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Chair

Mr. Daryl Kramp

Standing Committee on Public Safety and National Security

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•(0845)

[English]

The Chair (Mr. Daryl Kramp (Prince Edward—Hastings, CPC)): Good morning, colleagues, and welcome to our witnesses here today.

This is meeting number 54 of the Standing Committee on Public Safety and National Security. Today we are continuing our study of Bill C-51, An Act to enact the Security of Canada Information Sharing Act and the Secure Air Travel Act, to amend the Criminal Code, the Canadian Security Intelligence Service Act and the Immigration and Refugee Protection Act and to make related and consequential amendments to other Acts.

We have a group of witnesses here for the first hour, then further witnesses for the second hour, and then another table of witnesses this evening. We will start with opening statements by our witnesses here today. We would remind you that you're entitled to a maximum of 10 minutes, but should you be able to be a bit more brief, that would give more opportunity for the committee to have a dialogue with you.

At this particular point, we welcome Carmen Cheung, the senior counsel from the British Columbia Civil Liberties Association. From Greenpeace Canada, we have Joanna Kerr, executive director, and Keith Stewart, head of the energy campaign. As an individual, we have Ron Atkey, professor from Osgoode Hall Law School at York University. Welcome to all of our witnesses today.

We'll start with opening statements now.

Ms. Cheung, you have the floor.

Ms. Carmen Cheung (Senior Counsel, British Columbia Civil Liberties Association): Thank you, Chair.

The Chair: On a point of order, Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): Mr. Chair, I'm not exactly sure of the procedure here, but when the Minister of Justice appeared at the last committee meeting, he said some not too pleasant things about the British oversight committee. Quite honestly, the Minister of Justice was talking about history and was not up to date.

I have before me a report that was tabled in the British Parliament by their Intelligence and Security Committee of Parliament, which explains what they do and shows how fast they act. The problem, Mr. Chair, is that it's 200 pages long. It goes through the concerns they originally had and how they upgraded that intelligence committee with the Justice and Security Act 2013.

I think it would be important for committee members to have a copy of this report. It does show the good work they do and basically refutes what the Minister of Justice said about how they do it. However, it's not bilingual.

I would like to table it before the committee, or at least the summary of it, which I can get translated if that is the way we want to go about this. I understand the need for it to be bilingual.

I'm at your disposal, Mr. Chair. How do I get this tabled so that the committee has access to it, because it is pertinent and basically refutes the misinformation that the Minister of Justice gave this committee about how their oversight committee operates?

•(0850)

The Chair: Thank you, Mr. Easter.

There are two thoughts on the matter. Of course, under our routine orders anything that is to be tabled before the committee must be in both languages, unless, of course, we have unanimous consent to approve a tabling of any document in any form it's in.

Yes, Ms. Doré.

[Translation]

Ms. Rosane Doré Lefebvre (Alfred-Pellan, NDP): Could someone give us a translation of the documents to be submitted or a summary in both official languages?

[English]

The Chair: Well, what the chair would suggest, if that is the will of the committee, is that if Mr. Easter wishes to prepare a summary and or present a summary in both official languages, it would be pertinent to discussions that have already taken place and would be allowable at that point.

Hon. Wayne Easter: Thank you, Mr. Chair, and Rosane. I will do that.

The Chair: Thank you very much.

Yes, Ms. James.

Ms. Roxanne James (Scarborough Centre, CPC): It's my understanding that for something to be tabled in this committee, it has to be presented or tabled in both official languages. Any time in the past this issue has come up, the opposition has demanded that it be presented in both official languages before it's tabled. I think we should stick to the rules that govern this committee. That has been so in the past as well.

I have no problems with the Liberal member opposite having that translated for the committee and then tabling it at that point.

Thank you.

The Chair: That is what the chair has suggested.

The chair has suggested that the summary has to be translated, in both official languages, if he wishes to present just a summary. Mr. Easter certainly can look after that. Should he not, then we would rule otherwise.

We will now go back to our opening statement.

Thank you for your patience, Ms. Cheung. Please carry on.

Ms. Carmen Cheung: Thank you, Chair.

Good morning. It is a privilege to appear before the committee again. On behalf of the British Columbia Civil Liberties Association, I'd like to thank you all for your invitation to speak today.

The BCCLA is a non-profit, non-partisan organization based in Vancouver, British Columbia. For over 50 years the mandate of the BCCLA has been to promote, defend, sustain, and extend civil liberties and human rights in Canada.

We have submitted for the committee's consideration a written brief setting out our chief concerns with Bill C-51, and hope that as the committee examines this bill it will consider not only whether its provisions are constitutionally compliant but whether they are also efficacious and just.

We raise six chief concerns with the bill. Given our limited time here I can only canvass them in my opening remarks, but I do hope that the committee will refer to our written submission, which sets out our views in greater detail.

First, it is our submission that the security of Canada information sharing act is fundamentally flawed and should not be enacted. It endorses a radical conception of security unprecedented in Canadian law, and an unbounded scope of what it means to undermine Canadian security. Based on these expansive concepts, the act authorizes warrantless information sharing across government and dissemination outside of government. As the Privacy Commissioner has pointed out in his letter to this committee, such widespread and relatively unfettered access to personal information poses serious dangers for individual privacy. We and others have also suggested that such massive data collection and information sharing may not necessarily benefit security, either. Moreover, the act deepens an already serious deficit in national security accountability.

Professors Kent Roach and Craig Forcese have extensively detailed the legal problems with this proposed act, so we will not repeat them here.

Paul Champ, who is appearing on behalf of the International Civil Liberties Monitoring Group later today, will discuss in greater detail the human rights concerns raised by the information sharing act. We share the ICLMG's concerns. We add only the following observation. To those who might say that this proposed act poses little threat to freedom of expression and dissent, recent examples show that government already takes a very wide view as to what constitutes a threat to Canada's security. We need only to look at CSIS and RCMP monitoring of non-violent protests undertaken by first nations and environmental groups.

Second, it is our submission that the secure air travel act should be rejected. As a threshold matter, we question the efficacy of no-fly schemes in general. Travellers on such lists are deemed too dangerous to fly yet too harmless to arrest. It is our view that if law enforcement officials have enough information to determine that an individual poses a threat to aviation security or that they are planning to board a plane in order to commit a terrorism offence, the officials are also likely to have enough information to lay charges or to seek a recognition order with conditions. If it is indeed necessary to impose a travel ban, then the criminal law is already well equipped to allow the government to seek a court order to that effect.

But even if no-fly schemes do improve aviation security, the system proposed here suffers from serious procedural deficiencies. The proposed act creates a system where travellers have no concrete way of knowing whether they are on the no-fly list, where the reasons for listings are largely kept secret, and where the judicial process for reviewing delisting applications can be held in secret. This is a dangerous lack of due process. While travellers can't access information relating to their own listing, the proposed act does allow the government to share its no-fly list with other countries, with no statutory limitations on how that information can be used by a foreign state. Canada's experience with mistakenly labelling individuals as security threats and providing that information to foreign governments should counsel against such carte blanche approaches to foreign information sharing.

Third, we oppose the creation of an advocating or promoting terrorism offence in the Criminal Code. We see no security interest in further criminalizing expression beyond what is already proscribed by law. The Criminal Code already makes it illegal to counsel anyone to commit a terrorism offence. Considering that terrorism offences include acts that fall well short of violence, such as preparing to commit terrorist acts or supporting terrorist activity, this already captures a broad range of terrorism-related expression.

Similarly, the participating, facilitating, instructing, and harbouring provisions already contemplate recruitment and instruction to commit terrorist acts as criminal offences. In the Khawaja case, the Supreme Court of Canada also considered the constitutionality of the definition of terrorist activity in the Criminal Code, and allowed it to include threats of violence.

●(0855)

This new offence, then, would criminalize expression far removed from acts of terror or violence. It would make criminals of individuals whose sentiments may never even leave the confines of their own living room, so long as their listener is someone who might commit a terrorism offence. The new offence contains no requirement that the speaker actually intend a terrorism offence to be committed, and it contains no requirement that the listener commit a terrorism offence either.

Endorsing acts of terror may be upsetting to some and repulsive to many. But freedom of expression is what creates a democratic society in which we can debate the merits of ideas, even those that, as individuals, we find deeply offensive. A democracy is based on the premise that individual citizens have the capacity to govern themselves, to understand and to evaluate different perspectives with which they are confronted, to deliberate their merits, and to ultimately decide which viewpoints to adopt and which to discard. Accordingly, we urge this committee to reject the creation of this new offence.

Fourth, we submit that this committee should reject the proposed preventative detention amendments. Bill C-51 expands a troubling regime of preventative detention by lowering already low thresholds for detaining individuals on mere suspicion of dangerousness. When this committee debated the reintroduction of the preventative detention provisions currently in the Criminal Code, we expressed serious concerns about the necessity for such sweeping arrest and detention powers. While we continue to believe that it is preferable to charge terrorism suspects under the criminal law so that they are afforded appropriate due process protections, the fact remains that the government already has extraordinary powers at its disposal.

The question that this committee and all Canadians should be asking is not what additional powers should be granted to government to protect public safety, but how well existing powers are being used and whether the existing criminal law is being properly enforced.

Fifth, we believe that the proposed amendments to the CSIS Act are unwise and unnecessary and should be rejected. By giving CSIS the power to engage in threat disruption, Bill C-51 blurs the line between spying and policing, carefully drawn following the McDonald commission. This threat reduction power is a policing power. It is a policing power made extraordinarily broad by virtue of the expansive definition of threats to the security of Canada contained in section 2 of the CSIS Act, a definition that was constructed to set out the mandate of an agency responsible for collecting and evaluating information, not a policing authority. It is a policing power made dangerous, given the secrecy that accompanies national security activities. Rights violations may be more difficult to detect, and once detected, more difficult to remedy, and it is a power that seems wholly unnecessary. Government has provided little evidence for why this expanded power should be granted to CSIS or why CSIS should have any policing powers at all.

We are deeply troubled by the proposed CSIS warrant powers in this bill and the proposition that Canada's courts should be tasked with authorizing measures that violate constitutional rights. As many others have observed, this profoundly misconstrues the role of the

court in our constitutional system. Asking the court to authorize violations of fundamental rights, such as those protected by the charter, is simply offensive to the rule of law.

Over the past decade, we have seen the effects of an approach to national security that privileges bare legality, and at worst, descends into illegality. The consequences for the rule of law and human rights have been profound. Meanwhile, it remains an open question whether the gloves-off approach to national security has made Canada or any of our allies any safer.

Finally, Bill C-51 ignores the Supreme Court of Canada's teachings that the government cannot rely on secret evidence in security certificate proceedings without providing some way for the named person to know the case to be met and a procedure by which the evidence could be tested.

The proposed amendments to IRPA that would limit the scope of materials produced to special advocates should be rejected. It is difficult to conceive what sort of information is being exempted by these provisions. By definition, the information is neither relevant to the government's case against the person nor is it information to be considered by a judge when determining whether the certificate is reasonable. It begs the question of why this information is being placed before a judge at all, and leads us to conclude that this class of information may be so problematic that, rather than being exempted from disclosure, it must be made available to special advocates to review and potentially challenge.

●(0900)

It is difficult to comment on national security powers without also discussing the need for real accountability and review.

I know that I am out of time, so I will just end by saying this. We cannot afford to enact this bill, because we cannot afford to further expand the reach of the scope of our national security activities without taking steps to ameliorate what is now a staggering accountability deficit.

Thank you again for this opportunity and for this committee's work. I look forward to your questions.

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

Ms. Kerr, you have the floor.

[*Translation*]

Ms. Joanna Kerr (Executive Director, Greenpeace Canada): Thank you, Mr. Chair, for giving us the opportunity to express our views on Bill C-51, which is critically important.

I am Joanna Kerr, executive director for Greenpeace Canada. I am here today with Keith Stewart, who is in charge of the Greenpeace Climate and Energy campaign.

[English]

In my global roles as chief executive of ActionAid International, policy director with Oxfam Canada, and now with Greenpeace, I have seen first-hand the power of protest and dissent in effecting real, transformative change for the betterment of people and the planet.

I'd really like to start with a few very simple questions. Would women have the vote today if the suffragettes had not engaged in widespread non-violent protest? Would racial desegregation in the U. S. have occurred without sit-ins, march-ins, public protests, and peaceful sustainable resistance to unfair laws? Would despotic governments have been overthrown around the world without people merging onto the streets and holding ground? Would decolonization have happened without non-violent direct action?

All of these movements and those against slavery and apartheid, to name but a few, employed peaceful but actually unlawful means to confront unjust laws and practice and challenge society's views of right and wrong. They expedited change, which was urgently needed. That is the kind of change that is required today if we are to address the formidable threat that is posed by climate change.

Greenpeace's mission was forged in non-violent direct action, and we have used it to great effect over 40 years. We were instrumental in ending nuclear tests in the waters of the South Pacific, in ending scientific and commercial whaling, in ending toxic dumping in the world's oceans and getting a treaty to curb acid rain, and in the protections now afforded Canada's Great Bear rainforest. None of these critical environmental protections would exist without peaceful confrontation—what we refer to as non-violent direct action.

Do we really believe the interests of national security will be served by restricting these fundamental options for civil protest, be it against injustice, corruption, racism, or pollution? Because that is what Bill C-51 proposes in the name of national security.

Professors Craig Forcese and Kent Roach have shown that the bill could be used to target democratic protests engaged in such struggles. Based on public statements by cabinet ministers, as well as leaked RCMP and government documents, there is strong reason to suspect that these powers could and would be used against those advocating for clean water, for precious ecosystems, and an end to catastrophic climate change.

We are very concerned that the draft legislation appears to target environmental and first nation climate activists as a threat to security. To borrow a line from David Suzuki:

Pollution and climate change caused by excessive burning of fossil fuels are [the] real threats, not the people who warn that we must take these threats seriously. And while we must also respond to terrorism with the strong tools already in place, we have to remember that our rights and freedoms, not fear, are what keep us strong.

Greenpeace joins many others in having serious concerns with this legislation. More than a hundred legal experts wrote an open letter to Parliament calling on you to amend or kill this bill on the grounds that it is a danger to the rule of law, to protected rights, and to the health of Canada's democracy. They argue that it may be ineffective in countering terrorism and also could actually frustrate anti-terrorism efforts. We share their concerns.

Today I would like to focus on what this bill could mean for democratic debate in this country.

The government says the sweeping new powers to be granted to CSIS would not be used to target its political opponents. If that is so, then as legislators you have an obligation to write the legislation so that it cannot be used in that way. This was a key finding of a 2009 United Kingdom parliamentary review of the relationship between policing and protest movements. It stated that “the better approach is to draft legislation itself in sufficiently precise terms so as to constrain and guide police discretion, rather than to rely on decision makers to exercise a broad discretion compatibly with human rights”.

● (0905)

Your British colleagues went on to note that “We are concerned by the reports we have received of police using counter-terrorism powers on peaceful protesters,” and to urge that amendments be made to make clear “that counter-terrorism powers should not be used against peaceful protesters.”

As University of Ottawa law professor Craig Forcese has pointed out, the anti-terrorism law with its reference to “foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada” could be used in the case of “a foreign environmental foundation funding a Canadian environmental group's secret efforts to plan a protest (done without proper permits) in opposition [for example] to the Keystone Pipeline Project...”

We have already seen evidence of this. Government ministers have already characterized anti-pipeline protesters as foreign-funded radicals and even money-launderers. A copy of the federal government's oil sands advocacy strategy obtained by Greenpeace under access to information legislation identified environmental and aboriginal groups as “adversaries”, while oil companies were listed as “allies”.

It's more detrimental than just name-calling. The 2012 omnibus budget bill not only rewrote Canada's environmental legislation to reduce public involvement in decision-making, but also gave the Canada Revenue Agency millions of new dollars to conduct audits of charitable organizations that disagree with government policy.

The Voices-Voix Coalition has documented more than 100 cases of recent attacks against those who have simply raised their voices to criticize government policy. Last month, the newspaper *La Presse* obtained a copy of a secret RCMP critical infrastructure intelligence assessment that names Greenpeace, Tides Canada, and the Sierra Club as part of “a growing, highly organized and well-financed anti-Canada petroleum movement that consists of peaceful activists, militants and violent extremists who are opposed to society’s reliance on fossil fuels.”

Remarkably, this RCMP report downplays climate change. It says that these groups “assert climate change is now the most serious global threat, and that climate change is a direct consequence of elevated anthropogenic greenhouse gas emissions which, they believe, are directly linked to the continued use of fossil fuels” and that by highlighting “the perceived environmental threat from the continued use of fossil fuels” we are fuelling a “broadly based anti-petroleum opposition”.

While the RCMP questions the legitimacy of the threat of climate change, the Pentagon has called climate change a “threat multiplier”. The most recent U.S. national security strategy identified climate change as a threat on a par with terrorism, weapons of mass destruction, and disease. The World Bank says that it “is a fundamental threat to sustainable development and the fight against poverty.” An article published last week in the *Proceedings of the National Academy of Sciences* found “that human influences on the climate system are implicated in the current Syrian conflict.”

Perhaps most worrying in light of Bill C-51, the RCMP document categorizes civil disobedience and unlawful protest as being “beyond peaceful actions,” conflating peaceful activists with those who engage in violence in the category of “anti-petroleum” extremists.

● (0910)

To be clear, we believe the threat of climate change must be addressed through peaceful, democratic means. If for any reason someone causes another person harm or damages infrastructure or property, that person should and would, under current laws, face legal consequences.

The vast majority of people calling for a debate on fossil fuels and climate change, including those who engage in civil disobedience, aren’t violent anti-petroleum extremists. They are schoolchildren and grandmothers. They are ranchers and parents. They are people from all walks of life who care—

The Chair: Ms. Kerr, you’re over time. Would you wrap up, please.

Ms. Joanna Kerr: They care about their family.

The word “lawful” was struck from the current anti-terrorism law, following expert testimony in 2001, so that unlawful activity such as trespassing or minor property damage would not be conflated with terrorism.

I want to ask you again, in closing, do you believe that the interests of national security will be served by restricting fundamental, often vital, options for citizen expression and civil protest? We absolutely do not. We ask you to think through—

The Chair: You’re well over time. I’m sorry, but I still have to have some time constraints here. Thank you very much.

We will now go to Mr. Atkey, please, for 10 minutes.

Mr. Ron Atkey (Adjunct Professor, Osgoode Hall Law School, York University, As an Individual): Thank you, Mr. Chair.

Members of the committee, I’m honoured to be invited to appear before you regarding this important bill, which has certainly captured the attention of so many Canadians from across the country and internationally

My interest and background concerning this subject is set forth in my short form resumé that is attached to my speaking notes in both official languages. In the interests of time, I’m going to omit that information from my opening statement, although you should feel free to ask any questions.

Given that the government and one opposition party have already indicated support in principle for this bill, I want to indicate that I am not here to destroy the bill. Rather, I want to assist in proposing some practical amendments that would improve it and perhaps save its constitutional legitimacy and integrity. Like so many others in Canada, I accept, based on known evidence, that the current terrorist threat to Canada’s security is real and that enhanced measures are necessary for major agencies such as CSIS, RCMP, CBSA, and Transport Canada to combat this threat through lawful means.

In the few minutes I have today, I want to deal with five important matters. First, is constitutionality and the independence of the judiciary. Second, I’m going to touch on freedom of expression; third, on the issue of fairness; fourth, on effective review by SIRC and others; and fifth, on parliamentary overview, which is something you should consider.

Constitutionality and the independence of the judiciary go right to the major flaw in the bill. Part 4 authorizes the Federal Court to issue a warrant to CSIS to take measures that may contravene a right or freedom guaranteed by the Canadian Charter of Rights and Freedoms. This provision, in my view, is clearly unconstitutional and will be struck down by the courts.

The existing charter already has a built-in limitations clause authorizing reasonable limits where necessary in a free and democratic society, and proportionality applies to those limits based on almost 33 years of charter jurisprudence. If Parliament wants to invoke the notwithstanding clause, it is free to do so under this Constitution, although no federal Parliament has had the courage or need to do so since the charter was proclaimed in 1982.

I ask you, why provoke an avoidable constitutional challenge? Canadian judges are fiercely independent and are not agents of the government who can be mandated to authorize measures at all costs to protect against terrorist threats. Federal court judges have carefully authorized or rejected wiretap applications since 1984, under existing section 21 of the CSIS Act. I have seen or reviewed some of those applications and judicial decisions. The process of judicial control of wiretap warrants applications works today.

Why, in drafting new parallel provisions in proposed sections 12.1 and 21.1 of Bill C-51 respecting additional measures, do you need to instruct the judges to totally ignore the charter and to allow CSIS to violate constitutional obligations in order to take these additional measures beyond wiretaps? This notion of Parliament authorizing a charter breach, short of using the notwithstanding clause, is clearly unconstitutional and is not consistent with our constitutional tradition and the way in which section 1 of the charter operates.

You can avoid this constitutional mess by redrafting proposed section 21.1 of Bill C-51 to provide that any warrant that permits CSIS to take measures thereunder will not contravene a right or freedom guaranteed by the Canadian Charter of Rights and Freedoms.

I have a bit to say on freedom of expression, but in the interests of time I'm going to jump over that and urge that you consult the documents tabled and positions represented before you by my colleagues, Craig Forcese, from the University of Ottawa law school, and Kent Roach, from the University of Toronto. They have dealt with this in detail, and I don't have the time to go through it today.

Similarly the provision of fairness, which is guaranteed by section 7 of the charter, states:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

This, ladies and gentlemen, is the provision and constitutional requirement of fairness. It's embodied in the special advocates, and I happen to be a special advocate, so I know a bit about that role. I think there is a role for special advocates to provide fairness in a number of the warrant proceedings, a number of the no-fly list proceedings, and you should actively consider that.

● (0915)

I do want to jump right into some of the issues that I know are before you and which I know something about, and that's the question of effective review by SIRC and others.

Now, I have publicly defended the structure of SIRC, which was established in 1984 as the CSIS watchdog. I had the honour to be the first chair. It was effective at the beginning, even though there were growing pains as CSIS broke off from the RCMP and struggled initially to incorporate women and outsiders. The SIRC structure has worked where the only body being reviewed was CSIS and the monitoring of CSIS's extraordinary powers was manageable. That was 1984. Things have changed over 30 years.

First, the CSIS budget, personnel, and powers have grown exponentially while the watchdog budget remains pretty much the same. It is unfair to dramatically expand CSIS powers to conduct disruptive or international activities to fight terrorism at home and

abroad while leaving the watchdog frozen in time. Failure of the government to address this issue in the context of Bill C-51 is irresponsible. The public has a right to be concerned whether SIRC can do the job going forward.

Second, this debate on Bill C-51 has caused the public to reflect unfavourably on the scattered and uneven nature of review concerning a variety of federal agencies involved in security matters. There have been concerns about the extent of independent review of the RCMP and CSEC, and the absence of independent review of such important agencies as CBSA, Transport Canada, DFAIT, CIC, and 20-odd other federal agencies, not to mention provincial and municipal police forces involved in security intelligence work.

Whether we need to adopt a federal security czar to supervise, monitor, and coordinate security agencies, as is done in the U.S., or to develop a super-SIRC with expanded powers of review and accompanying budget, or to have statutory gateways to achieve accountability, as recommended by the O'Connor report in 2006, this is an issue that cannot be left aside as Parliament gallops ahead on Bill C-51.

This is not a question of oversight, which has become misused as a term. Responsibility for the planning and conduct of anti-terrorist activities in accordance with the law remains, in the first instance, subject to ministerial approval and approval of warrants by judges based on court applications submitted by appropriate agencies under the detailed requirements of the relevant legislation. This is oversight. Review bodies do not approve operations in advance, but they do ensure accountability after the event, to ensure that hopefully all agencies exercising security functions are effective and operate within the law. They engage the public through exhaustive annual reports tabled in Parliament with a minimum of redactions, redactions that are necessary for protecting individuals or methods of operation.

Let me conclude by talking about parliamentary overview. What are the responsibilities of Parliament other than to ensure that Bill C-51 is improved to allow the legislation to go forward and to assist government agencies to deal effectively with the terrorist threat while protecting fundamental rights and freedoms under the charter?

Members, I have been both a parliamentarian and a watchdog, a professional watchdog. The answer to whether Parliament or a specialized agency should have the power to review our security agencies is easy for me. Canadians should have both. Under our system of government, Parliament is the ultimate watchdog and is directly accountable to the people. The party having the most number of seats at each general election usually is called on to form the government, but Parliament itself remains the watchdog.

There is nothing inconsistent in having specialized security-cleared watchdogs created by Parliament covering the effectiveness and legality of various agencies involved in security work and having a committee of security-cleared parliamentarians charged to oversee the whole system—that is, to take a prompt overview of the situation when problems occur, which they inevitably will in this business, and to delegate the investigative responsibility to the appropriate specialized watchdog.

Indeed, there are three bills currently before Parliament calling for a committee of parliamentarians on national security. The one I like the best is Bill S-220, introduced by former Conservative Senator Hugh Segal. It calls for a committee of nine—three from the Senate, six from the House—to be appointed by the government but after consultation with opposition parties and approval of the appointment by a resolution of their respective houses.

●(0920)

There are provisions for appropriate security and confidentiality of each member of those committees, and the mandate would be to review the legislative regulatory policy and administrative framework for the intelligence and national security in Canada.

The Chair: Mr. Atkey, could you wind up, please?

Mr. Ron Atkey: I will.

Why not absorb Bill S-220 into this discussion and provide for it to come into force on January 1, 2016? In this way, I think Parliament could fulfill its position as an effective watchdog, and you could have a five-year review process in place for this bill, which would start four years after the bill becomes law so the review could be effective, and Parliament could have a major role in the operation.

Thank you.

The Chair: Thank you very much, Mr. Atkey, and thank you to our witnesses for their comments.

We will now go to the rounds of questioning.

We will start off the first round of seven minutes, and we will go to Mr. Norlock, please.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Mr. Chair, and through you to the witnesses. Thank you for attending today.

My first line of questioning will go to the BC Civil Liberties Association. Your website, like you, describes Bill C-51 as unnecessary. It goes on to articulate that your group thinks it is unfair. One of the elements of the bill that is attacked is the issue of preventative arrest. This is an item that national security experts and law enforcement officials have stated will be of enormous value in a number of cases, so it has a high benefit in terms of preventative law and a low cost, as it applies to a limited number of individuals.

Furthermore, I understand that the preventative arrest provisions in some allied nations, also thriving democracies, go much further than what we have proposed in this bill.

That said, it is difficult to fathom a case in which preventative arrests are not useful tools for protecting the public. We have heard that radicalization happens faster than we have ever seen in the past. One just has to watch the evening news over the past, I'd say, month and a half to two months to see that happening, not only in Canada but in many other nations.

We have also heard that investigations are labour-intensive and that Canada and its allies are dealing with unprecedented numbers of citizens leaving their borders to commit terrorist acts abroad. Also, sadly, some of them, and many more, have expressed a desire to turn on their country of birth.

In that context, one says, "Could you really imagine a world in which a weekend in jail would prevent an act of terror and give the government precious extra days to make a criminal case and save Canadian lives?"

It's also curious to see the concerns of some civil libertarians with an angle like this. We say preventative arrest will be used only on terrorist subjects. Prior to preventative detention, the threshold will still be robust, because it will require reasonable grounds to believe that an attack may be carried out and that the detention is likely to prevent such an attack.

No innocent bystander would be caught up in this threshold. An officer must present hard evidence to demonstrate that this threshold is met and that the person in question is a threat to society. Then, the Attorney General must agree and consent to the preventative arrest. The arrestee must be taken before a provincial court judge then....

●(0925)

The Chair: There is a point of order.

Yes, go ahead, Mr. Garrison.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): It sounds more like Mr. Norlock is testifying than asking questions of our witnesses.

Mr. Rick Norlock: Mr. Chair, I am entitled to make a comment and ask a question, but sometimes a question needs to have a certain amount of information before it is asked.

The member just interrupted me so that he could interrupt me. It has no bearing, and he knows that. His point of order is out of order.

The Chair: All that the chair would do, just as in previous conversations before this committee, is to ask members to keep things relevant. In this particular case, it is relevant to the testimony we've heard and where you are going with that, so it is in order.

I would encourage all members to try to stay within the framework of the meetings of acceptability for all.

Thank you.

Yes, you have a point of order, Ms. James.

Ms. Roxanne James: I just want to make sure that interruption does not take away time from Mr. Norlock's full seven minutes.

The Chair: That has already been noted. Thank you.

Carry on, Mr. Norlock.

Mr. Rick Norlock: How much time do I have, Mr. Chair?

The Chair: You have three and a half minutes, sir.

Mr. Rick Norlock: Thank you.

Just to finish off before asking my questions, the arrestee must be taken before a provincial court judge, as I mentioned, within 24 hours, at which point the judge can extend the detention for up to 48 hours. The Attorney General must then consent, and then a judge must agree within 24 hours. The hearing will be within 48 hours of that detention. At these hearings the crown will have to demonstrate that the case is progressing toward a criminal charge.

So we have a peace officer with evidentiary threshold; the Attorney General, represented by crown prosecutors; the judicial oversight. Keep in mind that we're trying to save lives in an emergency situation. That sounds like a fair process to me.

Is there any degree of checks and balances that would satisfy you? Are you simply fundamentally opposed to taking terrorists off the street?

Let me just quote one thing before you answer that. Mr. John Russell, a prior vice-president of the Civil Liberties Association, has stated:

...the government's proposed definition of "terrorist activity" is simply too broad. As it stands, proposed item 83.01.(1)(b)(ii)(E) of this definition would count as "terrorist activity" any unlawful politically motivated act that threatened to significantly disrupt an essential service.

He goes on to say:

...it would potentially brand as terrorists doctors, teachers, and nurses who threaten to strike or withhold services in the face of provincial orders deeming their work an essential service. It could also brand as terrorist the actions of first nations individuals who blockade an airport or a highway.

Are you fundamentally opposed to taking terrorists off the streets?

● (0930)

Ms. Carmen Cheung: Thank you for your question, Mr. Norlock.

With respect to that question, no we are not fundamentally opposed to taking terrorists off the streets. We believe that it's necessary to have effective measures for countering terrorism. Our concern with preventative detention is that it may not be the most effective measure for countering terrorism, given that the example Mr. Norlock has cited, somebody who might want to travel to commit a terrorist offence, is already in our Criminal Code as a terrorism offence. If law enforcement has that information, then it certainly has that information to actually lay a criminal charge, and no preventative arrest is necessary.

I think even others who see limited roles for preventative arrest will acknowledge that preventative arrest has enormous potential for abuse. To that end, I understand that Professors Roach and Forcese, for example, whom I think you'll hear from later today, are suggesting that there be limits to the circumstances under which preventative arrest can happen.

With respect to the characterization that this is simply a weekend in jail, this is not what Bill C-51 contemplates. As your minister—

The Chair: Be brief, please.

Ms. Carmen Cheung: Sure.

As I think you heard from the ministers two days ago, what this bill contemplates is up to seven days in detention.

The Chair: Thank you very much.

Now, Ms. Leslie, please.

Ms. Megan Leslie (Halifax, NDP): Thank you very much, Mr. Chair.

Thank you very much to our witnesses.

I'm the environment critic for the NDP, so I really want to focus on section 2 and the specific exclusion for lawful activity. However, before I get to that, I do want to ask a quick question of Greenpeace, because you're an international organization. You're Greenpeace Canada, but you know what's going on with your colleagues around the world.

How do the laws proposed in Bill C-51 compare to what Greenpeace faces in other countries?

Ms. Joanna Kerr: Thank you very much for the question.

Certainly, if we compare this law to those of the European countries, there are protections for both lawful and unlawful protest as an essential part of democratic change. As I laid out at the beginning of the remarks, some of these critical changes that have been brought about vis-à-vis human rights, social justice, and the environment wouldn't have been made possible without the right to protest.

Ms. Megan Leslie: In drilling down a little bit—I know, Ms. Kerr, that you didn't have a lot of time to get into that aspect of your brief—as I look at section 2 and this exclusion for lawful protest, your examples are incredible and inspiring. But I think about more banal examples, such as when the Raging Grannies came to my office. They didn't have a permit to be on the sidewalk outside of my office, but they were singing about GMO seeds, and then they came in and we had tea.

During the Idle No More movement in Halifax, people descended upon the Micmac Mall in Dartmouth and started a spontaneous round dance. It was nothing but goodness and light. People came out of stores, and they danced and they sang. But they didn't have a permit.

I agree with Professor Forcese's analysis of the problems this creates.

Ms. Cheung, maybe I'll start with you. Could you talk first about what impact will this have on groups that are seeking to combat climate change, groups that are concerned about environmental rights?

• (0935)

Ms. Carmen Cheung: As the committee will hear in more detail today, the concern is that this law makes no exemption for.... Unlike the definition of terrorist activity in the current Anti-terrorism Act, the bill now only provides exemption for lawful protest. I think that, as our colleagues at Greenpeace and as Professors Roach and Forcese have indicated, this is just far too broad. It captures all sorts of peaceful, non-violent protests that may simply be running afoul of a municipal bylaw: they may not have a proper permit—that sort of thing.

We have heard discussion about, for example, this not being what this law is meant to target; that it's not really meant to go after the Raging Grannies or kids who are protesting without a permit. But I think this approach—and this is something we set out in our brief—really threatens to politicize what ought to be an objective assessment of security. It makes quite subjective what constitutes a true security threat vis-à-vis what isn't a true security threat.

For the politically active, this is quite concerning, because whether their conduct were to be considered as something that undermines the security of Canada might simply turn on whether their cause is politically popular or not. In our view, that's quite dangerous for freedom of expression and for the right to dissent. We take the view that the better approach would be to adopt the definition contained in the Criminal Code, which explicitly exempts from the definition of terrorist activity all advocacy, all protest, all dissent, and stoppage of work.

Ms. Megan Leslie: And that's what we're trying to get at here, isn't it—terrorist activity?

Ms. Carmen Cheung: Exactly.

Ms. Megan Leslie: Okay.

Mr. Stewart or Ms. Kerr, what impact do you think this could have on citizens' efforts to protect the environment and engage on environmental issues?

Ms. Joanna Kerr: Well, this is our great fear, that so many of our supporters, seeing the potential conflation of peaceful protest and terrorism...and that even though this wasn't the intention of the bill, many legal experts are interpreting it as such, that it will put a real chill on individuals' and communities' activism, in a context in which there actually is quite a huge deficit of trust between many citizens and their government and some government institutions.... The extent to which it will harness, will contract, will constrain the right of people to carry out legitimate protests against very serious concerns around clean rivers and air and an end to catastrophic climate change....

Ms. Megan Leslie: Thank you for bringing up the word “chill”, because it's really important for me. As it is there is a chill in the environmental movement around protest and speaking out. But I also think about things such as, in Halifax, our having an “Occupy” in Victoria Park. I went down right before folks were being arrested to talk to them about what their legal rights were, how to not resist arrest—those kinds of basic legal facts. There was no chill there, but folks really had no idea what their rights were.

So it is about the chill, but I think it's also about...those folks could be spied on without their even knowing, just because they didn't

have a permit to be in Victoria Park. That's what we're talking about here, isn't it?

Ms. Joanna Kerr: Do you want to jump in there, Keith?

Mr. Keith Stewart (Head, Energy Campaign, Greenpeace Canada): Given the context right now, there is a great deal of conflict over what to do about climate change. Given that this is one of the defining issues of this century, there should be. The attempt to put a chill on those types of protests, when people who have protested against pipelines have already been spied upon, as you will hear.... We've already had statements from government ministers that very much equate this movement with being anti-Canadian, and also from the RCMP that it's the “anti-Canada petroleum movement”, which I had never heard of before.

We shouldn't be trying to limit democratic discussion, even when it is intense. That is part of being in a democracy; that is our right as Canadians. There are laws to deal with such things as illegal protests; we don't need to conflate those types of protests with terrorism. This is why your British colleagues say to separate policing of peaceful protest from anti-terrorism. That is what should be done.

• (0940)

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

We're over our time, so we will now go to Mr. Payne, please, for seven minutes.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you, Mr. Chair, and I thank the witnesses for coming to talk about this very important bill.

I will be sharing my time with Ms. James and I'd like to let her go ahead of me, before I finish up.

Ms. Roxanne James: Thank you, LaVar.

And thank you, Mr. Chair, and thanks to our witnesses.

I just want to correct some of the misconceptions I've heard so far in this committee. I'll start with information sharing.

There seems to be an implied belief that someone who is protesting lawfully, or perhaps unlawfully because they don't necessarily have a municipal permit, would somehow come under the scrutiny of being spied on. That is absolutely not the case.

The aspect of this bill has five different parts. The first one is information sharing. It has absolutely nothing to do with law enforcement, the RCMP, or CSIS. It's the ability for agencies to be able to share information from one branch of the government to another.

It's also a two-pronged approach, if you read the bill. On page 3, it specifically states:

For greater certainty, it does not include lawful advocacy, protest, dissent and artistic expression.

Now, some of the concerns I've heard have been about cases in which it's unlawful or there is no municipal permit. If you look clearly at the bill, the fact of the matter is that the same proposed section talks about the purpose of the Information Sharing Act. It has to do with "activity that undermines the security of Canada", including activities that undermine "the sovereignty, security, territorial integrity of Canada or the lives or the security of the people of Canada". So, unless your unlawful protest is somehow going to include blowing up infrastructure, I think you're misinterpreting this proposed section in the bill.

The second thing I want to clarify before I pass it over to my colleague, Mr. Payne, has to do with preventative arrest, detention, and the extension of the 24-hour period to up to seven days. It seems to have been implied that someone is going to be simply thrown in jail and that the police officer or the investigator who initiated that is somehow going to leave on vacation.

That's simply not the case. They actually must have the consent of the Attorney General; it has to go before a judge; the judge has to review all of the evidence that would warrant someone's being detained for 24 hours; then there is a review period every 48 hours after that, up to the maximum of seven days.

In that period, the person who has brought this before the judge to seek this type of detention has to prove that there is an ongoing investigation, that they are accumulating information, and give the reasons for there being a delay. This is all necessary. This has clearly been identified by our security and national security agencies. In fact, at Tuesday's meeting we heard that these types of measures are absolutely critical to the RCMP to carry out their investigations.

I just wanted to clear up those two things that I've heard so far as misconceptions of the bill.

I now will pass my remaining time over to Mr. Payne.

Mr. LaVar Payne: Thank you, Ms. James.

Certainly Ms. James touched on some of the areas that I want to touch on, but I guess what I want to say is that this information sharing power enables for national security purposes. It doesn't compel any government or any one arm to share with another one if they don't want to. Also, for your information, I don't need to repeat it twice, but it's subject to the Privacy Commissioner's review. There is another pillar there that certainly protects individuals.

Anyway, the purpose of the act is sharing for national security threats, so it makes me wonder if your organization is a national security threat. I see that your organization is protesting pipelines and forestry projects, but I didn't hear anything to indicate to me that you were planning to bomb any Canadian infrastructure or sabotage electrical grids, so I wonder if you consider yourself to be a national security threat and if you understand the definition: that it won't apply to you as long as you don't commit any of these terrorist activities. That seems to be fairly clear to me.

I think Minister Blaney was also clear on Tuesday that lawful and unlawful protest will not meet the threshold for information sharing. I'm sure you are aware that there are two tests to make sure that the information sharing can take place. First, I'll point out that the information is not the collection of new information; it is the sharing of current information and has nothing to do with the arrest or

prosecution. Even if your protest is interfering with critical infrastructure, that is only one test. A very important and pertinent second test is whether or not the protest is undermining "the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada".

● (0945)

The Chair: Mr. Payne, I'm sorry, but we are out of time, sir. I'm sorry. You're just getting started, I realize, but our first hour of testimony has expired. Certainly, I'd like to express regrets that we all haven't had an opportunity—

Point of order, Mr. Easter.

Hon. Wayne Easter: Yes, Mr. Chair, one of the parties in this lineup hasn't had the opportunity to question the witnesses. That's really problematic.

I understand that we're out of the first hour, but if the hearing process is going to eliminate the ability of one of the parties to raise questions, then we have a severe problem.

The Chair: Thank you very much.

Do you have another point of order, Ms. James, or are you speaking to the same point of order?

Ms. Roxanne James: Thank you. I was just going to suggest that we limit the opening remarks, and instead of having them up to a maximum of 10 minutes, we perhaps reduce them to 7 or 8 minutes in order to accommodate the third party.

The Chair: Okay. I understand Mr. Easter's point, and it is a valid point. No one wants to be excluded from having an opportunity to question.

There were two problems. One, of course, was that we had the point of order first by Mr. Easter, which took some significant time away from the opportunity. However, that aside, I think that in all fairness what the chair is prepared to do at this particular point is to suggest that when our next witnesses come forward, I will encourage them to keep it as short as possible, then take a look at the time that is left after that and spread it equally among the four parties, the four original first-round people.

That is the chair's decision as to where he is going to go on this issue. The questioners might get seven minutes and the questioners might get five minutes, depending on the time that is left, but at least our first full rounds of questioners will be available so that each party will certainly have their opportunity.

I would like to move on to our next witnesses. If you have a point of order, state it prior to that, but right now the chair would like to suspend. Is it on this point?

Mr. Randall Garrison: Yes.

The Chair: Okay. Go ahead, Mr. Garrison.

Mr. Randall Garrison: This is exactly the concern we raised with the government when we were setting the number of witnesses. We objected very strongly to having three witnesses per panel because of exactly this problem.

When we've invited people here to give their testimony, we're now going to cut them short, and we're going to cut the questioning short. I want it very clear on the record that this is a result of the government's insistence on having three witnesses per panel instead of two witnesses per panel, as we thought would be appropriate.

The Chair: Thank you very much. The chair will just simply not respond accordingly, other than the fact that it has been the practice of this committee on most occasions to have up to three witnesses... so this is certainly not an exception. It has been normally the rule.

The chair would like to move on. We have other witnesses to hear. Unless there is a point of order on the same point, the chair is willing to rule.

Yes, Ms. James.

Ms. Roxanne James: Thank you, Mr. Chair.

The guidelines that are set out for this committee, which the entire committee as a whole agreed upon, basically scheduled the time for questions to be the first round at seven minutes for the Conservatives, seven minutes for the NDP, seven minutes for the Conservatives, and so forth. It goes in that rotation.

I would like to request that we stick to those original guidelines, as we've done in the past when we've had three witnesses, which is the standard practice of this committee. It's to have three witnesses per hour. That's nothing new. It's what was agreed upon. That we just reduce the length of the opening remarks to seven or eight minutes would certainly accommodate the ability for the third party, the lone Liberal individual, to have a chance to ask some questions.

The Chair: The chair will do what he can do to try to provide some balance here.

We will now suspend to bring in our next witnesses and thank our witnesses for coming here. Your appearance is very much appreciated.

Thank you very much.

• (0945)

_____ (Pause) _____

• (0950)

The Chair: Okay, colleagues, we will resume and welcome our three witnesses for the second hour.

We have with us Paul Champ, counsel from the International Civil Liberties Monitoring Group. As an individual, we have Barry Cooper, professor of political science, University of Calgary. And we have, from the Assembly of First Nations, National Chief Perry Bellegarde.

Welcome all.

Gentlemen, we are running tight on time. I recognize that we cannot ask you to change your opening remarks. That would not necessarily be fair, given that you haven't been told. In the future this committee could perhaps suggest reducing the length of opening remarks, but at this particular point, all I would ask is your courtesy in trying to make them as brief as possible.

As the chair has mentioned, the round of questioning for the first round will be split accordingly.

We will start off with Mr. Champ. You have the floor, sir, for up to 10 minutes, but preferably significantly shorter.

Mr. Paul Champ (Counsel, International Civil Liberties Monitoring Group): Thank you very much, Mr. Chair.

I want to thank you, Mr. Chair, Mr. Clerk, and honourable committee members, for the privilege of this invitation.

I'm appearing on behalf of the International Civil Liberties Monitoring Group, which is a pan-Canadian coalition of over 40 NGOs, faith groups, and trade unions. It's been involved in national security and civil liberties issues since 2002. Personally I'm a human rights lawyer and I've been involved in many national security cases in which civil liberties and human rights have been violated, so I have quite a bit of background in this area.

I'm going to touch on three issues, three bells. I'm going to speak to the information sharing bill; the no-fly regime; and the expanded powers for CSIS, that is, the powers that will allow the secret authorization for CSIS to violate fundamental human rights of Canadians.

We'll also provide a written brief in which we go into more detail on these points we're making, obviously with the footnotes and references, which are always great to have. I'm just going to try to hit the high points for you this morning.

First, with regard to the security of Canada information sharing act, from our perspective there are two novel features. The first is the expanded definition of the security of Canada. This is a new definition that is unprecedented in our legislation. What we have right now for the security of Canada is in section 2 of the CSIS Act, and that is then incorporated into about 10 other statutes. In Canada we refer back to the definition in the CSIS Act, and what has been truly surprising for many critics looking at this bill is trying to understand why the definition of the security of Canada has been expanded. If the point is to capture terrorism, it is captured by the CSIS Act's definition. This bill has nine enumerated activities, and terrorism is only one of those. So if the true target of the bill is terrorism, why are we expanding the definition? With great respect, I heard the minister's testimony the other day when he said it's not meant to capture advocacy and dissent. If that's the case, then why change the definition? The definition of threats to the security of Canada as it appears in the CSIS Act was more than adequate and included things like serious acts of violence, attempts to violently overthrow the government, and espionage. That has been the definition in Canadian law for over 30 years, so why change it now?

The second point we have with regard to the security of Canada act is that it is dropping the walls around privacy across government, and it gives a mandate to government officials in all of these departments to basically spy on Canadians. If you look at clause 5 of this bill, it is asking all government departments to act and to try to prevent, detect, identify, and disrupt activities. These are going to be government officials who don't have experience in law enforcement, or security intelligence. What does a tax auditor know about disrupting terrorism? That's what this bill is doing. It's turning all government employees into spies, and it's going to facilitate the creation of secret files on Canadians because someone feels that a person's lifestyle or opinions or travels are suspicious. There are harms and risks associated with information sharing. Information sharing is such a benign phrase, and I can tell you when I first encountered it as a lawyer I thought what's the big deal? I have encountered many cases and have acted on behalf of individuals whose lives have been devastated because of improper and erroneous information sharing by Canadian government officials. It can have devastating consequences. We've had two public inquiries in the last ten years in Canada dealing with four Canadians who were brutally tortured by foreign officials based on erroneous information sharing by Canadian officials. That's not my opinion; those are findings by two public inquiries paid for by Canadians.

Just last week, committee members, I settled a case with the Government of Canada on behalf of an Algerian refugee and aerospace engineer who spent five years wrongfully imprisoned in the United States and seriously abused as a 9/11 suspect because of the sharing of erroneous information by Canadian government officials. Last week the Canadian Government finally righted that wrong and settled with my client. Those are the kinds of consequences that are associated with information sharing. When you don't have proper controls and regulation over information sharing, it can have devastating consequences on individuals. The O'Connor inquiry involving Maher Arar had excellent recommendations with regard to that and said that we have to have controls and filters to ensure that information is relevant and reliable before it is shared. We don't have those safeguards in this bill.

● (0955)

The secure air travel act is the no-fly regime. The client that I act for, the International Civil Liberties Monitoring group, has been one of the most active groups in studying the no-fly list since it was first introduced in Canada in 2007. We know that in 2007 there were over 2,000 Canadians on the Canadian no-fly list that was announced by the government. Ever since, the International Civil Liberties Monitoring group has been asking the government and Transport Canada repeatedly how many Canadians are on that list, just the number. The government has repeatedly refused to provide that number, and I think if this committee is going to seriously consider this bill you should be asking government officials to at least tell you how many people are on that list right now. How many Canadians' rights are being put at risk because of this bill and why are they refusing to tell Canadians? That's an answer that you need.

What I can tell you about the existing regime is that in 2007 all privacy commissioners in Canada, not just the Privacy Commissioner of Canada, issued a joint resolution saying that the current passenger protect no-fly regime was too opaque and violated the privacy rights of Canadians.

In 2008 the Privacy Commissioner of Canada issued a report that Transport Canada had provided "no evidence demonstrating the effectiveness of no-fly lists despite her repeated requests for such information". Those comments are more valid today than ever. This regime has been in place for eight years and we have no information about its effectiveness, about how many people are implicated, and why we need to expand it today.

The problem with the no-fly regime as it exists, and as it will be in this Secure Air Travel Act, is that there is no due process protections whatsoever. You don't get any notice when you are put on the list. Once you do find out, you can't challenge the evidence. It's completely secret and you don't have the right to see or challenge the evidence.

This regime as it currently stands was already found in 2008 by the Office of Reconsideration, a review body this government created to review listing regimes. That body decided and ruled in 2008 that it violates section 7 of the Canadian Charter of Rights and Freedoms. Transport Canada has ignored that finding, and as of yet no Canadian court has considered it. I can tell you, as a constitutional lawyer, I'm quite confident it will be struck down. I can tell you that last year in 2014 the U.S. courts found that the U.S. no-fly regime violated the 5th amendment of their constitution, which is the equivalent of our section 7 of the charter. Why are we doubling down now and enhancing and expanding this unconstitutional power that violates Canadians' rights?

The final issue is the CSIS Act, and the extraordinary expansion in the bill of CSIS' powers, allowing our spies to violate the fundamental human rights of Canadians. That's what it allows. It allows CSIS agents to violate charter rights or disrupt people's lives all in secret. The big thing about this part of the bill is that it's blurring the line fundamentally between law enforcement and security intelligence. It overrides the primary reason why CSIS was created in the first place. The agents in CSIS used to be part of the RCMP, and they were separated from the RCMP precisely for this reason, so that we would keep operational activities separate from security intelligence activities, because the overlap can endanger the civil liberties of Canadians. Why are we rolling back the clock? Why are we completely throwing out the very reason CSIS was created in the first place?

These powers have no real limits. The only limits in the act are that you can't cause death, you can't cause bodily harm, and you can't violate someone's sexual integrity. Everything else short of that is up to the imagination of CSIS agents. It could include detention. It could include secret sites of detention, the black sites the CIA had. That's technically authorized by this act. If we don't want to allow that, put detention in the bill. If it's not meant to allow that, put detention in the bill.

● (1000)

The final thing is that it's going to allow warrants—and Mr. Atkey testified before about how it creates problems with judicial independence. Here's one big thing I'll tell you that you may not hear from other witnesses: It relies on the candour and good faith of CSIS agents to put forth the proper information to those judges, because those warrant hearings are completely in secret. The judgements will be in secret, and we won't know.

The Chair: Mr. Champ, I'm sorry, you've over time, sir.

Please respect the time commitments of the committee here. You're well over time now, and the chair's been extremely lenient.

We will now go to Mr. Cooper, please.

Mr. Barry Cooper (Professor of Political Science, University of Calgary, As an Individual): Thank you, Mr. Chair, and thanks for the invitation to appear before this committee on such an important matter.

It will be obvious enough that I'm not a lawyer. I'm a professor of political science at the University of Calgary. Among other things relevant to your deliberations, I've written a book on terrorism as a political religion, major reports on why we need a foreign intelligence service, on the RCMP, and on problems that democracies have in fighting small wars.

By and large I think Bill C-51 is a useful improvement to Canada's anti-terrorism legislation. I said so in a couple of newspaper columns and I won't repeat myself here. I have some critical and analytical remarks that I expect are more useful for your purposes than half-heartedly praising the government.

Let me begin by recalling that the Prime Minister introduced Bill C-51 in Richmond Hill last January with the words, "violent jihadism is not a human right, it's an act of war". I think this is fundamentally accurate. We are in a different threat environment today than we have been previously. The problem of terrorism is not one of simply violent extremists as President Obama said, but chiefly of violent jihadis.

That being said, I recognize that, as in any law of general application, Bill C-51 has aroused the anxieties of Canadians concerned with peaceful and sometimes not-so-peaceful protests and how this activity will be treated under the provisions of this bill. However, the chief conflict I would say is not between the police and criminals. In order to understand the main threat to Canadian security, it's important to look first at how the opposition understand themselves, and they say they're at war.

In a study published last year by Clark McCauley and Sophie Moskalenko, the authors deal with the importance of the jihadi

narrative, which they argued moves often isolated individuals from radical opinion to radical action.

Two things are important here. The first is a four-part jihadi narrative. First, Islam is under attack; second, jihadis are defending Islam; third, their actions, which we call terrorism, constitute religiously justified warfare; and fourth, the duty of Muslims is to support their actions. Second, about five percent of British Muslims, where this study was conducted, agree entirely with this narrative. Eighty percent agree with the first element that Islam is under attack, and the authors think that this is a low estimate.

I mention this at the outset because the liberties of Canadians are threatened a lot more by Islamic states than by CSIS or the RCMP. Bill C-51 contemplates changing CSIS into something more than a security intelligence service but less than a foreign intelligence service. Forcese and Roach, from whom you'll be hearing later, are both critics of Bill C-51 and call this a kinetic service, and that seems accurate enough.

For what it's worth, I support a dedicated foreign intelligence service with real spies dedicated to stealing secrets from other countries. This new CSIS may be a step down this road, but if so, it needs to eventually deal with the fundamental problem of catching spies or neutralizing threats that require an entirely different skill set than espionage and associated extra-legal or illegal operations.

Historically, the separation of spying and spy-catching has been the rule among democratic regimes because the operational focus and organizational culture of such operations are so different. What a newly kinetic CSIS will be like is not at all clear, which introduces the second problem that seems to me equally intractable. It's not possible—it's not possible—to harmonize the purpose of the police with that of security intelligence, though it may be possible to manage their incompatibilities.

Part 1 of Bill C-51 on information or intelligence sharing seems to address this tension between CSIS and the RCMP. Let me say that intelligence sharing is useful and even necessary, and part 1 is a good start.

That said, the underlying tension has not disappeared for the simple reason that intelligence and police organizations have distinct and sometimes conflicting purposes. Police want to arrest suspects and gain convictions in court. Intelligence organizations want to play suspects for additional intelligence. Police need to be scrupulous in following legally correct procedures of gathering evidence, for example, to ensure convictions. Intelligence operatives, who are not primarily interested in convictions, do not.

This tension cannot really be dissolved since it goes to the heart of these different kinds of organizations. How CSIS and the RCMP will ensure that disruptive or kinetic activities of the former do not also disrupt the criminal investigations of the latter is a problem. Personally, I would hope that CSIS intelligence gathering, except in emergencies, trumps their kinetic activity, which in turn trumps the RCMP. This is more or less what Bill C-44 proposes, I believe. If so, I'd say that it reflects the appropriate priorities of the two organizations.

• (1005)

One other thing I would mention deals with oversight and review. As with the distinct purposes of police and security services, there is a distinction to be made here as well. Where CSIS's contemplated activities would violate the law, a Federal Court judge must pre-approve these with a warrant. This adds something to oversight by taking it outside the executive chain of command. I would reserve judgment as to whether we need additional oversight beyond search and surveillance warrants until we see how the proposed structure works. But how will we know how it works?

This is a matter not of oversight but of review, of after-action audits similar to what SIRC, the Security Intelligence Review Committee, is currently supposed to do with CSIS. I say "supposed to do" because, as I am sure you know, this review agency is underfunded and understaffed. Worse, if there is to be a whole-of-government approach to security and intelligence sharing, as contemplated by Bill C-51, and which, as I said, is a laudable objective, then there needs to be a whole-of-government approach to reviewing what the government agencies do.

Currently, for example, Canada Border Services Agency, which conducts both police and intelligence work, is not reviewed by anybody. This is bad bureaucratic practice, to say the least. I would suggest, therefore, an expansion of the SIRC model but, as is the case in the U.K. and Australia, I would add to the specialists and the technical officers, and people like Mr. Atkey, sitting MPs from both sides to the House. This seems to work fairly well in Australia, so far as I know. Obviously the MPs, like other SIRC members, would have to be sworn to secrecy.

I would point out two further things:

First, secrecy in the review of intelligence operations is as inevitable as it is in spying and conducting security intelligence. No country can conduct intelligence operations, whether defensive or offensive, in public. Second, increasing oversight is not as important as increasing after-action reviews. The reason is that more oversight amounts to more interference with the executive in matters where intelligence activities are often time-sensitive. Furthermore, after-action reports will influence future expectations, which is a kind of internal oversight, by providing appraisals of how the various security services behave.

Bill C-51, in short, is a good first step but it can be improved.

Finally, thank you for your attention. I'd be happy to answer a few questions later if I can. I hope I've not said too much.

• (1010)

The Chair: Actually, you're well under time.

Thank you very much, Mr. Cooper.

We will now go to Chief Bellegarde. You have the floor, sir.

National Chief Perry Bellegarde (National Chief, Assembly of First Nations): Thanks, Mr. Chair.

Good morning to you and the honourable committee members. My name is Perry Bellegarde, and I'm Chief of the Assembly of First Nations.

Bill C-51 is the subject of a great deal of commentary and controversy. First nations have a long history in this country of dealing with laws that threaten our rights, so we are always on guard against any legislation that could affect our rights, our citizens, and our traditional territories. The key issues at stake in Bill C-51 are the state's power to place individuals or groups under surveillance, to monitor their everyday activities, to create criminal offences that affect our ability to exercise our legally recognized rights, and the overall relationship of state power to fundamental human and indigenous rights.

On these issues, first nations have expertise and hard experience to offer this committee, the government, and Canadians as a whole. First nations people are often forced to take a stand against actions or initiatives by governments that refuse to respect or protect our rights. These activities are often deemed protests when in fact we are only calling on Canada to obey its own laws, which include the recognition and affirmation of inherent aboriginal rights and treaties in Canada's own Constitution.

At the core of this discussion for first nations is the unfinished business of balancing federal and provincial laws and authorities with the inherent jurisdiction and sovereignty of first nations. At its core, this discussion is about reconciliation, reconciling Canada's claims to sovereignty with our pre-existing rights, title and jurisdiction, and Canada's ongoing treaty obligations. We need to finish that work. It's the way forward. But until we do, first nations as individuals and as nations will assert our fundamental civil and political rights. We've had to do this many times in the past in the face of a history of imposed oppressive laws, laws that we are always told are good for us and good for Canada, but were in fact outright attacks on our identity and our rights.

We have suffered under laws that banned our cultural and spiritual practices, laws that denied our right to vote, laws that prevented us from going to court to fight for our rights, laws that gave the state the power to steal our children and assault their minds and bodies to try to kill our languages and traditions. We have been subjects of surveillance and suspicion, and seen as a threat for as long as this country has existed. Why? Because our cultures, values, and laws place a priority on protecting the lands and waters, and they place primacy on sharing and sustainability. Canada knows that our existence as peoples and nations qualifies and calls into question its claims to absolute sovereignty. But our people survived and prevailed over all the assaults against us because our ancestors and elders stood up for our people and our rights.

This generation is not going to forsake our ability to protect our lands and territories and rights that has ensured our survival. We will continue to assert our inherent sovereignty and sacred responsibility to protect the land and the waters. We have the right to be decision-makers in any activities that affect our lands and territories. Our laws and legal traditions embrace a balanced view of security, development, environmental protection, and fundamental rights. We have deep and strongly held traditions that respect individual autonomy, freedom of speech, and how to balance these for the collective good. Canada can learn from this.

That is the history and perspective we bring to this bill. We believe in the right to safety and security, but the federal government's rush to ram this legislation through is undemocratic, and it violates our individual and collective rights.

We have many concerns with this legislation. First, the proposed security of Canada information sharing act sets out an overly broad definition of "activity that undermines the security of Canada". We see this as a euphemism for an excuse to spy on first nations when they exercise their collective and individual rights. Our people could find themselves under increasing surveillance because of the broad, vague concepts and activities covered by this phrase. It clearly goes way beyond the current Criminal Code definition of terrorist activity. The "for greater certainty" clause that excludes lawful advocacy, protest, dissent, and artistic expression is not adequate to deal with the complexities of the ongoing task of reconciling first nations law and jurisdiction with Canada's asserted sovereignty.

This government often invokes the rule of law. We would like some rule of law that respects our constitutionally protected rights and our fundamental human rights.

•(1015)

The days are gone when absolute parliamentary supremacy trumped human rights and first nations' rights, but we still see this government struggling to accept the Constitution Act, 1982, both part I, the charter, and part II, which recognizes and affirms our treaty and aboriginal rights. Both sets of rights are at stake in Bill C-51.

First nations maintain that Bill C-51 will infringe on our freedom of speech and assembly; our right to be free of unreasonable search and seizure; our right to liberty; our fundamental right as peoples under section 35 of the Constitution Act, 1982; our treaty rights; and our right to self-determination.

Our right to self-determination, recognized in the United Nations Declaration on the Rights of Indigenous Peoples, includes the right to protect and make decisions about activities and laws affecting our lands and waters. But there is a balance between rights and security, and we can find it through dialogue with one another as nations.

Unfortunately the process for developing this legislation did not meet the federal government's duty to consult and accommodate, and on that point alone it is subject to challenge in the courts if the government tries to impose it on us.

Bill C-51 sets up conditions for conflict by creating conditions where our people will be labelled as threats—threats to critical infrastructure or the economic stability of Canada—when asserting their individual or collective rights as first nations citizens. This is not an abstract argument for our people. We've been labelled as terrorists when we stand up for our rights and our lands and our waters. We can see how first nations have been lumped in with terrorists and violent extremists when they are asserting their fundamental rights and jurisdiction, as in the recently leaked RCMP memo entitled "Criminal Threats to the Canadian Petroleum Industry". I'll be submitting this report as part of this presentation.

First nations have an unmatched record as peaceful peoples in the face of the most appalling human rights abuses, which is particularly exceptional when we remember the unrelenting assaults on our values, laws, jurisdiction, and fundamental human rights. We are peace-loving peoples, but we will push back against assault on our most basic liberties. We stand with the many other Canadians who are not willing to forfeit their fundamental rights and freedoms who are demanding that this government engage in more careful crafting of important legislation. Canada must do better and must do more to meet its constitutional and treaty responsibilities to first nations.

I leave you with a statement directed not just to this committee, but to all Canadians.

First nations know better than anyone how easy it is for government to ignore, erode, and eradicate our most basic human rights and freedoms until you barely recognize the land you're living in. First nations deserve better; Canadians deserve better. We cannot turn our backs on our hard-won human rights and we cannot turn our backs on the indigenous rights, treaties, and title on which this country was founded. We can do better and we must do better. First nations will vigorously oppose any legislation that does not respect and protect our rights. First nations will stand up for the rights of our people and our responsibilities to our traditional territories.

We make the following recommendations: first, that the government withdraw the bill and consult properly with first nations about its impact on our rights; second, that the government discuss with first nations options for a review process to examine all federal legislation that can impact the assertion of our section 35 rights.

Thank you.

•(1020)

The Chair: Thank you very much, Chief.

We will go to our rounds of questioning for five and a half minutes each.

We will go to Ms. Ablonczy, please.

Hon. Diane Ablonczy (Calgary—Nose Hill, CPC): Thank you, Mr. Chair.

Thank you to the witnesses, who have obviously put a great deal of thought into sharing their concerns and perspectives.

I have been and am doing quite a bit of reading to gain a deeper understanding of exactly why we are bringing forward this bill and the concerns that animate it. I read a very interesting article that I recommend, called “What ISIS Really Wants”, in the March edition of *The Atlantic*. It's by Graeme Wood.

I've also read an interesting article from the *The New York Times* called “The Education of 'Jihadi John'”. This article says that Jihadi John—and I think that most know who he is from watching the news—was a computer science graduate from the University of Westminster. He says:

In fact, academic institutions in Britain have been infiltrated for years by dangerous theocratic fantasists. I should know: I was one of them.

The writer of the article says that his recruiter came straight out of a London medical college. He says:

While such institutions must guard free speech, they should also be vigilant to ensure that speakers are not given unchallenged platforms to promote their toxic message to a vulnerable audience.

He ends by saying:

Until we confront this seeming legitimacy of Islamist discourse at the grass roots, we will not stop the scourge of radicalization.

I ask you, Mr. Cooper, as someone in the academic world who has done a great deal of study, whether this is a concern not just in Britain, but also in Canada.

Mr. Barry Cooper: Well, yes. Thank you.

First of all, I'd like to say it's somewhat gratifying to see that other than academics are concerned with the problem of politicized religions, and to see papers like that one in *The Atlantic* or in *The New York Times* is something of a novelty.

For those of us who have been looking at the sources of terrorism, the recent waves of terrorism, most of the analogies are made with medieval, apocalyptic movements that believed they were going to transform the entire world by introducing, basically, new realities that were taken from the Book of Revelation. In the Islamic world there are equivalent symbolisms to what we're probably more familiar with.

That *Atlantic* article, I thought, was actually quite accurate. It's also something that many of the more radicalized Salafist Muslims think they can actually bring about. They can bring about the Mahdi coming out of what is now Afghanistan and Iran to undertake a final Armageddon-like battle, in all places, in Jerusalem, where Jesus is going to help them. These are exactly millennial fantasies in our common-sense world, but they motivate many of these people. It's something that academics have known for a long time, and it's really quite gratifying to see this making it into wider media distribution.

Hon. Diane Ablonczy: While we are confronting this threat, clearly we need to do so in a prudent and measured way, one that respects Canadian values and freedoms. Mr. Champ and Chief Bellegarde have mentioned some concerns. Chief Bellegarde said, and I think it's understandable, that he and his organization want to be on guard to protect rights and freedoms for first nations, and I hope for all Canadians.

The minister was asked about this in committee earlier this week, and he said that this draft act “clearly states that the definition of activity that undermines the security of Canada does not include lawful advocacy, protest, dissent or advocacy expression.” He said it has to undermine the security of Canada. He also said that “lawful intent” is intended to be read narrowly, which it is already in RCMP activities.

I notice, Professor Cooper, that you've written about this issue of undermining the security of Canada. I think it would be helpful, in light of concerns that have been expressed, what your understanding is of what it would take to meet the test of “undermining the security of Canada”.

•(1025)

The Chair: Sorry, Ms. Ablonczy, we'd love to hear the response on that, but we are over our time.

We will go now to our next questioner. Perhaps in the next round of questions, Mr. Cooper, you would have that opportunity.

At this particular point now we will go to Ms. Ashton, please.

Ms. Niki Ashton (Churchill, NDP): Thank you, Mr. Chair. I want to thank National Chief Bellegarde for joining us today and sharing his powerful presentation. I'm sorry that there wasn't more time to hear your responses to my Conservative colleagues' questions across the way.

National Chief Bellegarde, you are the first indigenous witness, and as the national chief you speak on behalf of many across this country on what Bill C-51 will do to indigenous peoples and indigenous communities.

I have a few short questions, and given our restricted time I do want to ask you this first. Does Bill C-51 pose a threat to section 35 rights?

National Chief Perry Bellegarde: Yes, it does. I outlined earlier that there's a duty to consult and accommodate when the crown is to propose any law that would affect section 35 rights. Again, there's an obligation. It's been proven as well in Mikisew Cree Chief Courtoreille's case, which he won, that when any bill is developed, notice has to be given and there has to be a proper opportunity for responses to that bill. That didn't happen in this case, so I pointed out in my presentation that there will be legal challenges because of that.

Ms. Niki Ashton: Thank you.

Second, you referred to this in your speech, but I'm wondering if you could elaborate on it. According to you, does Bill C-51 seek to criminalize dissent, indigenous dissent, and the expression of indigenous peoples of their rights and of their title?

National Chief Perry Bellegarde: That's the biggest fear and concern, that just because we're going to stand up to protect the land and our water and any development, we could be branded as terrorists. I think of the anti-fracking position that Elsipogtog took. Are the people terrorists because they're trying to protect the water? I think of even the Site C flooding in northern B.C. that's proposed. If the people there start standing up against that initiative, are they going to be branded as terrorists for trying to protect their hunting territories where they used to trap, fish, hunt, and gather? Are they going to be labelled as terrorists? I think of northern Manitoba, Bipole III, where they're clear-cutting the forests. Chief Genaille is standing up against that because that's where they used to hunt, fish, trap, and gather. Same thing, are they going to be branded as terrorists if they try to say, "Hey, we have rights here"?

By going ahead with these developments, it's going to affect them. Our biggest fear is that, when our people are starting to stand up for their rights, they will be branded as terrorists when they're not. They're just standing up for their fundamental, inherent rights, treaty rights and aboriginal rights, and they should not be branded as terrorists because they're protecting the land and the water.

Ms. Niki Ashton: Thank you.

National Chief, I know you are aware of the facts that have come to light over the last few years about the incredible rates of surveillance of indigenous activists and indigenous grassroots organizations in this country. We're aware that even a few years back in 2009, it became clear that the RCMP intelligence unit was reporting weekly to approximately 450 recipients in law enforcement regarding the activities of indigenous, grassroots movements. Is this a reason for concern for you that might point to what Bill C-51 could do only more of with regards to surveillance that clearly already exists?

• (1030)

National Chief Perry Bellegarde: Again, I referenced in my comments the unnecessary surveillance and the infringement of privacy. Again, people are being followed around. I think of the example of one of our heroes, Cindy Blackstock, who was standing up for children and against the discriminatory funding on reserve for child care. She was followed around unnecessarily. Her privacy was brought into question so many times unnecessarily. I think there's going to be too many powers given to the government agencies with this bill that will really be abused and infringe on individual rights. A lot of our people will be followed unnecessarily, again, just for standing up for things that are right, things that are just. That's why we're looking at opposition to this bill legally if it goes through.

Ms. Niki Ashton: Finally, depending on the time, I want to ask what you are hearing from first nation leaders and grassroots members. Do you hear any support for Bill C-51?

National Chief Perry Bellegarde: No, not at this point in time. Again, most of the response that we're getting from our chiefs and leaders from across Canada is that they're opposed to it, because it's

going to impact on our rights. We don't want to be labelled as terrorists in our own territories, our own homelands, for standing up to protect the land and waters. That's the message we're getting pretty loud and clear from right across Turtle Island.

Ms. Niki Ashton: Great. Thank you very much.

Do you have any final comments, National Chief?

National Chief Perry Bellegarde: No. Again, I think the recommendation to government is to withdraw it and engage in a process with us. Again, it's not just Bill C-51, but Bill C-38 and Bill C-45, the omnibus bills, that really impact on section 35 rights. We can work these things through, but let's establish a meaningful process and dialogue so that we can get it right because everybody in Canada deserves to get it right and get it done in a good way. So that's our recommendation, to withdraw it, and let's engage in a respectful process and get it right.

The Chair: Fine, thank you very much, Chief Bellegarde.

Thank you, Ms. Ashton.

We will now go to Mr. Falk, please, for five and a half minutes.

Mr. Ted Falk (Provencher, CPC): Thank you, Mr. Chair.

I'd like to begin by sharing my time with Ms. James.

Ms. Roxanne James: Thank you very much.

I want to respond, Chief Bellegarde, to some of your comments. I appreciate your coming today to express your concerns, because it gives me an opportunity to respond directly to them.

I want to make it very clear with respect to information sharing in the bill that there is nothing in that proposed information sharing act that relates to spying or to any type of national security agency making arrests or to detention, etc. It has to do with the ability of one branch of government to share information with another one. In fact, it only encourages that information sharing. It's not a mandate. It doesn't allow an agency to collect additional information, other than the information it may already have on hand, and it doesn't allow for an accumulated database of information that can be widely accessed across all branches. I want to clarify that to begin with.

Also, there has been much talk and discussion about the specific clause that talks about for "greater certainty" and the terminology that "it does not include lawful advocacy, protest, dissent and artistic expression". There are concerns about the use of the word "lawful".

It was very clear at Tuesday's committee meeting that this does not even relate to unlawful protest—for example, if someone doesn't have a proper permit to protest—because with this specific clause, you have to look at the section of the bill in its entirety. It begins by talking about the activities that relate to information sharing. It has to be related to activities undermining “the sovereignty, security or territorial integrity of Canada or the lives or the security of the people of Canada”. I want to clarify that particular section to help ease some of those concerns. I can't think of a single instance in my history—I'm 49 years old—where a first nation has brought something that would blow up infrastructure, that would kill innocent lives, and I can't think of anything in history that would connect first nations to being a group that would be within the information sharing act.

Again, this is only information sharing; I want to clarify that. It has nothing to do with law enforcement. It has nothing to do with anything like that. It's just for the purpose of one agency coming across information that raises a red flag, that there's an issue concerning national security and that it would be pertinent to push that information out.

Also, before I pass my time back to Mr. Falk, there was a concern expressed by Mr. Champ in his opening remarks about someone who is auditing taxes being able to share information. I think you might recognize that in the course of auditing someone's taxes, there may be a red flag raised with respect to money laundering or related to terrorism financing. That's why it's so important that if this information is found, if in the course of the regular actions of that audit they come across it, it could be passed along to our national security agencies. I would think that you surely do not believe that terrorist financing should be allowed here in Canada.

Now I'd like to pass my time over to Mr. Falk.

I'm sorry if I've taken up most of your time.

Thank you.

•(1035)

The Chair: You have two minutes, Mr. Falk.

Mr. Ted Falk: Thank you, Ms. James.

Last week, with Commissioner Paulson, we were able to watch the video of the terrorist who came into this House on October 22. We had the opportunity to ask the commissioner questions and listen to his presentation.

Mr. Champ, I'd like to direct a few questions towards you.

Would you agree that Canada has experienced a terrorist act?

Mr. Paul Champ: That Canada has experienced a terrorist act?

Mr. Ted Falk: Yes.

Mr. Paul Champ: In the sense of someone trying to violently overthrow our government or commit a violent act to cause fear, yes.

Mr. Ted Falk: Okay. Do you think it is the responsibility of the government to ensure that its citizens are safe from terrorism as much as it's possible to do so?

Mr. Paul Champ: Yes, of course. It's a laudable objective and a primary objective of government to ensure the security of Canadians.

Mr. Ted Falk: Okay. Good.

In your testimony, which I appreciate and listened to carefully, I only heard of things that were broken or wrong in the bill. I'd like to give you an opportunity to tell us what you think is good in the bill and can be built on.

Mr. Paul Champ: In particular, I think of the peace bond provisions. I was a crown prosecutor a number of years ago, and I think the peace bond provisions, which would allow the police to go to court and have conditions attached to individuals whom they can demonstrate may well be considering engaging in terrorist acts, are a good idea. This bill enhances and expands a bit the previous section 810 in the Criminal Code. I think that's a power that can really address almost every concern I've heard thus far in preventing someone from acting violently.

The Chair: We're out of time now and we will go to Mr. Easter, please.

Hon. Wayne Easter: Thank you, Mr. Chair, and thank you for trying to find a way to have some fairness in the rounds of questioning.

Thank you to all the witnesses. Everybody adds something to this process in their own way. The amount of time is a problem for sure.

I do want to say at the beginning regarding Ms. James' point about Tuesday's testimony by the minister, I submit that it was the minister's opinion. It was not necessarily fact regarding the part dealing with greater certainty and lawful dissent. There are some questions around that.

I want to start with you, Chief Bellegarde. I'm going to tell you what I took from presentation, and you can tell me whether I'm right or wrong. I don't think you were opposing measures to protect the national security of Canadians as such. You're concerned about the process of how we got here, and about section 35 not being followed. Am I correct in that?

National Chief Perry Bellegarde: Yes, to a certain extent for any law that's been developed by the crown and that impacts on inherent rights, aboriginal rights and title contained in section 35, it's been proven that consultation and accommodation have to be put in place and first nations have to be involved when any such law is being proposed. Notice has to be given, and that didn't happen in this instance.

Hon. Wayne Easter: That clears it up for me.

Mr. Cooper, you talked about after-the-fact review and oversight as did Mr. Atkey before you. There are a number of proposals on oversight, whatever you may call it. There was a bill proposed in 2005 and there were other proposals in 2009.

Are you basically suggesting something along the lines of the oversight that our Five Eyes partners have, including the U.K., Australia, and the United States? Or are you suggesting more a super-SIRC proposal that would apply to all security agencies and not just CSIS? I'm trying to find out where you're at.

•(1040)

Mr. Barry Cooper: If it's a choice between the two, I'd go for a super-SIRC, because if there's intelligence or information sharing among all these agencies, then there should be some kind of reporting after the fact.

Hon. Wayne Easter: But you're not isolating that to.... There is no way the current SIRC can do its job with these additional powers. Are you suggesting that it be done by parliamentarians, that parliamentarians be a part of that, as your brief claims? Also, should it be over any security apparatus, including policing?

Mr. Barry Cooper: Well, it should certainly be over the RCMP, and yes, I would include members of Parliament under the same circumstances as the current SIRC members operate. The Australians, as I said, have done this for awhile and it seems to be working fairly well and they have the same kind of regime as we do.

Hon. Wayne Easter: The British as well increased their oversight in 2013.

Mr. Champ, maybe you can explain clause 6 to me. I'll just read what it says:

For greater certainty, nothing in this Act prevents a head, or their delegate,...under subsection 5(1) from, in accordance with the law, using that information, or further disclosing it to any person, for any purpose.

I'm worried about that section. What does that mean from your perspective?

Mr. Paul Champ: It's a wide open door to share information for just what it says "to any person for any reason". That's why we feel this bill is such a serious threat to privacy. It drops all the controls that have really been a thrust of Canadian law for so long, in the Privacy Act and everything. It's a pretty dramatic departure for Canada.

Hon. Wayne Easter: This is not the first time we've seen the term "lawful dissent" in a national security bill. It was initially in the one we introduced in 2001, but the government of the day had the wisdom to amend that out. If the word "lawful" were amended out in that section of the bill, would it make it more satisfactory to you and the group you represent?

Mr. Paul Champ: I would say so, Mr. Easter. That's part of it, but, again, I just don't think we've heard an explanation about why we're coming up with a new definition for threats to the security of Canada when the one in the CSIS Act has worked so well for so long.

Hon. Wayne Easter: Okay.

The Chair: You still have about 30 seconds, sir.

Hon. Wayne Easter: Okay. Let me come back to Mr. Cooper then.

Have you seen either Hugh Segal's bill, Bill S-220, or the other one before Parliament that proposes oversight by parliamentarians?

Mr. Barry Cooper: No.

Hon. Wayne Easter: I will agree with Mr. Atkey. I do think the Segal bill is better, because it compels departments and agencies to provide information to parliamentarians who are sworn to secrecy on the day-to-day monitoring of those agencies. Do you think that's a reasonable approach?

Mr. Barry Cooper: Yes, I do.

Hon. Wayne Easter: Thank you, Mr. Chair.

The Chair: Thank you very much.

We have about one minute, Mr. Garrison.

Mr. Randall Garrison: Thanks very much.

Thanks very much to all three witnesses for appearing today and giving very valuable testimony.

Since I have only one minute, I will go to Mr. Champ. As a former prosecutor, do you think this new terrorism offence that's being proposed has value in combatting the threats we face now, or is existing law adequate to do that?

Mr. Paul Champ: The big point on that is that offences already exist for those who advocate violent acts or terrorism. Again, I am not sure if it has been fully explained why we need this expanded definition of "reasonable and proportional". What is the kind of speech that it's designed to address? Everything that I've heard so far would already be captured by existing offences in the Criminal Code.

Mr. Randall Garrison: When it comes to information-sharing, if I understand correctly, your concern is that it essentially tears down the existing protections of privacy when the government deals with individuals' information. Is that the essence of your objection to that?

Mr. Paul Champ: Yes, absolutely. It's not simply some of the individuals I mentioned. It's also a general problem. Knowledge that their information might be "shared" and "collated"—that's the language of the bill—into secret files creates a chilling effect for people who want to engage in maybe unpopular or controversial speech. That's what Canada is about. We are a democratic society. It is essential to a vibrant and robust society to allow that kind of speech.

Mr. Randall Garrison: Thank you very much.

•(1045)

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

To our witnesses today, Mr. Cooper, Mr. Champ, and Chief Bellegarde, thank you very kindly for coming here today.

We will now adjourn until the meeting tonight.

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