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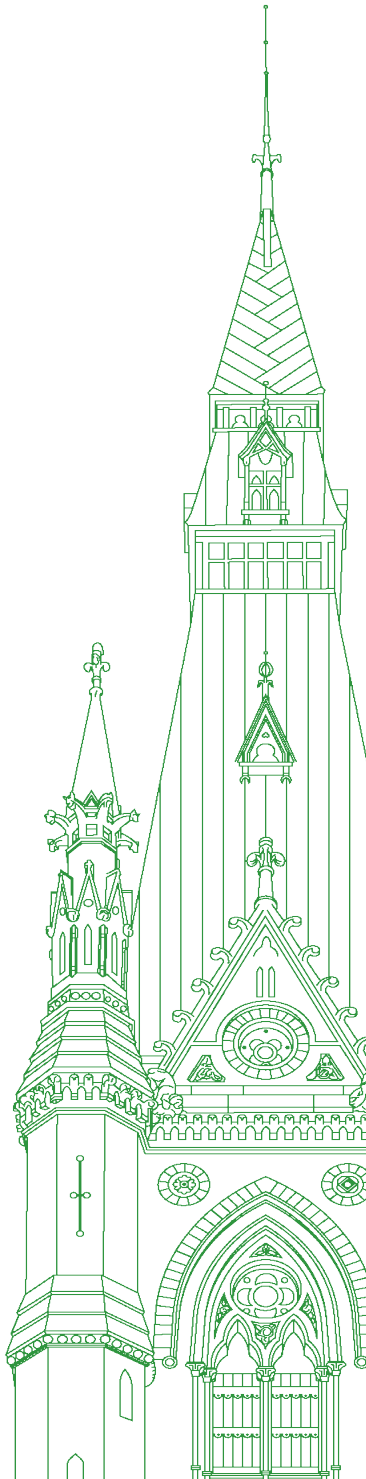

Chair: Mr. Ben Carr

Standing Committee on Procedure and House Affairs

Thursday, October 3, 2024

● (1100)

[*English*]

The Chair (Mr. Ben Carr (Winnipeg South Centre, Lib.)): Good morning colleagues.

[*Translation*]

Good morning, everyone.

I hope you had a lovely few days in the Outaouais.

Welcome to meeting number 126 of the Standing Committee on Procedure and House Affairs.

Today we are continuing our consideration of Bill C-377, An Act to amend the Parliament of Canada Act (need to know).

[*English*]

I just have a friendly reminder for witnesses and colleagues. Please make sure that your earpiece, when not in use, is placed on the sticker in front of you to protect the safety and well-being of our translators, who work so hard on our behalf.

With us today, we have two witnesses: Michel Bédard, law clerk and parliamentary counsel; and Marie-Sophie Gauthier, senior legal counsel and team leader of legal services.

Welcome.

Mr. Bédard, I'm not sure if you intend to split your time or if you'll be speaking on your own. However, we'll give you the five minutes to use, and then we'll go into our regular line of questioning. Once we hit the hour, we will suspend briefly in order to transition over to our second hour.

It looks like we're ready to go.

[*Translation*]

Mr. Bédard, the floor is yours.

Mr. Michel Bédard (Law Clerk and Parliamentary Counsel, House of Commons): Mr. Chair, members of the committee, thank you for your invitation to appear today regarding Bill C-377, An Act to amend the Parliament of Canada Act (need to know), which has been referred to the committee after second reading in the House.

As you said, Mr. Chair, I am joined today by Marie-Sophie Gauthier, senior legal counsel and acting team leader in my office.

We hope our testimony today will assist the committee in its consideration of this legislative initiative.

[*English*]

My office provides legal services and legislative drafting services to the House of Commons, its committees, members of Parliament, the Board of Internal Economy and the House administration. Our legislative drafting services include the drafting of private members' bills, such as Bill C-377, and motions and amendments at committee and report stages. Our legislative drafting services are provided confidentially to members of Parliament, and the information I will provide today to the committee will factor in these expectations with regard to my office.

Bill C-377 proposes to amend the Parliament of Canada Act so that members of Parliament and senators who apply for a security clearance from the Government of Canada are, for the purposes of the consideration of their application, deemed to need access to the information in respect for which the application is made.

Access to information of the Government of Canada that is either protected or classified is a two-step process. First, there must be a need or justification to initiate the security screening process, which will result in the individual receiving a reliability status for protected information or a security clearance for classified information. Such a need or justification is traditionally identified by a government department or agency.

Second, there is the need-to-know principle, which restricts access to sensitive information to those whose duties and functions necessitate access to the information. A person is not entitled to access information classified at a certain level merely because they have the appropriate level of classification or clearance. They need to know the information as part of their functions, regardless of their clearance. I note that the unauthorized releasing of classified information may lead to legal consequences such as prosecution under the Security of Information Act.

[*Translation*]

A distinction must be made between access to protected or classified information on a need-to-know basis by individuals holding the appropriate level of clearance and the House of Commons parliamentary privilege to send for persons and records.

This power, generally exercised by committees, supports the role of the House as the grand inquest of the nation and is essential to the proper exercise of the House's right to institute and conduct inquiries.

The power to send for persons and records would be unaffected by Bill C-377. Moreover, new proposed subsection 13.1(2) of the Parliament of Canada Act would make this unambiguously clear by stating that the proposal is not to be construed as a way of "limiting in any way the powers, privileges, rights and immunities of the Senate or the House of Commons or their members."

The privilege of freedom of speech would also be untouched by Bill C-377 and members speaking in the House and committees would continue to benefit from a criminal and civil immunity for their words spoken as part of parliamentary proceedings.

That said, this immunity does not apply outside of parliamentary proceedings and members would be, as any other citizens, amenable before courts of law for words spoken or communication outside the House and committees.

This concludes our opening remarks. We would be happy to answer questions.

● (1105)

The Chair: Thank you, Mr. Bédard.

[*English*]

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

Mr. Alex Ruff (Bruce—Grey—Owen Sound, CPC): Thanks, Chair.

Thanks for coming today. I think you highlighted very clearly what my bill is trying to achieve here and why it's so important.

I have a couple of quick questions to highlight the first step of parliamentarians needing to have that access.

Are you aware of historical examples of Parliament asking to see classified or secret-level documents?

Mr. Michel Bédard: In your speeches in the House of Commons and before the committee, you referred to some examples.

There is, of course, the Winnipeg lab documents precedent. That was a few years ago. It led to a ruling from the Speaker. Eventually, there was an agreement reached between the government and the opposition as to how those documents would be made accessible to members of Parliament. As part of this process, a panel of parliamentarians was created. One of the conditions was that they get a security clearance.

This precedent was inspired by another one in 2009-10, during the previous government: the Afghan detainee documents. Similarly, there was an order for production and some resistance. There was dialogue between the opposition and the government, and the same deal was struck between them.

Mr. Alex Ruff: Since then, have there been any concerns flagged by Parliament about leaking information outside of government, now that Parliament has more members with a secret security clearance?

Mr. Michel Bédard: I'm not aware of any concerns that have been expressed.

The two precedents I referred to were limited to a number of members who received the declassified documents. Since then, there have also been other precedents. The Johnston report and related information was made available to some members who agreed to receive a security clearance. The government agreed to provide it to them, provided they went through the process.

Mr. Alex Ruff: I'll go to another subject.

Foreign interference has been very prevalent. There is this desire among parliamentarians. Some have flagged to the government and the House a need to get greater levels of detail and information, especially when there are threats against them.

In your opinion, would it be valuable to have these members at a higher security clearance so they can properly have access to information and intelligence that is potentially putting them at risk?

Mr. Michel Bédard: In such cases, what is important is that members be made aware and have the relevant information, so they can take appropriate measures to protect themselves.

Now, whether the information required to achieve that objective is provided on a case-by-case basis, and whether there's a need to share classified information with members so they can protect their security, I think this is a genuine need that should be addressed.

Mr. Alex Ruff: Can you speak about your office's involvement, should this bill pass and the clearances be granted? What role would you play? How long does it take?

When we look at historical examples where, ultimately, a decision was made.... It takes time to get a security clearance and have a proper vetting process, should you be successful. This delays the necessary accountability and transparency. I don't mean transparency in the public view. It's about transparency to enable parliamentarians to do their jobs.

● (1110)

Mr. Michel Bédard: It is important to underline that, in the government security screening process, the House of Commons is not involved. It's a process led by the government.

Once a person has demonstrated that, as part of their function, they need access to classified information, they go through the screening process and receive the clearance. Then there is a second step: the need to know regarding specific information. The custodian of the information that is classified will assess whether or not this person needs to know the information.

It's a process that belongs with the government. Our office and House administration will not be involved in that process.

Mr. Alex Ruff: For my final question, do you have any suggestions for amendments?

Some of the concerns that have been raised during my appearance and testimony, even on Tuesday.... There was some confusion around the two-step process and understanding that my bill was only about allowing parliamentarians the right to apply.

Do you have a suggestion for an amendment that would make that clear?

Mr. Michel Bédard: This is indeed something that I noted when I was reviewing the bill as I was preparing for this appearance.

As I mentioned, access to classified information is a two-step process. You were very clear in the House and before this committee that you want to address the first step of the process, so that members of Parliament are deemed, as part of their function, to require access to classified information from time to time. The second step of the process is the need to know, which is on a case-by-case basis.

I think there might be some confusion or some ambiguity with the bill because, while you're addressing the first step of the process, the need to know is really terminology that is used for the second step of the process.

If there's a will to address this ambiguity or if the committee feels that there's ambiguity, we'll be pleased to assist the committee in proposing and preparing the appropriate motions and amendments.

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

Ms. Fortier, the floor is yours for six minutes.

[*Translation*]

Hon. Mona Fortier (Ottawa—Vanier, Lib.): Thank you, Mr. Chair.

Thank you for being here today, Mr. Bédard.

I think, thanks to your expertise, we are finally able to understand your interpretation of Bill C-377 and the repercussions it will have if it is passed as it stands.

My questions will relate to your expertise and experience. If you have any suggestions to make to clarify anything for members of the committee, we are always prepared to consider them.

My first question relates to parliamentary privilege.

What can you tell us about the relationship between this privilege and the right to information?

Do parliamentarians have an inherent right to information?

Mr. Michel Bédard: As I said in my opening remarks, there is the parliamentary privilege to send for persons to question them and the parliamentary privilege of ordering the production of records. When those privileges are exercised, they enable the House of Commons or a committee to access documents.

However, the exercise of those privileges requires the decision of a committee and a decision of the House. A parliamentarian may not exercise those privileges as an individual.

Hon. Mona Fortier: Does Bill C-377 as it now stands have an impact on those privileges?

Mr. Michel Bédard: Bill C-377 would mean that members who so request would be able to follow the process provided to get a security clearance. There is a clear saving provision in the bill, to avoid weakening the privileges.

The purpose of the bill is neither to claim nor to create new privileges. It would therefore not allow members to get more rights to access information, but it would allow them to get the necessary security clearance for accessing the information the government might disclose to them. It would still be the government that made these decisions, because it is still information that belongs to the government.

● (1115)

Hon. Mona Fortier: Yes.

Mr. Michel Bédard: It is therefore up to the government to decide whether or not it wants to disclose information to members that they ask for, because the information belongs to the government.

Hon. Mona Fortier: In your opinion, are there already processes or mechanisms that would allow parliamentarians to get the same level of access as what is proposed in Bill C-377?

Mr. Michel Bédard: Certain precedents have already been discussed before the committee. Special groups of parliamentarians have already been set up to provide access to certain information on certain conditions. One of the conditions that had to be met in order for the records to be made available was that the members be able to get a security clearance.

If there were cases of foreign interference, the government would certainly be able, if it wanted, to disclose more information to the members affected if they have the necessary clearances.

Hon. Mona Fortier: In your opinion, if Bill C-377 were enacted, what organization would be responsible for doing the security checks of members and holding the authorizations?

Mr. Michel Bédard: That is essentially a government exercise. The House of Commons is not involved.

In the House of Commons, when an employee has to get a security clearance, our contact is the Privy Council Office, and CSIS, the Canadian Security Intelligence Service, is also involved in the process.

Hon. Mona Fortier: After getting this security clearance, how do you think access to secret classified information would be obtained? Would this be paper copies in a secure location, a facility with a secret classification?

Do you have any ideas about how things should be done so that parliamentarians are able to use this clearance?

Mr. Michel Bédard: It is the government's information. It is a clearance from the government. It is government policies, government practices and rules, that apply. For example, if we are talking about information classified top secret, the measures put in place are very stringent. You have to go to a special room, and not take a cellphone or a computer, to get access to it.

Hon. Mona Fortier: Apart from the procedures that already exist, would you not have any other suggestions to make in the event that parliamentarians got this new clearance?

Mr. Michel Bédard: It would still be the government's processes and parameters that would apply. You have to understand that Bill C-377 is not an exercise of the privilege of parliamentarians in the House of Commons. It is really about access to information that belongs to the government.

Hon. Mona Fortier: Right.

Thank you very much.

The Chair: Thank you, Ms. Fortier.

Ms. Gaudreau, the floor is yours for six minutes.

Ms. Marie-Hélène Gaudreau (Laurentides—Labelle, BQ): Mr. Chair, it might seem like we consulted each other, because that sets the stage for my questions.

There have been several references to the government's process. At the last meeting, we were told about the structure of parliamentary committees. Now, you are going to tell me that it is actually controlled by the government and not by Parliament, which is essentially a multiparty collection of members, is that it? That is really the government.

Mr. Michel Bédard: There is often confusion regarding the nature of the National Security and Intelligence Committee of Parliamentarians. It is not a parliamentary committee, properly speaking.

Although its name suggests that it is, it is not a parliamentary committee; it is actually a statutory committee that was created by the National Security and Intelligence Committee of Parliamentarians Act. Yes, it is composed of parliamentarians, but it operates within a framework that is not parliamentary. In fact, the parliamentarians who sit on the NSICOP have to get the appropriate clearance. There is also an express exception in the act regarding parliamentary privilege, which means that members who receive information classified as secret in the course of their work on the NSICOP could not then disclose the information in the House of Commons, since there is a provision stating that parliamentary privilege cannot protect them in that case.

Ms. Marie-Hélène Gaudreau: This suggests to me that the bill we are considering really does highlight the dichotomy that may exist between parliamentary privilege, which is for the proceedings of Parliament, and national security. We have also heard that there were other organizations whose processes do not come under the government, but rather under the leaders' offices. Are you aware of other parliamentary institutions, maybe among the Five Eyes, whose structure does not depend on the government's process and is really based on the proper functioning of Parliament and the protection of secret information?

● (1120)

Mr. Michel Bédard: Each parliamentary institution has its own measures, its own relationship with the government, that depend on the culture, laws and practices of the state in question. I have not looked into the other states.

Ms. Marie-Hélène Gaudreau: This suggests to me that our committee should first review the operation of the NSICOP, in the sense that it should meet the needs arising from the privilege of knowing, the right to know, rather than instituting a security clearance about what we do with the information we have, to make sure that when we request information, we can get it, so we are able to do our work properly. If we focused more on governance and how the parliamentary committee operates at present, might that be a potential solution, rather than enacting Bill C-377 as is?

Mr. Michel Bédard: I thank the member for her question.

I think this question puts an issue on the floor that is more general than what is before the committee right now, that is, the relationship between Parliament and the government when it comes to obtaining information. The bill sponsored by Mr. Ruff is about a very specific policy that would enable members to have access to the clearance process, while not guaranteeing a clearance.

If Bill C-377 is enacted, I presume that some governance process will be established within the parties. The whips may have a role to play in selecting the members who will request clearances and determining what is done if a clearance is denied. I don't think that 338 requests would be sent to the government as soon as the bill is passed. I presume that the parties would exercise governance.

Ms. Marie-Hélène Gaudreau: In closing, Mr. Chair, I conclude that what we have at present on the legislative menu means that we use parliamentary privilege, by raising questions of privilege, to extract information that we actually should be given, to maintain our democracy and keep it working properly, rather than having a security clearance. For one thing, who am I to ask for information that, in my opinion, I can do nothing with? For another, what purpose is served when there is a very specific process for getting information?

In fact, if I have understood correctly, all members of the NSICOP, the National Security and Intelligence Committee of Parliamentarians, receive the information that the government is going to propose or explore. What can they do with it? Although the NSICOP is multiparty, disclosure of documents happens in our committee or in the House.

Is that correct?

Mr. Michel Bédard: The NSICOP's process is really parallel to any parliamentary process. There are statutory rights to obtain information, but the parliamentarians who are members of that committee are bound by their clearance and the Security of Information Act. There is also the exception relating to parliamentary privilege.

So we are still in the realm of parliament, of government, that is, parliamentary privileges do not apply. A member of the NSICOP could not rise in the House to disclose information. An exception is provided.

Ms. Marie-Hélène Gaudreau: Thank you.

My time is up, but I will have more questions later.

The Chair: Thank you, Ms. Gaudreau.

[*English*]

Ms. Mathyssen, the floor is yours for six minutes.

Ms. Lindsay Mathyssen (London—Fanshawe, NDP): I appreciate your coming today.

Just to continue that conversation around privilege, you just mentioned that there's almost a forfeiture of parliamentary privilege when those members become members of NSICOP. I think that has more to do with having a higher level of security clearance than what we're talking about with this bill. However, it's specifically not in this bill, that forfeiture of privilege. Do you see any problems with that? If a member were to breach that and were to release documents, with that classification or whatever, what are the ramifications? Certainly they're still protected by privilege, so what are the ramifications of that?

● (1125)

Mr. Michel Bédard: First, you're correct that in the legislative proposal, there's no exception that is created for parliamentary privilege. If a member of Parliament were to receive classified information and then disclose that information in parliamentary proceedings, there could be no prosecution under the Security of Information Act. That parliamentary privilege would protect the member, and this has been established. There are precedents in the U.K., and it's the state of the law as it stands.

That's why, for the NSICOP committee, there is a quid pro quo in that they make available more information to some members of Parliament, provided that they essentially forfeit their parliamentary privilege and that they go through the screening process and get the proper clearance.

It's a policy decision, ultimately. There is always the need-to-know principle that is applicable, so that it's the government that will decide what information it will share with members of Parliament.

If this bill is adopted, there is information that is disclosed as part of parliamentary proceedings. Regardless of the clearance that some members of Parliament have, the government could decide to simply stop sharing any classified information with members of Parliament.

Ms. Lindsay Mathyssen: Whether that breach was done unintentionally or intentionally, this doesn't really change what the government can allow or not. This doesn't change any of that. It doesn't have any furtherance in terms of the transparency that this bill is trying to accomplish.

Mr. Michel Bédard: There have been some precedents. There might be scenarios where, as part of a parliamentary function, there is a need to share classified government information. In those cases, the members of Parliament receiving the information would have to go through the process before receiving the information.

If there are, within each caucus, certain members who already have security clearances—because of their particular position, because of their role on specific committees, or maybe because they're more subject to foreign interference—and if there's a need to know, the government could share this information with those members without having them go through the process again, because they will already have received their security clearances.

Ms. Lindsay Mathyssen: It would be incumbent upon the members themselves whether or not they choose to get that security clearance or not, would it? Is there a possibility...?

I'm thinking about a situation. We discussed this a bit at the last committee. I'm on the national defence committee. One would assume that I might need a further clearance if I'm allowed. However, if I've chosen not to do that, does that automatically impede the rest of the committee? That could certainly create difficulties within the parties in deciding who sits on those committees. Is there a consideration of that in terms of how committees continue to function and who gets to sub in at committees? What are the rights of parliamentarians to sit in, even though they're not sitting members of that committee? If they want to sit in without a clearance, and there's a discussion, do they have the right to sit in? How does that work?

Mr. Michel Bédard: It's really about the government; it's not about committees. When a committee is requesting information from the government, whether its members have clearance or a level of clearance is no longer relevant. The committee and the House of Commons are entitled to documents that they request.

Ms. Lindsay Mathyssen: As a member, and in terms of the privilege I have, a lot of the parliamentary privilege I have expands to the operations of my office. Staff are covered under that to some degree in terms of the business they do under my name and my office. In terms of this clearance, is there a potential expansion on that with regard to the staff?

Again, it's different, and I understand that in terms of NSICOP there's a higher clearance level. However, it has exempt staff as part of its operations.

Would this apply to our staff, or would we have to go through all of those applications for our staff? How would that all work?

● (1130)

Mr. Michel Bédard: The bill is very specific to members of Parliament and does not include members' staff. If this bill were to go through and eventually you were to receive top secret information, for example, you wouldn't be allowed to share it with your staff.

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

Mr. Cooper, the floor is yours for five minutes.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you very much, Mr. Chair.

Mr. Bédard, you referenced two precedents in which members of Parliament who were appointed to special committees were granted security clearances, the first being with respect to the Afghan detainee documents and the second and more recent example being the national security breach at the Winnipeg lab.

In both instances, is it correct that members did not waive privilege upon being granted those security clearances?

Mr. Michel Bédard: This is correct.

Mr. Michael Cooper: Is that distinct from NSICOP?

Mr. Michel Bédard: That's correct.

Mr. Michael Cooper: We have two examples.

Are you aware of any instance in which members of those two select committees used their privilege to publicize what otherwise would be classified information?

Mr. Michel Bédard: That's in reference to those two...?

Mr. Michael Cooper: It's in reference to those two committees in which those members did not waive privilege.

Mr. Michel Bédard: No, I'm not aware of any incident.

Mr. Michael Cooper: I think it goes without saying that if a member of Parliament did so, in some extraordinary circumstance, there would be repercussions, including political repercussions, for doing so—if they in any way breached national security or other issues. However, we have two examples.

I find it passing strange that there are 250,000 people who have been granted a secret security clearance. Members of Parliament seem to not trust members of Parliament to be granted access to such clearance, but 250,000 people, including every ministerial staffer, have such a clearance.

Going to the language of the bill, there was a question perhaps about an ambiguity. You noted that there are two steps to receiving information that is classified as secret. First is to get oneself in the door for the purpose of applying and being granted a clearance. The second step would be actually getting information that is protected as secret. It is at the disposal of the government in terms of making the determination as to whether that person who has the clearance is granted access.

For the purpose of applying for a clearance, to get through that first step, one must have some need to know.

Is that correct?

Mr. Michel Bédard: I will say that generally that is correct, but in the intelligence or information world, the need-to-know principle or terminology is used in the second step of the process. That's why I was referring earlier to some confusion.

Mr. Michael Cooper: At both stages, there's a need to know. There's a need to know, to get one's foot in the door. I mean, not anyone on the street could just apply for a secret security clearance by virtue of being a ministerial staffer, a minister or an officer in the Canadian Armed Forces. Those would be bases upon which there would be, at the outset, a need to know. Then, when it comes to the information that someone might obtain, there would be a whole second analysis done as to whether they needed to know that particular classified information.

Is that correct?

● (1135)

Mr. Michel Bédard: That's generally correct, but if I may clarify, the need-to-know principle or test will apply in relation to specific information in the two-step process that I described earlier.

Mr. Michael Cooper: If you look at the language in the bill, it says, “for the purposes of the consideration of their application...of which the application is made.”

It's very clear that it's in reference to the application.

Mr. Michel Bédard: There are different ways to say the same thing. I think the intention behind the bill is very clear. Mr. Ruff, in his speech before the committee and in his speech in the chamber, made it very clear.

Now, I understand—and there was a question asked along this line—that there could be some questions raised about the language. I'm just saying that if the committee feels that should be clarified, then my office is available to prepare the appropriate motion and amendment.

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

Mr. Turnbull, the floor is yours for five minutes.

Mr. Ryan Turnbull (Whitby, Lib.): Thank you, Mr. Bédard.

You've said here today that there are some statutory rights to information that MPs have. I think you've also said that MPs do not have a right to classified information. Otherwise, there would be no reason to get a security clearance.

Mr. Michel Bédard: Just the status of being a member does not give them access to classified information.

Mr. Ryan Turnbull: Currently, who decides whether a member of Parliament can apply for a secret-level security clearance?

Mr. Michel Bédard: The process is a government process. It's the government that will decide if it's required for specific members of Parliament.

Mr. Ryan Turnbull: This bill essentially allows all members of Parliament to access an application, essentially to deem themselves, rather than having the government deem.... I'm not going to say they have a need to know, but they have a right to apply.

Now it's not a government decision; it becomes an individual MP's decision. Is that not correct? Is that the implication of this bill?

Mr. Michel Bédard: It becomes a member's decision to apply, and because of the proposed provision, the government will not be able to say they do not need this access to classified information in their functions.

Mr. Ryan Turnbull: I see.

Mr. Michel Bédard: My understanding is that those applications are not processed currently.

Mr. Ryan Turnbull: I've got that. I think that's helpful.

Essentially, all 338 members of Parliament could deem themselves as having a right to apply, and could apply, for a secret-level security clearance, but then the government, in the second step, may deem them as not needing to know in many of those circumstances.

Is that correct? Is that a possibility?

Mr. Michel Bédard: It is a possibility, except you jumped a step. If they apply, first there's the screening process. They need to receive the appropriate clearance, whether secret or—

Mr. Ryan Turnbull: Yes. You're right.

Mr. Michel Bédard: Once they have the clearance, it would be on a case-by-case basis. The government would decide whether or not there's a need to know.

Mr. Ryan Turnbull: Here's my point, though. Yes, we're using up a lot of resources to do security clearances for individuals who might turn out not to have a need to know information for which they've applied for security clearance. Because we're reversing the onus and we're saying members of Parliament can decide for themselves whether they need to access that information, now a lot more resources would be used to do security clearance and screening for them, when they may turn out not to have a need to know the information for which they've applied to get access.

Is that not correct?

Mr. Michel Bédard: That's correct.

Mr. Ryan Turnbull: Isn't that a waste of resources?

Mr. Michel Bédard: I know that the committee has officials from the government in the second hour. Those questions may be more appropriate for the government.

I will also say, and I alluded to this earlier, that should this bill be adopted, my assumption is that there will be some kind of governance established within each caucus, so that not all members will necessarily apply to receive a clearance.

Mr. Ryan Turnbull: Okay.

My other line of questioning is related to the immunity that you mentioned—that members of Parliament have immunity from criminal and civil prosecution, I guess. If a member of Parliament were to go through this process, gain access to information and then decide to read it into the record in the House of Commons, as happened in the United States with the Panama papers, what would be the legal repercussions? I think you've already said that there would be none, right?

● (1140)

Mr. Michel Bédard: Parliamentary privilege will protect the members if they disclose information as part of proceedings. There will be no legal consequences. Parliamentary privilege will not, however, protect any members if they disclose information outside of proceedings.

There will also be political considerations. If this bill is adopted and the members start disclosing classified information in the chamber, I suspect that the government will just stop sharing any information with members of Parliament.

Mr. Ryan Turnbull: Would that be with those members or with all members?

Mr. Michel Bédard: That's for the government; we're speculating here.

Mr. Ryan Turnbull: Yes, we're speculating, for sure, but in contemplating the repercussions of a bill like this, which changes the process, I think we should be speculating on what the risk to national security might be if members of Parliament use their privilege and immunities in the House of Commons, after gaining access to classified information, to reveal that information and disclose it publicly.

I wouldn't suggest that any member here would do that, but it has happened in other jurisdictions. I think it's a risk we should take quite seriously. Do you not agree?

Mr. Michel Bédard: I agree that if members have access to classified information, and then there's a forum in which they can disclose that information with immunity, that's certainly something that the government will take into consideration when assessing the need-to-know principle.

We had examples in the past of two panels where classified information was made available to members of Parliament. To my knowledge, there was no leaking of this information.

The Chair: Thank you, Mr. Turnbull.

[*Translation*]

Ms. Gaudreau, the floor is yours for two and a half minutes.

Ms. Marie-Hélène Gaudreau: This is a very interesting discussion, Mr. Chair!

Earlier, we talked about the United Kingdom. There were precedents, and so on. I am trying to be constructive, given all the answers we have received to our questions.

We know that the RCMP, the Royal Canadian Mounted Police, and CSIS, the Canadian Security Intelligence Service, have the authority to give a security clearance. I have a concern on that point, because they have to grant a clearance, and they also collect the information we are asking for.

In the United Kingdom, there is an independent agency that is completely neutral and offers information on a case-by-case basis to the appropriate recipient. It is not offered to everyone interested in a clearance and wanting to get top secret information.

Is that a solution that could be considered in our case?

Mr. Michel Bédard: This is a subject that goes well beyond the legislative initiative that is before the committee right now. The proposal is very specific about allowing members to request a clearance, while that is a much broader question of public policy, which raises the question of the all-inclusive approach to protecting information and clearances.

Ms. Marie-Hélène Gaudreau: Right.

Mr. Michel Bédard: The committee is going to move in that direction, but that is not what is under consideration today.

Ms. Marie-Hélène Gaudreau: My concern is national security. When we say we can get access to secret information, there may be a leak and consequences. As was said earlier, we are speculating, but it calls for a high degree of vigilance.

Later, I will be asking the question of our witnesses from CSIS, the Canadian Security Intelligence Service.

Thank you, Mr. Chair.

[*English*]

The Chair: Excuse me.

[*Translation*]

Have you finished?

[*English*]

Evidently, you have. Thank you. From time to time I get caught up in discussions with the clerk.

Ms. Mathyssen, the floor is yours for two and a half minutes.

Ms. Lindsay Mathyssen: Thank you, Mr. Chair.

As a continuation of the discussion, United States senators have similar protections to our parliamentary privileges. There was a case in which a senator received information and was told he couldn't publish it, but he found a back-way—through a subcommittee, because he was the chair—to publish that information. That ended up actually going through the federal courts. It went to the Supreme Court, and it ruled to uphold his privilege—his "parliamentary privilege" or whatever the American equivalent is. As the legal expert on this and all things legislation, have you or your office done a study or similar consideration of just how, if such a thing were to happen in a Canadian context, it would be applied here?

● (1145)

Mr. Michel Bédard: In the context of Bill C-377 there is a "saving clause" for parliamentary privilege, and parliamentary privilege is not affected, so the intent of the bill—

Ms. Lindsay Mathyssen: There could be no challenge. It couldn't undermine....

Mr. Michel Bédard: No. If members gain access to more classified information, there's no exception to privilege in the same way that is created for the NSICOP members. NSICOP members cannot disclose information to the chamber and committees, because they will be subject to the Security of Information Act. Here the information that will be provided is not subject to the same exception, so a member could disclose the information to the chamber and committees.

That said, and I think this is relevant to the example that the sponsor of the bill refers to when talking about the bill, we have certain recent examples—for example, specific briefings at which there might be foreign interference and there's a need to disclose classified information. I don't believe that this is the type of information that the member will then disclose to the chamber if it's very personal about the member. Again, there's always the need-to-know test or principle that is applicable, so it's the government, ultimately, that decides what information it is comfortable sharing with any specific member.

Ms. Lindsay Mathyssen: We heard at the last committee that this would undermine NSICOP. Is there any belief that this legislation would undermine NSICOP, from your perspective?

Mr. Michel Bédard: I think those are two different subjects. NSICOP has a very specific mandate, and the bill, if passed, will allow certain members to have the secret clearance accreditation. If committees were to undertake more studies in relation to national security and to exercise their right to send for records and papers, that will be a parliamentary order, a parliamentary decision. It has nothing to do with the clearances the members of the committee may have.

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

Colleagues, that brings us to the end of the first round.

Ms. Romanado, do you have something you want to add?

Mrs. Sherry Romanado (Longueuil—Charles-LeMoyne, Lib.): Thank you very much, Mr. Chair.

I don't think this is a question for the law clerk, but I have a question for the committee members. We didn't consider inviting Ian McDonald, who is the head clerk of committees, to this study. The reason I'm asking this is I'd like to understand the implications for committees.

If a committee like ours is doing a study on foreign interference, and we want to have access to specific information that is deemed classified, how would it work and how would this affect committees?

I'd like to ask the committee members.... I don't want to delay this. We're doing clause-by-clause next week, I believe.

If it's the will of the committee, could we have our clerk write to Ian McDonald, asking him specific questions, so that we can consider the implications on committees of this bill passing? Is that okay with the committee? I don't want to delay this, but could we write to the head clerk and ask how this *pratico-pratique* would function?

I just want to ask everyone if they're okay with that. Again, it's not to delay this at all. I'd just like to ask what the implications would be.

The Chair: Lindsay.

Ms. Lindsay Mathyssen: I don't have a problem with that. We don't want to delay this too much, but would just an hour with Mr. McDonald work for everybody? If we write it all down, I can see us potentially not getting it back in time. What are the deadlines?

Maybe we could add just an additional hour with that witness, if everybody's amenable.

The Chair: I caution against that, only because we have clause-by-clause already planned. We have a question of privilege that's very likely coming our way in the immediate future. That's going to disrupt the schedule we already have, and I suspect we may need time, if we get through clause-by-clause in an efficient manner, to go into committee business to talk about the question of privilege. We have a harassment study that's supposed to pick up on Thursday, if we keep it, and we still need some witnesses for that.

Those are my two cents, Ms. Mathyssen. I appreciate the suggestion, but for the sake of keeping us effective and efficient in our planning purposes, written testimony is perhaps the better route to go down, should that be the will of the committee.

Mr. Ruff, I know you want to speak to this briefly.

● (1150)

Mr. Alex Ruff: I have no concerns with the ask. However, it really has nothing to do with my bill, because it deals with that next step. Should a committee down the road ever decide it wants access to secret information—no different from the special committees we've referred to already a number of times—in that process, the House of Commons assists in working with the security agencies to set up the appropriate protections necessary to have those meetings in a secure location or to handle the files, etc.

Will there be implications? Absolutely, but they're not really that relevant to my bill, because my bill addresses only applying for security clearance. I have no issues with the ask; I just don't think it's really relevant to the actual clause-by-clause study of Bill C-377.

The Chair: Thank you.

Madame Gaudreau.

[*Translation*]

Ms. Marie-Hélène Gaudreau: We need to be constructive and efficient. Can we wait for our next witnesses?

At the end of the meeting, when I have my two minutes, I will be able to decide whether a question can be asked without infringing on the time the witnesses are allowed. I am thinking about the interpretation and the time for answers.

Before saying yes, it would be a very good idea, I would need about an hour, Mr. Chair.

The Chair: Right. That is a good suggestion.

[*English*]

Colleagues, here's what we're going to do. We're going to suspend, as we had originally planned, to transition over to our second hour. I will ask members to speak with one another during the break. See if we can find consensus on this, and then we can decide whether or not we want to provide some direction to the clerk on that basis.

Thanks to all those who offered commentary.

Monsieur Bédard and Madame Gauthier, thank you very much for being here with us today.

Colleagues, we're going to suspend. We'll pick it up in a few minutes.

● (1150)

_____(Pause)_____

● (1205)

The Chair: We are getting going with our second hour of testimony.

We have a number of witnesses with us here today. I would like to welcome them.

From the Canadian Security Intelligence Service, we have Nicole Giles, senior assistant deputy minister, policy and strategic partnerships, as well as Bo Basler, director general and coordinator, foreign interference. From the Privy Council Office, we have Sean Jorgensen, director general and chief security officer. From the RCMP, we have chief superintendent Jeffrey Beaulac, acting chief security officer, departmental security. From the Treasury Board Secretariat, we have Mike MacDonald, senior assistant deputy minister, security policy modernization.

Thank you very much to all the witnesses who are here today to add their insight and guidance as we delve further into Bill C-377.

Ms. Giles, I understand you'll be speaking on behalf of the entire group. I will turn the floor over to you for five minutes.

I just have a friendly note for our witnesses. If you're not used to appearing in front of committees, you have those earpieces. If you are not using them, please make sure you place them on those stickers in front of you. Obviously, if they're on your ears, you can go ahead and use the function as normal.

With that, Madam Giles, it's five minutes for you.

Dr. Nicole Giles (Senior Assistant Deputy Minister, Policy and Strategic Partnerships, Canadian Security Intelligence Service): Good morning, Chair and members of the committee. It's an honour to join you today and to have the opportunity to discuss Bill C-377.

We hope to provide some insight to this committee on government security screening processes and policies, as well as on access to classified information and the importance of protecting it.

In the interest of time, as the chair mentioned, I have the honour of providing opening remarks on behalf of the entire panel of witnesses.

[*Translation*]

Security screening is a fundamental practice that makes it possible to establish and maintain a relationship of trust within the government, between the government and Canadians, and between Canada and foreign countries.

[*English*]

Security screening involves the collection of personal information from individuals with their informed consent, as well as information from law enforcement, intelligence sources and other sources, using methods to assess their reliability and loyalty to Canada. My colleagues here from TBS and PCO will be very pleased to expand upon these issues.

A security clearance is sometimes misunderstood or portrayed as a special designation, a set of privileges or an earned qualification like a rank. It is none of these. Simply put, in the Government of Canada, it is an administrative decision taken by the deputy head of an organization that an individual is an acceptable security risk when accessing government information, assets and facilities, and when working with others in government.

[*Translation*]

The deputy head makes their decision based on the information and advice provided by the police and intelligence services, including the RCMP and CSIS. A security clearance may be granted, denied or revoked by the deputy head at any time.

[*English*]

Since clearance holders work in every part of government, a security clearance does not automatically grant the holder access to all information or assets at that level of clearance.

Safeguarding sensitive information is critical to the Government of Canada's ability to function and to keep Canada and Canadians safe. There are rigorous measures in place to prevent the release of classified information to anyone who does not strictly require it.

These measures are imposed with very good reason. The inadvertent release of sensitive information can result—and, very sadly, has resulted—in serious harm to individuals, even costing lives, Canada's national interest and our international relations. Mitigating this risk underpins everything that members of the security and intelligence community do. The release of information could mean risking the safety of human sources, exposing the tradecraft and other methodologies used to conduct investigations, and threatening the stability of indispensable allied relationships upon which Canada depends so heavily for intelligence. Put simply, if partners cannot trust Canada with their information, they will no longer provide it to us.

Similarly, if human sources do not trust that CSIS can protect them by safeguarding the information that they provide to us, our ability to recruit sources and collect information vital to Canadian security will be seriously impeded. We could also lose access to a valuable technical collection source that took years and expensive investments to develop.

What may appear in the first instance as information that's not especially sensitive or harmful, when viewed in conjunction with other publicly released information, can be used by adversaries to make inferences with very serious consequences. This is called the mosaic effect. Our adversaries carefully watch and track every word we say and release publicly, and we're very confident that they are watching now. They put together many pieces of information to identify our sources, our methodologies, our tradecraft and intelligence gaps. Many adversaries are very good at their jobs.

There are important principles that reinforce this system and that lie at the foundation of safeguarding all sensitive information. This is the need-to-know principle. An individual's specific duties and functions and the files they were working on at that particular moment in time are what establish their need to know for relevant sensitive information. Even the most senior officials at CSIS, who have the highest possible clearance levels, do not receive sensitive information that is not relevant to the current job and files that they're working on. In other words, there is no deemed need to know.

● (1210)

We need to ensure that sufficient information is disclosed to hold the government to account while also ensuring that classified information is protected. There are several critical avenues for review and oversight of classified information, including the National Security and Intelligence Committee of Parliamentarians, the National Security Intelligence Review Agency, the intelligence commissioner and the Federal Court, among others.

[*Translation*]

The people who work for these organizations have the necessary security clearances; they will receive the information classified as secret that they need for performing their specific jobs.

[*English*]

There are safeguards in place to ensure that no national security injury occurs as a result of disclosure of that information. These individuals are bound to secrecy under the foreign interference and security of information act, formerly known as the Security of Information Act, SOIA, and they must not knowingly disclose any information they obtained or to which they had access in the course of their duties and that a department is taking measures to protect.

[*Translation*]

At the same time, CSIS is making efforts to enhance its transparency, including in its public annual reports, which now say more than ever about its operations and the threat overview, and in its discussions with the media and the information it communicates to the public proactively.

[*English*]

We have taken extensive efforts to “write for release” information, for example in the proactive provision of chronologies of events to parliamentary committees. We've done that in the last couple of months.

Recent amendments to the CSIS Act through Bill C-70 further enhance CSIS's ability to share information, and we look forward to working more closely with parliamentarians as we up the national security conversation in this country.

[*Translation*]

We will be happy to answer your questions.

[*English*]

The Chair: Thank you very much, Madam Giles.

With that, Mr. Ruff, the floor is yours for six minutes.

Mr. Alex Ruff: Thanks, Chair.

Thanks, Ms. Giles, for the opening remarks.

Thanks to everybody here for what you do on a daily basis to help keep our country safe. There are some very familiar faces sitting at the table.

Ms. Giles, you talked about the threats, about the need to up our game and about the important changes that Bill C-70 allows that will allow CSIS, in particular, to share additional information. However, one of those conditions upon sharing additional classified information—and we're talking only at the secret level here, with my bill—is that you're still going to want those people to have a clearance before you share that information. That could be other levels of government. That could be—in particular here with Bill C-377—parliamentarians, so that's MPs and senators. That's a necessary safeguard that they're going to need in order to get that information.

Is that correct?

I would just ask if that is part of the reason this was evident and brought forward by CSIS—whether to NSICOP through reporting up to the government—and why it was included in Bill C-70.

Is it that there is that recognition that more classified information needs to be shared at a much wider level in order to address the ongoing security threats?

● (1215)

Dr. Nicole Giles: Mr. Chair, I think those are excellent observations, and I have perhaps two comments to offer.

First of all, one of the changes that was made to section 19 of the CSIS Act as part of Bill C-70 really removed what essentially was a prohibition from CSIS sharing any information or analysis outside the federal government, including unclassified information. Those amendments enable us to also provide a lot more unclassified information, advice and expertise in a way that we couldn't before.

That's enabling us, for example, to participate with allies in multibranded security advisories in a way that perhaps we couldn't before. It's also to enable sharing unclassified information that we previously couldn't provide. As the member mentioned, this gives us a great opportunity to have a far more sophisticated national security conversation.

Now, in some particular cases there will be specific pieces of information that are classified that we would like to be able to share outside the federal government to those who have the appropriate clearance. For example, there could be a situation where a parliamentarian is representing a particular constituency where we know a foreign interference actor might be interested, given the natural resources in the area or a particular ethnic or minority community that makes up the riding.

What we would like to be able to do is provide that specific and perhaps classified information to the parliamentarian to enable the parliamentarian to build their resiliency by being able to recognize and then, as a result of that, manage the threat.

That's the purpose of the changes to the CSIS Act. It is to allow us to do those resiliency disclosures.

Sometimes it will be unclassified information. Sometimes it would be classified, but classified information would be provided to only those who do have the requisite clearance.

In each of those cases there would need to be a determination by the owner of the information as to whether there was a specific need to know for that particular specific piece of information.

Mr. Alex Ruff: My next question, Mr. Jorgensen, will be for you.

We had some interesting testimony here on Tuesday.

Just to be up front, you're the former director of operations, if I got the title right, for NSICOP—since its formation, really.

We had testimony here from Mr. Wark, who said that if parliamentarians even applied and were granted a secret security clearance, it would be fatal to NSICOP.

In your opinion, would just having parliamentarians with a secret security clearance somehow undermine NSICOP?

Mr. Sean Jorgensen (Director General and Chief Security Officer, Privy Council Office): Thank you very much.

Through the chair, I'm not sure that I would go and criticize Mr. Wark for his opinion. Obviously, that's his opinion.

I would say that what he's getting at, if I were to interpret his remarks, is the issue around safeguards. In fact, Parliament has discussed safeguards in the context of NSICOP before. You'll recall, Mr. Ruff, that you went through a clearance, which is what we're discussing here.

There is more to security in the Government of Canada than just a clearance, as you well know. If you look at NSICOP, for example, every member there is permanently bound to secrecy. They have given up their parliamentary privilege. In fact, if they divulge something in Parliament, that information can be used against them in a court of law. They've taken an oath.

The other thing I would emphasize, though, is that Parliament allowed the Governor General to pass regulations. Those regulations set in place all the very safeguards that I think Ms. Giles covered very well. That is around who can do what, when they can share the information, how they can process it and what they need to use. All of those safeguards are what I think make up—and I hate this word—the ecosystem of security in the Government of Canada, of which security clearance is one part.

I'm not sure I'd agree that it's fatal. We already give clearances in certain circumstances to MPs. The NML issue is one and NSICOP is another. I think that all of those were buttressed with the safeguards that we're talking about.

● (1220)

Mr. Alex Ruff: Just quickly, on the NML or the Winnipeg lab stuff, is there any awareness from the officials here of those MPs who did not waive their parliamentary privilege having leaked information utilizing their privilege in the chamber?

Mr. Sean Jorgensen: I can't say that this has been the case.

I would also just remind everyone here that they also took an oath not to do so.

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

Madam Romanado, you have six minutes.

Mrs. Sherry Romanado: Thank you very much, Mr. Chair.

Through you, I'd like to thank the witnesses for being here today. I think it's a great panel, because the witnesses here today can kind of walk us through the process.

I want to make sure everyone understands how one would currently obtain security clearance. If I'm understanding correctly, there needs to be an administrator or someone who deems that, for the person who is applying for security clearance, there's a reason they need it. There has to be a justification for that. Once that is made, they can apply for the screening. They go through the screening. They have to pass said screening. There's a recommendation. I believe in some cases CSIS would do the screening and make a recommendation saying yes or no. At that point, the person would get their secret clearance. Again, that's in the case of secret clearance.

Once they have the secret clearance, it does not mean they can access every secret document of the Government of Canada. Is that correct?

Mr. Mike MacDonald (Senior Assistant Deputy Minister, Security Policy Modernization, Treasury Board Secretariat): Chair, I'll answer that question.

Parts of that are correct. For other parts I can provide a bit more clarity, perhaps. I'll be brief, because at times it's not a short, simple process, but other times it can be.

The easiest thing to say is that with security screening, the way it's conducted in the federal government is as per a Treasury Board standard. That standard lays out the responsibilities of those who actually take security in a department. One of their jobs will be to do security screening.

Essentially, the process starts—you are correct—when a person is considered for a position, or will be going into a position, or is being hired by the Public Service of Canada. Therefore, they are deemed...but that may not be the right word. They need to require access to a facility, access to assets, access to information technology, and so on. They must have a need in order to have a clearance.

Basically, the process begins when you're considered for a position. There are information assets and facilities. You don't ask for a clearance. Your department has decided that you need it. Then you as a candidate provide a range of information about yourself. You fill out forms. Some of you may have done that in the past. The department then collects that information about you. You are aware of this. In fact, you have to consent to all that. That's a key part. You're consenting to sharing your personal information and so on. You can look at things like work history, financial information records, maybe records of engagement with law enforcement in the past, your habits, your personal habits and your behaviours. There are searches of intelligence databases. There could be searches of the Internet, for example. There could be searches of national security holdings, some of your social media behaviour and so on.

All of this will be captured, or more, depending on what level you are looking at getting. It could be a top secret. It could be a secret. It could just be what's called a reliability status, which is the lowest.

Essentially, then, the decision-maker, like in administrative law, takes in all of this information and will send off a CSIS assessment, if required; a request for or a law enforcement check; or a request for or a financial check, if that's required. Basically, we'll take all this information and put that person through a judgment process. We'll take the totality of the information and think it through. Is there something that is causing concern? Is there something that would cause us to question their judgment, their trustworthiness or their reliability? If you're going to secret or top secret, you will then have questions around loyalty to Canada and reliability as it relates to loyalty.

If you come up to something where there is a concern, you may be called in for further security screening or questions. If not, you will proceed through the process.

It's important to say that if you do not get a security clearance, there is a right of redress. There are steps one must follow in order to address that redress, and the applicant has steps to follow if they disagree with the redress process.

● (1225)

Mrs. Sherry Romanado: What I want to get to, though, is that in this bill, the intent, as per the sponsor, is that first step. As members of Parliament, we do not have an administrator or someone saying that this person's job requires access to those assets, information, technology and so on. From what we heard from the last panel, there are two steps. First is what I'd like to call the justification or reason to apply, which is the administrator step. Second, once you've passed your security clearance, there's the need to know.

The fact that there is a reference to the words “need to know” in this bill may cause some ambiguity in terms of.... What are we referring to here? Are we referring to the application part, or are we referring to the fact that once you've passed all of that, you must now have a need to know?

Would you recommend any changes to this bill that would eliminate any ambiguity or remove any little *bémol* that you may have with respect to this bill? I understand the intent is really about parliamentarians applying.

Is the concern about the need to know, because it's in the second step in terms of the access to this information?

Dr. Nicole Giles: As officials we're never in a position to provide policy advice on specific pieces of legislation, but there is often some confusion around language and vocabulary. The term “need to know” is understood differently in different contexts.

When we talk about need to know, that applies to each and every individual specific piece of information. Therefore, in our work, there is no deemed need to know on any piece of information. It's the originator and owner of the information that determines who gets access to it. To give you an example, when we get information from an international partner and we want to provide it to the RCMP for a law enforcement investigation, we at CSIS have to go back to the international partner, ask if we can use these exact words, and give this exact information to the RCMP for the purposes of a criminal investigation. It's very regimented.

From our perspective, there's always value in being very precise about the language that's used. In our business, in our world, there is no deemed need to know on pieces of information. It's determined on the basis of that very specific circumstance.

Every day, for example, there are a number of meetings that I'm not allowed to attend, because, despite my position, I don't have a need to know for that specific operation.

Mrs. Sherry Romanado: Just to clarify, I have way too many as well, and I really don't want to be in some of those meetings.

Thank you.

The Chair: Thank you, Mrs. Romanado.

[*Translation*]

Ms. Gaudreau, you have six minutes.

Ms. Marie-Hélène Gaudreau: Thank you, Mr. Chair.

Thank you very much for enlightening us, Dr. Giles. I understood very clearly from your opening remarks what the distinction is between need to know and right to know.

What concerns me when it comes to parliamentary privileges is actually whether I can get access to the information that is going to be useful to me in my role as a legislator. You have reassured me tremendously on that point.

Where you worried me is when you talked about international relations, particularly with the Five Eyes member countries, about CSIS's image and about potentially sullying its reputation. I heard that clearly.

I also heard clearly that Bill C-70, which lacks teeth, in my opinion, has also contributed to providing us with more information in order to potentially avoid what we are experiencing in our legislative menu, which is going to last a very long time and is coming back to the Standing Committee on Procedure and House Affairs.

So I am trying to understand what benefit is provided by Bill C-377 when I could get the information I need by making a request, unless the government decides not to authorize access, obviously.

I would like to get your opinion.

Since there is some delay in answering me, I am thinking my question was a very good one, Mr. Chair.

Voices: Oh, oh!

● (1230)

C/Supt Jeffrey Beaulac (Acting Chief Security Officer, Departmental Security, Royal Canadian Mounted Police): I thank the member for her question, Mr. Chair.

The answer is not simple. It is not up to the RCMP to choose what members should have access to, or not, and how their laws should be written. We enforce the law. That was very clearly stated by my colleagues in the opening remarks. One of the concerns we have in our work is that sometimes the definitions are a bit vague.

As well, the international side of things is not the only thing that might worry us; there is also the internal side. As the national police service, we are in contact with every police force in Canada and with other law enforcement agencies. As was very clearly stated, the owner of information is entitled to decide where and when it should be used.

In the RCMP, every day, we look after the information we have. We make sure we protect it, because we do not want to damage our ability to do our job and the ability of our internal and international partners to do theirs.

Ms. Marie-Hélène Gaudreau: If I understand correctly, Mr. Chair, there is a difference between the information I have and what I might do with that information. It is this vigilance we are talking about.

I would like to hear CSIS's comments about this.

Dr. Nicole Giles: Mr. Chair, I can start and my colleague will be able to add to my answer.

[*English*]

From the perspective of our international partners, what they require from us in order to continue providing information and critical intelligence is the confidence that the information they give us will be protected and—if we choose and get their permission to pass that information on to others in the Canadian government or those external to the Canadian government—that there are appropriate frameworks and measures in place to ensure against the distribution of that information even further onward.

From our perspective, the really critical piece is ensuring that with those intelligence-sharing agreements that we have, we can live up to our obligations and protect the information. This is something that's so critically important to us. We are a double-headed intelligence service. We do both domestic and foreign. We are a relatively small intelligence service, so we are very dependent upon the information that our intelligence allies give us to be able to do our job and protect Canadians.

What we produce is very much desired by our partners and allies, but we ultimately are also net importers of intelligence, so we need to be able to provide those assurances and have those frameworks in place, and that's why that need-to-know principle is so important for us.

Mr. Bo Basler (Director General and Coordinator, Foreign Interference, Canadian Security Intelligence Service): The one piece I'll add to Dr. Giles's comments is that with our international partnerships, when we develop the sharing frameworks and mechanisms, how we use the information is spelled out as part of those mechanisms at the start, but it is also contained in each piece of intelligence that we exchange.

The intelligence will come to us or, conversely, our intelligence will be shared with a partner. It will say the security level at which it must be kept, but it will also say how that information can be used.

Often, when we receive a piece of intelligence, it will say, “This may be used by your department or by appropriately cleared members of the Government of Canada for investigation or for intelligence, but not for court proceedings,” for example. For each piece of intelligence, it is specified how it may be used and by whom, which I think is a critical element in all of this. If we want to use it differently, that's where we go back to the partners to say, “Now we may want to use this as part of a court proceeding. Can we use it in an affidavit?” for example.

[*Translation*]

The Chair: Thank you, Ms. Gaudreau.

[*English*]

Ms. Mathyssen, you have six minutes.

● (1235)

Ms. Lindsay Mathyssen: I have so many questions.

The sponsor of the bill, who is with us today, made many references to the number of people who currently hold secret security clearance—it's about 250,000—and said that only 23 have been rejected.

Can you go through those numbers for me? Also, when you get security clearance, do you always keep it? I know there's revocation if it's necessary, but how long does that last?

What I'm getting at is this: Where members of Parliament are allowed this access, how will CSIS, or whoever provides the clearances, handle and manage that in terms of numbers? Is that even an issue?

Dr. Nicole Giles: I'll answer very briefly, and then I can ask colleagues to comment.

CSIS's role in the security clearance, the government security screening process.... We also do immigration security screening; it's a separate program. However, our government security screening colleagues provide advice to the deputy head who has requested that the security clearance be undertaken and done.

We're not a decision-maker. We don't keep track of who has clearances. We provide advice on each individual case to the deputy head who has requested that we do so.

Mr. Mike MacDonald: Here are the statistics as best we can gather them, because you have to remember that each deputy head of an organization controls the clearances and the reliability status that are given in an organization.

I can say this: With regard to government employees, every person in the public service of Canada has to have a reliability status, which is good for 10 years. That's 100%, so you're at 360,000 plus. Roughly 51% of individuals will have only a reliability or an enhanced level of that. Roughly 40% of the public service of Canada has secret clearance, and then roughly 8% or 9% will have top secret clearance or top secret enhanced clearance, so the pyramid gets smaller the higher up you go.

Now, we do know that roughly 110,000 to 130,000 contractors are screened per year by PSPC as part of its program, and the last bit of data that we do have a good sense of is for new hires coming into the public service. About one in 400-plus to 500 actually don't get a clearance. That's for new hires, but again, this is not absolute data. This is the best that we can glean. That's for new people who are coming in and making an application into the public service.

In other words, denials are given. With regard to secret clearances, I believe you have 10 years, and it's five-year renewals for top secret. That's how the system operates, very briefly.

Ms. Lindsay Mathyssen: Who would be in charge, then, if this goes through? Hypothetically, what deputy head would be in charge of those general members of Parliament's clearances?

Mr. Sean Jorgensen: If you don't mind, I'll take that.

I must say that that's an area that is ambiguous in the bill right now. Up until this point, it's been the Privy Council Office that has done that, so, for MPs who come in for the NML or for NSICOP, it goes through my shop. Then, the decision to grant or revoke rests with me, or if it's a revocation or denial, it would rest with the clerk of the Privy Council.

Ms. Lindsay Mathyssen: Do you have the capacity to handle an onslaught of 343 potential members? Also, how long would that security clearance last? I know it's not dictated in the bill, so maybe this is part of that clarification. However, how long would that security clearance, then, last? Would it be the automatic 10 years?

Mr. Sean Jorgensen: That's another good question. It's not clear in the bill whether, essentially, an application would be going through the process that was set up and built for the public service. If that is the case, then it would last for 10 years. The revocation is another question that I think the committee would want to think about. What would be the implications if a member of Parliament were denied a clearance or, through whatever case, had their clearance revoked? What implications would that have for the individual member of Parliament, for their party, for the caucus, for the leader of that party and for Parliament more generally?

● (1240)

Ms. Lindsay Mathyssen: Currently, the revocation would sit with the deputy head's, I guess—

Mr. Sean Jorgensen: Authority.

Ms. Lindsay Mathyssen: —authority. Thank you. Clearly I need more caffeine.

So, that would be a problem.

If the security clearance lasts 10 years, then, what if the member doesn't?

Mr. Sean Jorgensen: Once you leave Parliament, your clearance remains valid for a year in the event that, for example.... This is how it works in the public service: If you come back to a job, it would be renewed. Otherwise, you'd have to get the clearance done again.

Ms. Lindsay Mathyssen: Then the other, revocation.... Has that been thought through? Let's say that, as a member of Parliament, I want to have somebody else, if I found somebody else. Is there a process of challenging that security clearance?

Mr. Sean Jorgensen: Again, it's unclear, but there are processes that enable a public servant to challenge the revocation or the denial of a clearance, and that happens at the reliability level—a different group. For a secret or a top secret, it goes to NSIRA.

The Chair: Thank you, Ms. Mathyssen.

Mr. Duncan, the floor is yours for five minutes.

Mr. Eric Duncan (Stormont—Dundas—South Glengarry, CPC): Thank you.

Mr. Jorgensen, I direct my questions to you here. When we talk about the right to apply for need-to-know status and have a security clearance, the chief of staff to the Minister of Public Safety, Democratic Institutions and Intergovernmental Affairs would be deemed to have the right to apply, and they have a security clearance. Is that correct?

Mr. Sean Jorgensen: That is correct—

Mr. Eric Duncan: I'm going to give a list here. The minister's staff that works at the Ontario desk for the Minister of Transport would be deemed to have the right to apply for need-to-know. Is that correct?

Mr. Sean Jorgensen: No.

Mr. Eric Duncan: For any ministerial staffer who applies, there's a rule here:

> All individuals who work in or for the office of any minister, including exempt staff, other employees, contractors, students, and persons on loan, assignment, or secondment, regardless of their work location, require a Level 2 (Secret) security clearance prior to appointment.

Mr. Sean Jorgensen: I'm sorry. That is a mistake on my part. That is true. You need a secret.

Mr. Eric Duncan: Next, the driver who's employed in the Minister of Health's office requires a need to know and has the right to apply. Is that correct?

Mr. Sean Jorgensen: A security clearance doesn't give you a right to know—

Mr. Eric Duncan: It gives them the right to apply, because they need to know. It's deemed that they must have it in order to be employed.

Mr. Sean Jorgensen: Yes, sir. We need to make sure, though, that the person who is employed in that position can be trusted with the information that they may overhear.

Mr. Eric Duncan: I'm not disagreeing with that.

The intern who participates in the Liberal party's internship program for two and a half months during the summer, in the office of the Minister of Democratic Institutions, requires a security clearance to work in that office. Is that correct?

Mr. Sean Jorgensen: I'll take your word for that.

Mr. Eric Duncan: They have to. I read that.

My point is that you come here today and say that there are some resource and capacity issues, that you've issued a quarter of a million security clearances in the last decade, and that...the fact that 338 MPs might apply is a bit of a challenge. I find that a bit difficult. I'm looking here, as a member of Parliament, Mr. Jorgensen...and I'll ask you about a high level again. In the budget for the office that you work in, who approves and votes on your budget each year?

Mr. Sean Jorgensen: You do, sir.

Mr. Eric Duncan: Yes. The intern at the Liberal Party of Canada's summer internship program is automatically deemed to have the right to apply, because they need or might need to know at some point in the course of their work.... We're having this push-back here today that for a member of Parliament to have the right to apply for that same status is suddenly an issue for some reason. I go back to when we talked about capacity and challenges. I'm saying that there is a frustrating point when it's required to have this, and "capacity" and questions are used as push-back. The point is that members of Parliament should have the same right to apply. What comes afterwards, in many conversations today—and it's frustrating—is, "We have this challenge."

Maybe you won't be able to provide this in writing, but I just want to give the context and hammer it home. Could you provide in writing to us how many intern applications were applied for and approved since 2021? My point is that, when there are 338 MPs who might apply and be given the right to apply, I go back to how, at the end of the day, it is very reasonable to do that for members of Parliament, who vote on the budgets that you work under and on legislation that you enact and enforce. I don't think it's unreasonable, and there shouldn't be any challenges to meeting this, so I think that's.... Could we have that number provided in writing, just to provide us with context?

Hopefully, what I've been able to outline is that we can get to yes on this. This is reasonable: It's very fair for members of Parliament to have the right to apply and, considering who is already deemed to have the right to apply on the need-to-know status, Mr. Ruff's bill on that is wholly appropriate and doable. I wonder whether you have any comments on that.

● (1245)

Mr. Sean Jorgensen: I apologize if I left any misunderstanding. I did not say, at any point, that my team cannot do this. We absolutely can do this. It will take some time, but that's true across the government. I want to leave the fact that I have not said we have an issue with responding to this type of demand.

Mr. Eric Duncan: It's not so much that capacity is a challenge; other ones have been raised about the volume. My point is that there's an opportunity and a way to get to yes on this. The volume of what's being asked here.... Again, I think a lot of the conversation, over the course of a couple of meetings, was about the other stage of having access to it. The right to apply and the capacity to do this is very reasonable, so to suggest, as you outlined, that capacity could be something...but other questions have been raised about this in the last few days.

I leave it at that and just provide that context, again, that if a Liberal party intern, as an example, has the right to apply for need-to-know status because they work in a minister's office, I make the argument that Mr. Ruff's bill is very reasonable, and that members of Parliament and senators should have the very same right to apply.

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

Mr. Duguid, the floor is yours for five minutes.

Mr. Terry Duguid (Winnipeg South, Lib.): Thank you, Mr. Chair.

Thank you to all of our witnesses for their testimony today.

I listened with interest to Mr. Wark's presentation, and I'm sure you listened to it as well. He has strong opinions. He referred to the Five Eyes and our international partners. He said they would not view this legislation very favourably; they do not have this kind of provision as proposed in Mr. Ruff's bill in their systems, and they are looking at NSICOP and other innovations we have introduced very favourably.

I wonder if you might comment on his testimony and whether you agree with it, and summarize the risks you see of passing this legislation. I haven't heard a crisp opinion from you on whether you support or don't support Bill C-377.

I'll then cede my time to Mr. Turnbull.

Dr. Nicole Giles: Mr. Chair, I can take a crack at that. It's an excellent question.

What I can speak to, perhaps, is how our closest intelligence partners manage similar situations. The way they do that is also by facing independent scrutiny by designated parliamentarians, similar to how we do it in Canada. For example, the U.S.'s FBI is overseen by specialized congressional intelligence committees. The U.K.'s security service is overseen by the Intelligence and Security Committee of Parliament. The Australian Security Intelligence Organisation is overseen by the Parliamentary Joint Committee on Intelligence and Security. It's similar for New Zealand, but with a different acronym.

What you'll see is the consistency in how allied partners manage this. There are designated parliamentarians who are cleared to the appropriate levels to receive—based on the reviews, specific files and issues they're looking at—the information they need to be able to carry out that function. It's very much about entrusting a designated group of individuals to carry out that function, similar to what NSICOP does for us.

We would be in a bit of a difficult position if we tried to speak to the views of all of our international colleagues. However, I think it would be fair to say that there would be concern, and there always is, when there's a possibility that they or we, as a designated intelligence service within Canada, would lose control over who gets access to specific pieces of information. That's where it circles back to being very clear about the vocabulary around “need to know” and that having a right to apply does not equal having a need to know.

Mr. Ryan Turnbull: I want to follow up on a previous line of questioning with the law clerk, who was here before this panel. I asked about the immunities and privileges of members of Parliament and said how I'm worried about the risks associated with certain cases—as we've seen in the United States and, I think, Australia—of members of Parliament or senators, so parliamentarians, using their immunity to reveal sensitive information in parliamentary proceedings that one could say might undermine our national security. I have that concern.

Do you share concerns that this bill might increase disclosure risk related to sensitive information? I'll ask Ms. Giles and then Mr. Jorgensen, please.

● (1250)

Dr. Nicole Giles: From the CSIS perspective, whenever there are not frameworks in place to prevent the onward disclosure of intelligence, we're concerned about our own information and the protection of our own technical and human sources and our analysis, for the reasons I explained. There are also the concerns that our allies, who give us specific pieces of intelligence for very specific purposes, would have.

We are always concerned about the onward distribution of information. We spend a lot of time thinking about it and making sure that we have frameworks in place to prevent it.

Our current understanding of the bill as constructed is that there are not currently those frameworks built in. That might be something that Parliament and this committee want to consider.

Mr. Ryan Turnbull: Ms. Giles, can I just be really clear on whether this bill increases onward disclosure risk?

Dr. Nicole Giles: Whenever the frameworks are not in place to prevent onward disclosure, the risks are increased.

Mr. Ryan Turnbull: This does not provide that framework. Is that correct, Ms. Giles?

Dr. Nicole Giles: As the bill is currently written, there's an opportunity to put frameworks in place that would help mitigate risks. I think Mr. Jorgensen spoke very eloquently about the measures in place for parliamentarians and NSICOP, and how that onward distribution is prevented.

The Chair: Thank you very much.

[*Translation*]

Ms. Gaudreau, the floor is yours for two and a half minutes.

Ms. Marie-Hélène Gaudreau: Let's imagine that I am taking part in a study in a committee. There is a document classified as secret, and the permanent members of the committee would like to get access to certain information contained in it. So I have to make a request, but I also have to go through the security screening based on need to know, in order to get access to that information in the document.

Have I understood correctly?

Dr. Nicole Giles: Are you talking about a document classified as secret?

Ms. Marie-Hélène Gaudreau: It is a secret document.

Dr. Nicole Giles: A document with a secret classification.

[*English*]

To Mr. Jorgensen's point, and going back to other procedures in place for other parliamentary committees, if there is a requirement for a parliamentarian to see a specific piece of information, and if the need to know has been established, a conversation would ensue about how the documents will be provided and the best mechanism to provide them.

One of the things we're also very concerned about is how the information is protected once it's received.

[*Translation*]

Ms. Marie-Hélène Gaudreau: I do not have a lot of time, but I want to be certain. Take the example of David Johnston's report. If it had been very useful to get access to that report, I could have requested the security clearance needed for getting access given that my position required it.

Is this what it means?

[*English*]

Dr. Nicole Giles: We certainly would not want to be involved in how parliamentary committees request information and how that information is provided. We work in collaboration with Parliament and the Privy Council.

[*Translation*]

Ms. Marie-Hélène Gaudreau: In fact, what I am seeing right now is that there is a major obstacle. Sometimes there is a Liberal government and sometimes there is a Conservative government. The important thing, however, is for us to get disclosure of the information we need in order to do our job properly.

Bill C-377, which we are currently considering, is one way of circumventing that obstacle, or finding another way to get access to information that may be declassified when a committee requests it in order to avoid having to raise questions of privilege in Parliament week after week.

So I want to know whether this bill has enough teeth and whether it is going to enable us to move forward. Ultimately, if the right to know is within the purview of Parliament rather than the government of the day, we are talking about something completely different.

Do you agree with me?

[*English*]

Mr. Sean Jorgensen: You've heard a lot about the need to know today, so I won't go through that again.

I think the issue you're getting at is this: If a member of Parliament has a clearance, does it allow the government to provide the information being requested more quickly? The answer to that would be yes, it would.

The determination of the need to know, though, still rests with the government of the day, but that's not what the bill says.

● (1255)

[*Translation*]

The Chair: Thank you, Ms. Gaudreau. Unfortunately, your time is up.

Do you need a clarification?

Ms. Marie-Hélène Gaudreau: That will work. I have enough information to interpret it all.

[*English*]

The Chair: Okay.

Next we have Ms. Mathyssen for two and a half minutes.

Ms. Lindsay Mathyssen: I'll carry things forward in terms of the checks and balances that are there, or not there, in this bill, and where we're left.

When someone gets a security clearance, there must be some sort of training or education they undergo. That isn't necessarily provided within this legislation. Is it possible to ensure that members of Parliament understand their obligations, and the difference between evidence and intelligence? How would you prescribe that for members of Parliament, specifically within our rules? I know it depends on the actual information that may come later, but I mean in general.

Mr. Sean Jorgensen: That's a great question.

If this is going to be the way we currently use it under the TBS guidelines, you'll get your secret clearance, and then you'll get a briefing on how to handle that information.

The other thing I would point out to you is this: There's an obligation, thereafter, for the CSO—the person who gave you that clearance—to monitor your compliance with the obligations you have under the SOIA, for example. Those are things this committee will want to think about, because that is part and parcel of it. When we give a clearance, we want to make sure people who have it are abiding by their obligations. It can be a cause for revocation.

Ms. Lindsay Mathyssen: Would that happen every year?

Mr. Sean Jorgensen: It's an ongoing obligation of the individual who has the clearance and of me and other CSOs like me to continue to monitor their compliance with the regulations.

Ms. Lindsay Mathyssen: That's the only question I had.

The Chair: Thanks, Ms. Mathyssen.

We're going to end with just two and a half minutes each remaining.

Mr. Ruff, that's two and a half minutes for you, and you're followed by Mr. Turnbull.

Mr. Alex Ruff: Thank you, Chair.

Thanks for coming here today.

I just want to make it crystal clear to everybody here that this bill does only the first step, which allows parliamentarians to apply for a clearance. There's nothing in this bill, the way it's currently written, that would allow access to any information. It just allows the ability to apply.

Is that clear to all the witnesses?

Mr. Sean Jorgensen: Your comments are clear. As we read it, we have concerns about the ambiguity of parts of the bill.

Mr. Alex Ruff: That's great. If we added a line or something to the clause that states, "This bill is only for the application for a secret security clearance that would then follow current Treasury Board guidelines," would something like that reassure the officials?

Mr. Sean Jorgensen: The point I would make, again, Mr. Ruff, is that we see in other legislation that has been passed by Parliament the safeguards and the follow-up that would give this table more assurances that Parliament has done this before.

Mr. Alex Ruff: Parliament has done this before with the NML situation and the Afghan detainee files. My bill does not address giving anybody any information. It only addresses the application for a secret security clearance. What I'm getting at is that I want to get rid of this ambiguity or get rid of this concern, because I'm only tackling that first step. These are legitimate concerns. I think the government of the day and all of you as officials would then ensure that the appropriate procedures and processes are put in place to protect this information after the fact.

I just want to get to the point for parliamentarians, as Mr. Duncan laid out, that there are so many people who work in certain positions—including, I would argue, parliamentarians, with the threat environment that we face now—that we should be elevating our game when it comes to national security and intelligence and doing better. The only way to do that is actually to see a bit behind the curtain, but the first step is to apply for security clearance. I'm just looking for that assistance to reassure you, because as somebody who has been in this world forever, I do not want to put any of our national security and intelligence assets at risk.

Dr. Nicole Giles: I think an observation you've heard from the panel of witnesses is that there may be an opportunity to clarify some of the vocabulary, and separating the concept of applying for the security clearance from the concept of need to know might give an opportunity to clarify some of the language surrounding that.

● (1300)

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

Mr. Turnbull, you have two and a half minutes.

Mr. Ryan Turnbull: Thank you.

Mr. Jorgensen, is the ambiguity you just referred to the same as what Ms. Giles just mentioned, which is what is deemed "need to know" in the actual language of this bill? Is that the ambiguity you were referring to, or was there another one?

Mr. Sean Jorgensen: It is in part, sir. I think we've raised a number of questions of, for example, whether this standard you're talking about is the public service standard, because if it is, then that reduces the ambiguity quite a lot. There's ambiguity about the safeguards and ambiguity about the implementation afterwards.

Mr. Ryan Turnbull: You mentioned before that members of Parliament who have been given access to information have had to take an oath, and they've waived their immunity and privilege in other cases. Are you concerned that this bill gives them access to information but does not have them waive their privilege and immunity, which, for example, in my mind, increases that onward exposure risk?

Mr. Sean Jorgensen: Parliamentary privilege is an important question for this committee to deliberate further on.

Mr. Ryan Turnbull: Okay, great.

To Mr. Duncan's point that interns and Ontario desk staff at ministers' offices have secret clearance, isn't that by virtue of the positions they hold?

Mr. Sean Jorgensen: Every time you get a secret or a top secret clearance, it's because of the position you hold and the responsibilities you have.

Mr. Ryan Turnbull: They didn't decide to apply. Is that correct?

Mr. Sean Jorgensen: They did not.

Mr. Ryan Turnbull: Do they get access necessarily to any information? Are they deemed to need to know on any information by virtue of having that secret clearance?

Mr. Sean Jorgensen: No.

Mr. Ryan Turnbull: Thank you.

The Chair: Colleagues, I want to thank our witnesses.

This was a very good example of why the committee stage of the legislative process is so important. It allows us to delve into a variety of questions that members from all political parties have and to rely on the expertise of witnesses with knowledge and guidance that they can lend to the discussion. For anybody who is watching, this is why we have the committee stage.

Our adversaries need to know we've got a strong parliamentary system; that's for sure.

Voices: Oh, oh!

The Chair: It's the teacher in me. Sorry, folks.

The meeting is adjourned.