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Chair

Mr. Daryl Kramp

Standing Committee on Public Safety and National Security

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• (1530)

[English]

The Chair (Mr. Daryl Kramp (Prince Edward—Hastings, CPC)): Good afternoon, colleagues and guests. Welcome to meeting number 40 of the Standing Committee on Public Safety and National Security.

Today, pursuant to the order of reference of Tuesday, November 18, Bill C-44, an act to amend the Canadian Security Intelligence Service Act and other acts, will be dealt with.

Appearing before us here today is the Honourable Steven Blaney, Minister of Public Safety and Emergency Preparedness. We also have François Guimont, the deputy minister. From the Canadian Security Intelligence Service, we have Mr. Michel Coulombe, director; and from the Department of Citizenship and Immigration, we have Nicole Girard, director general, citizenship and multiculturalism branch. These will be our witnesses for the first hour.

At the end of the first hour, Minister Blaney will be excused. The other witnesses, I believe, will be staying. We have other additional witnesses who will be arriving for the second hour.

With that understanding, I will now open the floor to opening statements by our witnesses.

Minister Blaney, you have the floor.

Hon. Steven Blaney (Minister of Public Safety and Emergency Preparedness): Thank you, Mr. Chair.

I am here this afternoon to invite you to support Bill C-44—

The Chair: Excuse me, Mr. Blaney, but Mr. Easter has a point of order.

Hon. Wayne Easter (Malpeque, Lib.): I raise this again, and I raised it last time this minister was here. The minister has the resources of all the department available to him. A minister coming before these committees reads from written notes; we saw that last time. There was important information in there we could have used during committee that we didn't pick up until after. So I ask, does the minister have his statement written so that it can be presented to the committee in both official languages, as I believe should be the custom of this place?

The Chair: Thank you, Mr. Easter. Obviously I will ask the minister if he has a prepared statement that he can distribute. If not, he can go ahead with his statement but take that under advisement for future visits.

Hon. Steven Blaney: Thank you, Mr. Chair.

I begin by saying that what I have to say is not in any written speech, Mr. Chair.

I find it particularly special to be here in this room, in this very room where I was with my colleagues on October 22. We spent hours here. You were here as well, Mr. Chair. We will remember those hours for a very long time, as will our opposition colleagues, who were just on the other side of that room. We were all somewhat involved, against our will, in the terrorist attack that took place.

A few weeks before the attack, I was here with Mr. Coulombe, Mr. Guimont, and also with our RCMP commissioner to state that we are—we were at that time and still are—taking the terrorist threat very seriously, and that the threat is real.

Unfortunately, we have been exposed to the hatred of those individuals who committed the two terrorist attacks in mid-October. That makes this meeting even more important.

With that, I would like to begin by talking to you about Bill C-44, for which I seek your support.

[Translation]

I will mainly address the provisions that amend the Canadian Security Intelligence Service Act, which has not been dramatically altered in the last 30 years.

I would like to point out that Ms. Girard will address the Strengthening Canadian Citizenship Act, which received royal assent earlier this year. The section that deals with Canadian citizenship is not a new legislative component; it only encourages quicker implementation.

I am here today as Minister of Public Safety because the Canadian Security Intelligence Service, CSIS, comes under my department's responsibility. This service must have effective tools to fight the terrorist threat.

CSIS collects and analyzes information from across the country and abroad, and informs the Government of Canada of threats to national security, especially threats involving terrorism and violent extremism.

[English]

Obviously there should be no doubt about the direct and persistent threat terrorism and violent extremism pose to our security. No one can argue that what took place here in this Parliament and in Saint-Jean-sur-Richelieu are not terrorist attacks. That's why, colleagues, we need to move swiftly forward with this legislation. CSIS' ability to investigate threats to the security of Canada no matter where they may occur is vital to the safety and security of Canadians, and indeed our ability to respond to the threat of terrorism.

Our government is keeping Canadians safe. That is what this bill is all about. Let's dive straight into the very reason of the bill before us today, and therefore so critical in its importance to keep Canadians safe, to use it as a shield. The protection of Canada from terrorists act responds to two key core decisions that have important implications for CSIS' mandate and operations. Those of you who have taken the opportunity to get the technical briefing provided by my department understood that well. I could see it was the case when we had exchanges in the House about the bill.

In May 2014 the Supreme Court of Canada issued its ruling in the Harkat case. The Supreme Court's decision stated that CSIS human sources do not benefit from a common law class privilege similar to the informer privilege applicable to police informers. Human sources are a critical source of information for CSIS. They are at the very base of CSIS, yet, Mr. Chairman, they do not benefit from a protection as this court has ruled. In turn this significantly hampers our intelligence-gathering capabilities and therefore it puts Canadians at risk. This bill is not seeking at this point in time for new powers. It's just seeking to clarify the existing authority under which CSIS can protect us in an efficient manner. That's why the protection of Canada from terrorists act addresses this gap.

• (1535)

[Translation]

These amendments bring about automatic protection of the identity of CSIS' human sources.

[English]

This bill is balanced. This bill is reasonable and that's why I'm seeking your support. That's why you've been expressing your support in the House so far. Why? Because it fully respects the spirit of our Constitution.

[Translation]

The parties will be able to obtain an order from a judge to declare that the person in question is not a human source or that the information in question will not reveal the identity of that person.

[English]

In criminal proceedings, defendants will have the ability to seek an order from a judge declaring that disclosure of the identity of a human source is essential to establishing their innocence. The fundamental right to a fair trial is preserved and reinforced.

Turning to the second court decision affecting CSIS' mandate, the Federal Court of Appeal recently unsealed its July 2014 decision related to the government's appeal of Justice Mosley's decision that was issued by the Federal Court last year. The protection of Canada

from terrorists act confirms CSIS' authority to conduct investigations outside of Canada related to the threats, to the security of Canada, and security assessments. This is not a big thing. CSIS can operate within and outside Canada. That's fairly simple.

[Translation]

CSIS has always had the power to undertake investigative activities abroad. The Federal Court of Appeal acknowledged this fact when it found that section 12 of the Canadian Security Intelligence Service Act in no way suggests geographic limitations for CSIS' activities.

However, the power of CSIS to conduct activities abroad in order to investigate threats to Canada's security is not indicated as clearly as it should be in the Canadian Security Intelligence Service Act. It is therefore important that Parliament and the elected representatives of the people clarify this matter.

[English]

At the same time, the bill also confirms the authority of the Federal Court to issue warrants authorizing CSIS to undertake certain activities outside of Canada, and it gives the Federal Court authority to consider only relevant Canadian law when issuing warrants for CSIS to undertake certain activities outside of Canada.

These amendments are important. We believe that the Canadian Constitution, especially the Charter of Rights and Freedoms, is far superior to the decrees of a dictator in a far-off land. Canadian law, and even more importantly, Canadian values, are what should solidly ground our legal deliberations around national security, and that is exactly what this bill is accomplishing.

• (1540)

[Translation]

Mr. Chair, the proposed amendments in Bill C-44 are reasonable and necessary for ensuring that the Canadian Security Intelligence Service can carry out its mandate adequately. They are also consistent with the spirit of the Canadian Security Intelligence Service Act and the recommendations of the 1981 McDonald Commission.

[English]

Unfortunately during debate on this legislation at second reading, I heard some allegations related to CSIS operating outside the law. That's what this bill would prevent from happening, because it would clearly define that CSIS is operating within the law. Let me be clear. CSIS will, as always, continue to be required to obtain judicial authorization to undertake certain intrusive activities.

I believe this clearly lays out the technical aspects of this legislation, and nobody can challenge the motive of this bill.

[*Translation*]

Again today, Mr. Chair, we have learned that the Islamic State armed group is recruiting eight-year-old children, as if all the images and atrocities we have been exposed to were not enough. I am thinking of a video that was released showing over a dozen men being decapitated.

Among those individuals was humanitarian worker Peter Kassig. His parents wrote on Twitter that they were heartbroken to learn that their son had lost his life because of his love for the Syrian people and his desire to lessen their suffering. Our government resolutely condemns the acts of violence by the Islamic State armed group in the strongest possible terms. That is why we are providing humanitarian aid to the people affected by these barbarians and are supporting the coalition's efforts to neutralize and diminish their capacity to conduct major operations.

In addition to these distressing reports out of Iraq and Syria, recent terrorist attacks here remind us that this organization is also a threat within our own country. That is why we are steadfastly working to improve the tools available to the police forces and the intelligence community. The Protection of Canada from Terrorists Act is just the first step toward achieving this objective. Our Conservative government has taken strong action to protect our national security.

As you know, Mr. Chair, we passed legislation to fight terrorism over a year ago now. That act gives the authorities tools that enable them to revoke the citizenship of individuals who take part in these activities. As I mentioned, the component of the bill that is before us today basically consists of accelerating the measures that have already been adopted and received royal assent.

We have increased funding to the Royal Canadian Mounted Police and CSIS by a third. We have implemented new measures. Unfortunately, we have not been able to count on the support of the opposition, neither the New Democrats nor the Liberals, for the revocation of passports and dual citizenship of individuals found guilty of terrorist acts. However, I have noted during debates that there is some receptiveness to the bill that was introduced today.

[*English*]

I realize this bill was not formally opposed during the debate at second reading, and I look forward to answering your questions today. Ultimately, and I would say much more importantly, I look forward to this legislation being returned to the House after thorough study so we can move forward and get this bill adopted, so that we as parliamentarians, elected officials, can better do our part to keep our country safe. Thank you.

• (1545)

The Chair: Thank you very much, Minister Blaney.

Are there any other opening comments from witnesses?

Seeing none, thank you. We will now go to the rounds of questioning. We'll start with Ms. James for seven minutes, please.

Ms. Roxanne James (Scarborough Centre, CPC): Thank you, Mr. Chair. Thank you to the minister for appearing, as well as the officials.

Minister, in your opening remarks you talked about the incident that happened at the National War Memorial as well as what took place here on Parliament Hill. These incidents of terrorism were not simply attacks against an individual or a place where people go to work. These were attacks against our Canadian Armed Forces and against our institutions of governance. This was an attack against all Canadians.

At the start, when we talked about Bill C-44, I heard some comments that this was simply a knee-jerk reaction to those terrorist attacks that took place in Ottawa and in Quebec. In fact, Minister, this legislation has been in the works for some time and was to correct a problem that, as you mentioned, we saw an issue with before the courts, which were calling into question the authority of CSIS.

I'm just wondering if you could speak about that particular aspect, that this was not a knee-jerk reaction, and why this is absolutely critical for the operations of CSIS to continue to keep Canadians safe.

Hon. Steven Blaney: I thank Parliamentary Secretary James for her question, Mr. Chair.

The definition of a terrorist act is widely accepted throughout the world, and it has three components. The first is that an individual or a group attacks a symbol of a nation. We are talking about the military uniform and we are talking about our sacred National War Memorial. It is also committed based on an ideology. We clearly saw that those two individuals were embracing extremist, fundamentalist, radical Islamic views. They were going against the Criminal Code by committing violent acts against innocent people.

Clearly, what took place in Canada on October 20 in Saint-Jean-sur-Richelieu

[*Translation*]

... and that targeted Warrant Officer Patrice Vincent, and Nathan Cirillo in Ottawa, are both terrorist acts.

That is what the president of Holland noted when he visited Parliament. The U.S. secretary of state, John Kerry, noted that as well, as did the RCMP commissioner. Under the Criminal Code, it was terrorism.

It is important to take a measured approach when dealing with the terrorist threat and not react excessively, but we must not stand idly by in the face of the constantly changing terrorist threat.

Ms. James, I believe you know that the bill in question was to have been introduced on October 22, the very day of the attack. Shortly after the attack, we did not know that we were going to be confined here all day. We were living in uncertainty, but I was still hopeful I would be able to introduce it that day.

Consultations were held before the introduction of this bill which, as I explained, followed on an invitation by the courts to clarify the legislative provisions so that CSIS could exercise its mandate adequately.

I am pushing the importance of adopting this bill because CSIS' current capacity to fully exercise its duties is limited by court decisions. As parliamentarians, we are being asked to get this bill to royal assent in order to restore existing powers to CSIS at a critical time when we are facing a real terrorist threat.

To answer your question, I would say that this bill was in the works long before the two terrorist attacks in Canada in mid-October, but that those attacks make its adoption much more important and urgent.

• (1550)

[English]

Ms. Roxanne James: Thank you, Minister.

In your remarks you said something similar to “not as clearly outlined in the CSIS Act as it should be”. I think everyone in this committee recalls, and I've mentioned it many times in conversations and in the House, that the CSIS Act was first passed way back in 1984. This is actually 30 years ago. This is why we're really here today. CSIS has been operating and communicating with our Five Eyes partners and operating outside of Canada, and all of a sudden the courts have called that into question because the CSIS Act doesn't clearly indicate it has the power and the ability to do so.

When we talk about terrorism in Canada, I think most Canadians would agree that the Toronto 18 was something we had not heard about before in Canada. We also experienced, more recently, the VIA Rail plot. Now we have seen issues of individuals being radicalized, going overseas, and receiving training overseas with the potential to come back here and cause even greater damage and assault against Canadians in our country within our borders. In reality, terrorism knows no borders.

When I think about this bill, Minister, my greatest concern is that CSIS must absolutely have the ability to operate overseas. Without that, it would be working with both hands tied behind its back.

Would you agree with that statement?

Hon. Steven Blaney: Absolutely, I fully agree with you.

I believe that while we have to make sure we are providing all the tools, especially to our national security agency, the service, in this case, we also need to continue to invest ourselves in the four pillars of our counter-terrorism strategy, particularly in the domain of prevention. This is exactly what was agreed upon amongst the 300 participants who took part in the Halifax international security conference that just ended yesterday, where there was a consensus among western countries that we need to reach out with outreach to communities. You have the example of the Toronto 18. As you know, it was because of the bridges we had built with the communities that we were able to deter this terrorist attack that was plotted. Mr. Coulombe is very aware of this.

In the meantime we also need to show our unwavering commitment in tracking those who are committing terrorist attacks or are willing to do so. This also includes hate violence, whether in their behaviour or in their speech. We also need to make sure we have the tools that are necessary, and not only our national security agency but our national law enforcement needs to have the tools as

well. That's why I and our government intend to come back with further legislation to address this gap we are now faced with.

The Chair: Thank you, Minister.

We'll now move on to Mr. Garrison, please. You have seven minutes.

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): Thank you, Mr. Chair.

I'd like to thank the minister for being here today.

The NDP supported this bill at second reading because it deals with national security, which is obviously a very important issue. Precisely because of that importance, we have to make sure, with any changes we make, that we get them right and that they are effective. That really requires full debate on this bill.

What I want to raise is something I raised with the minister in the House during time allocation. At that time I asked the minister if he would assure me that we would have full time for debate here in the committee. Again today, he mentioned in his opening statement that he looked forward to the committee giving thorough study to the bill.

I'm going to ask him again. His parliamentary secretary, who is his spokesperson in the House, has made sure that we have only one day of witnesses other than government officials. That means six witnesses on this very important bill.

I ask the minister again. Do you think we're actually going to have enough time here in committee to give this bill the study it deserves?

Hon. Steven Blaney: Absolutely. I think I have correctly evaluated the time needed to work on this straightforward bill. As I was given the opportunity to mention to you during the debate in the House of Commons, it's a seven-page bill. It says that CSIS can operate outside and within Canada. It says that we need to protect sources, which is obvious since that's where CSIS is harvesting its information, which can be transformed from intelligence to evidence, and then where we can prosecute terrorists and put them in jail. Rightly so, as we have already been doing with the Combating Terrorism Act and the previous legislation.

I believe there has already been more than 11 hours of debate. I think we are expected by Canadians, especially in the context of an evolving threat, to do thorough work but not to drag our feet and waste time. This bill is needed. As you know, we hope other measures will be coming soon, and that is what Canadians are expecting from us. I refer to some comments in the media today that Canadians think we should take the terrorist threat very seriously, and we should act accordingly. I think that adopting this bill after the study... We are here and the experts will be available here to answer all your questions.

•(1555)

Mr. Randall Garrison: But with respect, Mr. Minister, when we say one day that means two hours in this committee with witnesses outside the government. So if we are going to take terrorism seriously, with respect, I would think that two hours is not taking it sufficiently seriously.

You say it is only a seven-page bill so I have a question about something that is not there. We have seen recommendations from Justices O'Connor, Iacobucci, and Major, all of them dealing with the need for improved accountability in national security. The accountability is connected very directly to that effectiveness. Minister, why is there nothing in this bill that improves the accountability and the oversight of our national security agencies?

Hon. Steven Blaney: I think you were given the opportunity to attend the technical briefing. As I said in the House and I said again today, this bill is designed particularly to address two issues that were brought forward by the court that limit the power and the authority of CSIS. It is important at this very moment when we face a real terrorist threat—and these walls can speak for themselves—that we address this gap. That's why this bill is straightforward. I make the commitment today that we will present further legislation, and that's why I seek your support for this bill.

Mr. Randall Garrison: I hope the further legislation will have improvements in accountability and oversight because that's part of the effectiveness, as I said before.

Another point that I am concerned about here, and that's why I think we need more time to discuss this, is that there's no point in passing laws that won't withstand scrutiny in the court. So I have a question for the minister about what advice he has received from the Department of Justice on the constitutionality of the measures proposed here, particularly those that deal with authorizing courts to grant warrants without respect to international law, also with respect to the protection of the identity of human sources.

If these laws aren't going to stand up when they get to court then we're wasting time here when we could do something more effective. Has he had that advice? Will he table that advice with this committee?

Hon. Steven Blaney: I think our time is really precious, and that's why I seek to have this committee move forward, Mr. Chair.

Let me get back to the proceedings, and I will address it. I thank you for your question.

As I've said, in criminal proceedings defendants will have the ability to seek an order from a judge declaring that disclosure of the identity of a human source is essential to establishing their innocence. The fundamental right to a fair trial is not only preserved it is reinforced.

Mr. Randall Garrison: Only as to the trial, not to detention, not to bail hearings, and all other aspects of the criminal justice process. You've only applied that exception to one small piece of that. That's why I'm interested in the advice you have received from the Minister of Justice about the constitutionality of that.

Hon. Steven Blaney: In another bill we will come back with issues related to surveillance, arrest, and detention, but this is not what this bill is about. This bill is about protecting the source. This is

exactly why we have embedded measures in this bill to reinforce the fundamental right, not only respecting the law but the spirit of the law, which I think is going even further.

The other aspect is that you know we are talking about Canadian citizens, Canadian law, and Canadian procedure. I expect this question may come further on during our exchange. We sometimes work in an environment where people don't experience the freedom and the democracy that is experienced here. That is why this bill is related to Canadian law and that's why it is a bill that fully complies with our Constitution.

•(1600)

Mr. Randall Garrison: So you have that advice from the Minister of Justice.

Hon. Steven Blaney: We are always moving forward with bills that are seeking to protect Canadians. That's our first goal and priority and this is how this bill has been prepared, with all respect to our Canadian Constitution.

Mr. Randall Garrison: Thank you very much.

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

Now we will go to Mr. Norlock, for seven minutes, please.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much.

Mr. Chair, through you to the witnesses, thank you for attending today.

Minister, I notice that this act has certain aspects of the recently passed Strengthening Canadian Citizenship Act. Do you believe it's reasonable to revoke the citizenship of convicted terrorists, or people who would do harm to Canada?

Hon. Steven Blaney: Thank you, Mr. Norlock, for your question.

We are very proud to be Canadian. Whenever we go around the world we are also very proud to show our Canadian passport, which is well recognized and established. What we realize is that individuals are abusing the generosity of Canadian individuals who have embraced Canadian principles and values, and they are ready to turn their backs on this society.

Just last Friday I met with the cross-cultural round table where we have people coming from different backgrounds. Most of them are not Canadian-born citizens and they all agree that when we are Canadians, we are winners. We are winners of the lottery. We are a great country, and to be a citizen of this country is a great privilege.

Those individuals who are committing terrorist acts using the Canadian passport don't deserve to use their citizenship to propagate violence around the world. That is why, once they are convicted of a terrorist act, I find it fairly appropriate to remove this tool and the great privilege it is to be a Canadian citizen.

Mr. Rick Norlock: Thank you, Minister.

What you're saying is that citizenship is a great honour and to those who would do us otherwise, it is not a right. At least that's what I think you said, and that's what I believe.

Minister, I'd like to go further into this piece of legislation. One of the parts of the legislation deals with judicial oversight of CSIS warrants. We've heard statements that we have to respect international law and the laws of other countries. I think of some countries that don't have the respect for human rights and the rule of law that our country does. They may get warrants in ways that we would find totally inappropriate, and that are totally against all we stand for as a country that respects human rights.

I wonder if you could comment on judicial oversight, the necessity of issuing warrants, and comment on this provision and why you believe it makes sense.

Hon. Steven Blaney: I thank you for your question.

CSIS operates under Canadian law. This is why we have set up a package of law so that, whenever it operates, it is operating within the law. Of course, I may be involved in those authorizations, but more importantly, judges warrant when our issues need to be validated by the judicial system. On top of that, we have an overview mechanism of the whole service, and this is done by the Security Intelligence Review Committee. I have brought here a copy of that report. It's in both official languages. We have robust oversight of an agency that is to abide by Canadian law. This is exactly what this bill would do. We have, over the course of the last month, been given the opportunity by the court to clearly define that CSIS has the mandate to operate within and outside the country. That's the first main part of the bill. The second part of the bill, which is so important, is to protect the sources. To quote the definition of "source" in this bill:

"human source" means an individual who, after having received a promise of confidentiality, has provided, provides or is likely to provide information to the Service;

When the service is entering into a contract—if I can put it that way—with a human source, there is this promise of confidentiality. Those sources are sometimes putting their lives at risk to share this information. That is why it is important that this contract be clearly defined under the law, and under certain circumstances this protection can be used in a trial or tribunals if it is used to prove that someone is accused.

This bill has been crafted based on our Constitution, based on our laws, and based on the principle, as I've mentioned, that the fundamental right to a fair trial is not only preserved but reinforced. That's why I'm seeking your approval for this bill, which is accomplishing those main important things: protection of human sources within our Constitution, confirming the authority of CSIS to operate abroad, and as we have indicated, speeding up the process of removing dual citizenship, while adding no other element to the already-adopted bill.

●(1605)

Mr. Rick Norlock: It's not dissimilar to the rights and to the tools that exist for police officers within Canada, and have done so for some time and have stood the test of many court challenges over the years. I think what you're saying is that it would be reasonable to assume that this would withstand the test of the courts in Canada, as does the legislation that currently exists.

Hon. Steven Blaney: Absolutely.

The Chair: That's fine. Thank you very much.

Now we will go to Mr. Easter for seven minutes, please.

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

Welcome, Minister. You no doubt will be aware that I forwarded to your office a series of nine questions that I had hoped you could provide written answers to prior to this committee. I wasn't actually overly enamoured with the response I got back from your office. I'll quote it. It said, "It is preferable that Mr. Easter pose these questions to the minister and officials on Monday to allow the responses to be on the record and have all members of the committee be able to hear the responses to these specific questions."

Anyway, Mr. Minister, I do have those questions in both official languages here and, Mr. Chairman, I'd ask the clerk to distribute them. I may or may not get into them, but I would request, because they are quite technical, that your office provide the committee with answers prior to us going to clause by clause, because it is asking for some technical responses in terms of the bill. Before I get to the specific bill, but on something related, when you last appeared before us on October 8 you said, "We know of about 80 who have returned to Canada", meaning terrorists who operated abroad, or Canadians who operated in terrorist entities abroad. This is your quote: "Let me be clear that these individuals posing a threat to our security at home have violated Canadian law, as passed by this Parliament in the Combating Terrorism Act."

This is my question to you. None of these people have been arrested yet as I understand it, although you said they violated the Canadian law. I have said to you in the House that I believe they should be able to be arrested under section 83.181. I'll not get into it. There are four different evaluations there. Can you answer? One, why hasn't section 83.181 of the Criminal Code been used to arrest those individuals? Two, are there components in this bill that will allow you to arrest those individuals where you're not now able to?

●(1610)

Hon. Steven Blaney: I thank you for your question and also your detailed written questions and we'll do our best to answer them properly.

Related to your written questions, they are related to the bill. Now if I get back to your asks today, they are more broad but I'll try to also answer them properly. This number, if I go back to the latest information provided by Commissioner Paulson, is around 93 individuals. Mr. Easter, as you are well aware, and you've been in that position before, it is not because you suspect an individual to have contravened the criminal law that you necessarily are able to transfer this intelligence into evidence. That's why we need to move forward as the legislator. That's why I will come back to this committee to address this issue, and that's why I hope I can count on your support to do exactly that.

To get back to the existing provision of the Criminal Code, Commissioner Paulson has already indicated that the threshold was too high and that they were not able to proceed.

Hon. Wayne Easter: Yes, but sir, you did indicate that they had violated Canadian law.

My secondary question on that is this. If the threshold is too high to meet and to charge them, is there anything in this bill that does that, or will it be new legislation? You can answer that with my other question.

When you go to the bill, it specifies "within or outside Canada" for CSIS action under its collection duties in proposed new subsection 12(1) and under its investigation functions in proposed new subsection 15(1). This bill introduces an extraterritorial element within the checks and balances present in section 16, regarding foreign intelligence, of the obligation of consultation with the minister of foreign affairs.

From that complicated wording, under foreign affairs, if Canada is going to have some of its people do something, there's a check with the foreign affairs minister, because anything we do in a foreign country can impact us in other areas with that foreign country.

As I see it under this bill, there are no checks and balances where CSIS is going to do something that violates the law of another country but is able to do so because of the warrants issued within Canada. There doesn't seem to be a need for those checks and balances to protect our foreign affairs interests whether in trade or in other areas.

Can you, or someone, clarify that for me? Where are the checks and balances to protect Canada's interest when we take action under this section?

Hon. Steven Blaney: I'll answer that question first.

This is exactly why the service is conducting its operation, to protect the interests of Canada, its companies, its citizens—its safety and also its interests.

To get back to your first question, this bill indeed addresses that indirectly and would make it easier to track terrorists. This is because we would be able to gather better intelligence. Why? Because we would be able to guarantee a level of protection to the witness, which is critical in gathering intelligence, and because we would be able to operate prior to those two court decisions. Basically, we would just get back to where we were before those court decisions, which are, at some point, diminishing the capability of the service to protect us. Obviously, this would have a positive impact because when we want

to lay charges we need to have strong cases, and those cases are emanating from intelligence.

The answer is yes. This bill is definitely a step in the right direction. We need to do more, and that's why we will come back with additional measures in the near future.

• (1615)

The Chair: Thank you very much, Mr. Easter. Your time is up.

We will now go to Madame Doré Lefebvre.

[Translation]

Ms. Rosane Doré Lefebvre (Alfred-Pellan, NDP): Thank you, Mr. Chair.

Mr. Minister, I would like to thank you for being here today.

I would like to come back to a question that my colleague, Mr. Garrison, asked. Can you confirm, with a yes or no, whether Bill C-44 is constitutional?

Hon. Steven Blaney: I think this is the most constitutional bill we have introduced and that you will have an opportunity to support.

Ms. Rosane Doré Lefebvre: Did you receive any legal opinions that it was constitutional?

Hon. Steven Blaney: Of course. We always consider the legal elements.

As I clearly indicated in my presentation, not only does the bill confirm that an individual can receive a fair and equitable ruling, but it also strengthens and defines this right.

The mechanisms for this are explained in the new subsection 18.1 (4) that can be found in clause 7 of the bill, which stipulates that you can even have what we call an *amicus curiae*, a friend of the court who, in a way, enshrines and oversees the application of the individual's rights.

So this is a bill that establishes an absolutely effective way of strengthening the safety of Canadians while fully respecting the spirit of our Canadian legislation and the Constitution, particularly the Canadian Charter of Rights and Freedoms.

Ms. Rosane Doré Lefebvre: You mentioned CSIS. This bill is largely related to the Canadian Security Intelligence Service, aside from the part that affects Citizenship and Immigration Canada. In the last few weeks, we have heard a lot about the importance of public safety, while not overlooking the related civil liberties and while finding a balance between the two.

Why not provide CSIS with better tools for the civilian oversight mechanism at the same time?

Hon. Steven Blaney: Thank you for your question. I think I remember it being raised during the House of Commons debates.

There are excellent oversight mechanisms. I have here the 2012-13 annual report of the Security Intelligence Review Committee, and every member here has a copy. The committee is made up of prominent Canadians, who submit an annual report to Parliament. They are responsible before Parliament for ensuring that CSIS carries out its duties in the full respect of Canadian legislation.

As I indicated, I expect CSIS will follow up on the recommendations that were made in this year's report. The Security Intelligence Review Committee is doing important and very serious work.

Ms. Rosane Doré Lefebvre: I have another question about the part relating to the Strengthening Canadian Citizenship Act.

Bill C-44 concerns CSIS. Why include that act? Does it have any kind of relationship? I don't understand the connection between CSIS and moving up the implementation dates.

Hon. Steven Blaney: It is to facilitate and accelerate the removal of dual citizenship in those cases where individuals have been found guilty. There are no new legislative elements, except for the provisions aimed at expediting the implementation of the legislation that has been adopted. Perhaps Ms. Girard can round out my answer.

As for the oversight mechanisms, clause 7 of Bill C-44 amends the Canadian Security Intelligence Service Act by adding subsections 18.1(4) and (5) to enable the courts to intervene if there is a possibility that a source's identity would no longer be protected. The bill contains such provisions.

Ms. Girard, could you perhaps comment on citizenship and accelerating the implementation of the legislation?

Ms. Nicole Girard (Director General, Citizenship and Multiculturalism Branch, Department of Citizenship and Immigration): I don't have much to add to what the minister said. He provided a very good description of two separate elements of Bill C-44.

The objectives are complementary insofar as the proposed technical changes to the Strengthening Canadian Citizenship Act will help attain the same objective, which is to strengthen the safety of Canadians, the value of Canadian citizenship and the integrity of the program.

[English]

The Chair: We will now go to Ms. Ablonczy, please, for five minutes.

• (1620)

Hon. Diane Ablonczy (Calgary—Nose Hill, CPC): Minister, this act contains amendments to the CSIS Act that would clarify that CSIS may perform its duties and functions within or outside Canada. I wonder if you would tell us why you think that clarification is important.

Hon. Steven Blaney: Thank you.

The reason it is so important is that this law was crafted 30 years ago, and at that time it seemed it was not necessary for the legislation to clearly specify that CSIS can operate in and outside Canada. In a later judgment that was rendered by the Supreme Court, it was acknowledged that it might be pretty useful, especially in the context of foreign fighters, terrorists' attacks coming from abroad, that the service operate outside, which it has done over the course of the last year. That's why it is important to clearly specify in the basic law of the service that this principle be entrenched.

Hon. Diane Ablonczy: I note too that the act, and others have mentioned this, would allow CSIS to protect their sources in the same way that police officers can protect their sources, because obviously no one is going to give you information if they can be

hung out to dry, shall we say. I'm a little puzzled about why CSIS wouldn't have already had this ability to protect their sources, and I'd like to know why you think it's important that it be in this legislation.

Hon. Steven Blaney: That's a good question. I will turn to Mr. Coulombe. But one thing is sure, we clearly need it to maintain the quality and the reputation of the service and the accuracy of the data they are collecting. Before, this court decision, this right, if I can put it that way, was taken for granted. Due to this court decision, we are invited as a legislature to clearly define it in the law.

Monsieur Coulombe.

[Translation]

Mr. Michel Coulombe (Director, Canadian Security Intelligence Service): Thank you, Mr. Minister.

[English]

In terms of the first part of your question of why it's not in the act at the moment, if you go back 30 years, at the time it was not envisaged that the service would be as involved as it is today in administrative proceedings or criminal prosecutions. The threat has evolved, and terrorism is taking a growing place.

I think it is pretty obvious why we need to protect our sources. We've talked about it in terms of nobody wanting to cooperate with us if they were putting their life at risk. But I think it's also very important that we shouldn't lose sight that when somebody is cooperating with the service quite often at the risk of their own security and with the promise of confidentiality, the state has a duty to protect that person and to protect their identity so that we can protect their security—and not just protect them but sometimes their family also.

We have to balance that in different proceedings with how we maintain fair proceedings. I think the bill has achieved that balance.

Hon. Diane Ablonczy: I read an opinion that indicated that police evidence-gathering is different from CSIS' information-gathering, so CSIS sources don't need the same protection. Would you comment on that, please?

Mr. Michel Coulombe: It is true that the service is not an enforcement agency. We're not in the business of collecting evidence. But again, because of the evolution of threats, we're more and more indirectly—and sometimes directly—involved not in criminal investigations because we run parallel investigations with the RCMP, but just because of the nature of the relationship and exchange of information. At times service information will be used in criminal proceedings, or could be used regarding security certificates, for example. Although we're not in the business of collecting evidence, that's why our intelligence will either be challenged or there will be a request for more disclosure, including the identity of human sources.

It's just that the nature of the threat environment has changed and has changed the service interaction in dealing with those different proceedings.

• (1625)

The Chair: Fine. Thank you very much. Time is up.

Mr. Garrison, you have five minutes, please.

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

I just want to stress again, Mr. Minister, that when you talked about this bill at the outset we had hoped the bill could be made effective, and we had hoped we could have all-party support for the bill. The attitude of the government is now making me very doubtful.

We share the same interest as you in making sure that our national security agencies maintain their quality and the reputation of their services, and we think that accountability is quite important to that. There is nothing in this bill on that.

You mentioned the challenge of transferring intelligence into evidence. I think those were your words. We share that concern about taking intelligence and making sure you can use it in prosecutions. I have a concern that the way this bill is drafted it may make it more difficult to do those prosecutions. When you talk about the protection of the identity of witnesses, the courts can protect the identity of CSIS sources on a case-by-case basis now. They didn't say that wasn't possible.

When you say they invited you to do this, I believe that if you read the decisions, they said that Parliament could do this. They didn't say it was necessary, and they didn't say that Parliament should provide this blanket protection; they said it was possible.

Why risk this change to limit the rights of the defence to challenge the use of intelligence information in prosecutions? Why risk a change that might either make it more difficult to prosecute, or might result in those provisions being declared unconstitutional?

Hon. Steven Blaney: I thank the member for his numerous questions.

The first response would be that some of the questions go beyond the scope of the law, and I have clearly stated that this bill is crafted to ensure it responds to the invitation of the courts.

All western countries are faced with the challenge of terrorism. I have here a press release from my U.K. counterpart, Theresa May, who is coming up with more than eight measures to tackle terrorism and says that time for new policies is required, and why? Because we need to adjust to this threat, that's clear.

I've clearly demonstrated this afternoon that we are doing it while respecting the Constitution with the amicus curiae in the protection of witnesses whenever someone is accused.

The member has asked a question on oversight. Clearly this is going beyond the scope of this bill, but we have a clear mechanism that is working and will ensure that while CSIS is protecting Canadians, there is robust oversight.

I would say, Mr. Chair, that to me it is clear that there is no liberty without security.

Mr. Randall Garrison: With respect, Mr. Minister, all the commissioners who have looked into these questions have agreed with you on half of that. You forget the other half that they've said, and that is that we need improvements. If you're going to give more powers to national security agencies, especially in this time of technological change, then you need improvements in the oversight, so I think it is connected to the bill even though it's not here.

But I want to give you one more chance on this question of why you're risking making it very difficult to use intelligence information in criminal prosecutions by this very limited protection, this limited exemption in this bill.

[*Translation*]

Hon. Steven Blaney: This bill clarifies the powers of CSIS. It will facilitate the work of the courts because it eliminates the grey areas that existed when the legislation was applied, both with respect to protecting witnesses and to the capacity of the service to operate abroad and exchange information with our allies, including Great Britain, Australia, New Zealand, the United States and France. They are our allies, and they are facing the same challenges we are, which is monitoring individuals who travel from country to country, threaten the safety of Canadians and attack innocent people. That is exactly what this bill does. It restores the powers that enabled the service to be effective in the past. At this critical time, as we face a growing threat, it is all the more important to preserve the capacity of CSIS to protect Canadians.

[*English*]

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

Minister, thank you very kindly for coming here today.

We thank our guests as well.

We will suspend briefly just for a minute while the minister excuses himself, and we will welcome our new witnesses to the table.

• (1630)

_____ (Pause) _____

• (1630)

The Chair: Colleagues, we are back in session.

We will welcome our new witnesses here today.

We have Lynda Clairmont, senior assistant deputy minister, national and cybersecurity branch. We have Ritu Banerjee, director of the intelligence policy division for the national and cybersecurity branch; and we have Mory Afshar, senior counsel, Citizenship and Immigration Canada legal services.

The three new witnesses are entitled to make a statement, should they wish. Otherwise, we will go directly to questions.

Are you all fine? Thank you very much.

We will go to rounds of questioning, then. We will start off with Mr. Carmichael, please, for seven minutes.

Mr. John Carmichael (Don Valley West, CPC): Thank you, Chair.

Thank you to our witnesses for attending today.

This is obviously a very interesting session, as we deal with concerns of Canadians from coast to coast to coast. As I've travelled through my riding, I've heard from Canadians on this issue since October 22, and the horror that...well, actually before that, because we had the tragedy in Saint-Jean-sur-Richelieu, with Warrant Officer Vincent. Then we were confronted with the horror of the terror attack here on Corporal Cirillo, and then in the House. Canadians have been very responsive to these issues, and our security and our safety is clearly something they hold dear and for which they have great concern. They ask how these types of acts can happen and what we can do to protect our shores and protect our borders.

What I'd like to ask you about first off—and I'll let you decide who is the best person to respond on this—is around the fairness of revoking the citizenship of dual nationals. At your last appearance, Mr. Coulombe, we talked about the number of citizens who have gone overseas, who are taking part with ISIS in Syria and Iraq, and those who have returned. We addressed some of the numbers and the concern of how we're going to deal with these people.

But I want to talk about the provision in the bill for the revocation of dual citizenship, where we have people who have been charged with terrorism or treason, served their time overseas, and then come back. Canadians have asked about the fairness around this particular clause. I wonder if you could comment on it. I won't go any further, as far as what I'm hearing is concerned. I'll leave it for you to perhaps comment on the importance of this issue.

• (1635)

Ms. Nicole Girard: Thank you very much for your question.

I would just note at the outset, as mentioned earlier, that the provisions in Bill C-44 are technical amendments that would not bring any changes to the provisions of the Strengthening Canadian Citizenship Act, which received royal assent in June earlier this year. They would enable the government to pursue an earlier implementation of the changes to the revocation provisions in the Citizenship Act.

Nevertheless, to come directly to your question, I think the first, most important point to make is that Canada is alone compared to like-minded countries and other democratic countries in not having this ability already to revoke citizenship for egregious actions that are done against the national interest, so the recent changes that Parliament made in June to expand the grounds for citizenship revocation limited to specific actions—namely convictions for high treason, treason, spying, terrorism, or being in the service of an organized armed group or armed force engaged in armed combat with Canada—is broadly in line with what like-minded countries already do.

I would also like to add that with regard to fairness there are many safeguards that are provided in the law and as a matter of procedure with regard to the revocation process itself. Those include: notice, the ability of the person concerned to know the grounds against them; to see the evidence; to have an opportunity to respond and make their submissions; to receive a decision in writing; to potentially have a hearing with the decision-maker; and of course, to seek judicial review if in the end that decision is against them and revoking their citizenship.

Thank you.

Mr. John Carmichael: Thank you. Quite frankly, I think that is in line with the general consensus amongst Canadians today that citizenship is a privilege and should be respected as such. I appreciate your comments. Thank you.

I'd like to address this to Mr. Coulombe perhaps with regard to informants, and you can direct it elsewhere.

If an informant is involved with more than one investigation, they must have his or her identity released. It seems like you're left with a tough decision, a tough task in how to deal with that: give up their identity and risk losing intelligence that's been gathered from other ongoing investigations in hopes of getting a conviction, or risk losing that conviction to maintain other investigations.

Would this be an accurate portrayal of the situation, without having the similar protections afforded to informants by Canadian law enforcement agencies?

Mr. Michel Coulombe: It's actually a very accurate picture of what we're facing.

I would add one more thing. It is true at the moment that a judge can afford protection case by case, but because of that “case by case”, because of that uncertainty, it is more difficult to recruit or get people to cooperate because there is that uncertainty in terms of their protection.

Mr. John Carmichael: The uncertainty is about their safety.

Mr. Michel Coulombe: Their safety, yes.

Mr. John Carmichael: Once they've provided that information, they're vulnerable.

Mr. Michel Coulombe: Yes.

Mr. John Carmichael: That's an important part of what we're dealing with today, clearly.

Mr. Michel Coulombe: For us it is crucial.

Mr. John Carmichael: Monsieur Coulombe, without the assurance that their identity is being protected, has CSIS ever had issues with possible informants coming forward with information, and does that have a possible effect on the safety of the public? Added to that, is there a strong likelihood that without the security that informant will walk away from providing that information?

• (1640)

Mr. Michel Coulombe: There is always that possibility. I don't want to go into specifics, but again there's always a possibility that somebody with information, knowing that his identity could be revealed, would decide not to share that information.

Mr. John Carmichael: Thank you.

The Chair: Thank you very much.

We'll now go to Mr. Garrison, please, for seven minutes.

Mr. Randall Garrison: Thank you very much, Mr. Chair. I'm glad to see you back in the chair.

One concern I was raising with the minister is that, in fact, part of national security, protecting the country, is protecting the rule of law. I just want to go to something that Director General Girard said. In terms of the revocation of citizenship of dual citizens, she said there was the right to see the evidence.

I'm wondering how the provisions in Bill C-44 protecting the identity of CSIS human sources connect with the citizenship process. In other words, if evidence that's being used from CSIS sources is the evidence that is being used for the revocation of citizenship, then what provisions are there? The only exemption for defence here is about criminal prosecutions, not citizenship. Is there an intersection between the two bills there, or any exemption provided for use in those citizenship processes?

Ms. Nicole Girard: Thank you for your question.

I would just respond by stating that the two provisions of this bill are distinct. They are not intended to be related, other than that they both support the objective of the safety and security of Canadians.

Then the other point, more directly in response to your question, is that citizenship revocation cases would be initiated based on objective, open-source information to determine whether the provisions apply.

That's how I would respond to your question. Thank you.

Mr. Randall Garrison: There is no provision for using CSIS information in those proceedings.

Ms. Nicole Girard: There is not, as contemplated by Bill C-44 nor the changes under the Strengthening Canadian Citizenship Act.

Mr. Randall Garrison: Thank you very much.

I'm going to turn to Deputy Minister Guimont. I'm going to go back to the question of advice on constitutionality of this exemption provision from the Minister of Justice. The minister talked around the point; I think that is the most charitable way I can put it.

Can you tell us whether you received advice on that specific point from the Minister of Justice or the Department of Justice; and if you received written advice, would you table it with the committee?

Mr. François Guimont (Deputy Minister, Department of Public Safety and Emergency Preparedness): The advice from justice is always factored into the cabinet process, always. That's number one. Number two, the aspects of the bill are consistent with the charter and Canadian law. That's number two. Number three is that this is part of cabinet confidence.

I'm not trying to be difficult. I'm trying to be respectful of the committee, but most of you are aware of how that system unfolds. So that's my answer.

Mr. Randall Garrison: I respect that, and I am aware and certainly expected you to say it was a cabinet confidence—something the minister, of course, could have said. But there is a problem here then. We really need more time to have experts in on this, so that we can get our own advice in the committee on whether or not it's constitutional, since we can't see the government's advice on this. That is where we run up against the time limits, and the limited number of witnesses here makes it very difficult for us.

On a similar question, do any other like-minded countries, the Five Eyes countries, have provisions in their acts that allow ignoring the law of other countries or ignoring international law in the collection of intelligence?

Mr. Michel Coulombe: I'm not aware of any that specifically have it in their legislation.

You have to understand that everybody—and we'll talk, for example, of the Five Eyes partners—is working under different legislation, different frameworks, so it's very difficult to compare. I'm not aware of any other countries, partners, that would have the same type of legislation.

Mr. Randall Garrison: What would be the response of the government, then, if we had a foreign intelligence agency collecting intelligence in Canada in contravention of Canadian laws? How do you deal with that? There seems to be a normal principle, which I think is called comity of international law, by which we don't violate each other's sovereignty and we don't conduct illegal surveillance in each other's countries, which to me, would seem to be part of that.

If we're now telling people we might be doing that to them, what would our response be to another country saying it is going to do the same thing in Canada?

• (1645)

Mr. Michel Coulombe: Maybe I can just correct my previous answer, because I'm not an expert on the legislation. Just quickly reading this, I see that actually New Zealand, in its legislation with regard to foreign intelligence warrants, which is what we're talking about here, says that it can be issued notwithstanding anything to the contrary in any other act.

Mr. Randall Garrison: That's any other act of New Zealand, though, not of any other country.

Mr. Michel Coulombe: We can certainly dig down on that question and provide the committee with a better answer. As I said, I'm not coming here prepared to—

Mr. Randall Garrison: I appreciate that, and I thank you for being cooperative. I just will remind you that our deadline is going to be before next Monday, since we're going to be moving on to amendments to this bill.

I guess it still comes back to this question. What is the Canadian response, then, to foreign intelligence agencies conducting things that would be illegal here? How do we respond to that? If we're now saying, "We may do the same thing to you", I find it troubling.

Mr. Michel Coulombe: You have to understand that, with like-minded partners, we do work overseas jointly. It's not like we would go into a friendly country and do things covertly. As a security intelligence service, and not just as a service—all of our partners do conduct operations covertly. That's kind of obvious. Although it might not be specific in their legislation, that's what a security service will do at times. Most of the time, for the service, we do our work overtly with our partners when they are like-minded, but there could be occasions when we're sending intelligence officers, for example, into countries that are not like-minded, when we might not tell that country what we're doing, because of the national interests of Canada but also for the safety of our officers.

The Chair: Please reply very briefly.

Ms. Ritu Banerjee (Director, Intelligence Policy Division, National and Cyber Security Branch, Department of Public Safety and Emergency Preparedness): In the past, when there have been issues of espionage in Canada, we have used the security certificate provisions to seek the removal of those individuals. I'm thinking of Russian spy cases. So there are limited uses of our current legal framework to manage that, but it is very sensitive and very difficult.

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

Now we will go to Mr. Falk for seven minutes, please.

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

Thank you to our witnesses here today for joining us. I've enjoyed listening to your presentations and your responses. I just want to clarify again that, in the proposed legislation that we're discussing here today, there are no new authorities. Is that correct?

Mr. Michel Coulombe: Yes, that is correct.

Mr. Ted Falk: It's a clarification of existing authorities.

Mr. Michel Coulombe: Exactly, it's following the Federal Court decision of last year, and the Federal Court of Appeal decision.

Mr. Ted Falk: Good.

When we're conducting surveillance or intelligence-gathering in foreign countries, what kinds of activities would require a warrant in our country, or obtaining a warrant from the judicial?

Mr. Michel Coulombe: It's when section 8 of the charter is at play.

Mr. Ted Falk: Let me clarify a little bit. Would it be fair to say that we would secure a warrant from a judge if we were involved in any activity that would require a warrant here in Canada?

Mr. Michel Coulombe: Yes, that's a fair description.

Mr. Ted Falk: So we apply the same standard when we work outside of Canada as we do here inside.

Mr. Michel Coulombe: Yes, in fact all Bill C-44 would do in terms of... Section 21 is the one that deals with acquisition of warrants. We're just adding "outside", so it is the same article, the same criteria, that would be used.

Mr. Ted Falk: Good.

There have also been concerns raised regarding the rights of terrorists to a fair trial if they don't know who their accuser is or from where the information is being sourced. Can you maybe just expand

on that a little bit and comment on that; also whoever feels they want to?

Mr. Guimont I don't mind if you comment on that as well.

Mr. Michel Coulombe: Again, I think what's in the bill is exactly equivalent to the class privilege protection that police informants have. As was mentioned earlier, that has been tested a number of times in court, so that's not different. Plus, there are exceptions if it is believed that it is essential to reveal the identity of that source to prove the innocence of the person accused.

• (1650)

Mr. Ted Falk: Okay. In situations where we have to identify our source, do we provide witness protection programs going forward?

Mr. Michel Coulombe: We could certainly look into it, if we get there. With what's proposed in Bill C-44, if we come to a point where we would have to identify our source, I guess with discussion there's either the option—and it's a crown decision—to pull the information and possibly the case would collapse, or we disclose the identity of the source and then there's the question of assessing the risk to the security of that source and what we can do to mitigate that.

Mr. Ted Falk: But they've provided the information to us on the basis that we will respect—

Mr. Michel Coulombe: It was in confidence, yes.

Mr. Ted Falk: —their confidentiality. That creates a difficult situation in some scenarios.

Mr. Michel Coulombe: It does, and it goes back to my earlier comment that I truly believe there's also a duty on the part of the state, when it makes that promise of confidentiality, that it has the measures in place to assure the promise it has with that person.

Mr. Ted Falk: When we're using the resource of a confidential informant, is there a practice or procedure in place that confirms the information that's provided?

Mr. Michel Coulombe: We always try to corroborate information coming from sources, and not just the human sources. We always try to corroborate in order to better assess the validity of that information, and it doesn't matter if it comes from partners or others.

Mr. Ted Falk: Okay. These laws that we currently have on the books and that we're proposing to strengthen and clarify, are they consistent with laws that our allies would be applying?

Mr. Michel Coulombe: Again, it is difficult to compare because of different legislation, but yes, they are consistent in terms of being able to operate overseas. Again, the regime of obtaining warrants might be different, but overall it is consistent.

Mr. Ted Falk: Some concerns we've heard regard the ability of the Federal Court to issue warrants within the scope of relevant Canadian law when issuing warrants to authorize CSIS to undertake certain activities to investigate a threat to the security of Canada, outside of Canada. Some may wonder why warrants would not be more appropriate coming from the nation where the activities are taking place. Could you comment on why this is important, as some of those countries may not exactly have a court system that can be approached for a warrant, as well as the transnational nature of these investigations?

Mr. Michel Coulombe: I'll answer your question the same way as when I appeared in October and we talked about Canadians who are currently overseas involved in threat-related activities. I mentioned countries like Syria, Iraq, Somalia, Yemen, and Afghanistan, so you can just imagine going through the court system or the judicial system of those countries to try to get authorization. I'm not sure it would be practical.

Mr. Ted Falk: Ms. Clairmont, I have a question for you. You're representing cybersecurity here this afternoon. Cybersecurity is something that can be done anywhere. Is it necessary to operate outside of Canada to completely provide the security we require here? Or do we do everything here?

Ms. Lynda Clairmont (Senior Assistant Deputy Minister, National and Cyber Security Branch, Department of Public Safety and Emergency Preparedness): No. Cybersecurity is borderless, I would say. So it can be done within the country and outside of the country.

Mr. Ted Falk: Do you anticipate any changes affecting your operations, with any of the legislative issues here?

Ms. Lynda Clairmont: No, we don't.

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

We will now go to Mr. Easter for seven minutes.

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

The minister said we had robust oversight for security agencies. I want to put on the record, Mr. Chair, that I sincerely disagree. The fact is that we're the only one of the so-called Five Eyes that does not have parliamentary oversight for security agencies. I think the government, if it were thinking about bringing in a balance, would bring in such a body. In a report from 2005 all parties agreed on such a body. I'd just make that point. As Ms. Girard said, related to the revocation of citizenship, Canada is alone compared to other democratic countries when it comes to that issue. We're also alone on parliamentary oversight when it comes to the Five Eyes.

I think probably the nub of the issue, in terms of this bill, is the substantive changes to CSIS on its extraterritorial activities, if I could call it that. The deputy or head of CSIS can correct me if I'm wrong, but I think originally when CSIS came in it was envisioned that we'd depend on our foreign relations or liaison relations with other countries to provide us information, and that's how we'd operate, rather than having agents abroad. In today's reality the world has changed. We're dealing with a stateless world to some regard.

Doesn't this bill, in terms of CSIS, now give wide extraterritorial applications for Canadian judicial decisions abroad in how we operate?

Do you understand what I asked?

● (1655)

Mr. Michel Coulombe: Not the last part, I'm sorry.

Voices: Oh, oh!

Hon. Wayne Easter: That's fine. That's not a problem.

In this bill, if I can put it this way, with judicial decisions, judges authorizing certain activities for CSIS abroad, aren't we now getting into the extraterritorial application of what CSIS does from where we were?

Mr. Michel Coulombe: First of all, in terms of CSIS conducting activities outside Canada—and you talked about the McDonald commission but I'm not going to quote it—I'm pretty sure the report does talk about the creation of CSIS and that you would have to be very careful, but they were already seeing the possibility that we would have to do this. It has always been our understanding that we have that authority. That's why this is just a clarification, making it explicit in the act that we can do what we've been doing for 30 years, because that was the interpretation of.... If you look at section 16, there's a clear restriction: it's within Canada, which you do not find in section 12.

Hon. Wayne Easter: I'm not disagreeing with the approach here, but I think we need to be fairly open about what we are doing. I don't think CSIS has always done this, maybe in the last 20 years. But one of the difficulties I think with this act now, and with what we're talking about CSIS doing, is that we are getting into a new area, or I guess we're laying out in law more clearly a new area that Canada has always opposed other nations' security agencies doing when it's applied to Canada. Is that correct?

Mr. Michel Coulombe: Again, I don't think it's a new area. When you stated it's putting it into law explicitly in the act, I think that's correct, but I don't think it's a new area.

In the second part, again, you have to look at this in terms of thinking about our acting in other countries. When it's with like-minded partners most of the time this is done jointly, with the acknowledgement of that country, just as we expect them to do the same here. When there are cases of non-like-minded countries, as was mentioned earlier, with for example, cases of Russian espionage, then we would investigate, and if there's a case we would pass it to the RCMP.

● (1700)

Hon. Wayne Easter: I think you make a very good point, because we're really dealing with several different types of countries.

Mr. Chair, on the earlier question from Randall, I do have a Library of Parliament question we asked him here that basically states that we were talking about the wording “within or outside Canada”. I do have a Library of Parliament document here I can provide to the committee. It's only in English, but you could get it translated. It states that exact or similar wording to that found in clause 8 of Bill C-44 is not found in the relative legislation of Five Eyes nations. It names the relevant pieces. So if the committee wants that, I can table it.

The last question is on the source. On the sources protected, is there any different protection to sources outside Canada versus inside Canada? For those outside Canada, how do you perceive to protect those sources?

Mr. Michel Coulombe: There are no differences. It's not a question of where the source is actually residing. It's a question of whether we promise confidentiality. So there is no difference in terms of a source living here or living abroad.

The Chair: Fine, thank you very much.

Now we will go to Madame Doré Lefebvre for five minutes.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I would like to thank the witnesses for staying during the second hour to answer our questions.

For the moment, I would mainly like to know whether CSIS has sufficient resources to apply these new measures pursuant to the Canadian Security Intelligence Service Act. We know that all the departments have experienced cuts in recent years. The Department of Public Safety and Emergency Preparedness did, and so did CSIS. Do you currently have the resources needed? If not, where are you going to find them so that you have enough staff on the ground to do the work required under the new CSIS mandate?

Mr. Michel Coulombe: As we mentioned previously, Bill C-44 does not provide new powers or tools. It simply clarifies what we are already doing and a certain part that we had stopped doing following the Federal Court ruling last fall.

There is nothing new in terms of what we can do. No powers or tools have been added. This has no impact on the service's resources.

Ms. Rosane Doré Lefebvre: Does CSIS currently have the resources necessary to do the work being requested of it?

Mr. Michel Coulombe: The service, like any other organization, works within the framework of its budget.

We must establish priorities and allocate resources based on them, which are determined from information provided by the government. Then, we have our ways of evaluating the matrices to determine the threat that various subjects of investigation represent. We allocate resources based on that.

Ms. Rosane Doré Lefebvre: Have you cut any jobs that were directly related to the exchange of information with our allies abroad in the past few years?

Mr. Michel Coulombe: No.

Ms. Rosane Doré Lefebvre: Still on the topic of the exchange of information, I would also like to know whether Bill C-44 will

facilitate cooperation between the RCMP and CSIS. Are there any measures that will help you work with the RCMP?

Mr. Michel Coulombe: Bill C-44 has no impact on our relationship with the RCMP.

Ms. Rosane Doré Lefebvre: In terms of the class privilege protecting a CSIS human source, how will the bill facilitate your service's investigations? Could you provide some clarification on that? Could Mr. Guimont or Mr. Coulombe answer please?

Mr. Michel Coulombe: The first way to facilitate the investigations, as I mentioned earlier, is the certainty—with a few exceptions—of protecting the identity of the sources. More people would come forward with information. It would be easier for the service to obtain the cooperation of individuals who would become sources if they were certain that their identity would be protected.

In terms of the protection of sources, as your colleague mentioned earlier, when we appear in criminal court, for example, the current system judges situations on a case-by-case basis. That is very demanding on resources. We have to dedicate a lot of resources to this, which leads us back to the issue of uncertainty. It is important to know in each case whether the identity of the source will be disclosed. The protection of sources under Bill C-44 will really facilitate the voluntary provision of information sources, the recruitment of individuals and the management of cases and files when we go to criminal court or elsewhere.

• (1705)

Ms. Rosane Doré Lefebvre: Bill C-44 also contains a provision that has to do with providing better protection—or less disclosure—of information about CSIS agents. We are also talking about future agents. Do you have more details? Given the way Bill C-44 was drafted, this could be practically anyone who is working for CSIS. Wouldn't it be easier to target individuals you would potentially like to send abroad as agents? This provision is really quite broad.

Mr. Michel Coulombe: It is important to know that the current legislation provides this protection to individuals who are involved in these activities at present or who were in the past. Bill C-44 adds individuals who could be involved in this type of activity.

There is a problem if we try to provide a tighter definition of who we are talking about: the threat and context are changing so quickly that there are individuals involved now in this type of activity who, five or 10 years ago, I could not have imagined that they would be involved. It isn't just the intelligence agents who can be involved. We would run the risk of truly limiting the protection of the identity of the service's employees.

Like any other of the service's activities, designating employees who come under this protection is subject to the review of the Security Intelligence Review Committee. This is one thing it can monitor in the context of its review.

[English]

The Chair: Thank you very much, Madame Lefebvre.

Ms. James, you have five minutes, please.

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

Mr. Coulombe, with regard to warrants, some discussions have compared us to our Five Eyes partners and the fact that the same explicit text is not necessarily contained in other legislation from other countries. I wanted to confirm that we have been able to issue warrants since the CSIS Act was first established in 1984, and similar countries have the same abilities but maybe not necessarily the same wording in their legislation.

The problem we have here in Canada, as people recognize, is that we also have different court systems and the judiciary interprets laws differently. We have the Charter of Rights and Freedoms, which may not be identical to other countries as well.

The problem we have is that the courts have specifically called into question the ability of CSIS to operate overseas, to issue those types of warrants. The legislation, the very text we're putting in this new bill, will clarify, will clearly spell out the capabilities CSIS has always had, to ensure that the courts no longer call it into question. Is that a fair statement?

If you could, comment on that, please.

Mr. Michel Coulombe: You're right that since 1984 warrants have been issued, but in terms of activities here in Canada.

Starting around 2009.... The Federal Court decision last November by Justice Mosley called into question the authority of the service to operate abroad, certainly the authority of the service from Canada, because the interception had to be done from Canada, to be able to do it when the targets or investigations are overseas.

Yes, since 1984 warrants have been issued, but they were here in Canada. The bill is making it clear that we can operate overseas, and that, yes, the Federal Court has the jurisdiction to issue warrants that would apply overseas.

• (1710)

Ms. Roxanne James: Do you know if other countries that we're sometimes compared with have had similar court decisions that have questioned their authority to be able to operate overseas or communicate with their allies as such?

Mr. Michel Coulombe: I'm not aware of any, but you have to understand also, if you look at the Five Eyes partners, for example, they have a separate foreign intelligence security service with a clear mandate to operate overseas. They don't have the issue we're debating today, because they have separate agencies where their mandate is to operate overseas.

Ms. Roxanne James: I posed this question to the minister with regard to when the CSIS Act was first passed back in 1984. I wrote down something you said, that one reason we need to clarify this law

is that the threat to our national security has evolved, terrorism has evolved.

I think back to 1984. Without disclosing my age, I was still in high school, maybe. I had no email, no Internet, no computer. I remember lugging my father's old typewriter in that big old case up the stairs to write my first resumé to get a part-time job. A lot has changed. I recall answering my rotary phone when they called for an interview.

When we talk about how the threat has evolved, obviously a lot has changed since 1984. How has the threat evolved? You didn't really expand on it at that time.

Mr. Michel Coulombe: Not to reveal my age, but I was working with the RCMP in 1984.

The threat has evolved in a number of ways. You just talked about technology. The Internet has changed.... You don't have to go back to 1984; it was 10 years ago, so the pace at which technology is evolving, as we all know, is extremely rapid. That's certainly one.

The nature of the threat has evolved. Back in 1984, really, the priority was Cold War espionage. Now it's terrorism. The mobility of people has greatly increased also, and the facility of people travelling, so that has changed not only the nature of the threat but the velocity at which that threat can develop. Communication has changed that threat, again going back to the Internet, with the facility with which you can communicate between Canada and Yemen and the Sahel, and elsewhere in the world—it doesn't matter where.

There are many factors, and it's not just the threat itself that moves more from a CI threat to more of a terrorism threat. But everything surrounding it, from the technology to the mobility of people, as I said, has dramatically changed the environment in which we work today.

The Chair: Thank you very much.

We will now go to Mr. Garrison for five minutes, please.

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

I'm not sure who I should ask this question to. There's a bit of a problem I have in understanding, in terms of the legal drafting of this bill. Who here today can talk about that? Certainly, Mr. Coulombe, you said that there are no new powers for CSIS here. In clause 8 where it adds to the warrant question the words, "Without regard to any other law, including that of a foreign state", my question is this. Could that be removed from this bill?

If it were removed, would that change anything materially here? Certainly, to me, it would affect the reputation of what we're doing in other countries. I'm not sure who's responsible for the drafting of that and what impact it would have to remove those words from this bill.

Mr. Michel Coulombe: That's something, Mr. Chair, we'd like to get back to the committee on, because that's a very technical, legal question.

Mr. Randall Garrison: I respect that. That's why I said I had some trouble seeing if you had anybody at the table today who could really respond to that.

Mr. Michel Coulombe: But I just want to go back to what I said earlier, that you have to recognize the type of environment and the type of countries we're talking about. Again, if you're talking about a situation where activities that we were going to do overseas had to be lawful in the country where they were going to take place, again, I'm not sure that's a viable, practical system.

The Chair: Thank you very much.

I guess possibly what we're trying to say is that we're looking for perfect legislation to deal with an imperfect world. That could be, but carry on.

Mr. Randall Garrison: Those are words I would not accept. I think what we're looking for is legislation that will stand up to legal challenges, so that we're actually doing something effective in defence of national security.

Ms. Ritu Banerjee: Maybe I can add a little bit more to that. Part of the reason it's drafted this way is that, if we go back to the Federal Court of Appeal decision, we see the court made it clear—and this is again following up from what Mr. Coulombe just said—that it would have the jurisdiction to issue such a warrant, and I'm quoting the decision, “when the interception is lawful where it occurs”. Because that is very challenging to operationalize, we had to ensure that the law was clear for judges and that what they had to consider was relevant to Canadian law, primarily the charter and the CSIS Act.

So that's why it's written the way it is.

• (1715)

Mr. Randall Garrison: Thank you. I think that is helpful.

Mr. Michel Coulombe: I don't know if I have time to add one little thing. In terms of being lawful in the country where it's going to take place, you can imagine the difficulties in the countries I listed earlier. But I just talked about mobility. If we were to obtain a warrant where it would be lawful to do whatever we want to do in Syria, and the next week that person is in Iraq, and the following week that person is elsewhere, again, in terms of, as we say in French,

[*Translation*]

... “practical”.

[*English*]

I'm not sure how that system would be workable.

Mr. Randall Garrison: Okay.

In clause 9 of Bill C-44, it makes reference to making information, which is otherwise protected by the protection of identified sources, available to SIRC. Again, we don't have anyone from SIRC here, but it seems to me that this provides an element that is more complicated than some of the other stuff that SIRC has dealt with in the past. I'm just wondering about the capacity of SIRC as the oversight body to deal with this new responsibility that I believe does add a

responsibility to SIRC. I know the Minister says there's nothing about oversight here. I wonder if CSIS maybe shares that same interpretation that there is a new responsibility for SIRC included here in the bill.

Mr. François Guimont: Mr. Chairman, it's new in the sense of being defined in that bill, but in reality SIRC can look at all aspects of CSIS activity, as long as it is not cabinet confidence. Their power is very broad.

It is a review responsibility, and their resource—I think they have 16 individuals, plus or minus—is a significant number of individuals who are very capable and understand the business of CSIS. I would like to think they are probably equipped to do a good job of carrying out reviews, should they decide to do so.

Mr. Randall Garrison: So you would say this section is really more of a clarification, that this information is not excluded from the review responsibilities.

Mr. François Guimont: It is clarification.

Mr. Randall Garrison: Okay, thank you.

Do I have another minute?

The Chair: You have about 15 seconds.

Mr. Randall Garrison: Oh, 15 seconds. I think we'll let that go at this point.

The Chair: Fine, thank you very much. I appreciate your consideration, Mr. Garrison.

We will now go to Mr. Norlock.

Mr. Rick Norlock: Thank you very much, Mr. Chair.

Through you once again to the witnesses, thank you for attending.

I'll start by saying that we live in a new world, and I don't want to have an organization like CSIS or any other organization that treats the rest of the world like some.... I don't want to belong to a country that's naive or acts like a Pollyanna and expects the whole world to be like, we respect everything you do and we would never do anything.... We know that other countries are recruiting terrorists, whether they be naturalized Canadians, people who were born here, or people with dual citizenship, who are now embedded in our country and want to do irreparable harm not only to individuals in Canada but to our very foundation. The very building we're in is the place where we exercise our democracy.

At least on five or six occasions all the questions asked in many different ways here all come down to what Mr. Guimont said. This is not an earth-shattering, new, ominous, tremendous load on CSIS. This is just a simple clarification of existing rules and regulations that a court said we needed to clarify.

Mr. Guimont, you can tell me if I'm making this as simple as possible for my constituents, who don't want to belong to a country that's naive and believes that if we're nice to everybody else they'll be nice to us? This legislation tries to impart to CSIS the same kind of judicial acceptance or protection for human resources, in other words, for informants, who want to give CSIS information in a way that won't identify them. It gives them the same type of protection that police already have with informants. Is that correct?

• (1720)

Mr. François Guimont: Yes, and as was said earlier by the minister and others, essentially Bill C-44 is a result of court decisions, if you wish—in one case, that of Justice Mosley—so we are essentially fixing this very transparently. My colleague in CSIS was operating under a regime that we thought was understood, so we're clarifying that. That's why the word “clarifying” is always there, even in the bill, as I remember.

With respect to the protection of sources, it is also as a result of court proceedings—the Harkat decision, essentially. Again, out of the logic put forward by my colleague Monsieur Coulombe, we feel that being able to offer that protection is important for them to be effective in delivering protection to Canada.

Mr. Rick Norlock: Thank you very much.

It's as simple as that.

Another observation I'll make is that you can try to not support legislation by finding little bits and pieces that you disagree with, but the bottom line is that this is—as I say, I think you've made it simple—simply a clarification based on what judges have observed. All we're trying to do is straighten it out.

Thank you for that.

My next question is to Ms. Girard. You mentioned in your response to one of the questions that in this legislation that refers to another piece of legislation with regard to the revocation of citizenship, this is in line with other like-minded countries that have the same kind of legislation. It says, my goodness, being a citizen of Canada is one of the most tremendous privileges this country can offer. Citizenship is probably the most important thing, the most cherished thing, that you can be given. If you do something that imperils...or that is found to be treasonous, one of the most serious crimes, which used to have the death penalty up until very recently, if you want to do something that really spits on the privilege of being a Canadian, then maybe the state should revoke that.

I wonder if you are aware of any other countries that share the rights and freedoms that we have, the values that we have? Perhaps you could list a couple of those countries so that my constituents know that there are other countries that they may go to that share this kind of opinion.

The Chair: Very briefly, please.

Ms. Nicole Girard: Thank you, yes.

The provisions in the Strengthening Canadian Citizenship Act, which enable revocation of citizenship from dual citizens who have done these actions against the national interest that I referred to, are broadly similar to provisions that exist in the United Kingdom, Australia, and New Zealand, and other democratic European countries that we looked at including France, Italy, Germany, the Netherlands, Switzerland. So that gives you a bit of a flavour.

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

Mr. Garrison.

Mr. Randall Garrison: I actually have perhaps more than one point of order so I'll just try to deal with them in pieces.

One is that we've had an offer of some additional information being made available to the committee. My concern is that given our tight schedule the witnesses should be aware that we would have to have that this week really in order to deal with it effectively, as we're going to clause by clause next Monday.

So I'm looking for a commitment from the witnesses that they would be able, within about 48 hours, to provide us with additional information. I know that is somewhat unreasonable but I'm not setting the timeframes on this committee.

That's my first point.

The Chair: First of all, briefly an encapsulation of that first request, and it was directed to Mr. Guimont.

Mr. Randall Garrison: Yes.

The Chair: Are you familiar with the information that was requested, Mr. Guimont?

Mr. François Guimont: I think, Mr. Chairman, there was a bit of back and forth and it would be very good for all of us if the chair could clarify exactly what is expected by witnesses.

The Chair: Then please go ahead and repeat the information that you requested.

Mr. Randall Garrison: I'm trying to remember exactly because I didn't keep detailed notes because I thought the witnesses were. It had to do with certainly clause 7 of the bill and the exception and whether that exception deals with things like bail and detention. That's my main concern. There are a couple of other points but that's my main one. So the ability to request the exemption does it deal with...? It says the presumption of innocence but does that include the other stages of the legal process including bail and detention?

• (1725)

The Chair: Is that available to our witnesses to provide that?

Mr. François Guimont: Yes, sir, we will provide the information as requested. I also want to do justice to Mr. Easter; he has a commitment from the minister and he'll get an answer to the questions he filed with the department as well.

The Chair: Fine. Thank you very much.

Were those the two pieces of information you were looking for?

Mr. Randall Garrison: That was the piece I was looking for. The others were just questions.

My second point of order is that given the short timeframe we're on I'm looking for unanimous consent of the committee to authorize the chair to, should there be any witness slots that haven't been filled for Wednesday due to scheduling considerations, invite any of those who have approached the committee through the chair—which I know includes the Privacy Commissioner—to fill those slots. So could he fill those slots, starting with the Privacy Commissioner and any others who approached the chair, because we are on such a tight timeframe that people may not be able to get...?

The Chair: The motion is in order, but it would require unanimous consent to do so.

Yes, Ms. James.

Ms. Roxanne James: I have a quick point. We have a couple of other witnesses so we don't know whether those slots would be filled. I can't give you an answer at this point.

The Chair: Yes, Mr. Easter, speaking on the same point.

Hon. Wayne Easter: Yes. Certainly on that, maybe the parliamentary secretary doesn't have the information available yet, but given the Privacy Commissioner's interest, the Privacy Commissioner could be put on standby should a spot be found to be vacant at the next hearing.

The Chair: Yes, Ms. James.

Ms. Roxanne James: I would agree if a spot were available for the Privacy Commissioner to come as well, but again, I won't know until we are able to get hold of the other witnesses.

The Chair: The chair would only point out one thing. This does change the balance of the concentration of source of witnesses per party. As long as we have unanimous consent, the chair is comfortable with that.

Hon. Wayne Easter: Mr. Chair, that balance is such foolishness anyway. If they are good witnesses, bring them on.

The Chair: Mr. Norlock.

Mr. Rick Norlock: I'm not prepared to give my consent to something that I'm not aware of, the witness lists, etc. It's not appropriate for me to make a decision at this point because I haven't seen the complete witness list, so I'm not going to say yes or no to an unanimous motion until I have all the facts, and I do not have them.

I can assure Mr. Easter that any witness the government would bring forward would add value to this enterprise.

Hon. Wayne Easter: It's a political theme, if I could say so.

The Chair: Okay, seeing no consent at this point, that obviously is a no go now, but I might suggest there could be conversation between the parliamentary secretary and co-chairs, and we will see how this evolves. If something can be worked out, fine, and if not, we all understand the realities.

Mr. Norlock, the clerk has advised me that the witness lists have been distributed to all members.

Mr. Rick Norlock: Thank you very much. I'll look at them and be able to get back with regard to unanimous consent.

The Chair: Thank you very much.

To our witnesses, thank you very kindly for giving us your time and your expertise today.

The meeting is adjourned.

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