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Chair

Mr. Robert Oliphant

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• (1540)

[English]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): Good afternoon, and welcome.

I'm calling to order this meeting of the Standing Committee on Public Safety and National Security, which is our 42nd meeting of the 42nd Parliament.

We are continuing our study of Bill C-22, an act to establish the national security and intelligence committee of parliamentarians and to make consequential amendments to other acts that are implicated.

We welcome Stephanie Carvin, assistant professor at The Norman Paterson School of International Affairs, and her class, which is with her today, both for learning, hopefully, and for moral support.

Thank you for joining us at our committee meeting today.

Justice John Major was meant to be a witness today as well; however, our time is Eastern Standard Time, and he is on Mountain Time, which puts him two hours out. We may be able to track him down, but if not, we will reschedule him at another meeting.

We will begin with Ms. Carvin. You have 10 minutes, and then the committee will ask you questions.

Professor Stephanie Carvin (Assistant Professor, The Norman Paterson School of International Affairs, Carleton University, As an Individual): I thank the committee for inviting me to speak today.

Before I begin, I would, in the interest of disclosure, state that from 2012 until 2015 I worked as an intelligence analyst with the Government of Canada. My views are shaped by this experience, as well as my academic research on national security issues.

However, with regard to the matter at hand, Bill C-22 and the question of intelligence oversight and review, I would like to speak to issues that have been somewhat less prominent. My presentation will therefore proceed in two parts. First, I will address three issues that I believe the committee should consider as this bill goes forward: efficacy review of intelligence analysis; counter-intelligence and foreign influence; and, communications with the public. Second, I will provide four recommendations.

The first issue is efficacy review and intelligence analysis. I am presenting these remarks almost two weeks after it was discovered that the CSIS operational data analysis centre, or ODAC, had illegally kept metadata and conducted assessments with it. While this

issue largely refers to data collection and retention, it also speaks to the role of intelligence analysis within the Government of Canada.

We have frequently heard that CSIS's early 1980s mandate no longer reflects technological realities, but intelligence analysis was never discussed in the first place. Other than noting in subsection 12 (1) that the service

shall report to and advise the Government of Canada

on national security threats, the role of intelligence analysis is barely given any consideration in the CSIS Act. There is no guidance as to how this role should be done, how intelligence should support operations, or in what way advice is to be given. There is no formal or consistent intelligence analysis review.

In short, there is little accountability within much of the intelligence community as to the delivery of intelligence products, how these products are produced, or whether those products are delivered in a timely manner. Additionally, there is no way of knowing how intelligence products are used, or if they adequately support internal operations or policy-making. Further, there is also no way of knowing if analysts have the proper equipment, tools, or training they need in order to produce their assessments.

I believe the committee proposed in Bill C-22 can play a role in helping to address these issues by becoming the first body dedicated to intelligence analysis efficacy review in Canada.

Second, thus far the discussion around reform of our intelligence agencies and oversight has largely referred to terrorism and surveillance, not espionage or foreign influence activities. Counter-intelligence work requires a different set of skills and activities than counter-terrorism does. For example, counter-intelligence activities can have an impact on foreign policy, and vice versa.

Therefore, the proposed committee could assess how well our foreign policy and national security agencies coordinate their activities, or whether intelligence services should be more frank regarding the activities of foreign governments on Canadian soil. Without a doubt, it is challenging to air these issues in public; espionage and foreign influence can be a source of diplomatic headaches and embarrassment. Nevertheless, they should not be left out of the conversation and the consideration of Parliament as Bill C-22 goes forward. This is especially the case as investigating these issues may require going outside the intelligence community in Canada as traditionally defined.

Third, the proposed committee has the potential to be one of the most important communication tools the government has with regard to providing Canadians information on national security. Unfortunately, at present, there are very few ways in which security agencies are able or willing to communicate with the broader public. Worse, in recent years, it has been a trend for national security agencies to publish their reports infrequently or erratically. For example, CSIS has not produced an annual—now a biennial—public report since May 2015, which covered the period of 2013-14. Public Safety Canada's public report on the terrorist threat, the sole multi-agency report on threat activity in Canada, appears on a more regular basis, but does not cover non-terrorism-related activity.

It is my hope that the committee's report will help remedy this gap and become a powerful communication tool that can help improve knowledge and generate trust. I see this manifesting in two ways.

First, it could become a central source of information on the current threat environment that Canada faces. That this would come from our elected parliamentarians would in my opinion contribute to an overall improvement in the understanding of national security issues in Canada. Second, an honest assessment of activities of our security agencies will generate confidence that our national security services are operating within the letter and spirit of the law.

For the second part of my presentation, I will now present four recommendations.

First, it is imperative that Parliament consider the wider context in which Bill C-22's committee will exist and the broader roles it can play in generating trust. Oversight and review of national security agencies is and should be the fundamental focus of the proposed committee; however, I would encourage parliamentarians to think broadly about the role it may play in communicating information and building trust.

Second, with regard to analysis, the committee should, as a part of its mandate, ensure the quality and timeliness of intelligence analysis to support the government and policy-making by holding the executives of national security agencies accountable. Additionally, it should also include review of innovative techniques, such as big data analytics. This would of course require a secretariat that is knowledgeable about these issues and that could advise committee members. This will help transform intelligence analysis from a second thought to core activities supporting policy-makers.

Third, while it might have to be done behind closed doors, the issues of counter-intelligence, foreign influence, and cyber-intrusions need to be given greater consideration in terms of how the committee will handle its mandate. This includes ensuring that these operations are well coordinated with other agencies and departments such as Global Affairs Canada, which might shape the scope and mandate of the proposed committee.

Fourth, the committee should be required to publish its findings every 365 days without exception. Everyone sitting here today knows how easy it is for government reports to fall through the cracks and miss deadlines. Nevertheless, as I have already stated, the committee's report will be a crucial tool in communicating to Canadians. The more frank and honest these reports are, the better

informed the debate over measures to counter Canada's national security threats will be.

In this sense, I'm very much supportive of MP Murray Rankin's proposals regarding the committee, as stated in his speech to the House on September 27.

Thank you for your time. I'm happy to answer any questions or hear any comments you may have.

• (1545)

The Chair: Thank you very much.

As you were speaking, I was thinking that we've had a number of witnesses who have not been able to come because they were teaching classes. That excuse is gone.

Voices: Oh, oh!

The Chair: We'll begin with Mr. Mendicino for seven minutes.

Mr. Marco Mendicino (Eglinton—Lawrence, Lib.): Thank you, Mr. Chair.

Thank you, Ms. Carvin, for your presentation.

I want to pick up on your last recommendation, the fourth one, and turn your attention to subclause 21(1) of Bill C-22, which on the face of it would indicate that

the Committee must submit to the Prime Minister a report of the reviews it conducted during the preceding year.

Do you see that as sufficient assurance that there is a reporting obligation on the committee of parliamentarians to provide information to the Prime Minister, and through the Prime Minister, to the House of Commons, about their activities for the preceding year? Or are you suggesting that there needs to be something else?

Prof. Stephanie Carvin: I would hope for something else, something a little bit more, almost statutory in terms of the regulations. I see that it's here in terms of how it must submit to the Prime Minister a report of the reviews in the preceding year, but there's no timeline on this.

I think it should say "every 365 days", quite frankly, or, I suppose, 366 days in a leap year. I think that having it as clear as possible that this needs to be released on an annual basis, in law, is important, because this is going to be one of the few tools we have so that the government to communicate what it's seeing and what it believes Canadians should know.

Mr. Marco Mendicino: You're saying, if I understand your recommendation, that after that first sentence, under subclause 21(1) the words "within 365 days of the preceding year" should be included.

Prof. Stephanie Carvin: Yes.

Mr. Marco Mendicino: Or something to that effect?

Prof. Stephanie Carvin: Yes, I think that would be a great idea. I support it.

Mr. Marco Mendicino: To get back to some of your testimony regarding operational activities, how do you interpret the proposed mandate of the committee of parliamentarians as articulated under clauses 4 and 8?

I took several notes during the course of your evidence, which would seem to suggest that you don't think there are sufficient tools currently within any of the existing civilian oversight—for example, SIRC—to shed some light on the intelligence products, as you've described them.

This is a two-part question. One, do you think the mandate of the committee of parliamentarians under Bill C-22 captures the exercise that you think needs to be there in the review of intelligence products? Two, if not, what do you recommend we do with the bill?

• (1550)

Prof. Stephanie Carvin: Thank you for your question.

It's an issue that as a former analyst I feel very passionate about. Why I spoke to this issue is that intelligence analysis has tended to be a second thought in member organizations. These organizations are rightly focused on collecting intelligence, but over time they have developed analytical bodies that provide intelligence products to policy-makers with the appropriate clearances, but increasingly, they're also providing unclassified reports to their partners, such as police forces and provincial police forces, and we have no way of knowing how effective this is. As long as the committee understands its mandate to include efficacy review as part of its mandate.... You'll have to bear with me for a second as I flip through the—

Mr. Marco Mendicino: To maybe give you some assistance, clause 8 says:

The mandate of the Committee is to review

(a) the legislative, regulatory, policy, administrative and financial framework for national security and intelligence;

(b) any activity carried out by a department that relates to national security or intelligence;

and it continues, and

(c) any matter relating to national security or intelligence that a minister of the Crown refers to the committee.

As we've said before at this committee with other witnesses, the parameters are quite wide.

Prof. Stephanie Carvin: The parameters are wide, I would agree, but are people thinking about intelligence analysis?

I raise this issue because I haven't seen it raised prominently yet by a number of commentators on the subject. I can understand that. There are great concerns about other aspects of this bill with regard to what information MPs can see, who will be on it, and who will be the chair, but in making this as specific as possible, there's no harm in that. I would agree that it could technically be in there, but it's hard for me to see that these issues are being considered, because I haven't heard them discussed.

Mr. Marco Mendicino: Am I right in interpreting from your answer that your concern is less about the language and more about the culture of accountability and oversight as we embark on this new era? Is that a fair statement?

Prof. Stephanie Carvin: I think that is a fair statement. To be fair, I'm not a lawyer, so speaking about the legalities is not my particular area. One of the things that I hope I conveyed in my talk today was that I want this committee, when looking at this bill, to not just look at the functions of oversight or even efficacy review, but to think about the kind of broader purpose that I think this committee can

have in being a communication tool and in perhaps providing oversight for some of the things that just simply don't really take place right now.

Those are the two issues I feel particularly passionate about, which I tried to speak to today.

Mr. Marco Mendicino: Lastly, before my time expires in our exchange, what do you say that the secretariat, the staff side of this committee, should be turning its mind toward in creating this culture that moves beyond the specific language of the bill, such that the committee starts to dig into some of these other facets of oversight like intelligence products? What should they be thinking about?

Prof. Stephanie Carvin: What they should be thinking about is talking to policy-makers and asking them how they are receiving the products. To be honest, we don't even know. As an analyst, I didn't know who was even receiving my products. Who is receiving the products? Who is using the products? Did they play a part in policy-making? If so, to whom?

Then, of course, they should be talking to the executives of the intelligence analysis bodies, or those who are responsible for them, whether it's the ADI at CSIS, or the head of ITAC, to ask them about

Mr. Marco Mendicino: I'm sorry, but what is ITAC?

Prof. Stephanie Carvin: It's the Integrated Terrorism Assessment Centre.

Mr. Marco Mendicino: Okay.

Prof. Stephanie Carvin: They produce reports meant for the general public, but they also write very high-level documents as well. It's worth trying to find out how products were generated. Who was asking for them? Were they being used by more than one person? Were they all high-level products? Should we be thinking about distributing them more broadly?

Also, are the channels for distribution that we have effective? Sometimes as an analyst you have the feeling that perhaps your products are going into a black hole. You have a lot of smart people in these outfits, and I want to make sure that their knowledge is at least being seen, if not considered.

• (1555)

The Chair: Thank you, Dr. Carvin.

Mr. Clement.

Hon. Tony Clement (Parry Sound—Muskoka, CPC): Thank you.

Thank you for being here, Madam Carvin. Marco stole almost my entire thunder, but I'm going to build on—

Mr. Marco Mendicino: Sorry.

Hon. Tony Clement: No, no. We were thinking along the same lines.

In my seven minutes, I want to engage with you on the practicalities of this.

This is going to be a committee of parliamentarians, parliamentarians who have other things to do in their lives, such as other committees to be on, or travelling around the country and sometimes around the world. Then we have this very specific role that you have identified in terms of the importance that it has. You've said that we have to get into data analytics and cybersecurity and that our findings have to be timely.

In your mind, how does that actually work? How are we going to be qualitatively able to do this? Also, what's the interaction? You mentioned the secretariat, and I'd like you to build upon that a little bit, but what's the interaction? How does this work? We're not there 24/7.

It's an open-ended question.

Prof. Stephanie Carvin: Thank you very much. I appreciate it.

I think it speaks to the issue of how over even the last five years we have seen this transition to where everyone is talking about big data. I know that the intelligence services are also struggling with big data, and not just for the reasons we saw last week, controversially, but also for cultural reasons. People who were from the first classes of CSIS, perhaps, don't understand how big data or Bayesian statistics work.

What I think we need is a kind of cultural shift. In terms of this particular committee, you're going to need to have a secretariat that is familiar with data analysis and analytic techniques generally. When I was an analyst, we used to talk about structured analytic techniques—that was one way—but it's also about having just a broad understanding of the way the intelligence cycle works. Third, it's about having some kind of background, hopefully, in how big data can be used and how it can support.

You wouldn't necessarily have to be an expert in it but be familiar enough with it so that if you saw it you would know what you were looking at. This is why I'm so pleased that the bill has considered a secretariat that could support the work.

Hon. Tony Clement: Right. Yes, your point is—I'm dumbing it down for me—that the secretariat isn't there just to schedule meetings and compile a stack of briefing binders. It actually has to be engaging, maybe even on a proactive basis, with the security establishment in this country and developing their own expertise separate and apart from the security establishment expertise. I'm not trying to put words in your mouth, but is that where you're leading?

Prof. Stephanie Carvin: I appreciate it. I think you're saying it somewhat more eloquently than I did, but that's exactly it. The secretariat cannot be people who assemble briefing binders all the time. It has to be people who are actually knowledgeable about the intelligence cycle and process. I would agree with that. They have to be able to support the parliamentarians who are on the committee and be able to say, "This is some big data analysis, so I'm going to break it down for you in 30 seconds, and this is what it means, and this is what you need to know about it."

Hon. Tony Clement: Where do we find people like that? Would they be people who have already had some experience in the security establishment, or are they former academics, or...? Do I go to Jobmonster and monster.ca to find people like that? How does this work?

Prof. Stephanie Carvin: I don't know if this is the part where I'm supposed to suggest the Carleton Career Centre, but—

Voices: Oh, oh!

Hon. Tony Clement: Oh, there they are. Look, my email is ringing already.

Prof. Stephanie Carvin: Right.

I believe that increasingly what we're seeing is particularly a part of professional policy programs, with students who are trained in these kinds of activities: quantitative and qualitative methods in statistics. I believe you could look for individuals who have that kind of professional training.

In addition, if the secretariat isn't necessarily staffed by former analysts, I would encourage you to at least talk to them about their experiences and some of the things they saw going forward, or to at least have some kind of mandate to go outside and ask former analysts for their advice on certain questions.

• (1600)

Hon. Tony Clement: How am I doing for time, Chair?

The Chair: You have two and a half minutes.

Hon. Tony Clement: Put yourself in a parliamentarian's shoes just for a second. You're an MP and you've been appointed to that committee. What sorts of things would you charge the secretariat with doing? How would you comport yourself with this committee? Just give me some tips on that.

Prof. Stephanie Carvin: Some of the things I tried to highlight in my talk are issues such as timeliness. When were products started and when were they released? Were intelligence analyses produced within six weeks? Maybe they were sat on for some period of time, so why was that? It's important that we brief people as quickly as possible so that Canadian policy-makers can make the best decisions possible. Timeliness is certainly one of the issues.

The second one is whether they are actually supporting policy objectives. Were people writing about relevant things that people needed to know? They talk about intelligence requirements, so were those products produced to meet what the government actually needed? Alternatively, did—

Hon. Tony Clement: So timeliness, relevancy—

Prof. Stephanie Carvin: Timeliness, relevancy, and I would also look at distribution. I think that needs to be examined by this committee in particular. Who is getting these products, why, and how are they being used?

Hon. Tony Clement: Right, because you as an analyst sometimes didn't.... You went into a black hole or a black box in the sausage factory.

Prof. Stephanie Carvin: It sometimes felt that way, if I'm honest.

Hon. Tony Clement: Yes, okay. Fair enough.

The Chair: Monsieur Dubé.

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

Dr. Carvin, I think you know one of my former professors quite well, Professor Saideman, and as a McGill alumnus I will forgive you for poaching him, although I'm sure he's very happy here in Ottawa. I haven't had a chance to see him since, but I thought I would put that out there. I'm sure he'll be happy that he's in the committee Hansard now.

Prof. Stephanie Carvin: He will be.

Mr. Matthew Dubé: Absolutely. I know the man well.

Kidding aside, I do appreciate your stated support for the amendments of my colleague Mr. Rankin. We do want to work positively on this bill. I think it's a good first step. We do think there are some things that need to be fixed.

If you don't mind, I want to get into some of the more technical details. In some of the stuff that came out of the testimony from two weeks ago, if we look at Ron Atkey's testimony, for example, there is the idea that in paragraph 8(b) of the bill the minister can veto an investigation by the committee, which is actually a barrier that is not even there for SIRC. We're having a difficult time understanding why this committee of parliamentarians would have an additional barrier imposed on it that's not already there for SIRC. Could I perhaps get your thoughts on that?

Prof. Stephanie Carvin: There is one thing I neglected to say. I did mean to congratulate the parliamentarians here. I can sometimes be a harsh critic of government, but I think the debate over this bill has been excellent, and I think the feedback on it has been constructive. As someone who observes these events and teaches about them, I think it's been absolutely wonderful. I want to make sure that I put that in the testimony.

With regard to the suggestions of Murray Rankin, I believe they're very good. In particular, to reiterate, I think his proposals on the committee's report are essential and should be incorporated.

With regard to paragraph 8(b), speaking as someone who has worked in a classified environment, I can understand the concern. In my notes that I have here, for the second part of the sentence, I believe there needs to be more guidance, if nothing else, where it says:

unless the appropriate Minister determines that the review would be injurious to national security

I can understand why that line is there. If there is an imminent arrest or an imminent investigation, I can understand why you would need to perhaps say, okay, just hold on for a minute. That being said, I think it behooves the committee to put more guidance on that particular clause, perhaps by stipulating the conditions when that would be an appropriate move to make. Right now, I would agree with you that it seems to be unclear.

Mr. Matthew Dubé: Speaking of the enumeration of the points that are injurious, one of them, which you have talked about in your remarks, is this idea of international relations and diplomacy and the headaches that can come out of that. I guess the thing I'm having a

difficult time reconciling is this notion that just because a lot of what the bill states is what the parliamentarians can investigate, it doesn't mean that's going to be public.

I guess I'm having a hard time understanding why we would prevent the parliamentarians from receiving this information in camera and confidentially, when there's no guarantee that it will be in the report. What I'm getting at is that even if a parliamentarian is not a minister or the Prime Minister, we understand this notion that not everything can be public.

Is there any reason, really, for preventing the parliamentarians on that committee, who have sworn oaths, who have gone through this whole process, and who would face legal ramifications if they divulge this information, from having full access to that information?

• (1605)

Prof. Stephanie Carvin: I agree with you that the stipulations for parliamentarians, should they divulge information, are very severe and very clear in this bill. I agree in the sense that those safe locks are there. I suppose where I would like to see more guidance is that you can always present an issue, but it depends on how specific you get with the issue.

For example, let's say there is an ongoing case. It's very rare, for example, that an intelligence organization would divulge the name of the people, or perhaps they would say it was in a city in a particular province. I think you could speak about an issue in sufficient generalities such that parliamentarians could still be briefed on an issue in more general terms, but it's not.... Do you see what I'm saying?

Mr. Matthew Dubé: Yes, I understand. I guess our concern is that—with all due respect—it's more than a briefing, right? The idea is to prevent tragic situations like the Maher Arar one, for example. What I'm having difficulty understanding is why, confidentially, we would not allow these parliamentarians to have full access. One of the examples that was raised was Bill C-622, which was actually a Liberal bill that Joyce Murray presented in the previous Parliament and allowed full access to information.

A lot of folks are saying that is the model to follow, at least internally with the committee, so that they can appropriately do their jobs, because it's difficult to do oversight when you're having to go on a leap of faith with a briefing. I don't know if that makes sense.

Prof. Stephanie Carvin: Yes, it's a tough issue. I would suggest that, if nothing else, there needs to be more guidance. Right now, I think, as it stands, that particular line is not clear enough. It should be more specific. It might help if active "ongoing investigation" were more narrowly defined, because an investigation can last for two to three years, quite frankly.

Again, I think it's important to be clearer and provide more guidance in that particular piece of legislation. I don't have a line on hand with me, and I wish I did, but I understand your concern, and I certainly agree that where we should be erring on this bill overall is on the side of transparency, as opposed to not....

Mr. Matthew Dubé: Thank you.

My time is just about up, but I want one last quick question about the election of the chair. The government has told us that there's no point in speeding it up and that it took the U.K. a long time to get there. I don't really think that argument holds much water. That is one of our amendments as well.

May we perhaps have your thoughts quickly on that? It does influence the report afterwards, because if the chair is answering to whoever appointed him, as opposed to the parliamentarians, I think that might cause a bit of conflict.

Prof. Stephanie Carvin: It's my understanding that in the U.K. now the chair is elected, and I think we're probably going to end up going there anyway and I would suggest that—

Mr. Matthew Dubé: We just do it now.

Prof. Stephanie Carvin: —it does make sense going forward.

Mr. Matthew Dubé: Okay. Thank you.

The Chair: Thank you very much.

I want to take a moment to welcome Justice Major. Thank you for joining us. Our apologies for the time problem. We're going to stop in the middle of our questioning, have a presentation from you, and then recommence our questioning.

Mr. John Major (As an Individual): Let me begin by apologizing for getting the time confused. I was labouring under eastern time, and I should have known better.

I will be very brief. The only comment of consequence is with respect to subclause 13(2), where the “information” includes information that penetrates the solicitor-client confidentiality. I don't think that would pass charter scrutiny. I don't think you can pierce the solicitor-client privilege. Perhaps you might consider getting legal advice on that.

The only other comment that I would make is with respect to subclause 21(2), on reporting directly to the Prime Minister. That seemed to be a little too narrow, but as I read further on I think you have provided for eventually getting the report to Parliament.

That's the total of my observations.

• (1610)

The Chair: Thank you. We'll continue. To give you a heads-up, I suspect you're going to be asked a number of questions on that, because I think the committee will want to hear from you.

We're going to Mr. Spengemann now for seven minutes.

You can question either Dr. Carvin or Justice Major.

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

Professor Carvin, thank you for your service as an analyst, and thank you for being here and for bringing your amazing students.

Justice Major, it's an honour to have you with us.

My questioning has two themes. One is to explore the nature of building trust, because I think public trust in government is one of the strongest assets that this committee is aimed at. I would like to get your views and a bit more detail on that. My second interest is in the relationship with defence issues. I serve on the Standing

Committee on National Defence as well, and I think there are clear overlaps, and some teasing out of the details might be helpful.

I want to begin, Professor Carvin, by asking you, just generally, what do Canadians think and feel about national security? How up to speed are they? I know that there are a lot of things in the headlines, but understanding.... My anecdotal assessment is often not as detailed as it needs to be to fully harness or understand the opportunity that this committee represents. What challenges are there on the side of the Canadian public's understanding, and how can this committee work to close that gap?

Prof. Stephanie Carvin: Thank you for your question.

One of the issues that I think illustrated this was the debate over Bill C-51. A lot in Bill C-51 could perhaps have been criticized, but debate over it often came between individuals who were accusing those who did not want to support the bill as being in favour of child molesters, and, on the other hand, individuals who were accusing those who did support the bill of trying to create a 1984 surveillance state.

My concern is that the security environment in Canada has evolved considerably since the Cold War and I'm not convinced Canadians' understanding of that issue has. That's not to discredit the fabulous people working on this area, but let's just take the example of espionage. It's no longer about states trying to break into safes to steal designs for submarines or trying to steal the crown jewels of secrets. It's now about trying to get the health records of individuals through cyber-intrusions in order to use that information to exploit these individuals or to find out information on them where they may be vulnerable.

It's that kind of transition in terms of the scope of activities that we see some of these states doing that I think needs to be raised up. I would like to see this committee talk about the evolution of national security issues that this country faces and then communicate to the country what our services are doing in order to respond.

Mr. Sven Spengemann: Maybe I'll ask two questions before turning to the committee.

How intertwined is the intelligence community in terms of data sharing and information sharing? I'm looking specifically at the Five Eyes, but even beyond that. Then, what are the changes that are most profound in terms of public perception of the sources of our intelligence?

Could you then add a quick comment on classification levels? How much of a constraint are they in terms of day-to-day work and in terms of what this committee could see and, most importantly, in terms of what this committee could or could not communicate onwards to Canadians?

Prof. Stephanie Carvin: These are some very interesting and challenging questions. With regard to data sharing, it's not.... I read an article yesterday which suggested that because the RCMP now has this operational centre they're sharing all their databases or bringing them all together. No, it doesn't work like that.

Services are bureaucracies, and they are very protective of their information and their people. They've been criticized in the past for not sharing information appropriately. I think there is a perception that it is a kind of free-for-all and that there is data sharing. I am supportive of putting more clarity on the process itself, such as, for example, in Bill C-51, even though that's not what we are talking about here specifically.

I also believe that there should be.... Perhaps this will get to some of your questions on defence. Craig Forcese, the professor at the University of Ottawa whose work I very much admire, talks about having a super-SIRC that would enable the organizations, or at least the committee or some body, to follow the information as it goes from one agency to another. I think there needs to be slightly more appreciation for the safeguards that are put in place within these organizations, as I understood them.

Mr. Sven Spengemann: That's a fair point.

Can you comment on how much data and how much intelligence comes from open sources versus classified sources? We talk a lot about classification levels. Is that the tip of the pyramid? Or is most information actually classified and the Canadian public really cannot look over the shoulders of this committee to any greater extent than just a report that the committee may issue once a year?

• (1615)

Prof. Stephanie Carvin: On the issue of open-source intelligence within the community, I would suggest that.... I've seen statistics that say that as much as 70% of information used by intelligence agencies is actually open-source information. I'm not talking just about databases or anything like that; I'm talking about people reading *The New York Times* or other articles. There is actually a fair similarity between the jobs of spies and journalists in terms of collecting information using sources and things like that. I think that would be one of the things to be considered.

With regard to the committee, could you repeat that part?

Mr. Sven Spengemann: If you're saying that's right, then the committee could presumably communicate a fair bit outside of regular reports to the public. It could find some mechanism—you called them “innovative techniques”—to engage the public more so that the public has a better understanding of what the committee does and what our security and intelligence agencies actually do on a daily basis.

Prof. Stephanie Carvin: I absolutely and fundamentally believe that. There was a really good example today in the *Toronto Star*. The RCMP brought in two journalists to talk about some of the challenges they're facing with regard to encryption and data. They brought them in and talked about the cases. They didn't go into specifics, but they gave examples. This is exactly the kind of work that I would like to see the committee engage in to communicate to Canadians.

You're absolutely right: open-source information could be used to achieve this.

Mr. Sven Spengemann: That's extremely helpful to our committee. Thank you so much.

In the remaining one minute, could you comment on a potential relationship between the Bill C-22 committee and the NCIU of the Canadian Forces?

Prof. Stephanie Carvin: Again, this is where Craig Forcese says we need to have some kind of super-SIRC that overlooks all the bodies and all the ways that intelligence information is shared. Given the differences in mandate, I would suggest that perhaps the information sharing isn't as great as some people think it is.

Where the challenge is going to be for the committee, in particular—and perhaps this goes back to Mr. Clement's question—is having people with the expertise to understand how military operations work, and how intelligence is used in military operations and how it is used in domestic investigations, because it's very different. These are very different activities. This is my one concern with this kind of larger body that Professor Forcese has suggested. It's that you would need people to have a kind of expertise that transcended that. That would be a challenge.

Mr. Sven Spengemann: That's extremely helpful.

Thank you so much, Mr. Chair.

The Chair: Thank you, Dr. Carvin.

Mr. Miller, you have five minutes.

Mr. Larry Miller (Bruce—Grey—Owen Sound, CPC): Thank you, Mr. Chair.

Thank you, Ms. Carvin and Mr. Major, for being here.

Mr. Major, I want to ask you to enlarge a bit. You mentioned subclause 13(2) in regard to solicitor-client confidentiality. Can you enlarge a little on what exactly your concerns are?

Mr. John Major: The only absolute privilege that we have in Canada is the communication between solicitor and client. I think subclause 13(2) invades that, where they say specifically that:

The information includes information that is protected by litigation privilege or solicitor-client privilege

That invades the confidentiality of that relationship, which has been part of our legal framework almost forever.

Mr. Larry Miller: To carry that a little further, Mr. Major, I'm sure that you're probably aware of some framework models in place in other countries such as Britain and what have you. Does any other country have anything like that in terms of the concerns you have here as far as solicitor-client privilege goes?

Mr. John Major: I would look to the U.K., and I would be surprised if.... Mind you, they do not have charter protection. We have. But I would think, based on the common law in the U.K. and tradition and what they call their “common law charter”, that they would not permit that disclosure.

Mr. Larry Miller: You're saying that of any country out there, none of them have that clause, that you're aware of.

Mr. John Major: Not that I'm aware of, but remember, I'm not particularly familiar with this. That stood out as soon as I read the act: that it would be very difficult to get that past constitutional scrutiny.

•(1620)

Mr. Larry Miller: Okay.

Mr. John Major: I'm sure your legal advisers can be more specific, but I'd be surprised if they didn't see that as a problem.

Mr. Larry Miller: Thank you.

Ms. Carvin, on that note, are you aware of any country that has something in place that would give rise to the same concerns that Mr. Major has?

Prof. Stephanie Carvin: I regret that I am unfamiliar with... That's not to say that there isn't, but I wouldn't want to speak to something that I'm not familiar with. My apologies.

Mr. Larry Miller: Certainly, that's fair enough.

Early in your comments, Ms. Carvin, you mentioned working with foreign countries. I got the impression, and maybe wrongly, that you were hesitant about the sharing of information and what have you. Do I have the right assumption?

The reason I'm asking is that in this day and age, whether it's terrorism or whatever, we're living in a different world than we were not that many years ago, so it would seem to me that allies have to work together. Could you enlarge a bit on what you were saying there?

Prof. Stephanie Carvin: I wasn't speaking to the issue of sharing information with other countries specifically, but as you're asking that question, there are issues such as the foreign traveller issue. This has become a real issue. We have to work with other democracies and other countries in Europe as we look at the flow of travellers, for example, who are joining the Islamic State. I strongly suspect that those numbers are down, given the losses that the Islamic State has experienced, but that said, they often travel through Europe and countries like this. We need to be able to partner and work better with these countries.

The challenge is that no country likes giving information on their citizens. No country really likes exchanging names. What we've seen increasingly, particularly given Canada's experience in the 2000s with regard to some of the inquiries, is that more and more caveats are being attached to information and trying to have better systems in place and more regular communication going forward.

In some cases, it has proven to be very helpful. For example, there was the case of young girls from Toronto who were trying to go to the Islamic State, and they were stopped in Turkey. You must have some kind of coordinated information sharing.

This is a really great issue that I think parliamentarians on this committee could look at in terms of trying to help the security services find guidance and balance. I could add just one more thing to that, if I may. I think there's a perception in Canada that security services don't want more regulation or oversight. I can't stress to you how much that it's simply not the case. They want guidelines. They want to know where the boundaries are, so they don't cross them. I think this parliamentary committee could work with the security services on these challenging issues, such as sharing information.

I agree with the premise of your question. That's going to benefit everyone going forward.

The Chair: Thank you, Dr. Carvin.

Mr. Erskine-Smith, for five minutes.

Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.): Thanks very much.

Justice Major and Ms. Carvin, you have the bill before you. If we could turn to clause 14, I want to start with paragraph 14(e). That's

information relating directly to an ongoing investigation carried out by a law enforcement agency that may lead to a prosecution.

In the operation of clause 14, if it falls within these categories, it's excluded de facto. My worry here is that when we had the minister before us, we spoke about the bully pulpit. Where information is refused, the committee can actually refer to that information in the report and use that as a bully pulpit, but if it falls within clause 14, it's going to be very difficult to use the bully pulpit, because the minister can say, "Well, I'm obliged by the legislation."

When we had Professors Roach and Forcese in front of us, Justice Major, and they in fact said that an ongoing investigation carried out by a law enforcement agency would in fact include the Air India bombing, because there's still an active investigation. I would put it to you that when we talk about access to information, should we have the provision of paragraph 14(e) in the act as an exclusion without any refusal related to "injurious to national security"? There's not that additional factor that exists in clause 16, and without any reasons provided by the minister.

The Chair: I suggest that Mr. Major start.

Mr. John Major: I think you could penetrate a lot of sources of information with warrants, and I think for the right of access under subclause 13(2), if you were to obtain a warrant from a Federal Court judge disclosing the reason why, you'd need to have, in my opinion, substantial grounds, but if the safety of the country were in some way endangered, you'd get a search warrant that would be similar to a warrant to search a residence. I think that with a warrant you could get this information.

For instance, solicitor-client information does not include the commission of a crime. If that communication discloses a crime, there's no protection. Similarly, I think a warrant would be sufficient. You'd need to have substantial grounds to convince a judge to give you the warrant, but once you had the warrant, you'd be entitled to that information.

•(1625)

Mr. Nathaniel Erskine-Smith: Ms. Carvin, I'll give you an opportunity to respond as well, and again, could you speak more broadly to access to information? I would note that in the U.K., access to information can be refused for national security reasons. The minister is required in all cases to provide a refusal, unlike in this act, and there is a ministerial directive that it's expected to be required to be exercised rarely.

I would also note that in the U.S., for the Senate select committee on intelligence and the U.S. House permanent select committee on intelligence, the executive cannot withhold any information from them except temporarily and under extenuating circumstances, such as in relation to highly covert and time-sensitive operations. If you could, please speak to access to information with specific reference to clause 14.

Prof. Stephanie Carvin: Yes, I have that underlined a number of times.

I think that for me the issue is “ongoing investigation”. As I've already said, some of these investigations go on for years. There's the Air India inquiry, for example, but just your regular run-of-the-mill domestic terrorism investigation can take two to three years before you feel that you have the appropriate level of evidence against someone who you can bring in and actually prosecute.

Part of it might be how “ongoing investigation” is defined or understood in terms of this particular clause in paragraph 14(e). I like the suggestion of perhaps something along the lines of paragraphs 16(1)(a) and 16(1)(b). If you added something here in terms of “injurious to national security”, as in paragraph 16(1)(b), that might be appropriate.

Mr. Nathaniel Erskine-Smith: I want to pick up on that. Paragraph 14(b) is duplicated. You'll see that in clause 16 there's a reference to “information constitutes special operational information”. I won't take you to the Security of Information Act, but trust me, paragraph 14(b) is duplicated in section 8 of the Security of Information Act, and paragraph 14(d) is also duplicated, largely.

If we were to remove paragraphs 14(b) and 14(d), and subject paragraph 14(e) to a refusal and to the additional criterion of “injurious to national security”, would that make good sense?

Prof. Stephanie Carvin: Offhand, I would say yes.

Mr. Nathaniel Erskine-Smith: I think I'm out of time.

The Chair: You're out of time.

As chair, I just want to clarify something with Mr. Major. With respect to the exceptions in clause 14, you're talking about warrants that could be issued under clause 13. Just to clarify, are you saying, though, that the information that is excluded in clause 14 would be trumped by clause 13 powers?

Mr. John Major: I'm not sure that I understand that question. Clause 14—

The Chair: There are exceptions in clause 14.

Mr. John Major: Do you have any particular subclause in mind?

The Chair: I'd say all of them. For example, there is paragraph 14(e), which mentions

information relating directly to an ongoing investigation carried out by a law enforcement agency that may lead to a prosecution

That is an exception for material that would be available to the committee of parliamentarians. I might have misheard when I was trying to understand. You seemed to say that this could be gathered if under clause 13 a warrant is gained

Mr. John Major: What I think I wanted to say was that the information sought under subclause 13(2) as it's presently drafted would not permit solicitor-client exchange, and that the solicitor-

client privilege under our charter would preclude that disclosure without the benefit of a warrant.

• (1630)

The Chair: Okay. Thank you very much.

We started late, and I thought that because the New Democratic Party didn't have a chance to ask questions when Mr. Major was here, I could give another couple of minutes to Mr. Dubé.

That's if you have questions, Mr. Dubé.

Mr. Matthew Dubé: Yes. Thank you, Chair. I just have one question, so I won't use up too much of that indulgence.

Justice Major, you spoke of the Prime Minister's ability to redact the report, that component of the bill. We have an amendment that, in what we see as the minimum standard, would make that report to at least be clear on where and by whom it was redacted. If I could just, with your indulgence, read the the key component of the amendment, that would be helpful. I'll paraphrase as much as I can.

If the committee has been directed by the Prime Minister to submit “a revised version”, under subclause 21(5), we say that “the report laid before each House of Parliament must be clearly identified as a revised version and must indicate the extent of, and reason for, the revision”. For us, despite the fact that we have issues with the definitions of what can be redacted and the subjectiveness of it, that is the minimum required to at least ensure that Canadians know the motivation behind “the use of the Sharpie”, if you'll allow me that turn of phrase. Perhaps I could quickly get your thoughts on that.

Mr. John Major: Well, I agree with what you're proposing. What more can I say? I think that's appropriate.

Mr. Matthew Dubé: That's more than sufficient for me. Thank you very much, Justice Major.

The Chair: That's pithy.

Thank you very much to both our witnesses. We're going to take a quick turnaround of three or four minutes to change panels.

We thank you, Justice and Dr. Carvin, for being with us.

• (1630)

_____ (Pause) _____

• (1635)

The Chair: I'd like to begin our second panel for today. We will try to end close to 5:30 p.m., splitting between the two panels the time we lost.

We have with us the Civilian Review and Complaints Commission for the RCMP, represented by its chair, Ian McPhail. I believe Mr. Evans is with him. We also have with us the Office of the Communications Security Establishment Commissioner, and the commissioner is here, as well as Mr. Galbraith.

Welcome.

I think we'll begin with Mr. McPhail for 10 minutes, move to Monsieur Plouffe, and then have the questioning.

Take it away.

Mr. Ian McPhail (Chairperson, Civilian Review and Complaints Commission for the Royal Canadian Mounted Police): Thank you, Mr. Chair. My remarks will take a bit less than 10 minutes.

I would like to first of all thank you and the committee for inviting me here today as a representative of the commission. Mr. Evans is the senior director of operations of the commission.

I welcome the opportunity to share my views on the proposed legislation and the role of expert review bodies.

As you know, in 2014, amendments to the RCMP Act resulted in the creation of the Civilian Review and Complaints Commission. At that time, the commission's mandate was expanded beyond public complaints to include systemic reviews of RCMP activities to ensure they are carried out in accordance with legislation, regulations, ministerial direction, or any policy, procedure, or guideline.

The commission now has the ability to review any RCMP activity without having a complaint from the public or linking it to member conduct.

We are currently undertaking two such systemic reviews: one into workplace harassment, at the request of the Minister of Public Safety, and the other, which I initiated, into the RCMP's implementation of the relevant recommendations contained in the report of the commission of inquiry into the actions of Canadian officials in relation to Maher Arar. The RCMP's national security activities came under intense scrutiny during the O'Connor commission of inquiry. As such, I felt it was important to undertake an independent review of the RCMP's implementation of Justice O'Connor's recommendations.

As a key component of Canada's security and intelligence framework, enhancing the accountability and transparency of the RCMP's national security activities is the ultimate goal of the CRCC review. The commission's review is examining six key areas based on the relevant recommendations of Justice O'Connor, namely: centralization and coordination of RCMP national security activities; the RCMP's use of border lookouts; the role of the RCMP when Canadians are detained abroad; RCMP information sharing with foreign entities; RCMP domestic information sharing; and, training of RCMP members in national security operations.

The review is ongoing at this time, and it requires the examination of sensitive and classified information. Given that some experts and observers have previously raised concerns regarding whether the commission would get access to privileged information, it is important to note that we have reviewed classified material made available by the RCMP.

Upon completion of the investigation, a report will be provided to the Minister of Public Safety and the Commissioner of the RCMP. A version of the report will also be made public.

This ongoing investigation highlights the key role of the CRCC in reviewing RCMP national security activities. I believe that the expert

review provided by the CRCC and its counterparts, including SIRC and the Office of the CSE Commissioner, will be complementary to the work of a committee of parliamentarians.

This bill highlights the critical role of parliamentarians in the national security accountability framework, while acknowledging the contribution of expert review bodies. In that regard, I look forward to a collaborative working relationship with the committee.

Thank you for giving me this opportunity to share my thoughts.

• (1640)

The Chair: Thank you very much.

[*Translation*]

Now we move on to Mr. Plouffe.

[*English*]

Mr. Jean-Pierre Plouffe (Commissioner, Office of the Communications Security Establishment Commissioner): Chair and honourable members, I am pleased to appear before this committee on the subject of Bill C-22. I am accompanied by Mr. Bill Galbraith, the executive director of my office.

Before I make a few remarks about the bill this committee is examining, and since this is my first appearance before this committee, I will very briefly describe the role of my office.

[*Translation*]

You have my biographical note and a summary of my mandate, so I won't go over them here, but I would like to say that I have found that my decades-long experience as a judge has stood me in very good stead in more than three years as CSE Commissioner.

Being a retired or supernumerary judge of a superior court is a requirement set out in the National Defence Act, the legislation that mandates both my office and the Communications Security Establishment.

The CSE Commissioner is independent and arm's length from government. My office has its own budget granted by Parliament.

I have all the powers under Part II of the Inquiries Act which gives me full access to all CSE facilities, files, systems and personnel, including the power of subpoena, should that be necessary.

[*English*]

The commissioner's external, independent role, focused on CSE, assists the Minister of National Defence, who is responsible for CSE, in his accountability to Parliament, and ultimately to Canadians, for that agency.

Let me turn now to Bill C-22.

I have stated on numerous occasions that a greater engagement of parliamentarians in national security accountability is indeed welcome.

[Translation]

In particular, following the disclosures by Edward Snowden of stolen classified information from the U.S. National Security Agency and its partners, including CSE, the public trust in the intelligence agencies, and in the review or oversight mechanisms, was called into question. Those disclosures dramatically changed the public debate.

• (1645)

[English]

I believe that a security-cleared committee, along with the expert review bodies, such as my office and that of my colleagues at the Security Intelligence Review Committee, SIRC, which reviews the activities of the CSIS, along with the Civilian Review and Complaints Commission—the CRCC—for the RCMP, headed by Mr. McPhail, can provide a strong complementary and comprehensive framework for accountability of security and intelligence activities and can indeed enhance transparency.

I believe this committee will help restore and enhance public trust, but it will not be without challenges. Historically, the CSE commissioner was rarely invited to appear before parliamentary committees and the work of my office may not have received its full due. The committee of parliamentarians may help to focus attention on the important work of the expert review bodies. My office and I look forward to working with the committee and its secretariat.

For maximum effectiveness, however, the respective roles of the committee of parliamentarians and of the expert review bodies must be well defined, to avoid duplication of effort and wasting resources. In my view, this is of paramount importance.

[Translation]

Avoiding duplication was an obvious theme and I was pleased to see it stated in the bill, in clause 9 entitled “Cooperation”. The words are straightforward but we will have to work closely with the committee secretariat to ensure this happens in practice. The objectives, to my mind, are to ensure comprehensive overall review and encourage as much transparency as possible.

[English]

I have some thoughts on how we might begin a productive relationship with the committee and its secretariat. Perhaps we can explore this issue during our question period.

There are, however, some points that should be discussed. I have a number of observations about various parts of the bill. The three-part mandate of the committee, provided for in clause 8 of the bill, is very broad in relating to any activity that includes operations as well as administrative, legislative, and other matters. As written, this will be another reason why we must work closely with the committee from the outset to ensure the rules are defined in practice, and not just to avoid duplication, but to ensure complementarity.

[Translation]

I am not privy to the government’s intentions with respect to this broad approach. However, the combination of this three-part mandate could adversely impact the effectiveness of the secretariat’s work. The committee will have to establish its priorities. And again,

this is where the committee and the review bodies can work closely together for effective overall accountability.

[English]

What is clear is that the government wants to have a review of the national security and intelligence activities of those agencies and departments not currently subject to review. It is critical for effective review to maintain the capacity for expert review that we have now and to develop it for those agencies and departments not currently subject to review. This could be done by establishing another review body or bodies, or dividing them among the existing review bodies. The committee of parliamentarians will, I expect, turn its attention to this issue.

As I read the bill in its current form, it is clear that the committee does not have the same freedom of access as my office or, for that matter, as SIRC. In paragraph 8(b) the committee can review “any activity” that relates to national security and intelligence “unless the appropriate Minister determines” otherwise. This provides a potential restriction on what the committee may or may not see.

• (1650)

[Translation]

This is where I believe the complementarity between the committee and the existing review bodies comes in, with reassurance that the latter have unfettered access to the agencies they review. The gap is the departments and agencies not yet subject to review.

[English]

In conclusion, I would suggest a couple of small changes to provide clarity, and I could provide these in writing subsequently, if you so wish, Mr. Chair.

Thank you for this opportunity to appear before you today. My executive director and I would be pleased to answer your questions.

The Chair: *Merci.*

I should always mention to the witnesses that if at the end of the meeting there’s anything that you wished you had said and didn’t, it’s very appropriate for you to submit that in writing to the clerk, and it will be considered by the committee. That is no problem.

We will begin with Mr. Erskine-Smith for seven minutes.

Mr. Nathaniel Erskine-Smith: Thanks very much.

I want to start with the collaborative working relationship that you mentioned, Mr. McPhail, and the emphasis on the complementary nature of the parliamentary committee and the expert review bodies.

Mr. Plouffe, you mentioned that you have more access to information than certainly this committee would have as it’s currently written, not only under paragraph 8(b), but also in terms of limitations on access to information under clauses 14 and 16.

We’ve had other witness testimony that has emphasized that this could be a problem for the collaborative working relationship and could actually get in the way of that complementary approach. I wonder if you have something to say about that.

Mr. Ian McPhail: The access to information provisions aren't identical, as you point out, Mr. Erskine-Smith. For example, the RCMP Act gives the CRCC somewhat broader access to information on ongoing investigations, in that the RCMP commissioner is required to outline in writing why that would be inappropriate.

The reality is, though, that as a review body the last thing we would want to do would be to interfere with an ongoing criminal investigation, so definitely we would back away from that. Likewise, I would anticipate that the committee of parliamentarians, which is also a review body, would share that policy.

Mr. Nathaniel Erskine-Smith: I appreciate this if we want to establish a working relationship. We've heard other witness testimony that it's very important to establish a good working relationship, not just with the expert review bodies but with the agencies themselves, but of course, you would have that interaction directly with the commissioner and the commissioner would provide reasons. In this case, that conversation would be closed down from the outset pursuant to clause 14 in particular.

Mr. Ian McPhail: That is possible, and I would say that the committee will have to feel its way. It may well be that amendments to the legislation could be made now. Over the next few years, you'll see how it works in practice—

Mr. Nathaniel Erskine-Smith: But in your view, in practice, that working relationship—where you interact directly with the RCMP commissioner and the commissioner provides reasons for refusals and there's a bit of back and forth—works fairly well.

Mr. Ian McPhail: As a matter of fact, the example I gave dealt with matters relating to ongoing criminal investigations. I mentioned in my opening remarks our review of the implementation of Justice O'Connor's recommendations. In that review, we have had access to privileged and classified information. The RCMP has been fully co-operative. We anticipate that this co-operation will continue. If it doesn't, the act does provide a mechanism to determine what processes should take place.

Mr. Nathaniel Erskine-Smith: It sounds like it works fairly well, that back and forth, and not having completely restricted access to information—

Mr. Ian McPhail: If I can make one further comment, although the act prohibits the position of chairperson—my position—being held by a former member of the RCMP, fortunately we do have some former senior members of the RCMP on our staff, such as Mr. Evans for example, and because of that, our people also know where to go, what information is going to be kept, and where it's going to be kept. So it's not an uninformed request for material and, in that respect, getting back to the first part of your question, I think the commission could be of assistance to the committee of parliamentarians.

• (1655)

Mr. Nathaniel Erskine-Smith: Mr. Plouffe, perhaps you could speak to that access-to-information disparity between the CSE commissioner and the parliamentarians committee.

Mr. Jean-Pierre Plouffe: The way I see it is that as a CSC commissioner I have my own mandate to focus on, and the committee will have its own mandate to focus on. This is why I stressed in my remarks that complementarity between the two

committees is very important, so that this problem of access in theory is not a problem in practice.

Mr. Nathaniel Erskine-Smith: But it may be a problem in practice, as pointed out by Professors Roach and Forcese, for example. They used a number of different examples. One example would be being precluded from ongoing law enforcement operations. They say that there's still an active ongoing law enforcement operation with respect to the 1985 Air India bombing. They also speak to the Afghan detainee affair.

Where the parliamentarians committee would be precluded from accessing information related to these issues, and where they may want to of their own volition engage in an inquiry that the public is certainly concerned about, isn't that something we should worry about? Couldn't the parliamentarians committee work together with the CSE commissioner on the same footing, with the same access to information?

Mr. Jean-Pierre Plouffe: I think you are referring to the exceptions contained in clause 14.

Mr. Nathaniel Erskine-Smith: That's right.

Mr. Jean-Pierre Plouffe: We might agree or disagree with those exceptions, but in my view they are not unreasonable, taking into account the bill as a whole, the purpose and scheme of the bill and the entire context. I also believe that another witness who appeared before you previously, Mr. Atkey, commented on this when he appeared before you, saying that he accepted them for the most part.

Mr. Nathaniel Erskine-Smith: Yes, although he said we should eliminate clause 16 and the limitation in paragraph 8(b).

The Chair: You have 15 seconds.

Mr. Nathaniel Erskine-Smith: Here's what my last question would be. If these are security-cleared parliamentarians, why should we feel more comfortable with your office having complete access and parliamentarians not having complete access?

Mr. Jean-Pierre Plouffe: That's a good question, and I guess it's for the government to answer. I suspect, bearing in mind that this is a new committee and that it's the first time parliamentarians will be involved in those matters, that the government wants to go cautiously and slowly. We'll see as things develop what changes should be made to the bill.

[Translation]

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

[English]

Mrs. Gallant—I'm struggling with Madam, Ms., and Mrs.—welcome back.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): “Mrs.” is fine.

The Chair: I know. It just took me a minute.

Mrs. Cheryl Gallant: Thank you, Mr. Chairman. My questions will be directed through you mostly to Mr. Plouffe.

First of all, in your comments, you mentioned that the government wants to have a review of the national security intelligence activities of those agencies and departments not currently subject to review. Would you please list the agencies and departments that you feel are not adequately reviewed at this time?

Mr. Jean-Pierre Plouffe: I must admit that I don't have the list at hand right now to tell you exactly. The border agency, for example, is the first one that comes to mind. I think that agency should be reviewed by somebody. As an example, it could be SIRC, because the work that CSIS does on the one hand and the work that the border agency does on the other are somewhat similar. SIRC could be the review body for that agency.

With regard to other departments that are not subject to review, the option is for the government to divide them among the existing review bodies—for example, the CSE commissioner, SIRC, the CRCC—or to create a new review body or bodies. I think it's important that the agencies and departments that are not subject to review be reviewed.

• (1700)

Mrs. Cheryl Gallant: My concern is that we see from time to time in Parliament an issue that is sensitive, that is urgent—for example, the screening of Syrian refugees—and the system is in place may have some deficiencies. This committee may have wanted to study it, but were told no. We were just outnumbered by the tyranny of the majority. Do you see it as a concern that what parliamentarians possibly should be studying in standing committees could, by virtue of the government's wanting to keep it out of the public eye, be deferred to this special committee?

Mr. Jean-Pierre Plouffe: If I understand your question correctly.... I'm sorry. Could you repeat that again, just the essence?

Mrs. Cheryl Gallant: Do you see that the government might want to defer an issue that a committee might want to study to this special committee just so that it's kept out of the public domain?

Mr. Jean-Pierre Plouffe: No, I don't see that at all. As I say, the mandates are different, but they are complementary. I think the important thing, as I said in my opening remarks, is to work together: the committee of parliamentarians on the one hand and the expert review bodies on the other. If we do that, I guess this will answer your question.

Mrs. Cheryl Gallant: Okay. Now, you've said that the committee does not have the same freedom of access as your office or SIRC, though in a specific area it has more explicit access. Which area is that?

Mr. Jean-Pierre Plouffe: That's the access with regard to the legal opinions, the client-lawyer privilege.

Mrs. Cheryl Gallant: Okay. Very good. Paragraph 8(b) says unless the appropriate minister determines otherwise, so how would the members of the special committee be able to verify that there is actually a reason that the committee should not have access to certain information?

Mr. J. William Galbraith (Executive Director, Office of the Communications Security Establishment Commissioner): The legislation sets out that if a minister refuses, or if information is refused to the committee, there has to be an explanation given. Is that what you're referring to?

Mrs. Cheryl Gallant: We see this in the defence committee all the time when they say that something is a matter of operational security. We don't know whether it really is a matter of operational security. They could be just using this as a way to avoid providing the information. How would committee members know that there is

actually a national security issue as opposed to the department or agency not wanting to be forthcoming with the information?

Mr. Jean-Pierre Plouffe: In the bill, if I'm not mistaken, there's a provision whereby if a minister is refusing that type of information he has to give you reasons, the reason why he's not releasing that type of information.

Mrs. Cheryl Gallant: In the bill, we're talking about paragraph 8 (b). The witnesses could state how the—

Mr. Jean-Pierre Plouffe: It's 8(b)?

Mrs. Cheryl Gallant: Yes. Are you certain that the government or the agency could not simply be using national security as an escape clause for not having to provide the information to the committee?

• (1705)

Mr. Jean-Pierre Plouffe: I don't see why they would do that unless they are in bad faith, and I assume that everybody is acting in good faith unless the contrary is proven to me.

Mrs. Cheryl Gallant: All right.

We'll go on to the procedure of the committee. It says:

The Committee is to meet at the call of the Chair.

Do any of the witnesses see that there should be a provision whereby a certain number of the members of committee, a minimum number that would be equal to or less than the number of government members, would be able to call for a meeting of the committee?

Mr. Jean-Pierre Plouffe: Are you talking about a quorum?

Mrs. Cheryl Gallant: Yes.

Hon. Tony Clement: That's in clause 17.

Mr. Jean-Pierre Plouffe: Clause 17, is it? I notice there is no provision in the bill about a quorum in this committee. It says there are nine members, and clauses 18 and 19, for example, talk about voting, but they don't talk about a quorum. I think there should be a provision saying that the quorum for the committee, let's say, is five members or whatever.

The Chair: I need you to end there.

Monsieur Dubé, please continue.

[*Translation*]

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

I would also like to thank the witnesses for being here today.

My question is for Mr. Plouffe.

Pursuant to the National Defence Act, part of your mandate is to report any CSE activities that are not in compliance with the law. For our part, we are introducing an amendment that would make this committee responsible for alerting the Minister of Public Safety and the Minister of Justice, so that is similar to your mandate.

I would ask you first to speak about the importance of this part of your mandate, and then to tell us whether you think our amendment is an appropriate proposal for this committee.

Mr. Jean-Pierre Plouffe: Part of my mandate is to ensure that CSE activities comply with the law. It goes without saying therefore that if they do not comply, I have to inform the Minister of National Defence, who is responsible for the CSE, as well as the Attorney General of Canada, in accordance with the National Defence Act. If you read the annual report I released last year that was tabled in both houses, you will find that I reported one case where this happened.

The committee's role is to ensure that the activities of the "agencies subject to review" comply with the law. I do not see why you could not also have the power to report such cases to the minister responsible for the agency in question and to the Attorney General of Canada.

Mr. Matthew Dubé: Perfect, thank you very much.

We have spoken a great deal about paragraph 8b) and the minister's power to prevent an investigation by the committee, which is not the case for your office or for the SIRC ...

Mr. Jean-Pierre Plouffe: It is the Security Intelligence Review Committee, or SIRC.

Mr. Matthew Dubé: Yes, thank you, it is hard enough to remember all the acronyms, let alone the acronyms in both languages.

You spoke about complementarity. That would be one example of how we could work together. I would like to take a different approach and hear your opinion of it.

You spoke about something that is very important to the committee of parliamentarians, namely, public trust. Do you not think that adding discretionary powers for a minister—even if we can rely on other, existing bodies to provide oversight—undermines the key objective of public trust? We know that the minister can prohibit investigations, which is not the case for other review committees.

Mr. Jean-Pierre Plouffe: First of all, you have to understand the nature of the committee that the bill would create. It is a committee of parliamentarians, but not a committee of Parliament, it is a creature of the executive. I don't think this is the first time you have heard this. This is why the prime minister and the other ministers have a role to play. It would be different if it were a committee of Parliament.

It is a committee of parliamentarians, so it is a committee of the executive. This committee, by the way, must report to the prime minister in certain cases and to certain ministers in other cases. That's the philosophy.

Some day things might evolve, with practice, in the sense that we might realize—as is the case in England right now—that it is a committee of Parliament and not a committee of parliamentarians.

• (1710)

Mr. Matthew Dubé: Thank you.

[English]

Mr. McPhail and Mr. Evans, you raised an interesting point about the importance of your not being a former member of the RCMP, Mr. McPhail, and the independence that comes with that. I'm just wondering about your thoughts on this. We had a similar thought

process when it comes to the choice of the chair for this committee, in the sense that if the Prime Minister is naming the chair, I feel there's almost a similarity. It's as if you were a former member of the RCMP. There is a bit of a conflict that can be seen there. What's the importance of the independence that you have and ensuring that you can exercise proper oversight?

Mr. Ian McPhail: My sense, Monsieur Dubé, is that it's not so much a matter of actual conflict, but rather public confidence.

I'll speak for Mr. Evans here, but I can also speak for all of the former RCMP members who are on our commission staff. They're all, I find, quite determined to proceed with the mandate of the commission, and they bring with them not just that determination, but their specialized and expert knowledge, which is frankly invaluable.

It would be my sense—and obviously this is beyond my authority or the commission's authority—that since the purpose of this bill is remedial and is designed to boost public confidence, I find it difficult to imagine that the Prime Minister or any number of parliamentarians would appoint as a chair someone whose appointment would detract from public confidence and trust.

Mr. Matthew Dubé: Right. I appreciate that.

The Chair: You have half a minute.

Mr. Matthew Dubé: As one last quick question, what was the importance of the ongoing review of Justice O'Connor's recommendations? How important was it that you had access to all that information? You mentioned that in your remarks, but just how important is that? That's something we're debating in regard to this bill, as well?

Mr. Ian McPhail: It's critical, but as I said earlier, we haven't had to rely on any legal provision to date. I can't foretell the future, of course, but to date the RCMP has been fully co-operative in allowing our investigators full access.

Mr. Matthew Dubé: That full access is key to doing your job.

Mr. Ian McPhail: Absolutely.

Mr. Matthew Dubé: Thank you.

The Chair: Thank you very much.

[Translation]

You have the floor, Mr. Di Iorio.

Mr. Nicola Di Iorio (Saint-Léonard—Saint-Michel, Lib.): Thank you, Mr. Chair.

Thank you, gentlemen, for your cooperation and valuable testimony.

I would like to talk about clause 8 of the bill, which pertains to the Committee's mandate. It states: "The mandate of the Committee is to review"

Paragraph b) states:

[English]

(b) any activity

and it continues:

unless the appropriate Minister determines that the review would be injurious to national security;

[Translation]

Other witnesses have pointed out that there is repetition in the bill. I would like your opinion on that. Is there repetition in the bill?

Let us look first at clause 14.

Paragraph 14 b) no longer refers to review but rather information, which I consider much more limited.

Mr. Jean-Pierre Plouffe: It that clause 14 or clause 15?

Mr. Nicola Di Iorio: It is paragraph 14 b) that pertains to information and not review.

Paragraph 14 d) pertains to the identity of a person. Once again, it does not refer to review.

Paragraph 14 e) pertains to information, so once again it does not refer to review.

I would also draw your attention to clause 16, which once again pertains to information and not review.

Would you also agree that there is unnecessary duplication and that things are repeated for nothing? In your opinion, are the exceptions set out in clauses 14 and 16 justified?

• (1715)

Mr. Jean-Pierre Plouffe: Earlier, with Mr. Dubé, we touched on paragraph 8b). This paragraph is a restriction; how often will it be applied? We have to consider this. Based on what a minister said recently, this prerogative will be used very rarely.

I have a note in English that explains my thinking. I will read it out, if I may.

[English]

It states, “My experience has been that often the fears we have are seldom realized to the same extent as we had thought.”

[Translation]

It is a restriction, but is an exception. The principle of an exception is that it is used rarely.

Mr. Nicola Di Iorio: Do you agree that the minister could allow the review, although the bill stipulates that certain information cannot be disclosed to the committee?

Mr. Jean-Pierre Plouffe: We have to understand—and I believe you understand this too—that there is a difference between review, which is part of the mandate, and access to the information referred to in clause 13 and in the following clauses. I would say it is not exactly the same thing.

Mr. Nicola Di Iorio: Very well.

Now, Mr. McPhail and Mr. Plouffe, I would draw your attention to clause 9.

Mr. Jean-Pierre Plouffe: Yes.

Mr. Nicola Di Iorio: Clause 9, which is entitled “Cooperation”, states the following:

[English]

The Committee and each review body are to take all reasonable steps to cooperate with each other to avoid any unnecessary duplication of work by the Committee and that review body in relation to the fulfillment of their respective mandates.

[Translation]

Do you agree?

Mr. Plouffe, you yourself stated that it is a committee of parliamentarians many of whose members—the vast majority, but not all—are elected. These people go to the polls every four years to renew their mandate.

Mr. Jean-Pierre Plouffe: Yes.

Mr. Nicola Di Iorio: Do you agree that, in the event of a difference of opinion, this committee takes precedence over committees such as the one you chair?

Mr. Jean-Pierre Plouffe: Are you referring to committees of experts?

Mr. Nicola Di Iorio: I am referring to committees of experts such as the one you chair, and the one Mr. McPhail also chairs. The question is also for Mr. McPhail, of course.

Mr. Jean-Pierre Plouffe: I don't see it that way. I do not think it is a question of taking precedence. I see what you are getting at, but each committee or body has its own mandate. I don't think it is a question of precedence. I do not see it that way at all.

The expert review mandate that we have, as regards the Communications Security Establishment, is one thing. This involves in-depth reviews several times per year and so forth. I imagine that the committee, by virtue of its mandate, will probably restrict itself to more general matters as opposed to the specific or detailed matters that we examine.

I think they are complementary mandates. It is not a question of precedence; both are important.

Mr. Nicola Di Iorio: Do you have the power to summons?

Mr. Jean-Pierre Plouffe: Yes.

Mr. Nicola Di Iorio: Should the committee have the power to summons?

Mr. Jean-Pierre Plouffe: That might be useful. I do not see a problem in calling witnesses to appear if you wish.

For example, if you are conducting a review of a specific department and want access to documents and witnesses, but are being refused, it could be problematic if you do not have a power of coercion.

Mr. Nicola Di Iorio: So there would have to be a power *subpoena duces tecum*, that is, the power of subpoena to produce documents.

• (1720)

Mr. Jean-Pierre Plouffe: Yes, that is something to consider. That is the power to subpoena persons to appear with documents, known as *duces tecum*, as you said.

Mr. Nicola Di Iorio: What are your thoughts, Mr. McPhail?

[English]

Mr. Ian McPhail: It's an excellent question, but I think it goes to the basic role of parliamentarians and review bodies. It's hardly up to me to say what the roles are, but I think you would agree with me that the key roles of parliamentarians are to consider, and if appropriate, pass legislation and to hold the executive to account. The role of review bodies is to carry out the instructions of Parliament in their respective fields.

I would anticipate that if that same philosophy were to carry over into this proposed committee of parliamentarians, it would probably not be the wish of the committee or any such committee to duplicate the work by conducting detailed reviews on specific matters, but rather to consider, for example, the issue that has just been raised today, that is, the question of what access should police have to supposedly confidential material on cellphones, to encrypted messages.

The Chair: Thank you, Mr. McPhail.

Mr. Ian McPhail: There's a very valid public debate on that, but that's not the role of a review body, quite clearly. I just use that as an example.

The Chair: Thank you. We have to continue. That was eight and a half minutes.

[Translation]

Mr. Nicola Di Iorio: Thank you.

[English]

The Chair: Mr. Clement.

Hon. Tony Clement: I want to get back to what was described by previous deponents as the “triple lock” that is found in the legislation in clause 8, in clause 14, and in one other clause. I want to get a sense from the witnesses of how reasonable that is.

The triple lock means that you have these clauses that make it clear that the mandate of the committee can be circumscribed if there's a national security issue, something “injurious to national security”, as it says in clause 8. Then we have the whole kitchen sink list in clause 14 of things that cannot be before the committee, and the refusal of information. I guess clause 16 is the other one, which incorporates by reference the Security of Information Act. This has been described to this committee already as a triple lock on the ability of the committee to do its job.

I'm speaking as a member of the previous government, and we didn't want to have this committee in the first place, but it seems to me that if you're going to go to the trouble of having the committee, it should be a committee that is actually able and capable of doing something. This was described in negative terms by the deponents, Professor Kent Roach amongst others, as a triple lock.

Monsieur Plouffe, obviously you're the commissioner of an agency, and Mr. McPhail, you've dealt with these kinds of reviews in the past. There's a balance to be struck, and I get that, but how do we strike the right balance? Obviously, no one around this table wants to do something injurious to national security, Lord forbid. At the same time, if I may say so, all parliamentarians are honourable people, and they're busy people, so to have us go through the genuflection of having a committee without having a real committee seems to me to be a waste of time.

I would like to have your thoughts on this matter, gentlemen.

Mr. Ian McPhail: Mr. Clement, your point is well taken, and I suspect that probably all of your colleagues on both sides of the table would agree with you.

I can only comment specifically with respect to information that's in paragraph 14(e):

information relating directly to an ongoing investigation carried out by a law enforcement agency that may lead to a prosecution;

The language used in our enabling legislation is somewhat broader.

I will get back to the point that I was making a moment ago, which is that I don't believe that it would be your intention that the committee conduct its own investigations of particular actions of the RCMP in terms of its national security activities.

Let me give you an example, if I may. National security activities of the RCMP are actually far broader than I think the public realizes, because many national security provisions have been enshrined in the Criminal Code. As a result of that, there's a law enforcement mandate for the RCMP. The RCMP also works very closely, in many of these areas, with other federal government agencies, and with provincial and even municipal police services.

Our body has the—

• (1725)

Hon. Tony Clement: I hate to do this to you—

Mr. Ian McPhail: Am I getting a little off track?

Hon. Tony Clement: —but I only have 15 seconds and I want to hear from Mr. Plouffe as well. I do get your point.

Mr. Ian McPhail: Okay. We can work with the provincial oversight bodies and with others.

The Chair: I'm afraid that's the end of your time.

Mr. Ian McPhail: Oh, I'm sorry.

The Chair: Ms. Damoff, for five minutes.

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

My colleague would like to ask a quick question as well, so I'll share my time with him. I probably have time for only one question.

To both of you, we know how important public trust is in our policing bodies. How do you believe this committee can work with your agencies to build on that trust and to make sure that the public is well equipped to understand the balancing of public safety with our rights and civil liberties? Is there anything in the bill that could be improved to build on that?

Mr. Jean-Pierre Plouffe: I think one of the principal challenges to restore and enhance public trust will be transparency. The committee and also the expert review bodies must strive to provide as much information as possible to Parliament and to the public in general, so that there can be a better understanding of what is being done, why, and, particularly, what safeguards are in place to protect the privacy of Canadian citizens.

With regard to CSE, which I'm reviewing, I've been pushing this concept of transparency for the last three years and trying to convince the agency to release more and more information to the public, because for transparency, releasing more information is part of that concept. I think the emphasis should be put on transparency.

Ms. Pam Damoff: Mr. McPhail.

Mr. Ian McPhail: Ms. Damoff, I would agree with Justice Plouffe with respect to every point that he has made.

I would also add that there is a constant tension, as you point out, between not just our desire for but our commitment to civil liberties, and also to the protection of Canadians in terms of national security issues. Exactly how that balance should be reached I would see as being one of the key purposes of this committee, because the review bodies aren't able to perform that function. The committee, provided there's not undue partisanship, should be able to do so.

• (1730)

Ms. Pam Damoff: Thank you very much.

The Chair: Mr. Graham.

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Thank you.

I have one quick question for Mr. Plouffe, but I think it's an important one.

CSEC is an integral part of our national security establishment and deals with a much higher level of technology than most government departments, and overseeing mathematicians and cryptographers whose full-time job is obfuscation is necessarily difficult. It's one thing to have total access to everything; it's another to interpret that data. In signals intelligence, data mining, and so forth, and in the deliberate compromising of targeted machines, who conducts the accountability code audits?

To give you an example of what I'm wondering about, WIRED magazine reported that last year the Kaspersky Lab turned up a pretty fascinating operation called the "Equation Group" that remotely flashed hard-drive firmware and is believed to come from a Five Eyes partner of the National Security Agency. This is low-level assembly language-type work and requires very specific expertise.

What processes are in place to interpret this level of sophistication in oversight capacity, and how is it achieved or how could it be achieved?

Mr. Jean-Pierre Plouffe: Well, I suspect that this is why we are called expert review bodies. We have experts who work for us. I agree with you that it's not always easy to understand what CSE is doing and, believe me, I was appointed three years ago and I'm still trying to understand exactly, in all the details, what they are doing. It is very complex, but I rely on experts. I have eight or nine experts in my office working for me, and those experts have worked either for CSE beforehand, or for CSIS, or for the security department, whatever, so they are experts.

Mr. David de Burgh Graham: These are people who get into weeds of the code and the actual technology of the stuff and not just the records that come out of it.

Mr. J. William Galbraith: If I may, Commissioner...?

Mr. Jean-Pierre Plouffe: Yes.

Mr. J. William Galbraith: You're at a very granular level, a very deep level. We—

Mr. David de Burgh Graham: It's an area that doesn't get talked about, and I want to make sure it does.

Mr. J. William Galbraith: When we determine the activities that are to be reviewed and the priority of those activities, we're looking at risks to compliance and risk to privacy. For those that we go through, we receive the briefings from CSE, and where we identify activities, something like that may be part of those activities. We go down from there and determine what are the risks to privacy in that and what are the risks to compliance generally. We then determine what priority will be placed on that.

If there's a requirement to get into the kind of granular detail that you're talking about, we go to, as required, under the commissioner's authority, under-contract computer engineers, for example, to ensure that we're understanding what is going on. CSE, I have to say, is quite co-operative and transparent with the commissioner's office, as demonstrated in the metadata issue of last year.

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

That brings our meeting to an end. Thank you, everybody, and thank you to our witnesses for your time with us.

I'll ask you to clear the room fairly quickly, because I'd like to have a brief subcommittee meeting.

The meeting is adjourned.

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