealing with discrimination in the courts and administrative tribunals, and I think that's very important.

There was also something about introducing some guardrails in the criminal investigations. That can help police officers to do investigations that might be discriminatory. Those sorts of public things are very important.

There was also something about regulation of services. Again, we have no idea whether this is intended to be public or private, but the EU has proposed to ensure non-discrimination in emergency services, for example, which is very important.

However, what we didn't see...and this a problem. All the authority is still with the minister. When you look at what is proposed in the letter, you see various areas that are intended to be regulated. You have courts, peace officers, human rights and content moderation, which should be the purview of the justice minister. You have issues relating to employment, which should be the purview of the labour minister. You have issues related to health regulation, which should be within the Department of Health.

I could go on and on, but I think one thing that could be done would be to give numerous ministers the power to make regulations in their areas. That would help make this decentralized.

I know I'm out of time, so I won't get to the tribunal question.

Mr. Bernard Généreux: I want to make sure that Ms. Denham can respond to my question, please.

Ms. Elizabeth Denham: Yes, your question was about the outcome of the AI Safety Summit that was held several weeks ago at Bletchley Park.

I think, first of all, there was the fact that an international declaration on the risks that generative AI brings to society, an agreement, was signed by 25 countries, including China. The second piece was an agreement to agree on a multilateral agreement.

When you say it's a voluntary agreement, right now it is, although I think a multilateral agreement on how to test high-risk AI systems is a step in the right direction. However, it absolutely is voluntary at this point, and I think what we're seeing is a very fast-moving regulatory environment that's trying to sprint to keep up with the technology.

[*Translation*]

Mr. Bernard Généreux: Ms. Thomasen, what do you think of the answers that we've received to date regarding this bill?

This is a very general question, but I think it's important for all the witnesses to have an opportunity to express their general opinion of the bill.

We've known from the start that certain aspects should have been treated separately and that we shouldn't have put everything into a single bill. What you think of that?

[*English*]

Dr. Kristen Thomasen: Yes, thank you.

You asked about any positive aspects of the bill, and we did emphasize, in our written submission, some aspects of the bill that we think are very commendable. Dealing with discriminatory bias is important. The recognition that psychological harm is an aspect of harm is important and commendable. Taking a regulatory approach to give clarity to how AI systems can be operated and what obligations and transparency requirements exist for companies using AI, I think, is all very important.

The companion document that accompanies the legislation contains a lot of very important points, as well, and perspectives that we don't see reflected in the draft legislation itself, which we noted, in our submission, is a missed opportunity. There's a discussion about collective rights in the companion document that is crucial when we're talking about AI systems because of the way these systems work on large quantities of data, drawing out inferences based on an assessment of a large group of people. The idea that harm can be actually materialized at the collective level, rather than solely at the personal level, is something that the law needs to acknowledge. This would be relatively new for our laws. It wouldn't be brand new because there are areas of law that recognize collective rights, of course. However, it's something that we're going to have to see recognized more and more, and I think that exists in the companion document. That should be integrated into this bill if it's going to go forward.

I would just say, very generally, that a lot of what we're talking about highlights that we actually need to step back when we think about AI regulation in Canada. The AIDA did not benefit from the consultation. I think that would have been useful in advance of its drafting. It could take a much more holistic approach. Mr. Sookman has highlighted some of this. Ms. Denham has highlighted some of this. There are many considerations that have to go into how we would establish a framework for regulating AI in Canada that we don't see here and that I think are going to be difficult to integrate, solely through textual amendments, into what we have in front of us.

● (1640)

[*Translation*]

Mr. Bernard Généreux: Thank you very much.

[*English*]

The Chair: Thank you.

MP Van Bynen, the floor is yours.

Mr. Tony Van Bynen (Newmarket—Aurora, Lib.): Thank you, Mr. Chair.

I'd like to go back to Ms. Denham and take advantage of her international experience.

Bill C-27 creates a new artificial intelligence and data act, which appears to be based on at least part of the European Union's artificial intelligence act, which also proposes a risk-based framework for artificial intelligence systems.

How do you compare those two pieces of legislation?

Ms. Elizabeth Denham: The EU AI act is comprehensive in terms of its scope. It's a comprehensive act, so it applies to the public sector, the third sector and the private sector. It's a product-safety statute, so it doesn't give individuals any rights. What it does require is that companies categorize the AI system they are procuring or developing. It has to be slotted into one of the risks. There is prohibited AI, high-risk AI and low-risk AI, and it's up to the company to determine the risk they're creating for others. Then, according to that risk.... Due diligence, accountability, transparency and oversight are tied to the level of risk.

To give you an example, there is a group of prohibited AI uses. One of them is live facial recognition technology used by police in public spaces. The EU has already decided that's prohibited. There are many low-risk.... Chatbots, for example, may be considered a low AI or algorithmic risk.

What companies and governments need to do is prove they have a comprehensive AI data governance program in place and an inventory of all AI systems in use, and then stand ready to demonstrate this to AI regulators across the EU.

What the EU has is first-mover advantage, in terms of a comprehensive AI law. That's what it has. This doesn't mean the rest of the world is going to copy and paste their approach. That said, any company outside the EU that is directing services to citizens and organizations in the EU will be subject to the EU law. That means the world is paying attention to what the EU is doing, in the same way they did with the GDPR. There is first-mover advantage there.

I think what the U.S. is doing is extremely interesting. It's difficult to get anything through Congress these days. We know that. Instead, there is an executive order on AI, which requires all government agencies—the supply chains and procurement in every single agency, be it Health and Human Services or the Department of Defense—to comply with AI principles. They also have to stand ready to demonstrate that they are being responsible. I think that is going to be hugely influential but quite different from the approach the EU is taking.

● (1645)

Mr. Tony Van Bynen: The other aspect you raised earlier is with respect to teeth and enforcement regarding violations of some of the statutes. I was particularly interested in your reference to the stop processing order and the disgorgement of data order. If I recall correctly, there was recently a $1.2-billion fine, which seemed to be heralded as a huge fine. However, for a violating organization, this could simply be considered the cost of doing business—

Ms. Elizabeth Denham: It could be a rounding error.

Mr. Tony Van Bynen: —in some cases.

Could you expand a little more on those two concepts—the stop processing order and the disgorgement of data order? I think these are elements that need to be seriously considered in order to give regulators the effect they need to deal with these global enterprises.

Ms. Elizabeth Denham: I can't recall at this moment whether the CPPA has a power in there for the commissioner to order the deletion of data for data that may have been gathered illegally or not properly consented to.

I can't remember if the commissioner has that power, but it is certainly something that is necessary in the modern world. It could be much more effective in changing business practices, rather than fining a large data platform, a social media platform, hundreds of millions of dollars. If the data is collected illegally, and if the data is used in a significant contravention of the act, requiring a company to delete that data has an enormous effect.

I think of a case that I had when I was the commissioner in the U.K. One government department had illegally collected the biometric data of claimants. They had to provide voice prints, which is biometric data and which is sensitive information under the GDPR. The order was that the government department had to delete all of that data and start over again. That was more significant. Among peer departments in the government, that lesson was learned really quickly. Rather than fine the government department for collecting data illegally, the data had to be destroyed.

You'll see that the U.S. Federal Trade Commission has acted in several cases around data deletion and data disgorgement. At the end of the day, companies want sustainable business practices. They want assurances that they're doing the right thing. That's the lens through which we should be looking in Canada at the powers of the Privacy Commissioner, for example.

Mr. Tony Van Bynen: I've run over time. I'm wondering if you could send us some examples of that for consideration and review.

Thank you.

Ms. Elizabeth Denham: Absolutely.

The Chair: Go ahead, Mr. Sookman.

Mr. Barry Sookman: If you look at proposed subsection 93(2) of the CPPA, the commissioner has very broad powers to order compliance with the act, including "take measures to comply with this Act", "stop doing something that is in contravention of this Act", and so forth.

If there is an entity that is in contravention, the commissioner has the right to effectively get an injunction and have that injunction enforced by the court. That would include when an entity has data that should not have been collected. That could invoke the data deletion requirement. I believe the commissioner will have those powers.

[*Translation*]

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

Mr. Lemire, the floor is yours.

Mr. Sébastien Lemire: Thank you, Mr. Chair.

Mr. Sookman, at the ALL IN summit on AI, you hosted a panel entitled Creating tomorrow today: AI, copyright, and the wisdom of experience. I'd be very curious to hear what you have to say about it.

What are the concerns regarding copyright protection, particularly in the cultural sector, but also in a research context.

What are the weak points of Bill C-27 when it comes to protecting artificial intelligence?

We know that Canada's Copyright Act is now out of date and that it generally provides little copyright protection.

Will Bill C-27 push us down into an even deeper hole?

● (1650)

[*English*]

Mr. Barry Sookman: Mr. Lemire, thank you very much for that very important question.

The draft law that's in front of you doesn't deal with intellectual property rights at all, and that's unlike the EU legislation, which has at least a provision requiring transparency in data that's disclosed. It's also unlike the draft U.K. bill that requires compliance with copyright laws, and it is also not consistent with draft French legislation, which would also require compliance with copyright laws for training models.

As you know, there is a consultation ongoing with ISED and the Department of Canadian Heritage that asks a number of questions, including whether the act needs to be changed and, in particular, whether there should be a new text and data mining exemption. That is a very important consultation and raises the balance between the ability of creators, including many creators from Quebec, to be able to control the uses of the work and to get compensation for the uses of the work when their models are trained, and what might be an interest that AI entrepreneurs and larger businesses have to use works for training the models. It's a question that has policy considerations in it.

In my view, the existing law adequately sets the standard because, while training models would involve the reproduction right, which would be prima facie infringement, they're always subject to a fair dealing exception and fair dealing is the best way to calibrate, using the current law and the current principles, the use of works without consent.

[*Translation*]

Mr. Sébastien Lemire: Mr. Chair, how much time do I have left?

The Chair: You may ask another question if you wish, Mr. Lemire.

Mr. Sébastien Lemire: All right. I'll save my question for the next round.

The Chair: Thank you.

Go ahead, Mr. Masse.

[*English*]

Mr. Brian Masse: Thank you, Mr. Chair.

For Ms. Thomasen, you mentioned in your original submission to us that special attention needs to be taken...and also to separate the policy. I had the chance to attend in the United States this summer a couple of different conferences put on by Amazon, Google, Meta and a few others who were lobbying at the national state legislature level. One of the more interesting aspects was that we seemed to be, as they're developing their own AI, in their hands as they're trying to come to grips with the imbalances and the biases that they have because the people who are contributing to the AI are not reflective of society.

Maybe you can highlight that a little bit with regard to some of the concerns you have in terms of how we're currently allowing some models of AI to go forward with very little balance in many respects for societal issues related to gender, race, ethnicity and so forth.

Dr. Kristen Thomasen: Thank you. That's an excellent question.

My first reaction would be that this goes back to an important need for this bill to really be able to allow for regulations that will address discriminatory bias outputs that come from AI systems. If the bill is structured in a way that the obligation is clear and actually captures the range of ways in which algorithmic bias can arise, then companies will have an impetus to hire teams that are better enabled to anticipate and mitigate some of those harms.

One of the comments that I included in my introduction was that one of the issues, and what I see as one of the limits of this bill as it's structured right now, is that many occasions of discriminatory bias have been identified after the fact, usually through investigative reporting, usually by experts or people who experience these harms themselves and so have an understanding of the kind of harm that might arise. Then when that becomes publicly known and there's a public backlash, at that point there's an explanation that it was unforeseeable at the time the system was being developed or that the initial idea was developed to automate a decision-making process that was previously done by people, for example.

This bill, in the structure it is in right now, needs to be enabled to capture not just discrimination on recognized grounds but also discrimination by proxy for a recognized ground. Where a postal code might stand in or where employment status or previous experience of imprisonment or social networks might stand in to influence algorithmic decision-making and reflect a protected ground, this bill needs to really capture all the complexity of how these harms can arise so that companies are then motivated to ensure, to the best of their abilities, that this kind of discrimination doesn't happen.

This is also why we recommended an equity audit, which obviously would need more structure probably in regulation to really signal and advance the importance of equity and anti-discrimination in the development of these systems.

It's a crucially important point. I honestly do think that the companion document reflects the importance of that, but we don't see it fleshed out in the bill right now.

● (1655)

Mr. Barry Sookman: Mr. Chair, could I add just a very quick supplemental to that?

Mr. Masse, the question you ask is very important, but we need to recognize that one of the reasons there is the discrimination in algorithms is that they're being trained on data that is currently being used in other contexts.

I think we need to recognize that this problem is not just an algorithmic problem. It's a problem with discrimination that we have in this country that's not being addressed. What's the best entity to deal with that? It's the Canadian Human Rights Commission.

We don't need to solve this problem with AIDA. There's ample authority under the Canadian Human Rights Act to make extensive regulations. They need to be given the power to deal with all discrimination that's currently not covered, including algorithmic. Put the expertise in them, and do not separate them so that the Human Rights Commission is dealing only with older discrimination but not algorithmic discrimination. Let them deal with this so they can take a holistic view and deal with the problem.

Mr. Brian Masse: I'll just wrap up real quickly.

I appreciate that. What I saw was extremely disturbing because right now all the AI that's being launched is being launched under the so-called generosity of the companies' own interpretations of what they believe is fair and what they're trying to do for the models they're launching.

The human rights thing I take note of as well.

Thank you to the online witnesses too.

Thank you, Mr. Chair.

The Chair: Thank you.

Mr. Vis, the floor is yours.

Mr. Brad Vis (Mission—Matsqui—Fraser Canyon, CPC): Thank you, Mr. Chair.

Thank you to all of the witnesses today.

The chief information officer of Canada, Catherine Luelo, recently resigned from her position. She commented recently that the public service needs to build "credibility" in respect to a fractured IT system with up to two-thirds of government departments being poor at managing information technology systems.

Mr. Sookman, in that context, do you think it is responsible for us as legislators to allow the AI bill to go forward?

Mr. Barry Sookman: Mr. Vis, thank you for the question.

I'm not familiar with that, and I don't know that it provides any insight into whether this bill would be adequate because there isn't proper management of IT.

However, to the extent that there's a requirement for expertise related to the regulation of AI, that expertise doesn't currently exist, in my view, within ISED. This is very complex. If you can't manage an IT system, how are you going to manage an AI ecosystem? If that's your point, I agree with you.

Mr. Brad Vis: That came directly from the recent Auditor General's report, which basically outlined that the government is failing Canadians as it relates to the management of data that the Government of Canada collects on behalf of all of us.

Ms. Denham, thank you for your testimony as well. I was very interested in some of the work you've done in the U.K., and I really believe that your testimony provides a lot of weight with respect to the amendments we need to make in respect of children.

Prior to this meeting, I looked at "Age appropriate design: a code of practice for online services", which came from the Information Commissioner's Office in the U.K. In that document, it is outlined that there are 15 principles related to the protection of children's data. Those include the best interests of the child, data protection impact assessments, age-appropriate application, transparency—that's in respect to how companies are using data, I presume—detrimental use of data, policies and community standards, default settings, data minimization, data sharing, geolocation, parental controls, profiling, nudge techniques, connected toys and devices, and other online tools.

I presume, given your expertise, that you're somewhat familiar with the code of practice outlined in the United Kingdom, which is also part of the Data Protection Act of 2018 and in section 123 of the U.K. act.

Given your expertise, would it be your recommendation that this committee adopt a similar code of practice to ensure that children across Canada are not subject to online harms?

● (1700)

Ms. Elizabeth Denham: Thank you for that question.

In all the work I've done as a regulator over 15 years, the work that I think is most impactful and the work that I'm most proud of is developing the age-appropriate design code.

Mr. Brad Vis: Did you design this code?

Ms. Elizabeth Denham: The code is a statutory code, which means it's enforceable by the commissioner and by the court. It's not guidelines.

It follows directly from the U.K. GDPR. It has some provisions in it that I would recommend need to be in the CPPA.

One of them needs to be a statement in the preamble or in the purpose statement that recognizes that companies need to provide services in the best interests of the child. That language comes out of the UN convention that I mentioned earlier. Canada is a signatory to that.

The best interests of the child—

Mr. Brad Vis: Thank you for that.

On that point, please be assured that the Conservative Party will be putting forward an amendment. Hopefully the other parties will work with us to see a clause about "in the best interests of children" put into this legislation.

I have a point of clarification. My mic was off earlier.

Did you write the code standards for children in the U.K.?

Ms. Elizabeth Denham: Yes, I did—with my team.

We were directed by Parliament to write a code. It was a requirement in the act. It was a one-line requirement to have an age-appropriate design code.

My team worked for two years. We had 57 round tables across all industry sectors. We worked with child psychologists, parents, children themselves, the gaming industry, and the social media and video-sharing companies to come up with a code.

The code has been deeply inspiring to many countries around the world.

Mr. Brad Vis: Thank you. It's very deeply inspiring to me, as a parent of three young children, and to many other parliamentarians across the political spectrum.

With respect to the relationship between Parliament, the privacy commissioner in the U.K. and the design code, does the design code and the legislation in the U.K. provide for flexibility to account for future technologies and future harms that children may face?

Ms. Elizabeth Denham: It does.

Obviously, the commissioner's office developed the code, but it was laid in Parliament. Parliament approved the code, which gives it the status before the courts that the code needs to be taken into consideration.

Mr. Brad Vis: I have one final, quick question. I'm so sorry to interrupt you.

Do you believe that, if we took a similar measure here for Canadian children, to give the status of a code such as they have in the U.K., we would be doing the right thing to protect children in Canada?

Ms. Elizabeth Denham: Yes. Because the CPPA gives the commissioner a new power to create codes and certification, there would be a vehicle in the CPPA for the commissioner to develop such a code as is happening across northern Europe, Argentina, Turkey, Ireland and many places around the world. The state of California has this code.

[*Translation*]

The Chair: Thank you, Mr. Vis. That's all the time you had.

I yield the floor to Ms. Lapointe.

Ms. Viviane Lapointe (Sudbury, Lib.): Thank you.

[*English*]

My question is for Ms. Thomasen.

The LEAF organization submitted a brief to this committee in September.

Can you expand on your recommendation to amend proposed section 5 by adding the language of “identifiable group”, “collectively owned” and “group or collective”?

As you explain that amendment, can you also tell us why it is important?

Dr. Kristen Thomasen: Absolutely. Thank you for the question. I'm happy to explain that.

The exact wording, of course, we would leave to the discussion of the expert lawmakers and to your esteemed committee, who are working on proposed amendments. The reason we incorporated that wording into proposed section 5 was to respond to the ways in which harm can be experienced at the collective level and not solely at the individual level.

The law has traditionally recognized individual harm. If I'm injured physically or psychologically or I lose money, that has been more the traditional focus of the law. As I mentioned in an earlier response, the law is going to have to start to recognize and acknowledge the ways that harm can be experienced by the group and that this harm affects us as individuals as well. Our wording is meant to provide a suggestion for how that could be incorporated here.

The reason that we incorporate that—as you see in some of the discussion that follows the suggestion—is that AI systems trained on large bodies of data are used to identify patterns and to draw out inferences that can affect folks based on the groups they are a member of, even if it doesn't affect them directly as an individual. To recognize that as a harm is significant. It allows the act to actually capture some of the ways in which inequitable injury and losses from the growing and flourishing of this industry in Canada are going to be distributed within society.

If there's time, I'm happy to give an example. We have some examples of collective injuries in the written submissions as well, if that is easier.

● (1705)

Ms. Viviane Lapointe: I would also be interested in hearing how you would see the implementation of those amendments. How can that be done in an effective way?

Dr. Kristen Thomasen: Here's where there's a little bit of a struggle, and it's part of the reason for going back to the recommendation that actually it would be preferable to revisit this act altogether. I will point to that first, and then I will speak to the practicalities.

I think part of the challenge here is that it seems that one of the federal heads of power used to develop this act was the criminal law head of power. There's a tension between a criminal law penalty, which should only arise at a high threshold, and the need to acknowledge and mitigate as many harms from AI as possible, especially if we want to see this industry actually flourish and bring benefits to Canada. I would acknowledge that the tension exists and that this is something more complex to resolve, but in the structure we have right now, the way we would see that play out in practice would be through greater refinement and instruction from the regulations and from the minister going forward.

Again, that's acknowledging the critique of that structure. Along the lines of how the Privacy Commissioner provides guidance to businesses on how to meet certain criteria, I think this would be an area where education norm-setting would be absolutely crucial. I do think that, bottom line, it is imperative that this act not overlook collective and group-level harm if it's going to actually mitigate the harms we'll see as the AI industry grows and becomes more widespread.

Ms. Viviane Lapointe: What recommendations could you provide to this committee on how AI legislation can or should be protective of equality and human rights when it comes to private companies using AI in public spaces?

Dr. Kristen Thomasen: It's a fantastic question. A human rights approach as opposed to a risk mitigation approach would be something structured more like the charter or like human rights acts, where we identify values that are important, that need to be prioritized and that should not be violated, and, when they are, there's a structure in place to seek accountability and in particular to seek compensation. I think that would be a stepping back from this approach to legislation altogether and a revisiting of what it is we think is crucial as we support the growth of the AI industry in Canada. This bill is structured with a risk mitigation approach. Within that confine, we are stuck with how to identify risks and avoid them as much as possible. I think both of these need to go hand in hand.

I'm not saying we shouldn't have risk mitigation. Risk mitigation already exists in a lot of our laws of general application, like negligence and product liability. Some of these obligations on companies to think ahead to what kinds of harms might materialize already exist. How can we provide greater clarity to companies that want to utilize AI so that they can better identify particular risks that are especially likely to be dangerous and that could arise from the use of artificial intelligence? If we're going to maintain a risk mitigation structure, our recommendations have been that we need to then expand our understanding of the risks that are pertinent and, ideally, also accompany that with government support for companies to better develop equity audits and to have expertise in-house that can aid them.

I would just say that all of this also benefits companies and industries that exist right now in Canada. I mean, there are companies that are going to lose out from recommender algorithms sending you to Amazon instead of to a small business. Those companies are also, I think, probably very concerned about how we structure our AI regulations. What this whole conversation fits with is that we need to step back and think this through from a different lens.

● (1710)

Ms. Viviane Lapointe: Thank you.

[*Translation*]

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

[*English*]

Now I should yield the floor to Mr. Perkins, so I would ask him to regain his seat.

Voices: Oh, oh!

The Chair: Mr. Vice-Chair, the floor is yours.

Mr. Rick Perkins: At least I was still in the room. Thank you, Mr. Chair.

The testimony from all the witnesses, at been pretty much every meeting, has been fascinating. I think the questions from all the members have been amazing in drawing out some really good stuff.

Mr. Sookman, even though we're talking about privacy, I don't want to lose the opportunity to ask you a question or two about AIDA. You spoke a lot about AIDA. I've been thinking a bit about this. Are there some guiding principles that should be included beyond just the classification of the various types of artificial intelligence? Should there be some public policy guiding principles? If so, do you have any thoughts on what they might be?

Mr. Barry Sookman: Thank you very much, Mr. Perkins.

I think that one of the real failings of AIDA is that there are no guiding principles. The guiding principles are important, because they will influence the regulation and, where there's enforcement, what those principles should be.

I indicated in a previous answer that some of the guiding principles that could be a useful start were in that U.K. private member's bill. The member had given quite good consideration of various factors, which included responsible AI factors, the requirement for transparency and risk mitigation, as well as, from an economic perspective, the need to be sure that regulations are proportionate to benefit versus burden, and also to take into account international competitiveness.

That may not be the be-all and end-all, but the act should.... Assuming this can be somehow salvaged, there are some things that could be done. One of them is guiding principles. I would suggest that bill is worth considering.

Mr. Rick Perkins: I have one more quick question before I have to move on to another area. If you could, in a brief comment....

You suggested in your remarks that the current drafting of the AIDA bill could impede innovation. Obviously, the British are focused quite a bit on trying to attract and be a centre of artificial intelligence development. Could you expand on that a bit?

Mr. Barry Sookman: Thank you very much for the question.

Ms. Denham talked about the European approach as being a first mover. In fact, there's starting to be a wisdom that, while they're a first mover, they're no longer the right approach. The concern is very much that not only is it not the right structure, but that it will impede innovation. The U.K. is very much focused on that. The U.S. executive order on AI is very much focused on that. The reality is that Canadians need access to these tools. If there are impediments to that, it could set us back a lot.

You have to recognize as well that if you have complicated regulations that aren't in place in other countries, it requires Canadian entrepreneurs to make investments that don't have to be made in order to compete in foreign markets. A lot of these companies are small companies. They don't have the resources to sit down with lawyers and figure out how to comply with something that is really difficult. We need to empower them. We need to be sure they're responsible with voluntary codes and to deal with the very high-risk stuff in a thoughtful way.

However, we have to be sure we don't make a mistake in bogging down entrepreneurs and have them move, as they've done in other areas, to the United States where they can start businesses. Then we would lose the income and the people.

● (1715)

Mr. Rick Perkins: Thank you very much.

Mr. Chair, on Friday, I gave notice of a motion that I would like to table now. I'll read it into the record:

> That given the clerk has invited Annette Verschuren twice to appear before the committee to discuss her conflict of interest at Sustainable Development Technology Canada (SDTC), and that the witness has twice failed to provide a date of availability, the committee therefore summons Annette Verschuren to appear before the committee in-person for a period not less than one hour, no later than November 30, 2023.
>
> Further, that committee request Sustainable Development Technology Canada (SDTC) to provide any declarations of a conflict of interest from board members since 2015.

I have a brief explanation. I understand that Ms. Verschuren is leaving the country on Friday. We've given her lots of chances to appear. We have a space that she knows is available to her on Thursday. She has the ability to appear on Thursday. I don't think we're going to get her to appear, so I would recommend that we summons her.

Thank you.

The Chair: Thank you, Mr. Perkins.

I recognize Mr. Turnbull.

Mr. Ryan Turnbull (Whitby, Lib.): Thanks, Chair.

I wanted to speak to this because my understanding is that the original motion we agreed to—and I don't want to read it to members, because I'm sure you all have a copy of it—specifically indicates that this committee would take the testimony of witnesses who have appeared or testified before other committees. It was explicitly part of the conversation we had that Annette Verschuren, who is the former chair of the board at SDTC, had already appeared before the ethics committee. I'm not sure why Ms. Verschuren was actually invited to this committee, given the fact that we said we would take that testimony as our own so as to avoid duplication at this committee.

I would also direct people's attention to the fact that the motion also said, “the committee reserves the right to re-invite said witnesses as necessary”. However, my understanding is that no case has been made before this committee as to why that would be necessary.

I have Ms. Verschuren's testimony here before the ethics committee, which I've reviewed, and it seems quite substantive. I'm abiding by the original conversation and agreement we had in passing that motion. I don't understand why we would need to summons a witness—no one has made a case for why we need to reinvite her to this committee—when we all agreed we'd have her testimony as a part of this study at this committee.

Those are my thoughts. I'm not inclined to support a summons at this time.

The Chair: Thank you, Mr. Turnbull.

I'll recognize Mr. Masse, and then I have Mr. Perkins.

Mr. Brian Masse: Thank you. I'll be really quick.

I apologize to our witnesses, but we have to deal with some important business here.

I was in one of the meetings for ethics and a lot has changed since then. What I'm concerned about is that, if this individual is leaving the country.... I've had further contact from a whistle-blower since that time, so a lot of things have moved on. I think there's also been a process put in place for the workers, but it seems there are some issues with that.

For all those reasons, I'll support the motion if necessary. Nobody likes to have to do this, but if we have a witness who's going to leave the country, I don't know what else we do.

The Chair: As a point of information for committee members, I've been informed by the clerk that the witness in question has mentioned she would be available to appear on the 12th before this committee. That's something to keep in mind as you decide on this motion.

Mr. Perkins.

Mr. Rick Perkins: Thank you.

The 12th is a little late on this, as it was put in as an emergency meeting.

To address MP Turnbull's point—it's a legitimate question—there are a lot of other areas that you will find out about later today and in subsequent meetings. As the current chair—she is the chair until December 1 as it is a Governor in Council appointment—she has a responsibility to answer for much broader lines of questioning than the narrow ones that were asked of her in the ethics committee meeting.

There is a lot more information that's come to light. Perhaps the government isn't aware of it. That wouldn't surprise me. However, there are a lot of other areas.... I won't be duplicating what was raised in the ethics committee with Ms. Verschuren. It's a whole new line of questioning.

● (1720)

The Chair: I have Monsieur Lemire.

[*Translation*]

Mr. Sébastien Lemire: Mr. Chair, are you or Madam Clerk confirming that Ms. Verschuren will be appearing before the committee on December 12?

We therefore don't need to summon her by adopting a motion, particularly since—

The Chair: She informed the clerk that she would be available on December 12. However, as to whether she will be here—

Mr. Sébastien Lemire: I'll keep thinking. I'm sorry, Mr. Chair.

[*English*]

The Chair: I have Mr. Turnbull and then Mr. Perkins.

I'll also highlight that Mr. Turnbull has pointed out quite clearly that, in the original motion on this emergency study on SDTC, it wasn't necessarily clear which witnesses were to be invited. It's up to the committee to decide if it's necessary, as Mr. Turnbull has pointed out.

I'll yield the floor to you.

Mr. Ryan Turnbull: The committee hadn't had a deliberation on that, so I don't understand a summons, given the fact that any invitation was premature because the committee hadn't deliberated on it at all. I don't know why Ms. Verschuren was invited, but seeing how it is moot at this point if she's available and has gotten back to the committee and said December 12 works, then why wouldn't the committee just take her up on that offer rather than summoning her, which is completely unnecessary at this point?

There are two good arguments there for.... What's the argument for why members think that we need her to come to this committee, when she's already testified at another committee? I don't really hear a good rationale for that from my perspective, but I would invite other members to provide that rationale.

My understanding is that she has resigned from the board, and the minister has accepted her resignation. If that's in effect as of December 1, what can be gained?

Anyway, regardless of that, in terms of the timeline, I think there are two arguments that I've made here for why this committee would have to justify the invite to have her come and appear here, given the first motion that we all agreed to.

I'm just abiding by what the committee agreed to, and we haven't had a deliberation on why Ms. Verschuren should be invited. I certainly would say that a summons does not seem necessary from any perspective that I can entertain.

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

Mr. Rick Perkins: On MP Turnbull's latter item, to tell you the situation we're in, Ms. Verschuren refused to return any of the contacts from the committee until I tabled my notice of motion of a summons on Friday. It was after that, she decided to start communicating with the committee.

Second, I will not share with you or any committee members at this stage the line of questioning that I need to ask of the chair, who is the chair of this organization and is accountable, through the estimates, to this committee. I will not share with you or anyone else the line of questioning, but I can tell you, from my perspective, that it is not the focus, the narrow focus, that was followed by the ethics committee around COVID funding and the top-up. That was the main issue that they dealt with. It's much broader than that. This will not be a duplication of anything that the ethics committee did.

The Chair: Before I turn to Monsieur Lemire, I'd like to say thank you to our witnesses. I think, given the time and the nature of the discussion, we're not necessarily near a vote on this motion.

I want to thank you for your testimony today and for sharing your insights with this committee on Bill C-27. Feel free, if you want to listen to this debate.

● (1725)

[*Translation*]

Otherwise, you are free to leave the meeting. Thank you once again for making yourselves available to the committee today.

I now turn the floor over to Mr. Lemire.

Mr. Sébastien Lemire: Mr. Chair, the second part of the motion refers to a request for a declaration of conflict of interest.

The Conservatives have an annoying habit of making a lot of requests to many committees. I think this declaration of conflict of interest would be relevant in the Standing Committee on Access to Information, Privacy and Ethics.

Can anyone confirm for me whether, yes or no, this request has also been made to the Standing Committee on Access to Information, Privacy and Ethics? If so, what was that committee's response.

[*English*]

The Chair: I don't have that information.

Mr. Perkins, do you want to intervene on that?

Mr. Rick Perkins: Yes, I attended the ethics committee meetings on this. The issue of the tabling of the formal conflict of interest documents that you have to do as a director was not an issue that was raised at the ethics committee. It's not a document that the ethics committee asked for.

The Chair: Go ahead, Mr. Turnbull.

Mr. Ryan Turnbull: My understanding from reviewing the testimony from the ethics committee is that the conversation about conflict of interest was a very large part of the questions that were asked of Ms. Verschuren when she appeared before the ethics committee.

My point is that it was taken up at the ethics committee. It is a part of the testimony that she gave. I'm reading here questions from MP Green between MP Green and Ms. Verschuren, and it pertains to conflicts of interest and some of the board policies around that. It is the case that it was taken up at the ethics committee. We also know that the Ethics Commissioner is doing an investigation.

I'm still not sure what the rationale is, if that's the main concern.

[*Translation*]

The Chair: Mr. Perkins, the floor is yours.

[*English*]

Mr. Rick Perkins: On the second part, I'll just explain, because clearly some of the members don't understand.

There's a difference between a discussion in the ethics committee about a conflict of interest in the investment committee process and board process of approving investments versus—and I'm sure MP Turnbull is very interested in this—the formal thing you have to do as a director on a corporation board. I have been on boards of Crown and private and publicly traded companies. You have to declare.... It's a formal declaration, on paper, of a conflict of interest of companies that you have an investment in.

This is asking not for a debate on the conflict of interest, but for those declarations, those forms, that the Crown foundation has from directors and is accountable to this committee for. It's just asking for those documents. It's not about the debate on the conflict of interest.

[*Translation*]

The Chair: Mr. Lemire, the floor is yours.

Mr. Sébastien Lemire: Mr. Chair, the verb “summon” is a loaded term. I would like my Conservative colleague to explain the use of that word.

Can we invite her again, more insistently this time? Can we suggest that she come and testify on December 12 since she has expressed an interest in appearing before the committee and isn't free before that date?

There may indeed be a whole series of parliamentary procedures that follow from a refusal to testify. Is this really the path we want to take at this stage, since a provisional date, December 12, has been proposed?

I think that somewhat changes the way we should address the situation.

[*English*]

The Chair: Mr. Perkins.

Mr. Rick Perkins: Thank you, MP Lemire.

The witness was already invited. She was invited for this Thursday and she is around this Thursday. She's in the country. She leaves on Friday. She was already invited and has refused to come.

She's available, but she hasn't said whether she's coming on the 12th. Frankly, at this stage, given the lack of response and her refusal to even acknowledge an invitation by the committee until my Friday motion for the summons.... Yes, it's a powerful tool that was tabled. All of a sudden she remembered that she had to phone back, or her assistant had to phone back, and said, “Oh, maybe I should come, now that you're going to use your power to summon a witness.”

At this stage, I'm not feeling comfortable that the witness who is proposed here is going to comply unless she's summoned.

● (1730)

The Chair: Mr. Turnbull.

Mr. Ryan Turnbull: Respectfully, I don't think we can confuse not responding with a refusal to appear before the committee. I want to make the point that I made before. Those are two very different things. An email can get lost in an inbox or someone can be unavailable. I think there could be a very reasonable explanation, other than what Mr. Perkins is assuming, which is the most negative interpretation that we could give.

Being a little bit more charitable in our interpretation, she has now responded and said she's available on the 12th, so perhaps the word “summons” is not necessary.

Chair, I want to go back to the point that I made earlier, which is that Ms. Verschuren shouldn't have been invited at all until our committee deliberated on whether that witness was necessary. How did she get invited twice when the motion itself, the letter of that motion and the agreement that this committee made, was not to invite witnesses but to use their testimony and then deliberate on whether those witnesses needed to be reinvited to this committee?

Mr. Rick Perkins: [*Inaudible—Editor*]

Mr. Ryan Turnbull: That's what the motion reads, Mr. Perkins, so don't tell me that it doesn't. I have it right here and I can read it back to you on the record. I know you don't need that—you're a smart enough guy—but the point is that she shouldn't have been invited before this committee had a conversation about it.

To then imply that she's somehow refusing to appear is not the case. It's just not true.

The Chair: If I can just jump in on that, I'll take some of the blame.

The motion wasn't particularly specific about the list of witnesses in the text of the motion. I asked the clerk to invite the witness, so I'll take the blame for that. You're absolutely right that the text of the motion doesn't necessarily specify that the committee would invite that witness. It's a discussion that this committee should have had.

I guess it's hard to have it now, given that there is a motion on the floor that needs to be voted on. That's also, to some extent, an opportunity to have the discussion about whether we feel it's necessary.

I had some members come up to me and make the case that they felt we needed to invite that witness, so I instructed the clerk to invite the witness. However, I didn't have the instruction from the committee. I'll grant you that, Mr. Turnbull. You're correct.

We still have that motion with “summons” that Mr. Perkins presented.

Mr. Turnbull.

Mr. Ryan Turnbull: If we can all agree that a summons is not necessary, then perhaps we could agree to reinvite the witness for December 12. To me, that's perfectly reasonable, given the fact that we're all acknowledging—and the chair is acknowledging—that, in essence, following the letter of what was agreed to at committee, that motion didn't imply that this witness needed to be reinvited without the deliberation of the committee.

The Chair: Are there any more comments? Otherwise, we'll put the motion—

Monsieur Lemire.

[*Translation*]

Mr. Sébastien Lemire: In the constructive spirit of this discussion, would my Conservative colleague agree to change the date to December 12?

That would result in a consensus around the table.

The Chair: Mr. Lemire proposes that it take place here on December 12—

Mr. Sébastien Lemire: It's just a thought for the moment.

The Chair: Yes, I understand, but I'm hearing from the Conservatives that, if we say “by December 12” instead of “December 12”, that will allow the clerk more leeway to discuss the matter with the witness.

Mr. Sébastien Lemire: Yes, absolutely. I would say “no later than December 12”.

The Chair: All right.

Then someone should move an amendment to the motion.

Who wants to move that amendment?

Mr. Turnbull, the floor is yours.

[*English*]

Mr. Ryan Turnbull: I'm sorry. I'm not sure whether Mr. Lemire has made an amendment to the motion itself or not.

Why don't I propose an amendment?

The Chair: Go ahead, Mr. Turnbull.

Mr. Ryan Turnbull: I'll propose an amendment that we change the word "summons" to "reinvite" and that we change the date to "no later than December 12". I can read it in full, if you want, but I think you get the gist.

● (1735)

The Chair: There is an amendment moved by Mr. Turnbull.

Are there any comments on the amendment?

Mr. Perkins.

Mr. Rick Perkins: I have just a quick comment. I would support, as Mr. Lemire said, moving it to the 12th, but I don't support removing the word "summons".

Mr. Brad Vis: Mr. Chair, maybe we can ask Mr. Lemire.

[*Translation*]

He could move an amendment, as he has already mentioned.

[*English*]

The Chair: There is already an amendment. No, there is one by Mr. Turnbull.

Mr. Brad Vis: I'm sorry. That was formal. I apologize that I missed it.

The Chair: There is one by Mr. Turnbull that replaces "summons" with "reinvite".

This is not the amendment, but I would say that if we had something like "reinvite and, if necessary, summons", that would give ample latitude to the clerk. However, that's not the amendment on the table, and I'm not moving that amendment. I'm just thinking out loud.

The amendment is from Mr. Turnbull to replace "summons" with "reinvite" and to change the date to the 12th. That's what's up for discussion right now.

Mr. Masse, did you want to intervene?

Mr. Brian Masse: Just briefly, that might be the best way to do it. Here's my concern. We don't really want to have to summons somebody if we don't have to, but if somebody is going to be leaving the country and can't be here, then we lose control altogether.

I was there originally when the minister was at.... I still don't think the workers are getting the best due process. Therefore, if I have to vote for this amendment, I will not support it, because I will fall to getting the summons. I don't really want to summons anybody here, but at the same time, because of the workers and the way they are still compromised in this, I can't support their not having their day.

I don't know if there's any other way to do this. If we just do it this way and then nothing happens, then I'll regret that, but I really don't want to summons anybody either. It's a tough thing to do, and I think we're all taking it seriously.

If there's a way to put the two together, I would be open to that. I don't have a solution, though, at the moment. I'm trying to think of how they could word that.

[*Translation*]

Mr. Sébastien Lemire: Mr. Chair—

[*English*]

The Chair: Just give me one second, Monsieur Lemire.

The clerk has highlighted something quite obvious. There is time between now and the 12th. If we are to reinvite the witness, as proposed by Mr. Turnbull, we will have other meetings until then. Just maybe as a note, it's now being discussed that she is leaving the country. She has offered to appear on the 12th, just so we're clear on that.

I have Monsieur Lemire and then Mr. Turnbull.

[*Translation*]

Mr. Sébastien Lemire: First of all, I think it would be wise to split the motion into two parts and to hold two separate votes.

With regard to the word "summon", Mr. Chair, would you please clarify for us the potentially foreseeable consequences of failing to comply with a summons in this case?

The Chair: I think it amounts to contempt of Parliament.

Mr. Sébastien Lemire: Consequently, we would commence parliamentary proceedings. I imagine the matter wouldn't necessarily be settled by imprisonment in a dungeon or blows from the black rod.

The Chair: Then it would be up to the Speaker of the House of Commons to determine the consequences, which I don't know off by heart. I think there are several possible consequences. We really aren't there yet, Mr. Lemire.

We have to consider Mr. Turnbull's amendment, which entails reinviting Ms. Verschuren and changing her appearance date to December 12. That's what's on the table.

Are there any other comments, or can we vote on Mr. Turnbull's amendment?

Mr. Turnbull, go ahead.

[*English*]

Mr. Ryan Turnbull: I want to say that summonsing someone is a serious matter. I take it very seriously. I don't think it's necessary, given the fact that Ms. Verschuren has said she is willing to appear on December 12. Why wouldn't we just reinvite her? Then, if, for some reason she doesn't actually appear on December 12, which I wouldn't anticipate given the fact that she's already responded to the committee to say she would be available on that date, then we can deal with the matter after that.

To me, to use a summons when it's not absolutely necessary is, in a way, overstepping in terms of our power as members of Parliament, in my opinion, because it should be used as a last resort. When someone is completely unwilling and has been invited and invited and invited, then it's "No, you need to come to the committee." This hasn't happened in this case.

We've already had the discussion that, in fact, the committee hadn't deliberated on her being invited at all. The motion itself is a bit confusing, so perhaps I can understand that. However, I've already made that point.

● (1740)

The Chair: It's true that the motion was not very directive. It is within my purview as chair to invite the witnesses. We do it all the time with the clerk and the analysts on various studies.

I'll yield the floor to Mr. Perkins on the amendment.

Mr. Rick Perkins: Thank you, Mr. Chair.

In the spirit of the reasonable proposal that MP Turnbull just made, and because the witnesses are here, I'm willing to accept it on the understanding that, if she doesn't appear, then we'll issue a summons.

The Chair: The amendment is, "the committee therefore reinvites Annette Verschuren to appear before the committee in-person for a period not less than one hour, no later than December 12, 2023", and the rest stays as is.

[*Translation*]

Mr. Sébastien Lemire: We could even use the words "forcefully reinvite" in the circumstances.

The Chair: Then we would have to introduce a subamendment.

Mr. Masse, go ahead.

[*English*]

Mr. Brian Masse: Can we just leave this to you to come back to us on Tuesday? If you have a confirmation and you feel confident in that, then we don't even have to have a motion for this. We can just move on from there and we'll revisit it.

Just let it go like that. I'm totally comfortable leaving it in your hands. You can come back and tell us whether this is going to happen or not, and then we can go back to a motion. We don't have to go this far.

The Chair: I would need unanimous consent to withdraw the motion.

Do I have unanimous consent to withdraw the motion and move on?

(Motion withdrawn)

The Chair: I'll briefly suspend so that we can start the study on SDTC.

● (1740)

_____(Pause)_____

● (1745)

The Chair: Colleagues, we'll resume this meeting. It's been a little more than five minutes.

[*Translation*]

Pursuant to the motion adopted on November 7, the committee is commencing consideration of the study on the Recent Investigation and Reports on Sustainable Development Technology Canada.

I would like to welcome our two witnesses: Geoffrey Cape, Chief Excutive Officer, R-Hauz, who is participating in the meeting by videoconference, and Andrée-Lise Méthot, founder and managing partner, Cycle Capital, who is attending the meeting in person.

Mr. Cape and Ms. Méthot, thank you for agreeing to join us, and I apologize for the brief delay.

Without further ado, I yield the floor to Mr. Cape, who will have five minutes to deliver his opening remarks.

[*English*]

Mr. Geoffrey Cape (Chief Executive Officer, R-Hauz, As an Individual): I have very brief remarks.

My name is Geoff Cape. I was on the board from probably early in 2016 until the end of September or early October 2022. I was nominated to the board by Susan McArthur, through the member council, so it was a non-political invitation. I served as chair of the governance committee for roughly two years. My experience with the board was excellent from beginning to end. It was a very professionally run board.

I've served on two Crown corporation boards over the last number of years, as well as on a number of not-for-profit boards and private sector boards. SDTC was, unquestionably, one of the best I've ever served on, both at the board level and at the management level.

I'm looking forward to the conversation ahead.

● (1750)

[*Translation*]

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

Ms. Méthot, the floor is yours.

Ms. Andrée-Lise Méthot (Founder and managing partner, Cycle Capital, As an Individual): Thank you very much, Mr. Chair.

Dear members of the committee, thank you for welcoming me today.

A few words about myself first: I grew up in Baie-Comeau, in the beautiful region of Côte-Nord in Quebec, and as far back as I can remember, my daily life has always been influenced by environmental issues.

In my career, I worked for Lucien Bouchard's Parti Québécois government in a policy capacity. Then I devoted my life to the development of new technologies and the fight against climate change. As a geological engineer, I have been working hard on this for over 25 years. I have dedicated my entire career to building a company that combines ecology and venture capital. It was a very surprising combination 20 years ago.

The purpose of my contribution to Sustainable Development Technology Canada, or SDTC, was to get involved in the Canadian ecosystem to build the global economy of tomorrow. Let's start with my involvement on the board of SDTC, to which I was appointed in June 2016. Upon being appointed by the directors, I sat on the board until 2021.

In the context of my commitment to SDTC, I have always acted with complete transparency by declaring all conflicts of interest, whether real, apparent or potential. That was the case for companies in the Cycle Capital portfolio in which we generally hold a stake ranging on average from 4% to 30%. The same was also true of companies likely to attract future interest from Cycle Capital because, in my field, we see projects coming far in advance. Situations that could be perceived as conflicts were always declared.

Even where there was doubt, even though SDTC's governance did not always consider a situation as a conflict of interest, I chose to withdraw. I am convinced that my actions demonstrate the seriousness with which I approach this process in all situations.

As for the universal and equitable emergency aid granted during the pandemic to all organizations in the portfolio that met the conditions pre-established by SDTC, allow me to go back in time a little bit. On that date, schools were closed, Quebec was preparing for a general curfew, supply chains were disrupted, and our entrepreneurs were concerned, wondering if they would go bankrupt and if they should lay off their employees.

It is important to note that several government programs, at both provincial and federal levels, were essential to keep our businesses afloat during this difficult period, in all sectors of activity in Canada, from Imperial Oil to the local restaurant.

As for what we implemented when I was at SDTC, these were measures aimed at protecting Canadian companies holding intellectual property in clean technology in Canada and human expertise, in other words brains. The goal was to avoid weakening them and thus preserving them from low-cost foreign acquisitions, by countries such as China.

Studies show that in Canada, green technology companies are underfunded, up to twice as much as their American counterparts.

Every time we weaken our companies by refusing to support them in times of crisis, for example, we are not building the Canada of tomorrow; instead, we expose them to the appetites of foreign interests, especially those of the Chinese.

I would also like to point out that during our discussions on the SDTC board of directors, we obtained legal advice from a lawyer at Osler. This legal opinion stated that no conflict of interest existed, given that the measure in question was universal and exceptional, applying equitably to all companies that had benefited from SDTC in the past.

In conclusion, faced with this unprecedented situation, it had become imperative to protect our technological companies, to preserve Canadian intellectual property, and to ensure the sustainability of our green technology industry.

Investing in our Canadian green technology companies goes beyond simple economic consideration. It is a commitment to our nation, to the environment, and to our children.

By supporting these companies, we preserve our technological sovereignty, create sustainable jobs, and contribute to building a greener and more prosperous future for all. I personally believe in this just transition.

At Cycle Capital, for example, we have invested over $200 million in Canada. We have also taken the lead and contributed to injecting $2 billion in equity into Canadian companies.

● (1755)

Today, our portfolio is worth more than $3.9 billion.

We have also participated in the direct creation of 1,300 high-tech quality jobs that are being filled by engineers, PhDs and leading experts on these issues.

Ladies and gentlemen, I am now ready to answer your questions and to take part in the discussion.

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

Mr. Perkins, the floor is yours for six minutes.

[*English*]

Mr. Rick Perkins: Thank you, Mr. Chair. My first question is for Mr. Cape.

In your opening statement, Mr. Cape, you said that you served from early 2016 to early 2022 on the SDTC board. Is that correct?

Mr. Geoffrey Cape: That's correct—well, later in 2022, not early 2022.

Mr. Rick Perkins: For some time on the board, I think the latter years, you chaired the governance committee.

Mr. Geoffrey Cape: That's correct. It was roughly two years; I don't know exactly how long it was.

Mr. Rick Perkins: A year or two ago, the board passed a policy of a cooling off period for the directors who were not GIC appointments. Is that correct?

Mr. Geoffrey Cape: I'm not sure that was actually formally in place until shortly after I left.

It was one we were considering instituting, but it wasn't yet in place.

Mr. Rick Perkins: Actually, it was passed.

In the time after you left, did you ask and interact with management of the board seeking to get funds from SDTC for R-Hauz, of which you are now the president?

Mr. Geoffrey Cape: It was a prior CEO of the company, and the owners and managers advanced a proposal well before I participated, so yes, but it wasn't from me; it was from them.

Mr. Rick Perkins: Are you saying that you never contacted the management at SDTC—you are under oath—and you never canvassed the management or any board members at SDTC to talk about funding for the company you are now president of?

Mr. Geoffrey Cape: Under the management, I might have spoken with one particular individual at one point about the possibility of a prior grant application made by Leith Moore, the CEO then.

Mr. Rick Perkins: Madame Méthot, you're the managing partner, as you said, of Cycle Capital. I believe you are also the founder of it. It was founded, I believe, in 2009 with a focus on investment, private equity and buying ownership as a venture capital firm in green tech funds. Is that correct?

[*Translation*]

Ms. Andrée-Lise Méthot: If I've understood your question, that's correct.

We are a private investor together with many investors in our funds.

[*English*]

Mr. Rick Perkins: Thank you.

That includes some of your own, obviously. As any private equity firm does, it has the principal's money in it as well.

[*Translation*]

Ms. Andrée-Lise Méthot: Yes, it includes my own money and that of my colleagues.

[*English*]

Mr. Rick Perkins: Shortly after you founded the company, you hired the current environment minister, Steven Guilbeault, to work as a strategic adviser from 2010 to 2019. Is that correct?

[*Translation*]

Ms. Andrée-Lise Méthot: Yes, Mr. Guilbeault worked for us as a strategic adviser starting in 2010.

[*English*]

Mr. Rick Perkins: That was until he was elected in 2019. Thank you.

You mentioned that you were appointed the board chair of SDTC in 2016, one year after the Liberals won the 2015 election, and you sat on the board until 2021. I believe that after you left that, you were appointed to the board of the Canada Infrastructure Bank. Is that correct?

[*Translation*]

Ms. Andrée-Lise Méthot: Mr. Chair, I'd like to go back over a point, if that's possible.

Mr. Perkins, you said that Mr. Guilbeault worked for us until he was elected in 2019.

In fact, on June 17, 2019, we received a letter of resignation in the mail from Mr. Guilbeault stating that he was running for political office. We therefore terminated our business relations with Mr. Guilbeault as of that date.

● (1800)

[*English*]

Mr. Rick Perkins: I appreciate that. Thank you.

Before you were appointed to the board, the companies that you invested in had received $93 million in grants through Cycle Capital from SDTC. Is that correct?

I have a list, which I can table with the committee if you'd like. You list them as investments on your website: GaN Systems, Enerkem, Encelium, Agrisoma, Concentric. I can go through the 17 or 19 companies.

[*Translation*]

Ms. Andrée-Lise Méthot: Actually, a number of companies in our portfolio received investment funds from Sustainable Development Technology Canada before, during—that was the case with four of them—and after our investments. So during my term on the board of directors—

[*English*]

Mr. Rick Perkins: Thank you.

During your time on the board—

The Chair: Mr. Perkins, can you let the witness finish her sentence at least?

Mr. Rick Perkins: No, she answered my question, and I'm moving on to my next one since I have limited time.

The Chair: Go ahead, Mr. Perkins.

Mr. Rick Perkins: The next question is this: While you were on the board, Cycle Capital and the companies you invested in received $42.5 million from SDTC. These are companies that you have a financial interest in—you personally and your fund. It's $42.5 million. I can table those companies if you'd like, too.

[*Translation*]

Ms. Andrée-Lise Méthot: Yes, I'm glad to be scrutinizing this with you, as I don't have the same number as you do.

[*English*]

Mr. Rick Perkins: Are you an investor in Enerkem, MineSense Technologies, Spark Microsystems, Concentric Agriculture, and Polystyvert? They're all listed on your website as investments.

[*Translation*]

Ms. Andrée-Lise Méthot: Absolutely, but allow me to clarify something. I'm going to state the facts as they are.

Four of the businesses in Cycle Capital's portfolio have received support from SDTC since I was appointed to the board of Sustainable Development Technology Canada in 2016. They are MineSense, which has received $4 million and in which Cycle Capital holds a 9.6% equity interest; GreenMantra, which has received $2 million and in which Cycle Capital has a 19.5% holding; Inocucor, which has received $1.2 million and in which Cycle Capital owns a 28% interest; and Polystyvert, which has received $3.5 million and in which Cycle Capital is an 8.5% shareholder.

SPARK Microsystems, the example you cited, received money from SDTC in 2016. However, Cycle Capital invested in SPARK Microsystems at the end of 2020. So SDTC invested in it long before we did, nearly three years earlier.

[*English*]

Mr. Rick Perkins: According to—

The Chair: Mr. Perkins, I'm sorry. You're out of time.

I'll now turn to Mr. Turnbull.

Mr. Ryan Turnbull: Thanks to the witnesses for being here today. I know this is a hot topic for this committee and some others. I'm looking forward to your testimony.

I know that SDTC has been around for about 22 years, if I'm not mistaken. I know that it was, in fact, awarded an extra $325 million around 2013, which I think is a testament to the fact that the organization has been recognized by multiple governments as doing some really great work.

That doesn't solve the issue at hand, which is really talking about board governance and about assuring both us, as members of Parliament, and the general public that the funds that the organization presided over and distributed were presided over and distributed in a way that hopefully navigated the challenges and made sure that the organization abided by the highest standards of governance.

Obviously, I think that's a balancing act. It's important for us, as members of Parliament, and for this committee in particular, which has the job of holding the government to account on everything to do with industry and its large portfolio. Given the fact that SDTC falls under that portfolio, I think it's important that we have these debates and discussions.

I know that we've learned from investigations that were initiated by the minister and from the committee testimony that we heard around conflict of interest policies at SDTC in the past. They left a lot to be desired, I'll say quite frankly. Board members didn't necessarily recuse themselves from decisions where they had conflicts or where there could be perceived conflicts. At least, that's what we've heard. If they did recuse themselves, those things were not necessarily noted anywhere. Decisions were taken unanimously without any notation of dissenting votes. Board members, including the chair, gave money to their own companies in some cases.

I'm going to start with you, Ms. Méthot. Can you comment on some of these challenges and your experience while you were on the board?

● (1805)

[*Translation*]

Ms. Andrée-Lise Méthot: Thank you for your question.

I have always disclosed conflicts of interest. I even have a letter here confirming that I have complied with all the rules. This was also observed by a departmental representative. I don't really know his title, but I think he was an assistant deputy minister. He was there during all our deliberations. In addition, the common practice when I was there was to declare our conflicts of interest, actual, potential or apparent, in advance and to recuse ourselves in advance. Here I have a letter confirming that I recused myself in advance and complied with all the rules. It's available if you want to see it.

That being said, the comment about the minutes is fair. If there's one thing that all the organizations and boards that I've been a part of have in common, it's that they aren't perfect and are improving. In this instance, a certain amount of progress remains to be made. As you can understand, having left the board more than two years ago, I'm not in a position to judge the present situation. I can only speak to the period when I was there.

Here's a very specific example. I read the minutes on the weekend. They state that we are an investor in SPARK Microsystems, whereas the declaration of interest states that SPARK Microsystems could be an investment but in fact isn't one. That was incorrectly entered in the minutes.

You're entirely right on that point, sir. I agree with you.

[*English*]

Mr. Ryan Turnbull: If I could follow up on that, were there times when you had to recuse yourselves from decisions of the board as a result of a real or perceived conflict of interest?

Mr. Cape, I'll ask you the same, and I'll start with you, Madame Méthot.

[*Translation*]

Ms. Andrée-Lise Méthot: Yes, I recused myself every time I declared a potential or actual conflict of interest. That was the common practice, but it was incorrectly entered in the minutes.

[*English*]

Mr. Ryan Turnbull: You're saying you did recuse yourself.

How many times, roughly, would you say you had to recuse yourself?

[*Translation*]

Ms. Andrée-Lise Méthot: I can assure you that I recused myself four times over real conflicts of interest, five times over apparent conflicts of interest and 26 times over potential conflicts of interest. As you can understand, since I was no longer on the board, I didn't have access to all the information needed to validate these numbers, but I would say it happened at least 35 times. There were four actual conflicts of interest in which Cycle Capital was already invested in a business in which SDTC was preparing to invest. That's a very significant nuance.

[*English*]

Mr. Ryan Turnbull: Thank you for that.

Mr. Cape, I'll go to you. Could I ask you the same? Did you have to recuse yourself at times, while you served on the board, from a real or perceived conflict of interest? Could you give us an estimated number of times, if your answer is yes?

Mr. Geoffrey Cape: I felt like an outsider. I had no conflicts, and no recusals were ever required, so I never did sit out in those situations.

Mr. Ryan Turnbull: As a result of your work on the governance committee, during the time you served on the board, would you say improvements were made to governance, procedures, and processes? If so, could you tell us why we've heard, at least in a few cases, that these recusals were not documented anywhere? I would think they should be documented.

Could you speak to that, please?

The Chair: Please provide a very brief answer, Mr. Cape.

Mr. Geoffrey Cape: I certainly imagine they would have been recorded properly. They were managed rigorously, and the conflict of interest policy was well understood by all board members. The policy was reviewed each year by all board members. In any orientation program for new board members, it is one of the primary themes, so it was a well-understood policy, and it was rigorously managed.

We had corporate legal counsel in the room that managed the process. Not being documented was a mistake, obviously. I'm not aware of that particular challenge, though.

● (1810)

[*Translation*]

The Chair: Thank you.

Mr. Lemire, go ahead.

Mr. Sébastien Lemire: Thank you, Mr. Chair.

First of all, I must say that both of you have impressive CVs. You are pioneers in investment, sustainable development and the emergence of a new technology that may perhaps save the planet. Let's hope. The fact remains that what we're interested in here is concerning.

I would mention, Ms. Méthot, that you have a very calm tone of voice, which I find quite reassuring in the circumstances. I'd like to go back to the context of the COVID-19 pandemic because you mentioned it.

I remember the workload the committee was coping with at the time. We were considering a bill to amend Canada's Investment Act, and there was this sense that we had to save our businesses from devaluation. You suggested in your remarks that this desire to save businesses tainted your work.

What would have happened if the board hadn't made the decision to adopt an emergency plan for clean technology businesses during the pandemic?

Ms. Andrée-Lise Méthot: We were extremely impressed to be receiving calls from entrepreneurs, even if they were only those from our portfolio at Cycle Capital.

There was a whiff of panic among them. In many instances, their businesses weren't profitable, and that's why they didn't meet the criteria of other available programs. Those companies develop technologies and invest in technology, but they don't turn a profit. Consequently, panicking entrepreneurs were wondering if they had to declare bankruptcy or lay off their employees. However, losing human resources means losing business intelligence. You have intellectual property, but without engineers and experts, it's very hard to turn that asset into real products and build an actual commercial enterprise that's globally viable.

Many scenarios were possible, depending on the phases of COVID-19, obviously. Looking in the rearview mirror, we can see that we may have vastly undermined those businesses. Some very serious studies show us that more than 85% or 90% of new technology intellectual property in the water industry, for example, is owned by Chinese interests. In addition to the brain drain, that intellectual property could have been a target.

Let's say you stop all that, take a break and then start over. You will then have to find employees, people who understand and are capable of doing what's called “scaling”, which is the real commercial rollout, without losing knowledge.

I would have been more embarrassed here if you had asked me why we did nothing. I'm glad that we did something and that this committee is looking into this matter.

Mr. Sébastien Lemire: Yes, as I remember it, the risk was tangible. Someone mentioned the devaluation of Air Transat to this committee. In your case, we're talking about emerging businesses that have specific expertise; so there was an enormous patent risk.

Since I don't have much time, I'll get right down to your board's deliberations. I have training as a certified corporate director, a CBD, and I like the way you talk about declaring real, apparent and potential conflicts of interest and about withdrawing or recusing yourself as necessary.

Would you please tell us more about your board? How many directors at the table were in conflict of interest when the board voted on that emergency measure during the pandemic?

Ms. Andrée-Lise Méthot: It's hard for me to give you an exact number because I don't have the same status as everyone else.

However, I can tell you that the in-house practice was to recuse yourself. We had a productive discussion about this on the board, and the minutes recording the discussion between us and our legal adviser, an experienced lawyer who guided us in our decision-making, were very well written.

I would remind you that I'm an engineer and a finance expert. My role on the board was to review technical and financial aspects, and I followed the opinion provided, as did the others.

Mr. Sébastien Lemire: The motion that we previously discussed includes the whole aspect regarding the declaration of conflict of interest. Perhaps the committee will have the answer to that if we adopt this part of the motion soon.

So as I understand it, you declared at least four conflicts of interest with regard to the emergency fund, but you didn't actually withdraw. Why didn't you do so when it came to voting for the emergency fund?

● (1815)

Ms. Andrée-Lise Méthot: I felt that the opinion and the debate that we had gave me enough information to let me continue sitting on the board. However, I should also tell you what the actual exposure of our funds was.

All the motions together amounted to $38.5 million. The Cycle Capital funds in the businesses that received that money amounted to 0.26%. Cycle Capital doesn't own 100% of the businesses, just 4%, 5% or 10%. The Cycle Capital manager owned 0.0026%, which means an exposure of $996 from an accounting materiality perspective.

In my case, because I'm a Cycle Capital shareholder, it's 0.00078%, or $298, in all our businesses that received funding from the COVID-19-related measures.

Mr. Sébastien Lemire: We're reminded of the unusual context of this matter.

I feel like asking you if you would do it differently if you had to do it over.

Ms. Andrée-Lise Méthot: When I look at the present economic situation—I'm not an economist, but all you need to do is read a little in the newspapers around the world—I understand that there are economic risks. I think we secured our economic future. I believe that some of those hundred or so businesses will be the "green Googles" of tomorrow in Canada. So we did our duty.

We can definitely improve things, but, at a time when there was no vaccine, when people couldn't see their grandparents or parents, and our children stopped going to school, it was the only decision we could make as Canadians to preserve our business capital.

Mr. Sébastien Lemire: Ms. Méthot, I hope that all the witnesses in the studies conducted by parliamentary committees are as transparent as you are.

The Chair: Thank you, Mr. Lemire.

Mr. Masse, the floor is yours.

[*English*]

Mr. Brian Masse: Thank you, Mr. Chair.

Thank you for being here today.

How did you get appointed to the board?

[*Translation*]

Ms. Andrée-Lise Méthot: There are two processes, as I understand it. Personally, I was appointed by the members. I was co-opted by the civil society representatives under the chairmanship of Jim Balsillie, who created the BlackBerry.

[*English*]

Mr. Brian Masse: What was the process for other members to get appointed?

[*Translation*]

Ms. Andrée-Lise Méthot: I'm sorry, but I didn't follow that process. What I know about it is that there's a process involving members of civil society—

[*English*]

Mr. Brian Masse: You don't know how the other board members were appointed.

[*Translation*]

Ms. Andrée-Lise Méthot: No, I know how the directors are appointed, but not in detail. What I know is that you put your name forward. It's a direct selection by the government rather than by members of civil society.

[*English*]

Mr. Brian Masse: I'm assuming that it's the minister, at the end of the day. I guess we'll get that clarification. Maybe I can put that to the table as to who appoints the board members. I understand that Madame Méthot is appointed by those who are appointed, but I want to know who appointed the original board members.

I want to make sure that it's clear for the public, too. This board, then, is comprised of a number of different people who may or may not have several companies that SDTC then can provide financial assistance to.

[*Translation*]

Ms. Andrée-Lise Méthot: Yes, I think that's possible, and there's a reason for that, if you want to hear it.

Would you like me to continue my answer?

[*English*]

Mr. Brian Masse: No. I have limited time, but I'll try to come back.

I'm sure there's expertise, and there will be different things in that, but I guess the thing is that.... Walk me through how you recuse yourself during a meeting.

I have meeting minutes here that show that some of your companies received some money, and it says that it was unanimous. Now, you may have recused yourself. Does that mean that you leave the room and then come back? Walk us through that, if you could.

Thank you.

[*Translation*]

Ms. Andrée-Lise Méthot: We received the list 10 to 14 days before the board met. That let the members know whether they were in conflict of interest as a result of such and such a factor on the list. I was absent from certain board meetings and from meetings concerning businesses in our portfolio. In some cases, everyone was absent for the entire meeting, and generally that was clearly noted in the minutes. When I was in attendance and had to leave temporarily, I left the meeting room. That's something that all board members did, and it's something that the minister's representative saw every time.

● (1820)

[*English*]

Mr. Brian Masse: You would come back. Did you learn then what the vote was? Was that provided to you?

I know the minutes show that.... This, I think, is where some of the public and others have difficulty. It seems pretty comfortable. You come back, and it's unanimous, so it's kind of like rotate a person in, rotate another person out, rotate a person in, rotate another person out, because it's unanimous.

That seems like a very cozy way of going through things, and I have some minutes here that don't even show that; they're always unanimous.

What do you think of that?

[*Translation*]

Ms. Andrée-Lise Méthot: I'll answer both parts of your question.

When we left—

[*English*]

Mr. Brian Masse: Thank you.

[*Translation*]

Ms. Andrée-Lise Méthot: May I continue?

Mr. Brian Masse: Yes, all right; thank you.

Ms. Andrée-Lise Méthot: Thank you. I apologize, this is a bit stressful. I don't know how a committee proceeds.

[*English*]

Mr. Brian Masse: Yes, I know that.

[*Translation*]

Ms. Andrée-Lise Méthot: We didn't have the information when we left the meeting, and we didn't know what decision the board had made when we returned. We were never informed about the debates. Consequently, I never knew what had been said about the businesses in which Cycle Capital held shares at the time of a vote at SDTC. That's the answer to the first part of your question.

As for the second part, the board made decisions. Very important debates were conducted. The entire SDTC team, composed of qualified people, also did a lot of work before the vote. The engineers who were there, the technicians and the people who looked at things did an enormous job. I can tell you that an SDTC board meeting represented more than 10 hours of reading. So there were experts. We conducted in-depth debates in the investment committee.

[*English*]

Mr. Brian Masse: Every board member got the same package, though.

Say, for example, you get your package. You'd look at it and find out that you're in a conflict of interest on this issue, and then you would know that issue, though, so does somebody screen that, or do you just self-choose which conflict of interest...? You still receive the same package as everybody else.

Is that what happens? What would stop somebody from picking up the phone or talking to another board member outside of the board meetings about their own projects and own companies, especially since you're spending all of this time together?

[*Translation*]

Ms. Andrée-Lise Méthot: We received a list before we got the documents.

We had established a methodology at Cycle Capital. We manage 1,200 files a year, and I don't know them off by heart. An analyst examined that list and told us that we were investing in this one and that we had been considering that one for two months.

In the case of GHGSat, I declared that I was in conflict of interest and withdrew from the case because my niece was a member of the company's senior management.

So the analysts did some initial work on investment opportunities, the portfolio businesses and the more personal cases, such as the one involving my niece.

[*English*]

Mr. Brian Masse: Okay.

The Chair: Thank you, Mr. Masse. I'm afraid that's all the time you have.

I have Mr. Perkins for five minutes.

Mr. Rick Perkins: Thank you, Mr. Chair.

Madame Méthot, in the nine years that Steven Guilbeault worked for you, SDTC made announcements on the companies you have listed as invested on your website. The amount totals $111 million on announced stuff.

[*Translation*]

Ms. Andrée-Lise Méthot: I think that Sustainable Development Technology Canada—

[*English*]

Mr. Rick Perkins: It wasn't a question.

Secondly, during the time that your company has existed, announced projects from SDTC have totalled $143 million, including $8.5 million that was given to VueReal and announced after you departed for the Infrastructure Bank of Canada.

It seems to me that being, knowing and employing Liberals is apparently a fairly profitable thing for directors of SDTC.

I would like to know when you joined the board of the Infrastructure Bank.

● (1825)

[*Translation*]

Ms. Andrée-Lise Méthot: Is this committee concerned with the Canada Infrastructure Bank? Must I answer that question, Mr. Chair?

The Chair: No, this actually concerns Sustainable Development Technology Canada. It may fall outside the field of our study, but it probably concerns information that's in the public domain.

Ms. Andrée-Lise Méthot: I was just asking the question.

[*English*]

Mr. Rick Perkins: Chair, the witness, in her opening remarks, gave a very lengthy description of her qualifications. One of those is that she is now at or was transferred to the Infrastructure Bank.

It's a simple question. I don't know what you're afraid of.

What year, and what time of year, did you join the Infrastructure Bank?

[*Translation*]

Ms. Andrée-Lise Méthot: Allow me to—

[*English*]

Mr. Rick Perkins: It's on your CV on LinkedIn.

[*Translation*]

Ms. Andrée-Lise Méthot: You can answer for me, sir; I won't object.

[*English*]

Mr. Rick Perkins: In 2022, you joined the Infrastructure Bank of Canada. In February 2023, this year, Annette Verschuren's company, NRStor, received $170 million in financing for the Infrastructure Bank. That was after you had left the SDTC board.

Is that correct? Were you part of that decision on the Infrastructure Bank board?

[*Translation*]

Ms. Andrée-Lise Méthot: I have no holding in NRStor.

Is that the company you're talking about?

[*English*]

Mr. Rick Perkins: Were you on the board in February 2023, when the Infrastructure Bank granted financing to NRStor, Annette Verschuren's company, of $170 million?

[*Translation*]

Ms. Andrée-Lise Méthot: I have no holding in NRStor. I don't know why you're asking me that question.

[*English*]

Mr. Rick Perkins: I didn't ask you about holdings.

The witness is refusing to answer the question.

The question is this: Were you on the board of the Infrastructure Bank of Canada in February 2023?

[*Translation*]

Ms. Andrée-Lise Méthot: I'll look at the date of my appointment on LinkedIn. To be honest, I didn't prepare to answer questions about the Canada Infrastructure Bank.

[*English*]

Mr. Rick Perkins: Do you know if you were a member of the board of directors at the Infrastructure Bank this year?

[*Translation*]

Ms. Andrée-Lise Méthot: Yes.

[*English*]

Mr. Rick Perkins: You were on the board of the Infrastructure Bank, and the Infrastructure Bank granted financing to Annette Verschuren's NRStor, which also received money prior to her joining the SDTC board. There's a nice, cozy relationship going on between board members, such as you, Annette Verschuren and other directors we will call before this committee.

Can you explain to me why you received...? Did you recuse yourself the seven times—not four, but the seven times you were a board member, as reported on the SDTC site— when you were a board member and your companies received funding announcements while you were on the board?

Did you recuse yourself for all seven? You said you recused yourself for four, but there are seven listed on the SDTC website.

[*Translation*]

Ms. Andrée-Lise Méthot: May I answer, Mr. Chair?

The Chair: Yes, Ms. Méthot.

Ms. Andrée-Lise Méthot: I had to recuse myself way more often than that because I also declared apparent conflicts. There were board meetings where I was absent. In addition, only four businesses in my portfolio received money from SDTC while I was on the board. If they received any before or after I was involved with SDTC, they weren't in a conflict-of-interest zone, as it's technically known in governance terminology.

What the board decided before I arrived and after I left doesn't concern me.

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

[*English*]

Mr. Perkins, your time is up.

Mr. Sorbara, the floor is yours.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): Thank you, Chair.

Welcome to the witnesses, one in person and one virtually.

Obviously, a number of questions were asked today.

[*Translation*]

Welcome to the committee, Ms. Méthot.

[*English*]

I have taken a look at Cycle Capital, the firm that you are integral to—if I can use the word integral. It's obvious that your firm has been around for a while. You have made probably a lot of investments into a number of companies, and for those investments you obviously check out the corporate governance structure of all companies you would invest in.

It sounds as though you sit on a few boards. You sat on the board of SDTC, and, if my understanding is correct, you sit on the Infrastructure Bank board, which obviously acknowledges your experience and so forth within the investment industry.

How would you judge the corporate governance structure that was in place at SDTC during your tenure?

● (1830)

[*Translation*]

Ms. Andrée-Lise Méthot: I want to make sure I clearly understand your question. It concerns the governance structure. Is that correct?

Mr. Francesco Sorbara: Exactly.

Is SDTC's governance effective?

Ms. Andrée-Lise Méthot: SDTC is a foundation. When I arrived, the foundation had been in place for some years. As my colleague who is on the screen said, a robust governance was in place in which people recused themselves and declared their conflicts of interest in advance. It was very well structured, but poorly recorded in the minutes.

[*English*]

Mr. Francesco Sorbara: Okay.

Chair, I do want to put on the record that with regard to the chair of the board, Annette Verschuren, whether she's the chair or not or independent of that, she was a maximum donor to the leadership campaign of Mr. Jean Charest.

We heard from the other side—and we're just having some interruptions there from the other side, from a gentleman most times, so I will say that again. Annette Verschuren was a donor to Jean Charest's campaign. There was some insinuation that being a Liberal was this or that, and it was unfortunate that was pointed out.

To the gentleman who's attending virtually, what was your experience with SDTC?

Mr. Geoffrey Cape: I was a board member from 2016 to 2022.

Mr. Francesco Sorbara: You sit on the board. You have your quarterly meetings or monthly meetings, however it's structured. Someone should be there to take minutes. You have been around for 20 years. There should be some sort of passing-the-baton experience. There's in-house counsel.

Can you explain and give us some granularity on that?

Mr. Geoffrey Cape: I stand by my earlier comments, in which I viewed the processes of governance associated with the board to be excellent. The diversity of board members, the robust discussions, the policies in place around conflict of interest, obviously specific to today's discussion, were rigorously maintained and monitored.

I suppose maybe there's some debate as to whether or not the process for minutes was comprehensive enough in various details. Clearly, they were lacking in some corners. They were certainly sufficient as we as board members saw them at the time.

The addition of new board members was very carefully considered and, again, rigorous in the sense that we were looking for the right sort of diversity of voices and balanced discussions at the board level, so the process for bringing in new board members was always about trying to make the board better.

Mr. Francesco Sorbara: If I could interject, when there are contribution agreements signed with companies, I take it the board would look at all the investments that were decided upon by SDTC. Is that correct?

Mr. Geoffrey Cape: Just to look for a little clarification in your question, are you asking whether the contribution agreements, well after a board decision was made to approve a grant, came back to the board?

Mr. Francesco Sorbara: Yes. Did they come back either before or after? There would have been a process by the investment committee whereby it would have said yes or no, yea or nay, and the then board at some time would have to review those decisions.

Mr. Geoffrey Cape: The decisions to invest in a company were made at the board level after thorough review and debate by various committees leading up to management- and board-related committees, but the actual review of contribution agreements was not something that was routinely brought back to the board. They were part of management's responsibilities.

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

We have a hard stop at 6:38. That gives us four more minutes. I will give two to Mr. Lemire and two to Mr. Masse.

[*Translation*]

Mr. Lemire, the floor is yours.

Mr. Sébastien Lemire: Thank you, Mr. Chair.

Ms. Méthot, the type of expertise needed to analyze green and emerging technology investment projects, and especially to appreciate their economic potential—they involve a lot of venture capital—must be quite rare.

It must be quite demanding to bring all those people together around the table, and it must have been even more difficult a few years ago, no?

● (1835)

Ms. Andrée-Lise Méthot: About 15 to 20 people were starting to develop that expertise in Canada 15 years ago. A lot more people and organizations are doing it today, which is excellent news.

Mr. Sébastien Lemire: As I understand it, the Canadian government itself didn't have the necessary expertise to analyze these types of projects. The people working at Natural Resources Canada and elsewhere in the industry are very good at evaluating oil and gas projects especially.

Earlier, you said that there's half as much investment in green technology businesses in Canada as there is in the United States. I'd be curious to see a comparison between investments in green technologies and those made in oil. Even today, when you talk about subsidies to oil companies, there's an enormous imbalance. Do you sense that imbalance?

Is the federal government itself able to assess the potential of green and emerging technology projects now as compared to during the COVID-19 pandemic or to 2015?

Ms. Andrée-Lise Méthot: This is an emerging sector, and there can be a great advantage for both the private and public sectors to be working on it.

You mentioned the oil and gas industry. I've had very positive experiences with people from the oil industry. For example, Mark Little, a former president of Suncor, is one of our directors. These people have a major contribution to make.

I believe that everyone can make a contribution because we need to build this quickly. We have only a few years ahead of us to slow down climate change, and—

Mr. Sébastien Lemire: Do you think that a study like this one, which aims to discredit Sustainable Development Technology Canada, is also a way to discredit investments in green funds?

Ms. Andrée-Lise Méthot: I hope not.

Mr. Sébastien Lemire: Mr. Chair, I have a motion I would like to introduce, if I may.

The Chair: The floor is yours, but it should be related to the matter before us today.

Mr. Sébastien Lemire: Earlier, we postponed consideration of the second part of Mr. Perkins' motion, but I think it's relevant in light of what we're hearing today. It reads as follows:

> That the committee request Sustainable Development Technology Canada (SDTC) to provide any declarations of a conflict of interest from board members since 2015.

Ms. Méthot gave quite an exhaustive demonstration of this, but it would nevertheless be appropriate to make this request. As I understand that the Standing Committee on Access to Information, Privacy and Ethics has completed its deliberations, it would be entirely appropriate for our committee to make that request.

The Chair: All right.

Colleagues, Mr. Lemire has introduced a motion essentially restating the last sentence in Mr. Perkins' motion, which we dealt with earlier.

Are there any comments?

Go ahead, Mr. Turnbull.

[*English*]

Mr. Ryan Turnbull: Why are we picking 2015, when we know the organization has been around since 2001? This organization has existed for 22 years, and it seems that for 2015 the only rationale I can see is the correspondence when our federal government came into place under Liberal leadership. I would say that makes it look like it's biased towards trying to dig up some dirt on a Liberal government. We've heard opposition members on the Conservative side repeatedly say things that are untrue.

I would note for the record that Annette Verschuren was appointed by Brian Mulroney, Stephen Harper, and at least three times by Jim Flaherty, my predecessor, for different positions. With the claim that this is a Green-Liberal slush fund, as Mr. Barrett has claimed in the House of Commons multiple times, this starts to look like it's very much fishing for some goods on the government.

I think we need to consider the dates and timelines and go back to the beginning.

Mr. Chair, I know that the meeting had a hard stop at 6:38, but I'm happy to stick around if this is really what we want to be doing.

● (1840)

The Chair: I'm checking with the clerk to see when is the very latest we can continue.

We started at 3:38, and it was agreed that we have three hours, so until 6:38, but the clerk is looking into it.

In the meantime, Mr. Barrett, you can continue.

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): Thanks, Mr. Chair.

It's important to note that with respect to the billion-dollar Liberal-Green slush fund, the Auditor General had given it a clean bill of health up to 2017. While I am interested in the documents from 2015 forward, I think that some of that has already been pronounced upon by the Auditor General. Irrespective of who appointed any of the individuals to other OIC appointments and who appointed them to the board, it doesn't matter who appointed you: If you break the rules, then you need to be held to account for that.

Ms. Verschuren was in fact appointed to the SDTC billion-dollar Green slush fund by the current Liberal government and has resigned in disgrace, so in terms of conflict of interest, the government review that they commissioned has determined that the conflict of interest policies were not followed. I think it's very important that for that period of time they reviewed, to Mr. Lemire's point, that's the period of time for which we see those recusals. The in-house counsel, the one who is advising them on conflicts of interest, was the same one who told board members to backdate their conflict of interest documents. The documents they have are highly suspicious at best.

Certainly, to go back to 2015, there is full support from me for that suggestion.

The Chair: Thank you, Mr. Barrett.

Mr. Lemire.

[*Translation*]

Mr. Sébastien Lemire: I think this is an interesting question. I don't want to know whether or not requesting the documents prepared since 2015 concerns the Liberal government, but I think there are two possibilities. Either we focus on the study of the funding spent solely in the context of COVID-19, or we conduct an evaluation from the date on which Sustainable Development Technology Canada was created.

What was the spirit of the initially proposed motion? I'd like to know the purpose of the study. I'm going to suggest the date based on what is to be studied.

The Chair: Before we resume debate on Mr. Lemire's motion and turn the floor over to Mr. Turnbull, who wishes to speak, I need to verify something.

I'm a bit distracted, Mr. Lemire, because I'm trying to determine whether we should end the meeting. I have the feeling we're exceeding the resources that have been provided to us. We were told that the meeting could run to a maximum of three hours.

Out of respect for the resources of the House that were made available to us and that were increased for this evening's meeting, I'd be tempted to propose that we resume this fascinating discussion at the next meeting and that we adjourn, considering that we have already exceeded the three-hour limit. I see no opposition to that.

Ms. Méthot and Mr. Cape, thank you very much.

I also want to thank the interpreters and the analysts.

Mr. Sébastien Lemire: Mr. Chair, the NDP member has nevertheless made a legitimate request to ask a final question because he missed his turn.

I apologize because it was partly my fault and I feel guilty.

The Chair: You may introduce a motion when you come back.

I'm sorry, but there isn't much I can do.

[*English*]

Mr. Brian Masse: You're fair, Chair.

The Chair: Meeting adjourned.