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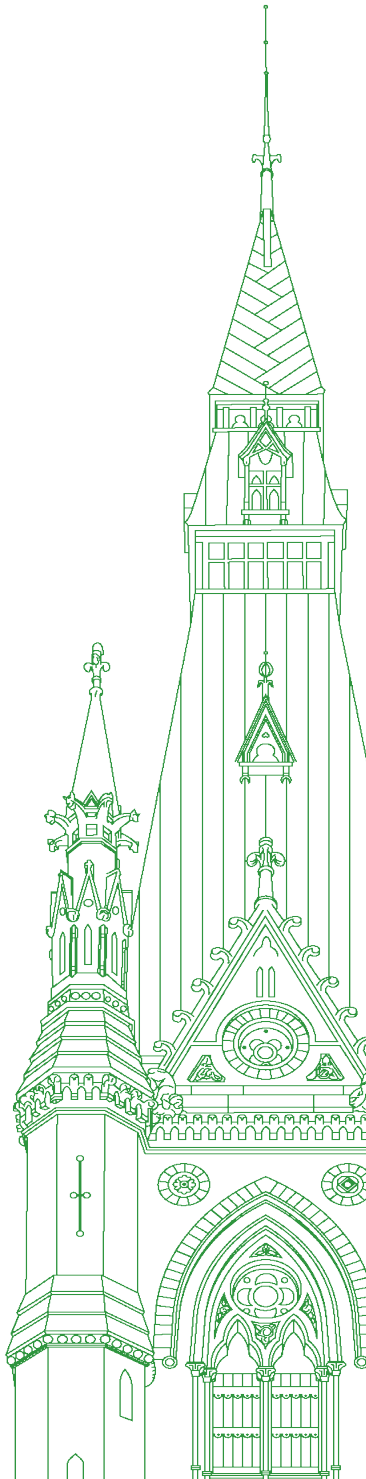

Chair: Mr. Joël Lightbound

Standing Committee on Industry and Technology

Wednesday, April 17, 2024

● (1700)

[*Translation*]

The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)): I call this meeting to order.

Welcome to meeting number 119 of the House of Commons Standing Committee on Industry and Technology.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders.

For our first hour, pursuant to the motion adopted on Monday, March 18, 2024, the committee is commencing its study of the development and deployment of ELYSIS technology at Rio Tinto and Alcoa facilities.

I'd like to welcome our witnesses today and thank them for being here, and I apologize in advance for having to interrupt our meeting a little later owing to a scheduled vote in the House.

We are now welcoming two representatives from Rio Tinto: Jérôme Pécresse, chief executive aluminium, and Nigel Steward, chief scientist, who will be joining us by videoconference.

As you know, you have five minutes for your opening statement.

Mr. Pécresse, please begin.

Mr. Jérôme Pécresse (Chief Executive Aluminium, Rio Tinto): Thank you, Mr. Chair.

Good afternoon, ladies and gentlemen.

Thank you for this opportunity to be here today to discuss Rio Tinto's commitment to Canada, and more specifically the development of ELYSIS, a revolutionary technology being proudly developed in Quebec's Saguenay—Lac-Saint-Jean region.

I'll begin by introducing myself. My name is Jérôme Pécresse. Six months ago, in October, I was appointed chief executive aluminium at Rio Tinto in Montreal. Before joining Rio Tinto, I had worked for 20 years, initially in the mining sector and then in the renewable energy sector.

Before getting into the topic at hand, although I'm pleased to be here today to answer any questions you may have, I would just like to briefly point out that the wording of the motion that has brought us here is not exactly correct. Rio Tinto never, to my knowledge, publicly announced that the total budget for ELYSIS was $240 million. Nor did we ever say that there had been cost overruns beyond the initial budget. More specifically, since 2018, Rio Tinto and its joint venture partners publicly announced an initial funding phase of $228 million, $160 million of which came in the form of equal contributions from the Quebec government and the Canadian government. I'll come back to this later.

Rio Tinto is a world leader that produces minerals and metals the whole world needs. Our products include iron ore, copper, aluminum and critical minerals.

Needless to say, we want to grow our business and create value for our shareholders and all the stakeholders, and we have publicly promised to be carbon neutral by 2050. Our clients, our investors and all of our employees are working towards achieving our carbon neutrality goal. A major share of the technology needed to achieve this goal is brand new, and that's also true of ELYSIS.

Rio Tinto, a global enterprise, is also the largest active mining and metallurgical company in Canada. Our Canadian operations rank second among our many activities around the world. We take pride in investing here for the long term, growing our business and working with provincial governments and the federal government. Our Canadian operations generate well-paying jobs for over 13,800 employees in Canada, approximately 8,000 of whom work in Quebec. Of these, approximately 4,400 are in Saguenay—Lac-Saint-Jean.

Canada is particularly well positioned for the production of low carbon primary aluminum. Access to self-produced hydroelectric energy is a key competitive advantage for us and the energy transition will require more and more aluminum.

Many of our top technological breakthroughs came right here in Canada. I'll mention just two of these, beginning with AP60 technology.

Last June, we announced the first major aluminum sector investment in the western hemisphere in nearly 10 years. It involved a $1.4 billion investment to further develop our AP60 technology in Saguenay, $1.2 billion of which came from Rio Tinto.

AP60 low carbon emission technology is currently among the most effective in the world for the production of aluminum on an industrial scale. When combined with hydroelectricity, it generates only one-seventh as much greenhouse gas per tonne of aluminum as the current industry standard.

We are currently finishing site preparation work. In 2026, the AP60 aluminum plant will be fully operational, increasing production capacity to approximately 160,000 metric tons of primary aluminum per year.

AP60 technology is essential for our development of ELYSIS. ELYSIS is why we are here today. It is cutting-edge technology, and it's no exaggeration to say that it could revolutionize the world of aluminum. Research and development on this scale requires major investment and teamwork by all stakeholders. Government funding initially represented 70% of ELYSIS funding, but the ratio has since flipped and the joint venture partners' contribution now accounts for 70% of the total.

In 2021, the partners stated that ELYSIS was aiming for installation of the technology to begin in 2024. We are now in 2024, and as I mentioned to a business audience in Montreal on Monday, I hope to be able to publicly announce our plans over the next few weeks.

We are making good progress on ELYSIS. However, as is usually the case for anything new, it takes time to do things properly. The development of such visionary technology also has risks. I'm sure we'll be returning to that topic. We're prepared to take these risks because we believe in the technology and its benefits. However, risk management for such a large-scale project requires step-by-step adoption of the right approach.

To conclude, it's in Rio Tinto's interest to develop ELYSIS with a view to large-scale production. It would benefit all of our workers in Canada.

● (1705)

I applaud Canada's foresight, because it has supported us from the very outset and invested in a revolutionary development that could well become one of the great inventions of the century. We intend to implement the technology here in Canada. Rio Tinto has invested $5.5 billion since 2018, only 7% of which comes from government funding. We wouldn't be investing at that level if we weren't serious, if aluminum wasn't central to Rio Tinto's strategy, and if we weren't convinced of its possibilities.

I'd be happy to answer your questions. I'd just like to remind you that my colleague Dr. Nigel Steward, Rio Tinto's chief scientist, is with us virtually today.

Thank you.

I'm looking forward to continuing this discussion with you.

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

We are going to begin the discussion now.

Mr. Martel, it's over to you now for six minutes.

Mr. Richard Martel (Chicoutimi—Le Fjord, CPC): Thank you, Mr. Chair.

I'd like to thank the witnesses for being with us. We're delighted to welcome them.

As you know, Saguenay—Lac-Saint-Jean is a world centre for aluminum. It's where we live and I'm proud of it. Alma is where the feasibility of ELYSIS was demonstrated.

Mr. Pécresse, I know that you've made major investments in our region. As you know, our equipment suppliers also want to work. What percentage of ELYSIS investment was spent on Canadian content?

Mr. Jérôme Pécresse: Thank you, Mr. Martel. I'm glad you asked that.

It's important to know that 60% of our global aluminum production is in Canada. It's partly in Kitimat, British Columbia, but most of our Canadian production is in Saguenay. Saguenay is, and will continue to be, the focal point of Rio Tinto's worldwide aluminum production.

To answer your question specifically, I would say that ELYSIS is a joint venture that now employs 100 researchers, all of whom work in Quebec, with about three-quarters of them in Saguenay and one-quarter in Montreal. There is funding for research at our Quebec laboratories and also at those of our partners around the world. These activities represent equipment expenditures, for tests and all the other research being carried out in Saguenay. The vast majority of these expenses are in Saguenay, as are all of our investments in the region. The STAS company provides the equipment needed for ELYSIS prototypes, and we intend to continue with them.

I repeat that 100% of ELYSIS employees are in Saguenay, and the vast majority of ELYSIS expenditures on laboratory equipment, prototypes and tests are also in the region.

Mr. Richard Martel: What will Canada gain from the marketing of ELYSIS?

Mr. Jérôme Pécresse: There will be short-term and long-term benefits.

In the short term, by which I mean the next few years, we will continue to create jobs. In fact, we hire researchers in Canada and Quebec on a quarterly basis to work at our research centres in both Saguenay—Lac-Saint-Jean and Montreal.

I should point out that ELYSIS technology decarbonizes aluminum electrolysis by using non-carbon anodes that do not release any CO2. This allows us to attract talented researchers and workers who were not particularly interested in yesterday's aluminum industry. We are going to continue with these efforts and invest in a pilot unit.

I believe that ELYSIS will help build the Saguenay of tomorrow. Saguenay's production site exists today because 100 years ago, my distant visionary predecessors built hydroelectric power stations. That's what gave Quebec a sustainable competitive advantage in aluminum production for decades. It's clear today that if we want to continue to do so, aluminum production will have to release diminishing amounts of carbon. Carbon emissions from production in Saguenay result from the electrolysis process. If we can manage to produce aluminum on a comparable scale using other patented processes, it will become possible to restore this sustainable competitive advantage and keep a step ahead of the competition in the entire industry. And as I was saying, in doing so, we'll be inventing the Saguenay of tomorrow.

ELYSIS is being developed in the Saguenay and will be used in Saguenay. That will make it possible to create another level of competitive advantages for the aluminum industry in Quebec. Our clients, or rather the clients of our clients, such as those who build automobiles or aircraft, or who produce packaging, want aluminum that has a very low carbon footprint. For 20 years, when we told them that we were producing aluminum using hydroelectricity, that kept them happy; but it's no longer enough for them. They now want an electrolysis process that doesn't release any carbon. And that's precisely what we are trying to accomplish together, through ELYSIS.

● (1710)

Mr. Richard Martel: Mr. Pécresse, last June, Rio Tinto announced the initial major investment in the project, for the purpose of installing 96 AP60 cells. At the time, Rio Tinto was the only company doing so.

We now know that Century Aluminum in the United States announced a green aluminum production project. Do you think this could constitute a threat to ELYSIS?

Mr. Jérôme Pécresse: I think there are two different ways to interpret their announcement.

First, it shows that governments are supporting their aluminum industry. The Canadian government has been doing so for a long time, as has the Quebec government. The U.S. government has also begun to do so through its very powerful Inflation Reduction Act. The fact that this highly important job-rich industry is being maintained by the government is therefore no longer just a Canadian anomaly, because the U.S. government is doing it too.

The second thing that needs to be pointed out echoes what I was saying earlier. When Century Aluminum says that it is going to produce green aluminum, it's oversimplifying. What it really means is that instead of using electricity from coal power plants, as it is doing now, Century Aluminum will switch to using renewable energy, and will be receiving support to do so. In Saguenay, on the other hand, we've already been using renewable energy for 100 years, in the form of hydroelectricity.

As I was saying earlier, through ELYSIS, we are going to try to restore our competitive advantage to an even greater extent. To the best of my knowledge, Century Aluminum will not be using an electrolysis process like ELYSIS. It will use carbon electrodes. That means a production process like the one we are currently using in Saguenay. They're trying to catch up to us. That means that we need to continue to move forward, and that's precisely what ELYSIS will enable us to do.

Mr. Richard Martel: How much time do I still have, Mr. Chair?

The Chair: You have 45 seconds.

Mr. Richard Martel: Mr. Pécresse, we know that our region is a major aluminum production centre. Will the Saguenay—Lac-Saint-Jean aluminum smelter be the first to use ELYSIS technology?

Mr. Jérôme Pécresse: Well, we're doing everything we can to make it so. There are no plans for ELYSIS development projects anywhere other than Saguenay—Lac-Saint-Jean. Nor are we planning any elsewhere. That's our goal. I can't tell you much more than that.

I should perhaps have pointed out at the beginning that for certain questions I might be asked about ELYSIS, I'm somewhat constrained by two things. First of all, ELYSIS is a joint venture in which we are only one of several partners. Secondly, it's an innovative technology protected by intellectual property laws and is commercially very sensitive. So I apologize for not being able to give you all the details, but it's because we have a duty to our joint venture partners to protect certain sensitive information.

I'll repeat that we are developing ELYSIS in Saguenay. There are no plans to do so elsewhere. What you said is precisely our objective.

Mr. Richard Martel: Thank you.

The Chair: Thank you very much.

Mr. Turnbull, it's over to you now.

[*English*]

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

Thanks to Mr. Pécresse for joining us today.

Mr. Pécresse, I want to start with a question about how Rio Tinto's Canadian aluminum-processing operations compare to international competitors in terms of GHG emissions. Could you explain how your Canadian operations compare on that level?

Mr. Jérôme Pécresse: If you look at the industry globally, the average emissions of a smelter would be 12 tonnes of CO2 per tonne of aluminum produced. If you look at what we do today in Saguenay—Lac-Saint-Jean, we are probably at 2.3 tonnes—much lower.

The reason is that most of the smelters in the world use, as a source of electricity, electricity taken from the grid, which has fossil fuel origins, whereas in Saguenay—Lac-Saint-Jean we use hydroelectricity from our own hydro power plant. Just to frame it, what ELYSIS is all about is to bring the 2.3 tonnes as close to zero as possible.

Mr. Ryan Turnbull: Thank you.

What impact, if any, will your plans have for future innovation in greening the minerals and metals industry? What are your plans? Are your plans to do things internally, which you're already doing, and then help to green the entire industry? Is that part of your plan?

Mr. Jérôme Pécresse: Our plan—and, if I take a step back, Rio Tinto's plan as a group—is to lower its CO2 emissions by 50% by 2030 and to get close to zero by 2050, which is much more ambitious than the average in the mining industry.

The emissions of Rio Tinto aluminum are 70% of the total of the emissions of Rio Tinto. We want to reduce CO2 emissions, first, to meet our group's CO2 targets; second, to create a long-lasting competitive advantage; and third, I would say, to create a much more healthy aluminum business.

I've been in renewable energy before, as I told you, and it's clear now that when you look at the energy transition, in moving the world to renewable energy there are bottlenecks that need to be lifted, but that happens. What you need to attack is the how-to of each sector: steel, aluminum and transportation. Greening aluminum is part of that pool as well.

● (1715)

Mr. Ryan Turnbull: I couldn't agree more. I guess what I wanted to understand a bit more deeply is.... Can you tell us about or or walk us through the current process for aluminum smelting and how ELYSIS will change that?

Mr. Jérôme Pécresse: Today, the way aluminum is being done is the way it's been done for a hundred years. There is just one way. Basically, you put alumina in a bath and then you put an anode—an electrode—in that alumina bath. That chemical reaction creates aluminum. The process used in the world is called Hall–Héroult, which basically uses anodes, which are in carbon. That's what everybody in the world, everywhere, has done for a hundred years. That chemical reaction creates aluminum, but the anodes progressively dissolve and they have to be changed every 20 days. As the anodes dissolve in the carbon, you release CO2 into the atmosphere, basically.

Maybe, Nigel, you can help me if I say anything wrong.

That's the process. When I say that we emit 2.3 tonnes of CO2 per tonne of aluminum, that's the bulk of it. What ELYSIS is about—and I'll stop there—is using anodes that are not formed of carbon while creating a chemical reaction that still produces aluminum with the same alumina. If you do that and you use hydro power, you are left with CO2 emissions in your alumina refineries and in bauxite mining that are of a smaller magnitude.

Nigel, is there anything you want to add on that?

Dr. Nigel Steward (Chief Scientist, Rio Tinto): No. I think it was a good description.

The key thing we've been trying to do ever since the Hall–Héroult process was invented, which uses the carbon anode, is really to replace that carbon anode with something that's truly inert and isn't consumed in the process. This is what we've been successful in doing. It's that change of electrodes and the way in which we operate and design the cell that's the big change that differentiates it from the conventional Hall–Héroult process.

Mr. Ryan Turnbull: Just as a quick follow-up for my final question, how does greening your operations create more jobs? Related to this change that you're making, how does it create more jobs?

Mr. Jérôme Pécresse: Look, the greening of our operations allows us to create a competitive advantage. It's competitive. The car producers, some of them, want to move to low-carbon cars. Packaging wants to move to low-carbon beverage cans, etc. If we manage to create a gap there, I'm convinced that we'll gain market share. By getting market share, we produce more aluminum.

Thank you.

[*Translation*]

The Chair: Thank you, Mr. Turnbull.

You have the floor, Mr. Simard.

Mr. Mario Simard (Jonquière, BQ): Thank you, Mr. Chair.

Mr. Pécresse, you are no doubt aware of the fact that in 2007, conditions were placed on Rio Tinto's acquisition of Alcan. Everyone also knew about these conditions. One such condition was that $3 billion was to be invested in Quebec and British Columbia, $2.1 billion of which was for an aluminum smelter here in Saguenay—Lac-Saint-Jean, which amounted to 240 cells for the production of 450,000 tonnes. Another requirement was maintaining the same level of activity at the Montreal headquarters, to maintain the same level of activity for regional development, and to maintain the research and development activities.

As far as I can see, 34 cells have been installed and there are plans to increase this number to 96. That's nowhere near 240 cells. It's also 10 years behind schedule. As for the strategic functions at headquarters, many might consider them to have been outsourced. And research and development has been considerably reduced. There used to be approximately 200 scientists working at Rio Tinto, and now there are barely 100.

I have one relatively straightforward question for you: Do you believe that Rio Tinto has met its 2007 commitments?

● (1720)

Mr. Jérôme Pécresse: Yes. I wasn't there at the time, but as you know, Mr. Simard, these commitments were renegotiated in 2018. That's something that can happen when there are black swan events. For example, there was the financial crisis and the COVID-19 pandemic. The commitments had to be altered at some point. In any event, the commitments were met. Rio Tinto has been investing in industrial tools. We invested $1.4 billion in AP60 technology. That was a huge amount, and other investments were made or are now in the works. So we have been meeting, and will continue to meet, our commitments.

As for headquarters, global activity in the aluminum sector is controlled from Montreal. I'm in Montreal, and except for the head of the Pacific area, who is quite rightly in Australia, and the director of strategy, who is in Montreal only half the time, my teams are in Montreal with me.

Mr. Mario Simard: Okay, thank you.

Mr. Chair, I see that we're not going to be able to ask all our questions today. So if you are in agreement, we could submit questions in writing. That might be easier.

The Chair: Yes, that's always an option.

Mr. Mario Simard: Excellent. Thank you. So we will be able to continue the discussion by sending questions in writing.

You are no doubt aware that there is a Saguenay—Lac-Saint-Jean optimization committee to ensure that regional benefits are as strong as possible. Rio Tinto does after all have significant energy advantages. I have a straightforward question for you. What role does Rio Tinto play on this optimization committee?

According to what I've been told, contracts were awarded to regional equipment suppliers for the first 34 cells that were built. That includes structures, superstructures and the cells themselves. However, for the 96 cells currently under construction, it would appear that no contracts were awarded to the regional suppliers.

I'd like to know why it was impossible to award contracts to the regional equipment suppliers for these 96 cells, when it had been possible to do so for the first 34 cells.

Mr. Jérôme Pécresse: You are talking about a specific part of the equipment. I want to be clear, Mr. Simard. Regarding the AP60 technology, I looked into the issue again recently and I can tell you that for a very large majority, we are working with suppliers from Saguenay—Lac-Saint-Jean and Quebec. When we have finished installing the AP60 pots, the portion of the $1.4 billion allocated to spending in Quebec will be considerably higher than 50%.

When we make investments like these, we also have economic and budgetary constraints. As well, Saguenay—Lac-Saint-Jean is not capable of providing all of the equipment we need.

Regarding the situation you spoke about, which represents only a small part of the project, we have in fact had economic concerns in terms of sticking to budgets. We must not forget that we have a duty to create value for shareholders. For some particular equipment, that may mean that we look outside Saguenay—Lac-Saint-Jean.

I would reiterate that at the end of the project, the percentage of the equipment that will be supplied in Saguenay—Lac-Saint-Jean will be very considerably over 50%.

Since I arrived, six months ago, a lot of Quebec suppliers have come to see me, first, to get to know me, but also, second, to tell me they are pleased to be working with us in Saguenay—Lac-Saint-Jean. They tell me they want to work more with us and preserve the excellent relationship we have. I would say that this is one of the positive surprises I have had. You can ask STAS, EPIQ Machinery, Groupe Alfred Boivin, Charl-Pol, or all the other companies we work with. I believe we are completely integrated into the local economic fabric.

Mr. Mario Simard: So you see no objection to participating on the maximization committee and collaborating within the framework of a regional dialogue.

Mr. Jérôme Pécresse: To be frank, this maximization committee is not entirely familiar to me. You will forgive me, but I have only been in this position for six months.

Mr. Mario Simard: Yes, I don't want to pick on you.

Mr. Jérôme Pécresse: There are a lot of organizations in Saguenay and I am not yet familiar with all of them. In any event, I want to reiterate our desire to integrate into the economic ecosystem of Saguenay—Lac-Saint-Jean and work with the local businesses. We are already doing that, in fact. I think that really is what is happening today.

Mr. Mario Simard: Thank you.

In 2018, the provincial and federal governments made an initial investment in ELYSIS in the amount of $60 million each. An additional $20 million was invested in 2021. Initially, it was announced that the technology would be commercialized in 2023 or 2024.

In 2022, in response to shareholders, Mr. Vella said that modernizing the facilities using the ELYSIS technology would be impossible before 2030.

The 2023 annual report also says that the technology will not be ready to be used before 2030.

Do you have a clear timetable at present for when the ELYSIS technology will be deployed?

Mr. Jérôme Pécresse: I don't know what you call a timetable, Mr. Simard.

I reiterate that with ELYSIS, for the first time in the world in the last 100 years, we are reinventing how aluminum is produced. This is not an easy process. If it were, someone would already have found a way to do it.

As for where the ELYSIS project will have got to in 2030 or 2031, I have no idea. If I gave you another answer, I would be lying. This is a technology that we are going to industrialize step by step. We will start building industrial-sized plants when we are satisfied that it can work at that scale. Other than telling you that I believe in this technology, the good news is that we have managed to produce aluminum at a sizable scale with no carbon emissions, thanks to the ELYSIS technology, so this is a project that has moved out of the laboratory.

Now, between leaving the laboratory and industrializing, we have to be able to replicate the process at the scale of the real pots. You have not said it, but, as you know, we have already announced that after producing aluminum with ELYSIS in 150 ampere pots, we were going to move on to 450 ampere pots. As for the timetable, what you asked me about, we said we would do it in 2024 in Saguenay—Lac-Saint-Jean, and we are working on it. We are also working on other stages of ELYSIS and, as I said, I hope to be able to announce them soon.

● (1725)

Mr. Mario Simard: Thank you.

Mr. Jérôme Pécresse: To avoid any misunderstanding on the committee's part, I want to point out that there is actually aluminum being produced using the ELYSIS technology. I do not know whether you have any, but if not, I will be happy to give you some. I have an aluminum ingot here produced with no carbon emissions using ELYSIS.

Mr. Mario Simard: I will be happy to pick it up a bit later.

We know that the ELYSIS technology requires 15% more energy than the current technology, but is going to need a lot fewer operators.

Mr. Jérôme Pécresse: In fact, that is what we are assuming, but we do not know yet. We are not at a stage where we can know that.

Mr. Mario Simard: However, we do know that the inert anodes will have to be replaced much less frequently, compared to the current process.

Mr. Jérôme Pécresse: Exactly.

Mr. Mario Simard: So we know that, inevitably, fewer employees will be needed for this new process.

Mr. Jérôme Pécresse: When you say “inevitably”, you are being categorical. We are not that categorical. Let's say we can assume it.

Mr. Mario Simard: Right. So we can assume it.

To restore the balance of power, has Rio Tinto already arranged to have a discussion on this subject with representatives of the region, or is it open to the idea of having one, given all the energy invested in it?

Mr. Jérôme Pécresse: We do not yet have enough certainties to have a discussion on these subjects.

Deploying ELYSIS is not solely a matter of installing new electrolysis pots. We also have to build a supply chain for producing different pots and anodes and cathodes with different materials, using different processes.

So if there is a discussion to be had today with representatives of the region, I think it really has to be about what support they can give us for the project, and as things progress, how they can help us build a supply chain for ELYSIS that will enable us to supply our plants. I think that is the right discussion there has to be had in the coming years.

Mr. Mario Simard: Thank you.

The Chair: Thank you.

The conversation was so interesting that I lost track of time. You went past your speaking time by two or three minutes.

Mr. Masse, you have the floor.

[*English*]

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

Thank you for being here.

The first part of the motion that brought you here says:

> Whereas, in May 2018 and June 2021, the Minister of Innovation, Science and Industry provided $80 million in funding to Rio Tinto and Alcoa for the development and deployment of ELYSIS technology in the industry’s existing aluminum smelters for the production of carbon-neutral aluminum;

Is that correct and accurate?

Mr. Jérôme Pécresse: Yes.

Mr. Brian Masse: Okay. Of that $80 million, how much is actually for deployment, given that deployment really isn't taking place till the mid-2030s? You have $80 million for development and deployment, and the latest date was June 2021, but you're saying now that it's not going to be till the mid-2030s.

Mr. Jérôme Pécresse: It's being deployed. It's being developed. Your question depends on what you call.... I don't want you to think I'm playing on words, but deployment is moving from the lab to the 150-ampere pot, then repeating what we have done in the 150 amperes, then moving from 150 amperes to 450 amperes. It's a step-by-step approach over many years. The government funding you referred to was for the first phase, but there will be other phases.

Mr. Brian Masse: Okay. Deployment is not necessarily deployment into the economy, but deployment through the system of Rio Tinto's labs. Is that it?

Mr. Jérôme Pécresse: It's a scale-up in our Saguenay operation on a larger and larger pilot scale—the test units.

Mr. Brian Masse: Okay. That's fine. That explains it a bit, because for “deployment”, I think people get the impression that it means deployment externally.

What was the $80 million used for? Give us a better picture as to what took place with the $80 million.

Mr. Jérôme Pécresse: It was for hiring 100 scientists, who are also part of ELYSIS and who are all in Quebec; purchasing the equipment that was needed to do the test in the 150 amperes, which allowed us to produce this; preparing and purchasing the equipment to do the test on the 450-ampere pot, which is three times bigger, which is kind of representative of the industrial scale. It's purchasing the pot, purchasing all the logistics and the many kinds of equipment that allow us to do that, and purchasing laboratory equipment to do tests. It's all of this.

● (1730)

Mr. Brian Masse: With that, are you still employing those scientists at the same level of employment? Has that stayed consistent?

Mr. Jérôme Pécresse: We are hiring every quarter to increase it.

Mr. Brian Masse: The employment has actually gone up. Is that what you're saying?

Mr. Jérôme Pécresse: Yes.

Mr. Brian Masse: The motion also says that the company "anticipated cost overruns on the initial budget of $240 million". Is that accurate?

Mr. Jérôme Pécresse: I said in my introduction that it's not accurate.

Mr. Brian Masse: Okay. What would be accurate?

Mr. Jérôme Pécresse: I don't think we have cost overruns.

This is going to be a process where sometimes we'll test something and it will not work, and then we'll understand why and we'll test it again. You could call it a cost overrun, but it's just innovation life. Do you see what I mean?

Mr. Brian Masse: I see somewhat what you're saying. It's just a little confusing, but I think I understand. It's a loss leader for you until you get the final product, then. Is that essentially it?

Mr. Jérôme Pécresse: Yes. You test and it's not working, and then you understand why and you test again.

Mr. Brian Masse: Okay.

Has Rio Tinto received any municipal support? I know that we have federal support and we have Quebec support throughout. I'm just curious. I'm a former city councillor, so I'm wondering whether Rio Tinto has also reached out for support from the municipalities.

Mr. Jérôme Pécresse: For ELYSIS, I'm not aware.

Mr. Brian Masse: Okay. That would be of interest. I just don't know.

I know, for example, that for the Stellantis project in Windsor, the City of Windsor had to really come to the—

Mr. Jérôme Pécresse: I'm sure we have local support on the things we do in Saguenay. I'm always impressed by how well we work with the community. I'm not aware of anything on ELYSIS specifically.

Mr. Brian Masse: Okay. If you do find out something, I would appreciate knowing. I think that would be helpful. It's part of the accountability. We tend to forget that cities or municipalities at times are giving land or other types of things, like materials and so forth.

With the process now and with your competition that's out there, give us a clearer picture in terms of where you can corner the market in the future. You mentioned automotive. You mentioned aerospace. What other applications might be useful for the new process?

Mr. Jérôme Pécresse: ELYSIS is a proprietary technology developed by the joint venture, with the partnership between us and another very large aluminum producer in the world. It's not an IP that we intend, in the short term, to license to anybody.

We are aware of some competing projects to do the same that may have happened in Russia or China. We are not aware that anybody has been able to do this, which is to produce the highest purity possible of aluminum, produced, again, without carbon emissions from the electrolysis. We are not aware of anybody being able to get to that stage.

The sectors where this is most in demand are sectors like automobiles, the cable industry—the people who produce electrical cables, in particular for the grid—and aerospace, among others.

Mr. Brian Masse: Thank you.

Those are all of my questions, Mr. Chair.

[*Translation*]

The Chair: Thank you, Mr. Masse.

Mr. Paul-Hus, the floor is yours for five minutes.

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

Thank you, Mr. Pécresse. Thank you for being with us.

First, I have to tell you that for our part, we find the questions the Bloc Québécois is asking and the position it is taking to be somewhat bizarre. With me is my colleague from Chicoutimi—Le Fjord, Richard Martel, who is a proud Saguenayan and is also very proud to have Rio Tinto in his region. The purpose of the questions asked today should be to understand the progress being made on the ELYSIS project, which is extraordinary. To someday succeed in producing carbon neutral aluminum would be a world first. We are very proud of this project. We know that it may be complicated in terms of research and development, as you explained earlier.

With that said, I am going to come back to the main subject of the motion. I would like to understand your business model and the federal government's contribution a little better.

For example, you said that certain figures in the Bloc Québécois motion were not accurate. So can you explain your business model and the federal government's contribution more precisely?

Mr. Jérôme Pécresse: Based on the business model, we have received subsidies of approximately the same value from the federal government and the Quebec government. As I said, those subsidies initially represented approximately 70% of the investments. Since then, the joint venture partners have financed the subsequent stages of development themselves. Now, if we consider everything that has been invested in ELYSIS since the outset, we can say that 70% of the funds comes from the joint venture partners and 30% comes from the subsidies granted by the Quebec government and the federal government.

● (1735)

Mr. Pierre Paul-Hus: The objective was to begin production in 2024, but we understand that in terms of research and development, it takes longer. As you said, you are able to produce small quantities using the ELYSIS technology, but producing it at industrial scale is another matter altogether.

Your ultimate objective is to achieve this, but it is difficult to assess. Is that it?

Mr. Jérôme Pécresse: Yes, and we are focusing on the next steps. As you said, we are able to produce small quantities. Without going into very sensitive details, I would say that what we are now going to try to do is to produce quantities that will still not be industrial scale, but will be more substantial and be in a way that can be replicated. That is what is in front of us.

What I would really like the committee to understand is that industrializing technologies like this cannot be rushed. In my own life, I have worked on offshore wind projects where we went from three megawatt turbines to 15 megawatt turbines in four years. I am saying that the best way to kill technology like this is to go too fast and speed through steps. At some point, you realize that you are industrializing the technology without understanding everything and you find yourself with $500 million invested that has served no purpose and you have to tear it up. That is what we are trying to avoid.

So we are not going to go from small quantities to 100,000 tonnes overnight. We are going to try to produce more sizable quantities in a way that can be repeated and completely mastered. That is the objective for 2024. It means creating projects that will enable us to do that. When we have succeeded, in 2025, we will sit down and look at the next step. That is the approach we are taking.

Mr. Pierre Paul-Hus: I imagine that the company has assessed the impacts that the ELYSIS technology will have for Canada and Quebec after it is commercialized. Have you assessed what those impacts will be, whether in terms of jobs, investments, or other benefits for the country?

Mr. Jérôme Pécresse: We have 4,300 or 4,400 employees in Saguenay—Lac-Saint-Jean today who are working on the best technology, AP60, and on the others. We are trying to recreate a competitive advantage for the benefit of those people so that in 50 years our successors will say that this is what ultimately preserved those jobs. That brings me back to what Mr. Simard said. Will it be exactly the same jobs and the same number of jobs? I don't know. However, I am convinced that if we are not the first to get on the aluminum decarbonizing train, those jobs will be in danger one day. The Americans will be telling us that our aluminum is very nice, but they want a product with a very small carbon footprint, and otherwise they will buy it elsewhere.

So we are already trying to preserve the leading role played by the Quebec basin in the production of aluminum for North America. That is what ELYSIS is. I cannot tell you today whether they will be the same jobs and whether there will be more jobs or fewer jobs. In any event, this leading role creates jobs in our company and in all our suppliers and subcontractors, and puts Quebec in a position of influence in North American industry. That is what we want to do.

Mr. Pierre Paul-Hus: In any event, as is the case for any technological change, the jobs will adapt, so that people are working more electronically and less mechanically.

Mr. Jérôme Pécresse: They will not necessarily be the same jobs. Yes, Mr. Simard was right to mention that the anodes will not be changed as often. So there will be things that will need to be repositioned in terms of skills, too. On the other hand, we will try to use suppliers in Saguenay—Lac-Saint-Jean to supply us with the new equipment and new materials we are going to need.

Mr. Pierre Paul-Hus: I have to say that I visited your facilities in January and attended the presentation where Rio Tinto emissions were compared with emissions in China. Canada is already the best in the world on that point. With the new technology that is going to be developed, we will be the model for others to follow.

Mr. Jérôme Pécresse: In fact, Mr. Martel asked a question about this. The Americans are going to try to catch up to us, so we have to stay one step ahead.

Mr. Pierre Paul-Hus: We have to be competitive and continue moving forward, yes.

Thank you.

Mr. Jérôme Pécresse: I would like to take a few seconds to point something out regarding our integration into the Lac-Saint-Jean community. You say we are a source of pride in that community, but the community is also a source of pride for us. I have been in this position for six months, and when I go to Saguenay, I am struck by the level of symbiosis. I am not saying that everything is perfect, but the level of symbiosis between us and the Saguenay—Lac-Saint-Jean community in the broad sense is something I have rarely seen in my experience in industry.

The Chair: Thank you.

Mr. Gaheer, you have the floor.

[*English*]

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

Thank you, Mr. Pécresse, for appearing before the committee.

Mr. Pécresse, my initial question is one that's been asked, but I want to give you a chance to be very clear about this. There was $60 million invested in 2018, and there was $20 million invested in 2021. What has the money gone towards exactly? You mentioned 100 scientists who were hired and are still employed. What else has the money gone towards?

● (1740)

Mr. Jérôme Pécresse: It has gone towards building equipment like the first electrolysis pot, where you put the aluminum ore; building the anodes and the cathodes that allow you to produce aluminum out of this aluminum ore; building around that, the logistics equipment that allows you to move anodes into the pot and take them out; starting to build the second facility, where we'll do the same thing on a scale that is three times bigger, which is a different location; hiring 100 R and D people and funding R and D work in the central labs of Rio Tinto and its partner; and building laboratory equipment that allows us to do a number of tests that are necessary to validate what we are doing.

It's for pilot equipment for scale one and scale two, laboratory equipment, R and D people in Quebec, and R and D work in the central labs.

Mr. Iqwinder Gaheer: It's new technology, so it's obviously a very unprecedented path that you're following.

Has the technology been demonstrated at scale?

Mr. Jérôme Pécresse: I don't think we have communicated the number of tonnes, but we have produced this. We and our partners have sold some tonnes of this to real industrial users for industrial use so that they could qualify it in their process. We have not produced anything close to the amount of aluminum that we produce today with traditional technology. We have produced meaningful amounts that are not immaterial.

Mr. Iqwinder Gaheer: Can the technology itself be scaled up?

Mr. Jérôme Pécresse: The technology works. It works out of the lab. It works on something that is one-third the size of real equipment. We now have to make it work on something that is the size of the real equipment in a repeatable manner. We did manage to do that, but sometimes we failed. Then we tried again. The question is this: Can we scale it up and repeat it? When we are past that stage, which is what we are working on, then, at some stage, you build a plant. Then it becomes massive. Then your supply chain needs to follow because it needs somebody who can produce not 10 or 20 anodes but hundreds of anodes. You need to ramp up the global supply chain behind you.

Mr. Iqwinder Gaheer: This might be putting the cart before the horse, but can you retrofit old plants with this technology, or do you have to first demonstrate that it can work at scale and then you'll be able to see if you can retrofit old plants?

Mr. Jérôme Pécresse: We don't know yet. It's far from certain—very far.

Mr. Iqwinder Gaheer: What I've read about this technology is that it will be a paradigm shift in the entire industry. If it's that big of a change, I would assume that there are other folks who are trying to replicate this technology or have some version of this technology worldwide. Do you feel that's happening?

Mr. Jérôme Pécresse: We know there are some attempts to do it in Russia and China, particularly in Russia. We are not aware of similar programs anywhere else. It is a joint venture between us and other major North American producers. We went together because we have complementary investigation fields on the topic.

Mr. Iqwinder Gaheer: Mr. Chair, do I have more time?

The Chair: You still have one minute, Mr. Gaheer.

Mr. Iqwinder Gaheer: That's perfect. Thank you.

With regard to the technology itself—I understand that there might be proprietary know-how here—could you speak in layman's terms about how the technology works? What stage of the process of making aluminum is it primarily targeting?

Mr. Jérôme Pécresse: When you do aluminum, the first step is to mine bauxite. Typically, bauxite mines are close to the equator. Then, you put this bauxite in an aluminum refinery, where you do some processing, cleaning, washing and heating. From that bauxite, you produce alumina, which is what we are doing in Saguenay—Lac-Saint-Jean and Vaudreuil. Then, when you have alumina, you put it in a pot for an electrolysis process whereby, using a carbon anode, you produce aluminum.

You have CO2 emissions all over the chain. However, by far the biggest part of emissions is from the electrolysis process, with two sources. The first is the massive use of electricity needed for that process. For this reason, the source of electricity matters, and we have clean electricity in Saguenay—Lac-Saint-Jean. The second is the carbon itself dissolving, which releases CO2 into the atmosphere. This is what you are trying to tackle with ELYSIS.

Mr. Iqwinder Gaheer: Great. Thank you.

[*Translation*]

The Chair: Thank you, Mr. Gaheer.

Before giving the floor to Mr. Brunelle-Duceppe, I would like to say something. As you can tell, colleagues, we are now hearing the division bells for a vote in the House. The bells will sound for 15 minutes. If the committee agrees, I think we can continue the meeting for about 15 minutes and we will have the time we need for voting.

Some hon. members: Agreed.

● (1745)

The Chair: Thank you.

Mr. Brunelle-Duceppe, the floor is yours for two and a half minutes.

Mr. Alexis Brunelle-Duceppe (Lac-Saint-Jean, BQ): Thank you, Mr. Chair.

The Conservatives vote for a motion and then complain that the motion passed. Welcome to our world, Mr. Pécresse.

First, I want to thank you for being here, Mr. Pécresse.

In April 2007, we were promised Alma II. There were even collective agreements negotiated based on the investments in Alma II, but it never came to pass.

Recently, ground was even broken for the billet casting centre in Alma, but the project then fell through and it has gone back to the drawing board.

Mr. Jérôme Pécresse: No, no—

Mr. Alexis Brunelle-Duceppe: Hold on, I am going to give you an opportunity to respond, but I want to ask my question first.

Can you reassure the people of Lac-Saint-Jean today and tell them that the billet casting centre will definitely be in Alma, and it will be done quickly?

Mr. Jérôme Pécresse: I want to give the committee the right information.

The billet centre is one of the first projects I looked at when I took up this position. What that project involves is carrying out projects that are downstream in the value chain, which is important. When I took up this position, work had already started on that project, but given the state of the art, it was going to cost about two times more than had been projected. In a case like that, I think a responsible manager's usual duty to their shareholders is to put the project on pause and try to see whether it can be resized while preserving the number of jobs.

Mr. Alexis Brunelle-Duceppe: That was in the fall of 2023, is that right?

Mr. Jérôme Pécresse: Yes, it was in October, and I took up the position in September.

Mr. Alexis Brunelle-Duceppe: So in the fall of 2023, you shelved the project so it could be redesigned.

Mr. Jérôme Pécresse: No, no. I arrived on October 23. I put the project on pause in November. We are currently determining whether it has to be resized, and, if so, how to do that intelligently. On the one hand, we want to preserve the objective of creating jobs. I want to point out to the committee that we are talking about several dozen jobs here. On the other hand, we are looking at how we can do that while creating value for the shareholders. That is what we are currently doing.

The project has not been abandoned, it has been put on pause. It is currently being reworked. I am optimistic that we will find a way to do that on terms that make sense for everyone. On the one hand, we have to think about the Rio Tinto shareholders, since, if we continue to invest in Lac-Saint-Jean, we also have a duty to stick to our budgets and carry out projects that make sense. On the other hand, we also have to think about our employees in Lac-Saint-Jean, because I know how important this project is for them.

Mr. Alexis Brunelle-Duceppe: In November 2023, you said the project had been put on pause because it was costing too much to pour concrete in the winter, and the work would start back up in the spring. Today, you are telling us that you decided, in the fall, to redesign the project.

Is it possible to be transparent, for the people in the region?

Mr. Jérôme Pécresse: It's because we were pouring way more concrete than what was anticipated in the initial plan. You may say that's surprising, but it surprised me too.

The project isn't on hold. It's being revamped. What everyone's intending to do is find a way to do it in normally healthy financial conditions.

Mr. Alexis Brunelle-Duceppe: We weren't told the same reason in the fall. Now you're telling us you've put it on hold in order to redesign it, but we were told in the fall that work would start up again as planned. You didn't want to pour concrete in winter because it was too expensive.

Mr. Jérôme Pécresse: You may have been told that, but not by me.

Mr. Alexis Brunelle-Duceppe: It was your company. I can show you the press release.

Mr. Jérôme Pécresse: Look, I—

Mr. Alexis Brunelle-Duceppe: There's an obvious lack of transparency here.

Mr. Jérôme Pécresse: No, there's no lack of transparency. Objectively speaking, the union partners from Saguenay-Lac-Saint-Jean are remarkably transparent.

Once again, we don't want to do projects that undermine our credibility. We want to do projects in a way that's smart for everyone.

The Chair: Thank you very much.

Mr. Masse, go ahead.

[*English*]

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

In Windsor, we had a plant called Nemak. It was a Mexican company. It received millions of dollars from Navdeep Bains and the Province of Ontario as well. Then they actually needed to cut the wages of the workforce in order to keep the investment to modernize auto manufacturing, with some new models. The Corvette was in there and a few other things for some of the components. They did this through research and development. Then the company, Nemak, decided to take that research and development and production and move it to Mexico. They threw the workers out. The workers actually had to go to court and, very recently, they got a settlement.

The reason I'm telling you about this is that I want to ask if there are any clauses in the grants and subsidies you've received from the federal and provincial governments that prohibit you from moving that technology and innovation to another country for manufacturing.

This took place at a time of a lot of angst in Windsor, especially when we subsidized the relocation of those jobs. I'm just wondering whether there are similar clauses, because I've been promised by the minister's office, most recently, that that type of agreement was a model to change things, but your agreement may not include that because it might have come before the time of the change. That's what I've been told.

● (1750)

Mr. Jérôme Pécresse: I need time to come back to you on that. Clearly our intention is to do it in Saguenay. We at Rio Tinto also have smelters elsewhere in the world, so I don't think we are prevented from developing and using the technology elsewhere in the world in our smelters. Clearly—

Mr. Brian Masse: You may have the right intentions, too. You can get back to me on that, because I am just interested. We should be able to pore through the agreements the government has given. I just want to make sure that practice doesn't happen again.

Mr. Jérôme Pécresse: [*Inaudible—Editor*] our ability to source from Quebec, to use local suppliers.

Mr. Brian Masse: Right.

Mr. Jérôme Pécresse: I don't think the agreement prevents us from using our IP for Rio Tinto in places other than Saguenay—Lac-Saint-Jean. This technology, if successful, will have global development. The reality is, Saguenay represents 60% of our aluminum production today. It's the most competitive place, so that's where we want to start it.

Mr. Brian Masse: Okay.

What I want to know for certain, though, is whether those clauses are in the actual allocations from the federal government and the provincial government. I think that's a reasonable thing.

Thank you.

Mr. Jérôme Pécresse: Also, we're in Saguenay—Lac-Saint-Jean because we have access to competitive hydro power due to our whole operation, which would be very difficult to delocalize.

Mr. Brian Masse: Yes, I know. I'm not comparing apples to apples here, for sure, but I think you understand the reason. It builds better public confidence when—

Mr. Jérôme Pécresse: I get it. We'll get back to you on that.

Mr. Brian Masse: Thank you very much. I appreciate that.

[*Translation*]

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

Mr. Martel, go ahead.

Mr. Richard Martel: Thank you, Mr. Chair.

I'm going to ask a few questions and then yield the rest of my time to Mr. Généreux.

Mr. Pécresse, given the way primary aluminum production is mainly done in North America—what Rio Tinto produces is in great demand—would aluminum produced using ELYSIS technology be available to Canadian SMEs, small and medium-sized enterprises?

Mr. Jérôme Pécresse: I don't see why it wouldn't be.

Mr. Richard Martel: Does the consortium have a plan to ensure that metal produced using ELYSIS is available to Canadian SMEs?

Mr. Jérôme Pécresse: We don't have any specific plan to do that, but we sell our aluminum in Canada, and we'll sell aluminum produced using ELYSIS in Canada as well.

Once again, your question kind of puts me on the spot because it raises two more questions: how much will it cost us to produce aluminum using ELYSIS technology, and how much will we sell it for? These are still very uncertain factors for us.

Mr. Richard Martel: I'm going to ask you a final question and then yield the floor to my colleague.

Will the anodes be manufactured here at home?

Mr. Jérôme Pécresse: We haven't made any announcements about that either, but it would be logical to produce anodes in Quebec, as carbon anodes currently are.

It would be easier from the standpoint of logistics and security of supply, and it would also help allay certain concerns that have previously been raised. Once again, no decision has been made, but that would be entirely logical.

Mr. Richard Martel: Thank you, Mr. Pécresse.

I now yield my time to my colleague.

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

Mr. Pécresse, as Mr. Simard was questioning you, it seemed to me he wanted to make you say that Saguenay-Lac-Saint-Jean was having its cake and eating it too, as well as everything else on the table. That's probably fair enough since we Quebec MPs want to help our regions grow and benefit as much as possible from any spillover effects.

My colleague mentioned electricity generation. If I'm not mistaken, you own assets that you operate to produce green aluminum using your own electricity.

Will aluminum production using ELYSIS technology require more electricity? My colleague seemed to be making a connection between the required quantity of electricity and the number of new jobs.

Is there really a connection between those two factors?

Mr. Jérôme Pécresse: You're right about the first factor, Mr. Généreux, because 90% of the electricity we now use to produce aluminum in Saguenay comes from our own hydroelectric power station.

Just imagine the situation 10 years from now, with all the uncertainties that scenario entails. When we consider our ambitions for aluminum production growth and its limits, including aluminum produced using ELYSIS technology, and when we consider how we want to decarbonize other elements in the value chain, including the alumina refinery in Vaudreuil, we have to admit that we'll need to electrify some things that aren't electrified today. We will very likely need more electricity in Saguenay—Lac-Saint-Jean than what our power stations can generate today.

Consequently, we will start by modernizing those stations. Speaking of which, our future investment program will include major funding to upgrade power stations in Saguenay—Lac-Saint-Jean. That's another indication of our commitment to the region.

We'll also have to consider how we can meet those needs, including perhaps by turning to new sources of renewable energy. This is a topic that we've begun to address in Quebec.

● (1755)

The Chair: Thank you very much, Mr. Généreux. I'm sorry, but—

Mr. Bernard Généreux: Pardon me, Mr. Chair, but you were generous with speaking time earlier.

Mr. Pécresse, have you assessed the impact that your presence and investments in the community will have on Saguenay—Lac-Saint-Jean?

Mr. Jérôme Pécresse: Rio Tinto has invested $5.5 billion in Canada since 2018. We invest approximately $650 million in Quebec every year.

In Canada, in 2023, Rio Tinto spent $2.2 billion on aluminum production in Quebec, and those investments are slowly growing. So those amounts are really significant.

Mr. Bernard Généreux: I congratulate and thank you, Mr. Pécresse.

I would also like to welcome you to Quebec.

The Chair: Thank you.

Mr. Généreux, you don't want me to start counting all the times when I was very generous with speaking time. I think you'd owe me.

Mr. Van Bynen, go ahead.

[*English*]

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

You talked about gaining market share as a result of having the green aluminum. What's your market share currently? Who are your biggest competitors, and to what extent?

Mr. Jérôme Pécresse: I'm not sure we'd disclose market share. Today, if you look at the North American market, which is the most relevant market for the production of our Canadian aluminum, we are probably, under the control of my team, the largest producer, competing with imports primarily from the Middle East and competing with Alcoa, which is our partner on ELYSIS, and with a handful of other American producers.

Just for the benefit of the committee, I would note that if you look at the western world, in the last 20 years, 24 aluminum smelters have been closed. We are investing in Saguenay—Lac-Saint-Jean.

Mr. Tony Van Bynen: We've heard about scale one and scale two. How many more phases will be involved before you feel you could be scaled up? How much would need to be invested as you go along?

Mr. Jérôme Pécresse: We probably have at least two more successive phases of piloting the technologies before we can think about industrial deployment.

Mr. Tony Van Bynen: Based on your experience now, what level of investment would be needed? Just give very broad numbers.

Mr. Jérôme Pécresse: In dollars, the order of magnitude will be in the many hundreds of millions. It's not many tens and it's not many billions.

Mr. Tony Van Bynen: Thank you.

When we had the announcement in 2018, there was the indication that it would create 100 jobs directly and as many as 1,000 jobs by 2030, potentially increasing that to around 10,500 existing aluminum jobs in Canada. Are those estimates still accurate, in your mind?

Mr. Jérôme Pécresse: I think it was up to 1,000 jobs. I'm not sure what "up to" means, but I would qualify them as ballpark figures. Given that there are still so many unknowns about the deployment of this technology, I am reasonably uncomfortable about articulating exact numbers.

Mr. Tony Van Bynen: We've talked about this AP60, which is part of your steps towards ELYSIS. Is it your intention to train the existing workforce with the new technology?

Mr. Jérôme Pécresse: I will tell you.

For your full information, AP60 will progressively take over production from the production line called "Arvida", which has been in operation for close to 100 years. It will be progressively shut down. We are retraining the people from the Arvida line, most of them, on AP60.

It's our duty to the community to make sure our employees can transfer from the oldest technology line to the newest.

Mr. Tony Van Bynen: Okay.

Thank you, Mr. Chair.

I think we should be voting shortly.

[*Translation*]

The Chair: Thank you, Mr. Van Bynen.

Mr. Pécresse, in addition to the requests from Mr. Simard and Mr. Masse, committee members would like to ask you a few questions in writing. Perhaps you could answer them by early May because we'll be hearing from the minister on this topic on May 8. We would appreciate that in view of the fact that this is a very important subject for us and certainly for the people of Saguenay—Lac-Saint-Jean, and Quebeckers generally.

Thank you for taking part in this exercise.

● (1800)

Mr. Jérôme Pécresse: The topic is extremely important for us as well. Our interests are basically aligned with yours in ensuring that the project is a success.

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

We will suspend.

● (1800)

(Pause)

● (1823)

The Chair: Colleagues, we will resume. This part of the meeting should run until 8:00 p.m.

Pursuant to the order of reference of Monday, April 24, 2023, the committee is resuming clause-by-clause 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.

Once again, I would like to welcome Mark Schaan, senior assistant deputy minister, Strategy and Innovation Policy Sector; Samir Chhabra, director general, Marketplace Framework Policy Branch; and Runa Angus, senior director, Strategy and Innovation Policy Sector.

Thank you for being with us on this Wednesday evening.

[*English*]

If I'm not mistaken, Mr. Turnbull had a subamendment to NDP-2.

Mr. Turnbull, I'll yield the floor to you.

(On clause 2)

Mr. Ryan Turnbull: Thank you.

At the tail end of our last meeting, we took a very short suspension to huddle and talk over a compromise or a way forward in relation to the definition of “anonymize”. There was a proposal that we made. I believe it had unanimous consent, subject to Mr. Masse having a look at the wording. The wording has been drafted. I shared it with committee members as soon as I got it. I hope we can get this quickly passed unanimously and move forward.

This adds, “that there is no reasonably foreseeable risk in the circumstances that an individual”, and then it continues on with the sentence in the text of the bill.

I hope we can dispense with this fairly quickly, get to a vote and keep moving through the bill, subject to my colleagues' support.

Thank you.

● (1825)

[*Translation*]

The Chair: I would like to clarify a point of order to avoid any confusion.

[*English*]

The subamendment proposed by Mr. Turnbull is the one referenced 13024106, which you all received this afternoon through the clerk.

Mr. Masse.

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

Thanks to Mr. Turnbull for doing this. We're trying to work together, obviously. I have had confirmation that the Privacy Commissioner can work with this. That's very important to me, so I accept this. It's a friendly amendment, I believe.

That's where I stand.

The Chair: Thank you, Mr. Masse.

I appreciate your comments. We'll still have to vote on it at some point, because there is no such thing as a friendly amendment, but we understand what you're saying.

Thank you.

Mr. Perkins.

Mr. Rick Perkins (South Shore—St. Margarets, CPC): I think “friendly amendment” is in *Robert's Rules of Order* or something—in another world. However, we're all friendly here.

Just so I understand, if we pass this, it goes into NDP-2, and G-2 is no longer necessary. Is that correct?

The Chair: That's correct.

Mr. Rick Perkins: Mr. Schaan, for due diligence—since we haven't talked about G-2—could you explain to me what you think this subamendment or G-2 does, and what we're doing by modifying the definition of “anonymized” by adding this?

[*Translation*]

Mr. Mark Schaan (Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector, Department of Industry): I want to thank the member for that question.

As we discussed at the meeting on Monday, amendment G-2 comprises two elements.

[*English*]

We had a long discussion about the first of those elements, which was the concept of “generally accepted best practices”. I understood from committee members that they did not see the value in that approach.

The second aspect was the notion of “reasonably foreseeable”, which allows for a standard approach found in many other parts of the law—as we discussed at the last meeting—and for the implementation to be a test, essentially, of whether or not the user of the personal information has a reasonable understanding of its potential for reidentification. I think that's the second construct that would now get inserted back into NDP-2.

Those were the two elements of G-2.

[*Translation*]

The Chair: As there are no further comments, I am going to put the question on the subamendment to amendment NDP-2, the one with the reference number I just cited.

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

The Chair: Shall amendment NDP-2 carry?

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

The Chair: That brings us to amendment CPC-2.

[*English*]

CPC-2 is almost identical to NDP-3. If it is adopted, NDP-3 won't be moveable because of a line conflict.

On CPC-2, I'll recognize Mr. Généreux to move it, and then I'll see Mr. Turnbull.

● (1830)

[*Translation*]

Mr. Bernard Généreux: Thank you, Mr. Chair.

Thanks as well to the witnesses for being with us.

Before we get into specifics, I have to admit my ignorance of the process involved in drafting and finalizing bills. For that reason, I'd like to ask you the two following questions.

Are they drafted first in one language or the other, or in both languages at the same time? For example, are they drafted in English and then translated into French?

And who does that work?

Mr. Mark Schaan: I want to thank the member for his question.

The drafting of bills is a collaborative effort involving the team members of the department concerned and lawyers from the Department of Justice. The process depends somewhat on the language of the experts in the room, but the bills are nevertheless drafted in both languages simultaneously.

We call in jurilinguists, who are trained to draft bills in both official languages. Then there's also a revision process in which an anglophone jurilinguist and a francophone jurilinguist ensure that the content of the two texts is identical and is up to legislative drafting standards.

Mr. Bernard Généreux: I want to be sure I understand your answer.

So the bill is drafted by employees of the department in question; in this instance it's Innovation, Science and Economic Development Canada, and employees of the Department of Justice. All these people work together to draft the bill in both official languages. However, as I understand it, the language in which it is first drafted depends on the language mainly used in the room. If there are more anglophones, they'll be drafted in English and then immediately translated into French.

Is that right?

Mr. Mark Schaan: Yes, that's exactly it. We establish a text in one language, and then there's the revision process to ensure that the content of the two texts is identical.

Mr. Bernard Généreux: Now I'm going to talk about the amendment we're proposing.

I don't know if the linguists have considered the definition of the verb "de-identify" in English and the verb "*dépersonnaliser*" in French. If we were the only ones moving an amendment on this point, I think it might be because we're a bit too picky or demanding, but another party is calling for the same thing. Consequently, we have to try to come up with an equivalent definition of this idea in both languages.

Here's how the definitions in question are actually drafted.

[*English*]

> de-identify means to modify personal information so that an individual cannot be directly identified from it, though a risk of the individual being identified remains.

[*Translation*]

In the French version, the meaning of the verb "*dépersonnaliser*" is as follows:

> *Modifier des renseignements personnels afin de réduire le risque, sans pour autant l'éliminer, qu'un individu puisse être identifié directement.*

According to your interpretation, when reference is made, in the English version, to "someone who cannot be identified", that's not the same thing as saying "*réduire le risque*".

I don't know how you understand that or how the linguists understand it.

Which leads me to another question. You regularly testify before the committee, and you're involved in the clause-by-clause consideration of this bill. The people from the Department of Justice are often mentioned since you've collaborated with them. However, no linguist has been invited to testify before the committee and share his or her expertise regarding the drafting of these definitions.

The bill is many pages long. Can there be any risk that these words may be interpreted differently in English and French elsewhere in the bill? I think that's a reasonable question.

I'm asking a really innocent question: Is it normal for the people who work on the bill to come solely from the Department of Industry and for there to be no one from the Department of Justice?

● (1835)

Mr. Mark Schaan: The officials have several discussions with experts when drafting a bill. It's somewhat like what happens with amendments proposed during committee proceedings. Bills are drafted by experts from the House of Commons Procedural Services. Committee members thus receive a text drafted by a legislative expert from the House of Commons, and this helps them promote their ideas.

Something quite similar takes place in the department. Its jurilinguistics service is responsible for conducting an important phase of a bill's revision, and this topic is discussed at length. Considerable effort is made to ensure that the two texts say exactly the same thing in both official languages.

Errors occur from time to time. To correct them…

[*English*]

I'll say this in English because I don't know the name of the statute in French. It's the statute amendment act, which allows for some of these corrections to be made. From time to time, there's been an error in the specific meaning.

[*Translation*]

Mr. Bernard Généreux: In our opinion, and that of other people, including the Privacy Commissioner, there's a difference between the English and French versions of the definition of the verb "*dépersonnaliser*".

Do you agree that a correction should obviously be made in this case?

Do you now think that a correction should be made to the text of the bill to ensure that the two definitions represent the same idea?

Mr. Mark Schaan: The jurilinguists haven't expressed any specific opinion about the definition. I think the Conservative Party's remarks are logical. The definition of the verb "*dépersonnaliser*" is accurate, and it reflects the English.

Mr. Bernard Généreux: All right.

The Commissioner's submission on Bill C-27 reads as follows on pages 13 and 14:

> There appears to be a discrepancy between the French and English versions of the definition of "de-identify" under section 2 of the CPPA. The English version clearly states that de-identified information means that one cannot directly identify an individual from such information, but there is nevertheless a risk that re-identification could occur. In the French version, the wording appears to focus on lessening the risk of reidentification rather than clearly stating that the individual should not be directly identifiable despite the fact that such a risk cannot be completely eliminated. To avoid potential interpretive discrepancies, the French version of this definition should be modified to reflect the more rigorous meaning in the English version.

Do you share the Commissioner's view?

Mr. Mark Schaan: Are you asking me if I agree with him?

Mr. Bernard Généreux: Yes, do you share the Commissioner's opinion that the two definitions aren't the same?

Mr. Mark Schaan: It's a good point of view, and I think it's a good amendment for that reason.

● (1840)

Mr. Bernard Généreux: All right.

The purpose of our motion is to amend the French version of the definition of "*dépersonnaliser*" to ensure greater concordance between the two versions of the bill.

We propose, following the words "*Modifier des renseignements personnels afin*", to delete the words "*de réduire le risque, sans pour autant l'éliminer, qu'un individu ne puisse être identifié directement*" and to replace them with the following, "*qu'un individu ne puisse être identifié directement, sans pour autant en éliminer le risque.*"

We believe that would be closer to the meaning of the English version.

What do you think?

Mr. Mark Schaan: We agree with the proposed definition. It's an improvement on the definition currently in the bill.

Mr. Bernard Généreux: Mr. Chair, I unfortunately haven't read amendment NDP-3, but, as I understand it, it essentially means the same as amendment CPC-2.

We obviously recommend that the committee adopt our amendment.

The Chair: Thank you, Mr. Généreux.

Mr. Turnbull, go ahead.

[*English*]

Mr. Ryan Turnbull: Thank you, Mr. Chair.

Seeing as how this is a French translation-related issue and my French language skills are not up to speed, I trust my colleagues. If committee members feel that this amendment is needed, I think we're prepared to support this amendment. I don't think it's a big issue for us. We felt that the definition that was included reflected a good translation, but I also recognize that other committee members may feel differently. I think we need to respect your point of view on this.

We're prepared to support it. Thanks.

The Chair: As a French speaker, it's obvious to me that there is a difference between the French and English versions. The question is this: Which one needs to be modified to reflect which? Is it the French that needs to adapt to the English, or is it the English that needs to adapt to the French? There is a difference. The proposed change aligns with the English version better, I would say.

Mr. Perkins.

Mr. Rick Perkins: That's exactly what my starting point was going to be.

Mr. Schaan, I thought we asked this. I don't know which language the final draft of the bill was drafted in. If it was drafted in English, the government's intent presumably was what we're trying to do here in the English version, which is to make sure that there's no risk. Or is it the French version, which says that it's okay to have some risk? What was it originally? The intent is no risk. Is that right?

Mr. Mark Schaan: The English indicates that there is a risk of reidentification, which is what delineates between de-identified information and anonymized information. The English intent is to say "modify personal information so that an individual cannot be directly identified from it, though a risk of the individual being identified remains", which is to distinguish it from anonymized information, where that reidentification is not reasonably foreseeable.

Mr. Rick Perkins: I'm working on my French. I haven't actually read the French version of this bill and done a comparison. We rely on the government to do that.

It worries me that this one version is one that the Privacy Commissioner raised. I don't think he raised any others. Maybe that means there aren't any others. Subsequent to seeing either our amendment or this being raised by the Privacy Commissioner, has the government gone back and done a clause-by-clause comparison to make sure that both the English and the French reflect the same thing, whatever the intent was?

Mr. Mark Schaan: Yes. That's a task for the jurilinguists. We have worked with the jurilinguists to ensure that the two interpretations of the law will be the same in both official languages.

Mr. Rick Perkins: So it's subsequent to that. I'm curious, then, why didn't the government propose a similar amendment? Since it was caught by the Privacy Commissioner, it should have been caught by the government.

Mr. Mark Schaan: I think the view was that the legal effect was understood, but we've come to view this as an important amendment that we've understood to now reflect the identical interpretation in both official languages.

● (1845)

Mr. Rick Perkins: I appreciate that, but it doesn't give me a great deal of confidence in the answer to the previous question, which was that it's been gone over to make sure that this has happened. I would have expected a government amendment to this along those lines as well, if that had been done.

I accept that you are supporting it. I sure hope we're not caught up in any of the other clauses of the 140-page bill and we don't have other ones that we've missed. You're assuring me that we don't.

Mr. Mark Schaan: To the best of my knowledge, yes.

Mr. Rick Perkins: Okay. Thank you.

[*Translation*]

The Chair: Mr. Masse, you now have the floor.

[*English*]

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

The only thing I would like to know.... Our amendment, NDP-3, is identical to the Privacy Commissioner's amendment. I'm an anglophone, so I will defer to my francophone friends to decide. To me, the question is which is the better one of the two. The Conservative Party has never led me astray.

Some hon. members: Oh, oh!

Mr. Brian Masse: As long as we hear from others that their amendment is good, I'm comfortable with that. I want to make sure, again, that it's the right one of the two. I'll support CPC-2 if that's what I hear from my francophone friends.

The Chair: Thank you.

[*Translation*]

Mr. Schaan, would you like to add a comment?

Mr. Mark Schaan: I come from Winnipeg, but I'm not a Franco-Manitoban. I think amendments NDP-3 and CPC-2 mean the same thing.

The Chair: There's only a one-word difference between amendments NDP-3 and CPC-2. They mean the same thing.

Mr. Garon, go ahead.

Mr. Jean-Denis Garon (Mirabel, BQ): I was going to say the same thing. There's only a one-word difference.

Amendment CPC-2 states, "*afin qu'un*", but amendment NDP-3 reads "*de sorte qu'un*". This reveals the full richness of the French language, but they say the same thing.

The Chair: And with those wise words, do I have the unanimous consent of the committee to adopt amendment CPC-2?

[*English*]

Mr. Brad Vis (Mission—Matsqui—Fraser Canyon, CPC): I request a recorded vote.

[*Translation*]

The Chair: A recorded vote is requested.

[*English*]

(Amendment agreed to: yeas 11; nays 0 [*See Minutes of Proceedings*])

The Chair: Thank you.

If the government leaves some imperfections in its bills, it's to test the opposition members. You've successfully passed the test. Congratulations.

Mr. Rick Perkins: It was a trap.

The Chair: It was a test.

NDP-3, then, is not movable, which brings us to CPC-3, moved by Mr. Perkins.

I'll yield the floor to you.

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

This one's not a test, I don't think.

Throughout the bill, the term "lawful authority" appears. Now, we're in the early stages of the bill, and we found that our concern was that nowhere in the definition section of the bill does it actually define what "lawful authority" means. Without even providing that term, I think it provides a bit of ambiguity in there.

For instance, proposed section 44 of Bill C-27 allows an organization to share "an individual's personal information" with a government institution upon request "for the purpose of enforcing federal or provincial law". The language of proposed section 44 is taken from PIPEDA, as I understand it, and it is problematic, given that it outlines few privacy safeguards that have been afforded to individuals in the past with Supreme Court decisions like the 2014 R. v. Spencer case. I'm sure everyone on the committee is familiar with that—I know that some of the witnesses are—but I'll just go over a summary of it.

R. v. Spencer, in 2014, according to Wikipedia, "is a landmark decision of the Supreme Court of Canada on informational privacy. The Court unanimously held that internet users were entitled to a reasonable expectation of privacy in subscriber information held by Internet service providers. And as such, police attempts to access such data could be subject to section 8 of the Charter of Rights and Freedoms. At issue was whether the police could request subscriber information associated with an IP address from an Internet service provider without prior judicial authorisation, who could then voluntarily provide it. The Supreme Court ruled that the request for internet subscriber information infringed on the Charter's guarantee against unreasonable search and seizure."

Law enforcement, with some exceptions, in my view—in our view—generally should be required to produce a court order when asking for somebody's personal information: a bank account, personal messages, health information and that kind of thing.

The ambiguity with respect to the meaning of "lawful authority" that existed in PIPEDA with regard to disclosures to law enforcement remains in the CPPA and will likely result in continued disclosures of personal information without consent by organizations to police and to other law enforcement agencies in the absence of a court order.

Given this issue, the Privacy Commissioner recommended that the definition of "lawful authority" for purposes of sections like proposed section 44 in this bill be amended to clarify that individuals should still enjoy a reasonable expectation of privacy.

In the Privacy Commissioner's submission on Bill C-11 in May 2021, the Privacy Commissioner said:

> Beyond transparency, clarity is also required with respect to the impact of the 2014 R v. Spencer decision with respect to when the state can obtain personal information via warrantless access. When Bill S-4 was before Parliament, the OPC recommended that:
>
> a legal framework, based on the Spencer decision, is needed to provide clarity and guidance to help organizations comply with PIPEDA and ensure that state authorities respect the Supreme Court of Canada's decision. Such a framework would provide Canadians with greater transparency about private sector disclosures of their personal information to state agencies.

The Privacy Commissioner went on to state:

> The ambiguity with respect to the meaning of "lawful authority" that existed in PIPEDA remains in the CPPA, as evidenced by companies' continued disclosures of personal information without consent to police and other law enforcement agencies absent a court order.
>
> As such, we reiterate and update for Bill C-11—

At the time, that's what he was dealing with.

> —a recommendation previously made in our 2015 submission to Parliament on Bill S-4, that a clarifying provision be introduced that defines lawful authority for the purposes of section 44. This provision would make clear that discretionary disclosures to law enforcement following a request should be permissible only where there are exigent circumstances, pursuant to a reasonable law other than section 44 of the CPPA, or in prescribed circumstances where personal information would not attract a reasonable expectation of privacy.

● (1850)

> Recommendation 19: That a definition clarifying the meaning of "lawful authority" for the purposes of section 44 be introduced.

It wasn't. In his submission for this bill, on April 26, 2023, the Privacy Commissioner again proposed recommendation 19: "That a definition clarifying the meaning of 'lawful authority' for the purposes of section 44 be introduced" in this bill.

This amendment follows on the recommendations of the Privacy Commissioner on numerous occasions to "make clear that discretionary disclosures to law enforcement...should be permissible only where there are exigent circumstances, pursuant to a reasonable law other than section 44 of the CPPA, or in prescribed circumstances where personal information would not attract a reasonable expectation of privacy."

That's by way of introduction. I haven't read the actual amendment, which is fairly short, but I know the witnesses have read it.

Do you agree with the Privacy Commissioner that this needs to be added to this bill, that we need to add a definition in the definitions section for "lawful authority", which is a term used frequently throughout this legislation?

● (1855)

[*Translation*]

Mr. Mark Schaan: I want to thank the member for that question.

[*English*]

I think our abiding consideration would be that we note and acknowledge the import of R. v. Spencer as a fundamental precept that needs to be understood as it relates to the ongoing interpretation and implementation of the CPPA, in much the same way as it has shaped the implementation of PIPEDA. In that regard, I think this helpful construct, as it relates to the relationship between the CPPA and law enforcement, is a potentially useful area to ensure is well understood.

Our abiding view would be that it should conform to the legal test set out in Spencer.

Mr. Rick Perkins: In short, you're saying we don't need to define this in the definitions section of the bill. What's there and in jurisprudence is all we need.

Mr. Mark Schaan: No, I think jurisprudence is helpful. I would suggest that, if there is to be a legal definition of "lawful authority" added, it must conform to the legal test set out in Spencer.

Mr. Rick Perkins: You are agreeing, then, that adding this would add clarity consistent with R. v. Spencer and would ensure there is no confusion about the meaning of "lawful authority" within the CPPA—something the Privacy Commissioner has been seeking for a decade.

Mr. Mark Schaan: I would defer to Ms. Angus to ensure the legal test established in Spencer is articulated.

[*Translation*]

Ms. Runa Angus (Senior Director, Strategy and Innovation Policy Sector, Department of Industry): Thank you.

[*English*]

On this, I would say that what the Privacy Commissioner has called for is the Spencer test being put into the law.

When I look at the paragraph you quoted on that, I see three criteria: the criterion of “exigent circumstances”, the criterion of “a reasonable law” and the criterion of “prescribed circumstances”, which are the three criteria in the Spencer decision. What I want to make clear is that these are three separate criteria, so they are either-or. It can be exigent circumstances, or reasonable law, or prescribed circumstances. Actually, the Spencer decision doesn't refer to them as “prescribed circumstances” but rather as “the common law authority” that police have, which is in paragraph 71 of R. v. Spencer.

Those are the three criteria set out in R. v. Spencer. To the extent it should be defined, that is the definition currently used by law enforcement and organizations when they disclose pursuant to PIPEDA.

Mr. Rick Perkins: Can you repeat those three criteria to make sure I understand? I'm looking to make sure they're covered in the amendment.

Ms. Runa Angus: They are exigent circumstances, a reasonable law other than section 44, and common-law authority that police have. Those are the three circumstances that are set out in Spencer. Again, they are not cumulative. They are separate; it's either-or. Either there are exigent circumstances or there's a reasonable law or there is common-law authority whereby personal information that does not attract a reasonable expectation of privacy can be disclosed.

Those are the exact words in paragraph 71 of R. v. Spencer, which the Privacy Commissioner referred to.

Mr. Rick Perkins: What I'm trying to get at here is that there's clearly a gap in the law, which you're trying to get at by using the term “lawful authority” throughout this version of the new privacy act that's being proposed in CPPA. We've seen how, with the weak wording that was in PIPEDA, which is carried forward here, businesses and organizations often provide information to law enforcement agencies or the agencies that are going after it on fishing expeditions when they don't really have the interest of the privacy of the individual in mind.

When a government organization or a law authority asks a business or an organization for access to something, they clearly, sometimes, without going through the hoops of consulting with all of their inside and outside corporate lawyers, give out access to personal information and data that hurts an individual's privacy.

There was recently a Supreme Court ruling on the issue of IP addresses. That was done in just the last few months, so clearly there's an issue with the current wording of PIPEDA, which this carries forward, which is inadequate to protect the privacy of an individual against the overreach of a law enforcement agency or government that is going after information, however legitimate they may think it is in the particular circumstance. Under law enforcement, you can pretty much justify most intrusions into personal privacy. Certainly, having the speed of this and not having to be burdened with going and getting a warrant or some sort of judicial authority to do this makes life a lot easier for those authorities, but that doesn't make it easier to protect an individual's privacy.

Without this type of further definition in the bill, we're going to continue to end up with these cases of people, with or without their knowledge, having their data shared with these agencies, and then having to fight, after the fact, through the Supreme Court, to try to put the toothpaste back in the tube, to say this was something that should not have happened.

Now, I'm not a lawyer, as I often say here, but this just strikes me as unfair when we have the opportunity right now, in creating a new privacy law, to actually listen to the Privacy Commissioner, who's been dealing with this for quite some time, for at least a decade, and asking for Parliament to put in a simple definition, which can be lifted straight from the presentation of the Privacy Commissioner.

Again, as MP Masse said last time, I trust the Privacy Commissioner on these issues and I have not yet been convinced that putting this in will somehow diminish the bill or harm somebody's privacy. In fact, I think it enhances an individual's privacy.

Does putting this in enhance somebody's privacy, or does it diminish it?

● (1900)

Mr. Mark Schaan: I think it provides greater clarity as to the uses of personal information by law enforcement. I think it's important, though, that, as Ms. Angus noted, the Spencer test is not a cumulative one. Law enforcement does not need to meet all three aspects of the test. Law enforcement needs only to meet any of the three aspects of the test. I think that's something to consider with respect to how the amendment is currently drafted, because it reads as cumulative.

Mr. Rick Perkins: In the recent Supreme Court case, did they meet any of the tests?

Mr. Mark Schaan: In the IP case, they could not rely on any of the three, as I understand it, which is why it was seen to be personal information, because it was not understood to be foreseeable that.... It was that an individual has a reasonable expectation of privacy when it comes to their IP address.

Mr. Rick Perkins: That's okay for now for me.

[*Translation*]

The Chair: Thank you very much.

Mr. Turnbull, the floor is yours.

[*English*]

Mr. Ryan Turnbull: Thank you.

It's a great conversation so far.

I want to balance this out with.... This amendment potentially adds a new test for “lawful authority” that may not be something that the private sector marketplace is normally subject to.

Mr. Schaan, would you agree with that? Could you provide a bit more detail?

● (1905)

Mr. Mark Schaan: I'll turn to Ms. Angus.

Ms. Runa Angus: The private sector is quite familiar with the Spencer test. That is the test they use to disclose information to law enforcement. CPC-3 does not quite mirror that test. When I look at the submission of the Privacy Commissioner for Bill C-11, I see that it more closely mirrors the Spencer test in that it has three criteria and those criteria are not cumulative. The way that I read the Privacy Commissioner's submission, there's a clear “or” in there, which is not there in CPC-3. Therefore, this would be a significantly narrower test for organizations.

Mr. Ryan Turnbull: If I'm to understand you correctly, there are three parts to this test that are being combined together as a test that includes three conditions. All three would be required, so they are cumulative—which is the word I think Mr. Schaan used—rather than independent criteria, and only one would need to be sought in order to apply.

I'm trying to understand how a private sector company meets this high bar for the test that CPC-3 seems to impose, and if that is realistic for the current marketplace, given the fact that it may not be how they're operating currently and it may not even be entirely consistent with the Supreme Court ruling that is being referenced. Can you add detail there?

Ms. Runa Angus: Sure. Our understanding is that the private sector is already quite conservative when it comes to disclosure of information. They will typically want to see judicial authorization before they disclose, unless, obviously, law enforcement can meet the test in Spencer to show that it's “exigent”, that it is under “a reasonable law” or that there is a “common law authority” for them to collect that information.

They're quite parsimonious in the information they disclose. More often than not, they will not disclose. The other thing to remember is that proposed section 44 of the CPPA and its equivalent in PIPEDA are permissive. They don't compel disclosure. They say that a company “may disclose”. Typically, companies, on balance, don't disclose unless they are convinced that the Spencer test is met.

This test is a significantly narrower test than Spencer and would probably mean that the private sector would not disclose any information, which, of course, can disrupt law enforcement activities at all levels: national security, child exploitation and many other instances where law enforcement needs this kind of information.

Mr. Ryan Turnbull: If I'm understanding you.... Maybe what would be helpful is to use a case or an example to illustrate where, potentially, this bar.... Essentially, we're saying that an organization would have to determine exigent circumstances, which may be slightly difficult, and would have to assess that without necessarily having government institutions disclose all of the facts and information. We're also saying that the reasonable expectation of privacy may be slightly difficult. Then, if you're adding those two together, as well as a test that excludes common-law authorities....

What I'm trying to understand is how.... Maybe a solution is to have the definition of a lawful authority and have it mirror more the Spencer ruling that has been referenced multiple times. What would that potentially look like?

Mr. Mark Schaan: We need to make it clearer that the Spencer test has exigent circumstances or reasonable law or information that would not attract a reasonable expectation of privacy. If it actually ensured that it recognized that those were three mechanisms that law enforcement had to access information, it would be consistent with the current jurisprudence, which is the test that the Privacy Commissioner thought was useful.

● (1910)

Mr. Ryan Turnbull: I took enhanced logic at university. It's an exclusive disjunction versus an inclusive disjunction. It's not a set of things all of which you need to comply with. It's either this or this or this. They're independent criteria.

That's what I would propose. I'm going to propose a subamendment that more clearly aligns with the OPC, but also with the Supreme Court ruling that the Conservatives have referenced. It's a slight variation on what you've suggested, which is significant and important. It's a set of criteria, but it's either one or the other. It's not all three things you've outlined.

I'll send that around and read it into the record, if you'd like.

Mr. Brad Vis: Please do.

Mr. Ryan Turnbull: It would read, “lawful authority means authority exercised by a government institution or part of a government institution where one or more of the following criteria are met: (a) there are exigent circumstances, (b) it is pursuant to a reasonable law (other than section 44) or (c) it is pursuant to common law authority where personal information would not attract a reasonable expectation of privacy.”

I've sent that around to the clerk and other members.

I don't think I have a paper copy, but we can get one.

The Chair: I just discussed that with the legislative clerks. Procedurally, it would be a little more elegant if this amendment was defeated and then another one was proposed, instead of subamending, because this is basically rewriting CPC-3 entirely.

I think it's good, Mr. Turnbull, that you put it on the record and that it is being circulated, so that MPs know what alternative you're proposing. It would still, to some extent, respond to some of the concerns that are brought forward by CPC-3. However, procedurally, I don't think we could subamend it the way you're proposing, Mr. Turnbull. I would rather you moved a distinct amendment with what you've proposed.

Go ahead, Mr. Perkins.

Mr. Rick Perkins: I have a procedural question.

Can we ask our officials about both of these together, since they're not on the floor?

The Chair: Given that they're related and they're dealing with the same issue, yes, you can ask about the difference.

I believe the clerk has circulated Mr. Turnbull's proposed subamendment. You have it now in your mailbox. We can continue debate on CPC-3 with the knowledge that Mr. Turnbull has proposed an alternative.

[*Translation*]

The next speaker on my list is Mr. Garon.

[*English*]

Mr. Turnbull, are you done?

Mr. Ryan Turnbull: I made the case for amending the definition of “lawful authority”, including the Spencer Supreme Court decision and ruling as guiding that definition. It includes many of the things that the Conservatives intended, and there is a subtle difference. We believe it's more consistent with the OPC and the Supreme Court ruling, and therefore would be an improvement and a compromise, working constructively here. Please consider it, and let's debate it if we need to.

Thank you.

The Chair: Thank you, Mr. Turnbull.

[*Translation*]

I now give the floor to Mr. Garon. The next speakers will be Mr. Masse, Mr. Williams and Mr. Vis.

● (1915)

Mr. Jean-Denis Garon: I don't want to take up too much time, but I do want to say that our questions are exactly the same.

First, it's important to have a definition that's authoritative and legitimate. We don't have one, and we need one.

Second, we've been wondering about the Emergencies Act and police investigations, in particular. I think our questions have been answered.

However, I have another question. You mentioned the legal test stated in the Spencer decision. I need to read the new definition more carefully, but offhand I think it's more appropriate. It adopts exactly the same test as is used in Spencer. So it's already in the case law.

So what's the difference between introducing that test into the law as is and not including a definition?

Mr. Mark Schaan: I think the case law is now what guides organizations in how they use personal information. However, adding this kind of definition to the act would, in a way, further confirm the test set forth in Spencer.

Mr. Jean-Denis Garon: I'm going to go back to the definition proposed by our Conservative colleagues.

What would be the legal consequence of having in the act a definition that would be consistent with a certain logic and that would be more restrictive than the legal test?

Would that limit the scope of the amendment in a court case?

Mr. Mark Schaan: As Ms. Angus said, the addition of a new definition that includes, in a single sentence, the three criteria of the test established in Spencer, without stating that they are three separate parts but only one has to be satisfied, creates a new, more restrictive test for organizations.

As a result of this new test, law enforcement agencies would be unable to obtain certain personal information requested from organizations, whereas that information would have been legally obtained under current case law.

Mr. Jean-Denis Garon: Thank you.

The Chair: Go ahead, Mr. Masse.

[*English*]

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

Ms. Angus, I am not a lawyer—I have a BSW, actually. I'm looking at these two amendments here and then what the Privacy Commissioner had. Are you confident that the one that's being proposed by Mr. Turnbull is more consistent with what the Privacy Commissioner had? I just want to be sure about that.

I think the intent of the Conservative motion was to also fold in some of those concerns, and hence we do have another potential thing here where we're going in the right direction together.

Ms. Runa Angus: I certainly can't speak for the Privacy Commissioner, but as I read his submission on Bill C-11, which was quoted earlier in the session, it is a test that has an “or” in it, so already it's not a cumulative test. I think the paragraph at the beginning does say “clarity is also required with respect to the impact of...R v. Spencer”.

There are two points there. One, they're asking for R. v. Spencer to be codified. Two, the three things that the Privacy Commissioner lists do have an “or” in them. To me, that's indicative that they're not cumulative, so I think the intent was to codify the Spencer decision, and that is what the motion proposes.

Mr. Brian Masse: For us lay people on this, “or” not being cumulative means that any one of these things can trigger that process, but it can be two or it can be one or it can be three. It's as simple as that. It provides flexibility. Okay.

Thank you very much, Mr. Chair.

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

I have Mr. Williams next.

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

I want to go back to the GDPR. As I understand it, the GDPR does not have a definition of lawful authority, but it does outline the principles for processing personal information lawfully.

Ms. Angus, if we compare adding “lawful authority” to why the GDPR may or may not have that.... Have we looked at the GDPR in this instance and what they've done in place of adding this definition?

● (1920)

Ms. Runa Angus: The way the GDPR works is a little bit different. There are six bases for processing data, consent being one of them. Legitimate interest is another, and lawful authority as well. I would assume that lawful authority would be defined nationally because, of course, the GDPR applies to all European member states and they would have their own jurisprudence and legislation that define lawful authority. I can't really speak to that.

This is something that's very specific to the Canadian law enforcement and criminal law context. I think a better reference would be the Supreme Court of Canada.

Mr. Ryan Williams: This is my last question.

Besides the Supreme Court case, which was specific, would this apply to anything else, like health care data access or employee monitoring, for instance, where employers have surveillance or webcams to look at employees? Would this look at anything else besides the Spencer decision, or would it be specific to only what was looked at in that individual case?

Ms. Runa Angus: The way Spencer has been used is that it is the test that any disclosure from a private entity to law enforcement is subject to. Therefore, every organization right now, when they get a request from law enforcement, will look at these Spencer criteria to decide whether or not they will disclose. Again, it's permissive. It does not compel disclosure like a warrant would, for example. This is really the organization making the determination based on the three criteria in Spencer. It would apply to all information. Again, the criteria are “exigent”, “reasonable law” and “reasonable expectation of privacy”.

Therefore, if you're talking about very sensitive health data or genetic information, I think it would be hard to argue that. Unless it's exigent—something's going to explode—or there is a reasonable law that authorizes it specifically, it would be really hard to meet the third criterion, which is that it doesn't attract a reasonable expectation of privacy. It is quite a high bar to meet for lots of those types of information.

Mr. Ryan Williams: I have one last point. In my research, the GDPR outlines the principles for processing personal information “lawfully, fairly”, and it does emphasize the importance of respecting individual “rights and freedoms”. I know that's something we've talked about, but they seem to put that all together when they're using this basis.

Thank you very much.

The Chair: Before going to Mr. Vis, I have one quick question, Ms. Angus.

You mentioned that the proposition by the Privacy Commissioner for “lawful authority” in Bill C-11 was closer to the Spencer test. Does it resemble what's being proposed before the committee by Mr. Turnbull right now?

Ms. Runa Angus: The only difference is in the third branch of the test. The Privacy Commissioner uses the words “prescribed circumstances where personal information would not attract a reasonable expectation of privacy”.

I don't have the motion in front of me, but I think it says “pursuant to common law authority”, which is the wording that's used in paragraph 71 of the Spencer decision. In this circumstance, I think that putting “prescribed” in CPPA would probably lead to more confusion because when we say “prescribed”, we typically mean regulation.

Again, assuming that the Privacy Commissioner wants Spencer codified, that's not what Spencer says. Spencer says “common law authority”; those are obviously authorities that are prescribed by the court, not through regulation.

[*Translation*]

The Chair: Thank you very much.

I'm going to add a brief comment.

Even though court decisions help inform the work of parliamentarians, they don't dictate it. We could decide to go further. However, here in committee, we haven't had many representatives of law enforcement agencies tell us what the consequences of going beyond the Spencer decision would be for their work.

In any case, I don't remember that, and the consequences would be very serious. So we have to reflect on this. I think the government is taking it into account in its proposal.

Mr. Vis, go ahead.

● (1925)

[*English*]

Mr. Brad Vis: Ms. Angus, can you please define “common law authority”?

Ms. Runa Angus: What I'm going to do is take Spencer, because Supreme Court justices are smarter than I am.

What Spencer says is that common-law authority is the "authority of the police to ask questions relating to matters that are not subject to a reasonable expectation of privacy."

Mr. Brad Vis: Okay, so it's the discretionary powers of our police forces.

Ms. Runa Angus: Roughly.

Mr. Brad Vis: Okay.

What about "exigent circumstances"?

Ms. Runa Angus: There isn't a definition of "exigent circumstances" that I can see.

Mr. Brad Vis: I understand it. It's like doing something urgently.

Ms. Runa Angus: Yes.

Mr. Brad Vis: Okay.

The third criterion, "a reasonable law", would be other acts. Is that correct?

Ms. Runa Angus: The Supreme Court has defined "a reasonable law" as a law that balances a state purpose—whatever the purpose of that act may be—with the interest of privacy.

Mr. Brad Vis: Okay.

I understand the basis of the subamendment. I guess it's not a subamendment but a replacement amendment. I guess that's what we're calling it now.

The Chair: We're calling it "Mr. Turnbull's potential proposal".

Some hon. members: Oh, oh!

Mr. Brad Vis: All right.

Under the definition in CPC-3, "lawful authority" addresses proposed section 33.

What does proposed section 33 state?

Mr. Mark Schaan: It's called "Communication with next of kin or authorized representative".

Mr. Brad Vis: It states:

> An organization may disclose an individual's personal information without their knowledge or consent to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that the disclosure is requested for the purpose of communicating with the next of kin or authorized representative of an injured, ill or deceased individual.

Can you explain that for us, Ms. Angus?

Ms. Runa Angus: Just so I understand the question—

Mr. Brad Vis: What's the significance of proposed section 33? CPC-3 includes "other than section 33", and the amendment put forward by the government side excludes proposed section 33.

Ms. Runa Angus: It's just for the purpose of communicating with the next of kin, in case an individual is injured, ill or deceased. They still have to show their lawful authority for doing that.

The significance is this: It doesn't actually grant lawful authority. It just says you need lawful authority to do it.

Mr. Brad Vis: Say, God forbid, my spouse passed away. She's on all of our bills, like Fortis, Telus, etc. Would it grant Telus the ability to communicate or meet with me regarding the information on my wife's account?

Ms. Runa Angus: It would grant Telus, in your example, the right to communicate with law enforcement so they could communicate with you.

Mr. Brad Vis: In our definition, it's "other than section 33", so lawful authority was exempted. Under the government's proposed amendment, it wouldn't be exempted anymore.

Ms. Runa Angus: I think what was asked for was the OPC's recommendation. The OPC asked for a definition with respect to proposed section 44. That is the reason for proposed section 44.

● (1930)

Mr. Brad Vis: The OPC only discussed proposed section 44. Okay.

Just for clarity, let's go over the same thing in proposed section 43.

Mr. Mark Schaan: It reads:

> Administering law—request of government institution
>
> An organization may disclose an individual's personal information without their knowledge or consent to a government institution or part of a government institution that has made a request for the information, identified its lawful authority to obtain the information and indicated that the disclosure is requested for the purpose of administering federal or provincial law.

Mr. Brad Vis: Can you give me a real-world example of how that would apply and why the amendment didn't include that? Is it for the same reason you just noted for proposed section 33?

Ms. Runa Angus: It is the same reason, but this is for administering law. Obviously, if something happens, there is administrative work that institutions need to do, whether that's producing a death certificate or other documents. That's what proposed section 43 is for.

Again, I will note that the Privacy Commissioner did not ask for a definition of "lawful authority" for these, but the same definition could be used for proposed sections 33, 43 and 44. I think the privacy concern was very much with proposed section 44, because it's about law enforcement, as opposed to communicating with the next of kin or administrative work.

Mr. Brad Vis: Okay. On that point, proposed subsection 47(1) talks about "national security" and "defence". Do we really want to exclude that one, then?

Ms. Runa Angus: The definition wouldn't exclude it. The definition would apply to every place in the act where "lawful authority" is mentioned.

Mr. Brad Vis: Our amendment includes proposed subsection 47(1). The new amendment doesn't. I'm trying to parse out the difference between the two. That's what I'm trying to get at.

Mr. Mark Schaan: What proposed section 44 does in the government amendment is to say that for law enforcement in these particular zones, you can't rely on the CPPA itself for a definition of lawful authority. When we're suggesting that you can rely on a reasonable law to be able to have lawful access as a function of law enforcement, that means you can't come back to proposed section 44, which says that law enforcement does these things. You essentially need to exempt proposed section 44 from "reasonable law" under the Spencer test because it's self-referential.

I think the CPC amendment suggests that you can't rely on it in zones other than proposed section 44, and I think the view is that the reasonable law portion is "Law enforcement—request of government institution" in proposed section 44.

Mr. Brad Vis: I just think that "national security" and "defence" should have the same applicability as proposed section 44. That's in proposed subsection 47(1), "National security, defence or international affairs". That would be my concern with the new amendment, Mr. Turnbull. That's just my opinion.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Vis.

Mr. Perkins.

Mr. Rick Perkins: I won't be long. It's just a follow-up to MP Vis.

In our amendment, we thought there were several circumstances beyond proposed section 44 where this definition wasn't needed. That seems almost common sense: talking to a relative or the exemption for national defence. Yes, it's true that proposed sections 33 and 43 and proposed subsection 47(1) were added in addition to what the Privacy Commissioner was looking for in proposed section 44, but I haven't really heard a good reason why MP Turnbull's coming amendment doesn't include those sections.

Are we saying that the level of police requirement still needs to be in place for proposed sections 33 and 34 and proposed subsection 47(1)?

● (1935)

Ms. Runa Angus: From my perspective, these are not sections that grant lawful authority. If that clarity is needed, I don't see any legal issue with that. I think what needs to be clear is that proposed sections 44, 43 and 33 and proposed subsection 47(1) don't actually grant authority. They are not reasonable laws for the purpose of the definition.

Mr. Rick Perkins: I'm not sure I understand that.

Proposed section 44 grants.... The next coming amendment proposes that we need to say that lawful authority other than proposed section 44 applies. Basically, we're suggesting that there are a couple of other pro forma sections, national security being one of them, that might be considered. Obviously, we can have a debate on that. That's what we're having.

This goes a little further than 44, but are you telling me that the government isn't concerned about the issue around lawful authority in 33, 43 or 47(1) on national security, and that they have to go through that process in that case?

Mr. Samir Chhabra (Director General, Marketplace Framework Policy Branch, Department of Industry): For greater certainty here, I think the privacy commissioners, both the previous and the current, have focused on section 44, because there's a potential.... Our assessment of the approach that's been taken is that it would not cause any further risk or issue if proposed sections 33, 43 and 44 and proposed subsection 47(1) were named.

If the committee chose to do that for greater certainty, we don't think there's a significant issue there, if that's the question that's being posed.

Mr. Rick Perkins: That's the question.

Thank you.

The Chair: Mr. Masse.

Mr. Brian Masse: I'm trying to make sure I understand this discussion about national security and defence being included.

Would that, then, make them equal in the process to the police? I have some concerns about that, but is that the result?

Mr. Mark Schaan: Spencer is a three-part test where any satisfaction of one of the tests can constitute lawful authority for the disclosure of the information. One, is it an emergency? Is it exigent circumstances? Is this information absolutely dire so that it needs to be accessed in this moment? Two, is it pursuant to a reasonable law? Is there some other authority that you can rely on to be able to get this information? Therefore, you can rely on that law for the purposes of accessing this information. Three, is it pursuant to a common-law authority where the courts have basically said there is no reasonable expectation of privacy for this information, so it's allowed to be given because it wasn't really considered to be private in the first place?

In the government's subamendment or future considerations in our future draft picks of amendments we might want to think about, what we're trying to do is suggest that the "reasonable law" piece—what reasonable laws you're allowed to rely on—can't include the CPPA itself. You can't go back to proposed section 44 and say that the CPPA says that an organization may disclose an individual's personal information, so that lawful authority allows you to do that. I think the question from the Conservatives is whether we also need to say that you can't rely on other sections of the CPPA, that you can't point to them and say that's a reasonable law.

Now I'll turn to Mr. Chhabra.

Mr. Samir Chhabra: I'll just put a finer point on it. If I understood your question correctly, MP Masse, you were asking whether including or not including those other sections in the reference would change the definition of "lawful authority". The answer is that it would not.

I don't believe the committee right now is debating whether the definition of "lawful authority" would apply, because it would. The issue here is whether you're establishing a circular reference to the lawful authority being found in the act itself. The idea is to separate that.

Our understanding of the OPC's previous advice on this was that proposed section 44 was seen to be a risk, to be something that could be pointed at in a circular reference way, when in fact the idea here is to have a separate reasonable law form the reasonable basis or the lawful authority for the ask, such as the CSIS Act or the Criminal Code or other acts.

● (1940)

Mr. Brian Masse: And that would then trigger access to that information, because it falls under that specific menu of legislation that's already established. Okay. Thank you. That's very helpful.

The Chair: Mr. Turnbull.

Mr. Ryan Turnbull: Mr. Chair, I have a very quick point.

It sounds like what I moved.... Actually, I didn't move it, because I wasn't able to. The subamendment that I was planning to move is now deemed another amendment, after we dispense with CPC-3. Essentially, there were brackets under (b), which was “it is pursuant to a reasonable law (other than section 44)”, and this could be changed to “other than section 33, 43 or 44 or subsection 47(1)”. Essentially, that would remove these self-referential loops within the bill and, for greater certainty, as some say, might make it a bit clearer and accommodate the suggestions that my Conservatives colleagues are making. It might be a way we could get this resolved.

Would that have any impact on the overall intention of what I had originally proposed when I planned to move it as a subamendment? No. Okay, great.

Why don't we do that? I'll agree to do that if we can dispense with CPC-3, and I will introduce exactly that.

Mr. Rick Perkins: I seek unanimous consent to withdraw CPC-3.

Some hon. members: Agreed.

(Amendment withdrawn)

The Chair: Mr. Turnbull.

Mr. Ryan Turnbull: Mr. Chair, I wish to take the floor, if I'm allowed, to introduce exactly what I just said I would. I'll read it again. The one I sent around is being amended, but I haven't moved it yet, so technically I'm able to do that within the procedural rules of the House.

I'll read it into the record:

> lawful authority means authority exercised by a government institution or part of a government institution where one or more of the following criteria are met: (a) there are exigent circumstances, (b) it is pursuant to a reasonable law (other than section 33, 43 or 44 or subsection 47(1)) or (c) it is pursuant to common law authority where personal information would not attract a reasonable expectation of privacy.

To my colleague Jean-Denis, I apologize that those slight changes, although they are just numbers being added, were not translated in the original version that I had sent.

Thank you, Chair.

The Chair: Members, you have the amendment to clause 2 that is referenced as 13026345 as amended, so not the exact text. We know that Mr. Turnbull has added a few sections of the bill.

[*Translation*]

Mr. Garon, you have the floor.

Mr. Jean-Denis Garon: I'd like to have the French version before debating the amendment, Mr. Chair.

The Chair: The clerk should normally have distributed the text of the amendment in both official languages.

I've received it.

[*English*]

Mr. Brad Vis: Can we suspend until we get the French version? That's only fair.

[*Translation*]

The Chair: The French version is drafted in the same way as all the other amendments.

[*English*]

Mr. Rick Perkins: We were looking at Ryan's version, and we didn't realize there was one from the clerk.

The Chair: It's technically under Mr. Gaheer's name.

[*Translation*]

Have you received it, Mr. Garon?

Mr. Jean-Denis Garon: I thought I hadn't received it; pardon me.

The Chair: Mr. Généreux, go ahead.

Mr. Bernard Généreux: I just want to check something with Mr. Turnbull since he just read the amendment in English. I want to be sure that paragraph (b) doesn't just mention section 44.

Mr. Turnbull, could you reread paragraph (b)? It seems to me that what you said differs from the text I have in my hand.

● (1945)

[*English*]

Mr. Ryan Turnbull: The (b) part would be “it is pursuant to a reasonable law (other than section 33, 43 or 44 or subsection 47(1))”. It's really just amending what's in the brackets.

[*Translation*]

Mr. Bernard Généreux: Should we have received two versions, Mr. Chair?

The Chair: No, but when members move an amendment, they may amend it as they present it. That's what Mr. Turnbull did to reflect the text of your amendment, which Mr. Perkins has withdrawn.

Has everyone heard the amendment being proposed? It isn't numbered because it was moved during the debate. However, I know the reference number.

Do we need to go to a vote or is there unanimous consent to adopt the amendment?

[*English*]

Mr. Brad Vis: Let's take a vote.

[*Translation*]

The Chair: We request a recorded vote on the amendment moved by Mr. Turnbull, the reference number of which is 13026345.

(Amendment agreed to: yeas 11; nays 0)

The Chair: We're moving right along this evening. That's great.

We now go to amendment CPC-4.

Mr. Vis, go ahead.

[*English*]

Mr. Brad Vis: Before I begin, Mr. Chair, how much time do we have? I don't know what time we started tonight.

The Chair: We started after the vote. We started the meeting at 5 p.m., and we started the second part at around 6:20.

I'm looking at you, colleagues, to know whether we go until eight o'clock. I would suggest about 8:15, if that's okay with members.

Mr. Brad Vis: I think that's reasonable.

The Chair: Okay, it's 8:15, then. Perfect.

Mr. Masse.

Mr. Brian Masse: I'll just have to change some things around. I thought you'd originally said 8 p.m., but yes, I'll stay until 8:15.

The Chair: Because of the interruption for the vote, if we can get closer to two hours on Bill C-27.... It's moving along so well.

Mr. Brian Masse: That's fine. I'll just take some time to do a couple of things.

The Chair: Okay. It will be 8:15 and no later.

[*Translation*]

Mr. Vis, you may introduce amendment CPC-4.

[*English*]

Mr. Brad Vis: This is CPC-4, reference number 12753822. The original amendment that was put forward stated, “minor means an individual under 14 years of age”, in the context of Bill C-27. I would like to change that as a good-faith amendment, if it's actually allowed, to “minor means an individual under 18 years of age”. I have been debating this one for a bit, personally.

Before I go on, is that clear for everyone? In my amendment, I'm changing the age of a minor from 14 to 18.

The Chair: Could you read the amendment, Mr. Vis, as it would appear?

Mr. Brad Vis: It would read as follows: “minor means an individual under 18 years of age”.

The Chair: Okay.

Mr. Brad Vis: As it is currently drafted, Bill C-27 provides no definition for the term “minor”, despite several mentions of the term throughout the text of the bill. In my opinion, this is problematic. In the absence of a definition, the definition of what constitutes a minor will have the meaning ascribed to it by provincial or territorial age-of-majority laws. For instance, it's 18 in Quebec and 19 in my province of British Columbia.

Different definitions across Canadian jurisdictions will, as some witnesses have said, “make compliance increasingly challenging and can put organizations in a position where they will need to build and implement different privacy practices by location raising both the technical costs incurred as well as the risk of failing to comply with a myriad of obligations by jurisdiction”.

This amendment seeks to resolve these issues by defining a minor as an individual under the age of 18. The age of 18 was selected to align with the United Nation's Convention on the Rights of the Child, the U.K. children's code and the California age-appropriate design code. Choosing this definition will also bring Canada into alignment with the introduction of the children's code and age-appropriate applications in CPC-17.

I've spoken with Elizabeth Denham, my new favourite British Columbian, who designed the U.K. children's code. Her main concern with our proposed children's code was not using the age of 18, especially considering Canada's obligation under the United Nation's Convention on the Rights of the Child, as I mentioned.

I would also say that, in testimony, we heard from David Fraser. He is from McInnes Cooper. He appeared at our meeting 91 on October 24. He stated:

> One thing I'm a bit concerned about is that the current bill would be difficult to operationalize for businesses that operate across Canada. Whether or not somebody is a minor currently depends upon provincial law. That varies from province to province, and implementing consistent programs across the country would be difficult. I would advocate putting in the legislation that a minor is 18 years or below.

I will point out again that California's new online privacy and safety law for children outlines the age of 18, and it's modelled on the U.K. age-appropriate design code, which became enforceable on September 2, 2020. I would also note that, when we think about Canada's trade relationship with the United States, there are lots of precedents in American jurisdictions as well.

I reference these partly because of the testimony we heard from Scott Lamb. I can't recall the exact meeting, but I did have a follow-up conversation with Mr. Lamb where he talked about interpreting the existing privacy law in Canada and working on behalf of clients who have business in both Canada and the United States. He said that, from the perspective of applicable companies, they would often defer to the definitions included or the practices from American states and jurisdictions, and apply those same standards in Canada. This, of course, goes along with the design code they have in California. He was probably doing business with companies in California.

On July 1, 2024, Florida's law will go into effect. It applies not only to social media companies but also to online platforms that are defined to include online games and online gaming platforms. It defines a minor as someone under 18—not just children under the age of 13—in all online platforms that are predominantly accessed by minors.

● (1950)

Arkansas has passed the Social Media Safety Act, which, again, uses the age of 18 and has certain consent provisions related to the age of 18. Utah passed a law recently that prohibits kids under 18 from using social media between certain hours. That's a little excessive, but again, it's using the age of 18 with age-verification provisions. In Louisiana, it's 18 as well. Texas bans kids under 18 from joining a wide variety of social media sites without parental consent. I'm just outlining some of the great examples from America.

In our industry committee meeting number 98, Michael Beauvais said that the term "minor" must be defined. He said:

> First, several key definitions [in this bill] need to be clarified. These include a definition of a minor and a definition of capacity to determine when a minor is "capable" of exercising rights and recourse under the act.

Michelle Gordon also said, in meeting number 98, that "minor" needs to be defined:

> First, the law should define the terms "minor" and "sensitive". Without these definitions, businesses, which already have the upper hand in this law, are left to decide what is sensitive and appropriate for minors. The CPPA should follow the lead of other leading privacy laws.

She then—and this is my reason for what I stated earlier—referenced the California Consumer Privacy Act, the U.S. COPPA, the EU's GDPR and, indeed, Quebec's law 25.

David Fraser, in meeting number 91, said that "minor" does need to be defined. He stated:

> One thing I'm a bit concerned about is that the current bill would be difficult to operationalize for businesses that operate across Canada. Whether or not somebody is a minor currently depends upon provincial law. That varies from province to province, and implementing consistent programs across the country would be difficult.

In meeting number 92, Michael Geist, who, as I think we all know, is Canada research chair in Internet and e-commerce law, stated:

> I'll note that one of the real concerns arises in differing definitions of minors from province to province and the like. Therefore, one thing I think we need to include within the legislation—I know other witnesses have highlighted it—is the need for some sort of consistent definition here so that we know there is that consistency of protection.

The Interactive Advertising Bureau of Canada submitted a brief on November 13, which stated:

> Under the CPPA "minors" are not explicitly defined leaving the interpretation to be defined by the provincial/territorial age of majority laws. This lack of federal clarity makes compliance increasingly challenging and can put organizations in a position where they will need to build and implement different privacy practices by location raising both the technical costs incurred as well as the risk of failing to comply with a myriad of obligations by jurisdiction.
>
> Our recommendation would be to amend the Bill to include a single age threshold nation-wide. The Bill should specifically define the term "minor" and perhaps align with Quebec's Law 25—

I will note, for my Quebec colleagues, that he did say that as a suggestion.

> —as it is already in effect, and which establishes a minor as someone under the age of 14 years old. This will be a less complicated approach will keep minors safe and set companies up for success—not failure.

I'm going to go back to this point in just a minute, because I think it's really important.

The Canadian Chamber of Commerce also stated:

> As the term "minor" is not defined in the CPPA, the term will have the meaning ascribed to it by provincial/territorial "age of majority" laws, which provide that, in the absence of a definition or an indication of a contrary intention, a "minor" is a natural person under the age of 18 in AB, MB, ON, PEI, QC, and SK and a natural person under the age of 19 in BC, NB, NL, NT, NS, NU, YT. Differing definitions of "minor" across Canadian jurisdictions will require businesses operating in multiple jurisdictions to develop and implement different: (1) consent management policies, practices, and procedures; (2) user/customer experiences; (3) retention and breach reporting policies; and (4) security safeguards for different sets of jurisdictions. It may also require such businesses to engage in age profiling in jurisdictions where a "minor" includes a person who is 18 years old. This will impose an undue burden on such businesses and may lead to customer confusion. It is recommended to harmonize the definition with Quebec Law 25

● (1955)

I am reading this testimony for you specifically, Mr. Garon, because I did have internal debate about whether it should be 14 or 18. The reason I mentioned amendment CPC-17 is that, while I do note that a minor is defined as someone under the age of 14, as I've read two times already into the record tonight, the challenge I have approaching this as a parent and as an uncle is that I don't believe the decision-making capacities of children at 15, 16 and 17 are necessarily always developed to the extent that they need to be for them to make rational decisions about their well-being.

It kind of reminds me of a policy in the school district where my kids go. As a parent, I see that children in the school district have access to every social media platform imaginable. They can go and buy things on Amazon accounts without their parents knowing. They can look at whatever they want to on the Internet, but if you want to go skating with your class, my gosh, you need your parents' permission.

● (2000)

I'll end there. I look forward to a discussion on this. The testimony is very clear that we do need to have a discussion on defining what a minor is, largely for businesses' purposes. I would contend as well that it's for future amendments that will be put into this law, and my hope is that it will safeguard children from online harms.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Vis.

I think you made a very eloquent case that it should be 18, in my humble and unbiased opinion as chair.

Mr. Perkins, you're next.

Mr. Brad Vis: I could have kept going, too.

The Chair: Should we seek unanimous consent to go until midnight?

Mr. Rick Perkins: I won't give the rest of this speech, because I do want to get to hockey.

I think there are compelling reasons, obviously, for setting an age.

When I was first briefed by the department on the legislation, this was one of my first questions, because, at second reading, a big part of the minister's speech was about the focus of this bill to protect children and improve privacy for children, which I believe is and was his genuine intent, but it concerned me that there wasn't a definition. The response, I think, of the department at the time was that if we left it as it is, it would be up to various definitions in provincial law. As a marketer—and I can never leave my hat as a marketer—that would worry me because that means I would have to have 10 plus different systems about when the data I have on an individual moves from being totally sensitive, which is what happens currently under this proposal, to having elements of it that can be used for purposes when they leap over that age, whether it's 13, 14, 16 or 18.

Mr. Vis suggested the age of 18. Personally I think that it should probably be 18, but I'm open to a discussion on that. If we pick an age that is going to be across the country, what's the department's view? Age 18, to me, is when you can vote, when you can start to do some things and when you graduate from high school. You can do some other things, but you can't drink and you can't smoke marijuana. You can drive at 16, yes, but you can't drive fully on your own at 16 anymore, like I used to. In Quebec, you can. That's because in Quebec they just have driving guidelines, not laws.

The issue, I think, is whether 18 is the right age. I believe it is. How does the government feel about that? One, should it be defined? Do you agree now that we should define it? Two, is age 18 appropriate?

[*Translation*]

Mr. Mark Schaan: Thank you for that question.

[*English*]

As a Manitoban who had the unlucky fate of turning 18 and then immediately moving to the province of Ontario for university, where there was a different understanding of what competency was as it related to the consumption of libations, I feel this point quite deeply.

On a serious note, for the purposes of the act, as we are heightening the treatment of information as it relates to minors to that of "sensitive"—meaning that it requires a duty of care and a much higher standard for its protection and consideration—it is useful to have a clear obligation as it relates to that. There were initial concerns and conceptions about whether or not federal and provincial competence was potentially at issue here. The view is that this is in a zone in which this can be established in a federal statute regarding its application. I think the definition of "minor" will be very helpful in the interpretation and implementation of the law.

There will be considerations as we go through the statute of whether or not, with that capacity threshold, there are some individuals who might fall within the definition of under 18 but are still allowed to exercise their own rights under the law. As we defined earlier in some of the previous amendments under the definitions, that becomes important, because there are some, not all, 16- and 17-year-olds who have the capacities, but 18 is a threshold that's common across a whole host of societal norms.

That would be our response.

● (2005)

Mr. Rick Perkins: Thank you.

[*Translation*]

The Chair: Thank you.

Mr. Garon, go ahead.

Mr. Jean-Denis Garon: Mr. Vis was very convincing, but I'm persuaded he would have been even more so in French. I know what he's capable of.

Mr. Brad Vis: That'll be for the next time.

Mr. Jean-Denis Garon: All right.

We're obviously given all kinds of examples of the ability to make decisions. We're told about the laws of Utah and Texas, a state that incidentally has abolished abortion, thus denying women's rights. People cite legislation on the age of consent in certain American states where young people can go and get shot at in Afghanistan at the age of 18 but can't buy a beer when they go home.

In many respects, this is a value judgment issue. I'm not saying that as a joke. We're trying to determine who should be considered a minor in the context of the disclosure of personal information. Incidentally, for your information, I would remind the NDP and my friend Mr. Masse that they've introduced a bill in the House that would allow people to vote starting at the age of 16.

Here's the question we need to ask ourselves: Until what age should parents have full authority regarding the disclosure of personal information on the Internet, social media and elsewhere?

We also have to take into account the fact that there are clauses further on in the bill providing that the minimum age may be redefined, and I know you want to propose amendments regarding that. I know you discussed the age of majority that should be set in the bill, which you think should be 18, and that this will be reflected in subsequent amendments.

The compromise made in Quebec was to set the minimum age at 14. That's obviously under the Quebec law, and, as you know, we support the National Assembly's consensus. However, we nevertheless believe that was reasonable because we're not talking here about buying alcohol and driving a motor vehicle. We're talking about disclosing information on social media and the use of commercial products. Both present a risk, but they're virtually essential to socialization today.

Without wanting to criticize what's being presented here, I think it's entirely reasonable to set the age at 14. I'm more convinced that 18 is too high. That's where I stand so far.

The Chair: I would add an example to your list, Mr. Garon. In Quebec, an 18-year-old can purchase a 40-ounce bottle of absinthe but can't buy a joint at the Société québécoise du cannabis. That's another incongruity.

Mr. Jean-Denis Garon: With your permission, I'd like to add something.

This discussion turns on the issue of when a person is capable of forming a free and informed judgment about the disclosure of personal information.

I think most people 40, 50 or 55 years of age have the same problem as 15-year-olds.

● (2010)

The Chair: Thank you, Mr. Garon.

I now give the floor to Mr. Turnbull. Then it will be Mr. Masse's turn.

[*English*]

Mr. Ryan Turnbull: Thank you.

I was going to move a similar subamendment to the definition of "minor". I didn't quite have the treatise to read into the record that Mr. Vis had—

Voices: Oh, oh!

Mr. Ryan Turnbull: —but I wanted to express some rationale as to why setting the age of a minor and defining it in the context of the bill would be a good move. I will just say that from our side, we fully support the amendment he offered.

With regard to Mr. Garon's points, we intend to work on a capability test and on including that in the bill. I think it would modify it slightly and give some ability for minors who are under 18 to exercise their rights over their personal information, if they have the capability of doing so.

Mr. Garon, you and I actually had a conversation about this prior to getting into clause-by-clause. It was brief, I know, but I think it might help you feel more comfortable if "minor" is defined as 18. That's not to say that it's perfectly aligned with your perspective, but we're all having a little bit of water with our wine in this process, I'm sure. I will just say that I respect your point of view, but we will be supporting the definition of under 18 for minors.

Thank you.

[*Translation*]

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

Mr. Masse, go ahead.

[*English*]

Mr. Brian Masse: Yes, this is a tough one. We do believe in voting at age 16, so when I saw 14, that was closer to what I was comfortable with.

Can we get a practical example of something that would alter between a 16-year-old and an 18-year-old, in this case, in terms of control over their lives?

Mr. Mark Schaan: I would point to two things that I think are important. One is that under this definition of "minor", minors' information under the act, as we've now identified through the amendments, will be defined as "sensitive" information, which means that it requires a duty of care and a greater level of protection.

However, I would draw members' attention to page 6 of the bill, under "Authorized representatives". The relevant part here is proposed paragraph 4(a):

> 4. The rights and recourses provided under this Act may be exercised
>
> (a) on behalf of a minor by a parent, guardian or tutor, unless the minor wishes to personally exercise those rights and recourses and is capable of doing so;

The capability test is one that's been established in other courts of law in terms of an assessment as to whether or not that individual would be able to exercise those rights on their own behalf. It's not ruling out the possibility that individuals under the age of 18 would have some oversight of their own personal information, but it is suggesting that for those under 18 information should be deemed sensitive, for which there is an allowance for a parent, guardian or a capable minor.

I think an example, when it comes to ages, particularly in the zone of 14 to 18, would be a ninth grader, potentially, who might have posted embarrassing information online that they regret. They would not have the right to have the information deleted if we actually set the test at 14, because of the nature of it. Older teenagers who may have less capability to understand their privacy information, and the implications from a privacy perspective of their actions, would not have the same protections as younger teens because it's not deemed sensitive and it hasn't necessarily afforded them the same rights under the law.

I think that's really what we're getting at here in changing it from 14 to 18. It's not ruling out autonomous action by those under 18; it's suggesting that the information of those under 18 is sensitive and that it requires a duty of care.

Mr. Brian Masse: Thank you. That's very helpful.

I actually really appreciate Mr. Vis bringing this forward.

What about the 17-year-olds living on their own? Let's say they were in an abusive home and are now on their own. How much more difficult would it be for them to have that decision-making process, if there is, still, technically, another person being their parent or guardian? They may not even be living in the same place, for a variety of good or bad reasons.

● (2015)

Mr. Mark Schaan: Again, I would just go back to the "Authorized representatives" piece, where the rights and recourses of the act are afforded "on behalf of a minor by a parent, guardian or tutor, unless the minor wishes...." In your case, if those 17-year-olds had sought out their own autonomous path, and are capable of doing so, they can exercise the rights and recourses and the fundamental right to privacy on their own behalf, under the guise of the law, without needing to pursue the role of the guardian.

Mr. Brian Masse: I appreciate this. To be clear, there wouldn't be an extra step that those persons would have to take. They wouldn't have to go to court. They wouldn't have to prove that they're independent. How would that happen? Could there be a legal contestation of that from a parent or guardian above that age to block them?

Mr. Mark Schaan: The only time that might arise is when the commercial entity holding this information receives a request or, potentially, has instructions given on the treatment of the personal information, and they themselves, potentially, get conflicting instructions.

Let's imagine that someone has.... The law is clear that minors capable of exercising their own authority have the capacity to make those instructions to those in possession of their personal information. It would only be if the receiving institution, the commercial entity, was somehow unconvinced of the capability of those individuals and sought, potentially, to have that clarified.

[*Translation*]

The Chair: Thank you, Mr. Schaan.

[*English*]

Mr. Brian Masse: I will have a few more questions, when we start up again. I appreciate the answers, though. They're very helpful, but there are still a few things.

The Chair: You answered my question, Mr. Masse. I thought we could put it to a vote before we adjourned, but if you still have more questions, we'll bring it up on Monday, when we come back from the break.

[*Translation*]

I want to thank the witnesses for taking part in our study.

The meeting is adjourned.