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Chair

Mr. Mike Wallace

Standing Committee on Justice and Human Rights

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• (1530)

[English]

The Chair (Mr. Mike Wallace (Burlington, CPC)): I call to order meeting number 58 of the Standing Committee on Justice and Human Rights. According to the order of reference of November 30, we're going to continue our discussion of Bill S-9, An Act to amend the Criminal Code.

We have two panels today, ladies and gentlemen. We have a motion that I'm going to make sure we reserve 15 minutes for at the end of the meeting, and we have a duly noted notice of motion from Madam Boivin. If this first panel finishes early, we will deal with that motion and then move to the second panel.

From the Canadian Nuclear Safety Commission, we have a number of guests. Mr. Jamieson is going to introduce his guests and give a short presentation.

We also have with us, from the Department of Transport, Madam Dagenais, who is the director general, transportation of dangerous goods. She has a very brief opening statement.

The floor is yours, Mr. Jamieson.

Mr. Terry Jamieson (Vice-President, Technical Support Branch, Canadian Nuclear Safety Commission): Thank you, Mr. Chair and members of the committee, for the invitation to appear before you today to discuss certain aspects of Bill S-9, the Nuclear Terrorism Act, and how they relate to the mandate of the Canadian Nuclear Safety Commission.

I'm accompanied by Mr. Raoul Awad, director general of the directorate of security and safeguards, and Mr. Jason K. Cameron, director general of the strategic planning directorate.

[Translation]

The CNSC is Canada's sole nuclear regulator and, as such, is responsible for protecting the health, safety and security of Canadians and the environment with regard to the use of nuclear energy.

The CNSC is also tasked with ensuring that Canada meets its international obligations as far as the peaceful use of nuclear energy is concerned. We carry out our mandate under the Nuclear Safety and Control Act and related regulations.

[English]

The CNSC and its predecessor organization have been regulating nuclear activities for more than 65 years. Activities regulated cover the entire nuclear cycle, from uranium mining and milling through to

fuel fabrication, to nuclear facilities such as nuclear power plants, and ultimately to waste management. Regulatory oversight also extends to nuclear substances and to commercial, medical, academic, and research applications.

I will focus my brief comments today on describing how the CNSC ensures the security of nuclear materials and of nuclear facilities.

The prevention of nuclear terrorism relies on several elements, starting with international treaties and conventions. In Canada, the CNSC oversees the application of physical protection, threat assessment, and security measures. While Bill S-9 deals with Criminal Code offences if terrorist activity is found, the work of the CNSC is largely meant to be preventive, so that nuclear terrorism efforts will be detected and thwarted as early as possible.

The CNSC was involved in helping to develop the amendments to the Convention on the Physical Protection of Nuclear Material. The CNSC's nuclear security regulations were updated in 2006 to reflect those changes. These regulations set out prescriptive and detailed security measures that licensees must adhere to. Physical protection requirements are based on a graded approach commensurate with the risk level and the resulting consequences.

For example, with respect to category I and II nuclear materials, and the facilities in which they are stored, the requirements range from site access controls to an on-site armed response force capable of intervention in the case of intrusion, theft, or sabotage. Employees and supervisors must fulfill mandatory requirements for awareness and education of security protocols. Those workers with access to nuclear materials must undergo rigorous background checks.

Licensees must develop and maintain contingency plans, as well as practise regular emergency drills. In fact, the North American nuclear industry holds an annual competition in which the tactical and physical skills of nuclear security protection officers are demonstrated. Canadian teams are regularly among the winners.

The transport of category I, II, and III nuclear materials is covered by the packaging and transport of nuclear substances regulations, and requires a licence from the CNSC. In order to obtain such an approval, the licensee must submit a transport security plan that provides detailed information, including a threat assessment, the proposed security measures, the route, and other arrangements along the route, all in accordance with the nuclear security regulations. Security plans are required for all shipments, including those in transit through Canada. Transport Canada's transportation of dangerous goods regulations also apply to any transport of nuclear substances.

Consequently, if Bill S-9 is enacted and Canada ratifies the CPPNM as well as the International Convention for the Suppression of Acts of Nuclear Terrorism, there is no additional work necessary to implement the physical protection measures among Canada's nuclear facility operators. These measures in fact have already been in place for years.

Similarly, Canada's framework and policy for the import, export, control, and safeguarding of nuclear material is transparent and comprehensive, to the extent that the CNSC is routinely consulted by regulators in other countries seeking to replicate various aspects of the Canadian model.

The Nuclear Safety and Control Act does contain regulatory offence provisions and penalties. Indeed, an individual was successfully prosecuted in 2010 for trying to ship nuclear-related dual-use devices to Iran, which could have been used for uranium enrichment. The proposed provisions of Bill S-9 would supplement our Nuclear Safety and Control Act for more serious offences and acts of nuclear terrorism.

In closing, the CNSC has been on the leading edge of implementing safety and security of our nuclear material inventory here in Canada as well as controlling the movement of nuclear materials, both domestically and across our borders. Consequently, the regulatory framework in Canada is already in a position to accommodate the provisions proposed in Bill S-9.

Thank you for the opportunity to appear before you today. I look forward to your questions.

• (1535)

The Chair: Thank you, sir, for that presentation.

Madam Dagenais from the Department of Transport, please go ahead.

Ms. Marie-France Dagenais (Director General, Transportation of Dangerous Goods, Department of Transport): Good afternoon. My name is Marie-France Dagenais, and I'm the director general, transportation of dangerous goods, for Transport Canada.

The transport of dangerous goods program deals mostly with the safe transport of the United Nation's nine classes of dangerous goods. Some of the issues raised by this proposed legislation fall exclusively on class seven, nuclear material, which falls mostly under the Canadian Nuclear Safety Commission mandate, as indicated by Mr. Jamieson.

I'm here to answer any questions that may fall under the TDG program responsibilities.

Thank you.

The Chair: Thank you very much. We'll move right to questions. Our first questioner is Madam Boivin from the NDP.

[Translation]

Ms. Françoise Boivin (Gatineau, NDP): Thank you.

Thank you to our witnesses for being here today.

I am going to give in to temptation and start with one question, in particular, and whoever would like to respond, may go ahead.

In your view, is the threat to our nuclear security greater domestically or internationally?

Mr. Terry Jamieson: Thank you, Ms. Boivin.

[English]

Regardless of the comparison of threats within Canada to those of some of our international partners, we can assure you that all nuclear materials in Canada remain in a safe state and are for strictly peaceful uses.

We rely upon some of our partners in the federal family to evaluate those threats for us. I will say that we don't routinely do a cross-comparison of threats across various countries, but we would use intelligence that was gathered exterior to Canada in establishing the threat level within Canada.

I hope that answers your question.

Ms. Françoise Boivin: Yes and no in a sense.

You talked about your partners in the matter, but how is the level of communication between.... I'm sure CSIS is involved. I'm sure a lot of agencies are.

Is there a formal format whereby you can review all these things? We get to study a bill and we don't know what it is needed for. I take it there are some conventions internationally that we have to conform to. All of you must have read the article in the *Ottawa Citizen* this morning entitled, "Liquid bomb-grade uranium to be shipped secretly from Chalk River to U.S.". I might not have thought too much about it normally, but now that I'm reading Bill S-9, I'm thinking that my goodness, if somebody inside Canada had bad intentions, those are all types of events that could create some type of.... Are you reasonably assured that all the means are already in place, because that's what I gathered from your testimony, and if so, why do we need Bill S-9?

• (1540)

Mr. Terry Jamieson: I'll answer your questions in sequence, and in a moment I'll turn it over to Mr. Awad to talk perhaps about some of the more detailed aspects of security planning for such shipments.

To start with, yes we do have a formal manner in which we interact with our partners, so we'll regularly work with the RCMP and our CSIS partners in order to arrive at the latest assessment of the threat environment.

In terms of why we need Bill S-9, currently Canada has signed for the amendment to the CPPNM and also has signalled intent for ICSANT. Of course, we can't ratify them without modifying our legislative framework to make acts of nuclear terrorism a Criminal Code offence. That in fact is the driver for Bill S-9.

With regard to your remarks concerning the HEU shipments, such shipments of nuclear material, certainly of nuclear medical isotopes, occur routinely, hundreds of times a day in Canada.

For the proposed HEU shipments, from a number of viewpoints this is the right thing to do, to return that material, which was originally of U.S. origin, to the U.S. Of course, this is consistent with the Nuclear Security Summit commitments made by our Prime Minister directly to President Obama.

The proposed shipments will be entirely safe and secure. There will be a detailed security plan that will be filed before any shipments take place. The actual physical packaging for the material, which is in a liquid form, which is the only difference between the routine shipments that we have now, those transfer containers will be certified, and the safety and security of them will be demonstrated.

Also, as I mentioned, we will work specifically with our partners, our security partners, in order to review the threat assessment along the proposed transportation route.

Ms. Françoise Boivin: There is the aspect of environment, I gathered that from the article, but on our side, on justice, I was thinking more of somebody with bad intentions or something. I guess that's why you keep the information very hush-hush so nobody knows the convoy will be on this road, this day. That's pretty tempting.

Mr. Terry Jamieson: Thank you for reminding me to respond to that.

In the reporter's article there's some allusion to highly secretive operations that would be taking place. In fact, that is just standard security protocol. For shipments of this nature you would not publicize in a paper that this is the transport route and it would be leaving location X at 10:00 in the morning.

Ms. Françoise Boivin: Excellent. Thank you.

The Chair: Thank you very much.

Our next questioner is Monsieur Goguen from the Conservative Party.

Mr. Robert Goguen (Moncton—Riverview—Dieppe, CPC): Thank you, Mr. Chair.

Thank you to the witnesses for appearing and enlightening us on this subject.

The physical protection measures that are contemplated under the Convention on the Physical Protection of Nuclear Material are already in place in Canada. We know that. Under the Nuclear Safety and Control Act, the Canadian Nuclear Safety Commission is responsible for setting physical protection standards in Canada and ensuring that those standards are met. We know that the nuclear security regulations set out the physical protection measures, which licensees must implement to meet minimum security standards.

As we speak and at this time, how safe are our nuclear facilities in your opinion?

Mr. Terry Jamieson: They're absolutely safe. The upgraded Canadian security regimes started after the 9/11 events. We have very highly secured facilities. I can't go into a lot of details in an open forum such as this, but suffice it to say that the full range of standard security techniques are put in place so there'll be barriers, defences, and detention mechanisms. I must stress that at the class I facilities, the nuclear power plants, we have armed on-site response forces. They essentially are army-level trained in terms of tactics and response strategies.

Mr. Robert Goguen: Thank you.

That's my questioning.

The Chair: Next is Mr. Cotler from the Liberal Party.

Hon. Irwin Cotler (Mount Royal, Lib.): Thank you, Mr. Chairman.

I'm wondering how one would define the particular role and mandate of the Canadian Nuclear Safety Commission. In other words, would you regard the mandate as being one primarily concerned, let us say, with the prosecution of crimes relating to nuclear materials and facilities or the early detection and prevention of such crimes? How does the commission work with regard to these two priorities?

• (1545)

Mr. Terry Jamieson: Our number one priority is to ensure that no threat is posed to these nuclear materials in the first place. As I mentioned in my opening remarks, our activities are largely preventive in nature. We do have some limited ability to fine individuals for contraventions of our regulations. Certainly one of the aspects of the mandate of the CNSC is not to be involved in prosecution. We'll support prosecutions that would be led by Justice.

Hon. Irwin Cotler: During the Senate committee proceedings it was suggested that Canada's regulatory framework for the import, export, control, and safeguarding of nuclear material has been in place for years and is already sufficient to implement the physical protection measures required for the International Convention for the Suppression of Acts of Nuclear Terrorism, the ICSANT, and the amendment to the Convention on the Physical Protection of Nuclear Material.

Would you say it's correct that our current legislative and regulatory regime is consistent with our obligations under ICSANT and the amendment to the CPPNM, or is Bill S-9 necessary for us to be in a position to ratify both treaties?

Mr. Terry Jamieson: Bill S-9 is required to allow us to ratify because there are specific requirements to have acts of nuclear terrorism considered as Criminal Code offences.

Hon. Irwin Cotler: Okay, thank you, Chair.

The Chair: Thank you, sir.

Our next questioner is Mr. Albas from the Conservative Party.

Mr. Dan Albas (Okanagan—Coquihalla, CPC): Thank you, Mr. Chair.

First, let me thank our witnesses for their presence and their expertise in helping us study this important legislation.

It's my understanding that the Nuclear Security Summit process brings together 47 countries with a view to strengthening international cooperative efforts to prevent nuclear terrorism by enhancing global nuclear safety. At the inaugural 2010 summit in Washington, D.C., Prime Minister Stephen Harper and 46 other leaders agreed to a joint communiqué and work plan, which among other commitments welcomed a four-year international effort to secure all vulnerable nuclear materials worldwide.

It also highlighted the importance of achieving the universal ratification and implementation of the amended Convention on the Physical Protection of Nuclear Material and International Convention for the Suppression of Acts of Nuclear Terrorism. The March 2012 Nuclear Security Summit in Seoul provided countries with an opportunity to identify areas for cooperation to enhance nuclear security.

Mr. Chair, I'm going to direct my questions to Mr. Jamieson or his colleagues as they feel they can answer.

Mr. Jamieson, when you testified before the Special Senate Committee on Anti-terrorism back in June, you noted that "the regulatory framework in Canada is already in a position to accommodate the provisions proposed in Bill S-9". Do you think it's important for Canada to become a state party to international counterterrorism instruments?

Mr. Terry Jamieson: Sir, that's one of the principles Canada has always acted by. I would suggest that ratifying the two instruments affected by Bill S-9 is an important step towards reaffirming our commitment to be 100% compliant with the international system.

As to the physical protection, I want to stress that all those aspects have been in place since 2006, and some aspects were in place before that.

As for the comment about being one of the items considered by the Nuclear Security Summit in securing vulnerable material, in no way would the HEU and other material in Canada be considered vulnerable in comparison to established international norms for the protection of such material.

Mr. Dan Albas: Carrying on with that, I understand the transport of categories I, II, and III nuclear materials is covered by the packaging and transport of nuclear substances regulations and requires a licence from your organization.

You touched upon this in some of your earlier comments. What requirements must licensees meet in order to get a licence from the Canadian Nuclear Safety Commission?

Mr. Terry Jamieson: Certainly, they must assure that at all times while the nuclear materials are in their possession, they remain in a safe and secure state. There would be requirements to specify, among other things, the level of protection when the materials are in place, as well as transport security plans when the materials are moved. We physically track the movement of certain classes of nuclear materials on a real-time basis.

Mr. Dan Albas: Based on your testimony to Madam Boivin and Mr. Cotler, and from your presentation earlier, it sounds to me as if there's been a lot of infrastructure, a lot of work specific to this. This is basically harmonizing ourselves with our international counterparts as part of wider efforts to curb the use of these materials for terrorist acts.

• (1550)

Mr. Terry Jamieson: This would be the last step in the broader sense of harmonizing. The physical arrangements are already in place. This just allows us to conclude the legal arrangements.

Mr. Dan Albas: Thank you.

Thank you, Mr. Chair. I have no further questions for the witnesses.

The Chair: Thank you very much.

Mr. Mai from the NDP is next.

Mr. Hoang Mai (Brossard—La Prairie, NDP): Thank you, Mr. Chair.

[*Translation*]

I, too, want to thank our witnesses for joining us today. And I especially want to thank them for the work they do.

Ms. Boivin touched on the issue of nuclear protection and cooperation between the various organizations. I would like you to comment on the level of cooperation with other countries, such as the U.S. or Russia, as far as sharing information and working with our partners goes.

Mr. Terry Jamieson: Thank you.

I will answer first, and then I am going to ask Mr. Awad to provide a few details.

[*English*]

We work in lockstep, particularly with our U.S. colleagues. In fact, our training program and protection requirements were largely modelled on the U.S. Department of Energy requirements for the safe protection of items, such as highly enriched uranium.

I'll ask Mr. Awad to add a few details.

Mr. Raoul Awad (Director General, Directorate of Security and Safeguards, Canadian Nuclear Safety Commission): We regularly share information with the Nuclear Regulatory Commission, NRC, the regulator in the United States, and with the Department of Energy on the security aspects of any shipment, of any export or import, across the border. We have in place a formal MOU with them to share this information.

Mr. Terry Jamieson: In particular, we have formalized arrangements for pre-notification of shipments across our borders. Before any such materials leave the U.S., we're notified and vice versa.

We cooperate quite frequently with the U.S. in training and exercises: we'll observe some of their security exercises and they will observe ours.

Mr. Hoang Mai: Are there other countries with whom we have the same type of relationship for information and things like that?

Mr. Raoul Awad: We also have a formal arrangement with the IEA for anything regarding the illicit trafficking of nuclear material. We are contributors to what they call the illicit trafficking database, the IEA funnel for all the information coming from all over the world about this issue.

In addition, we have some arrangements with other countries, formal MOUs, regulatory MOUs. I don't have the list of these countries, but we can—

Mr. Hoang Mai: That's okay.

One of the questions I have is about whether there is anything that prevents us from real exchanges or from more collaboration. From your perspective, did you find anything that maybe we should address in terms of making sure there's better protection, for instance, or a better exchange of information?

Mr. Terry Jamieson: I would offer that we have a very free exchange of information with our partners, but of course security items are on a need-to-know basis. I do want to assure you that in terms of evaluating the constantly changing threat environment, there's an absolutely free flow of information between countries.

Mr. Hoang Mai: Also, very quickly, because I don't have much time, regarding infrastructure, are there any other measures that you think we should have in terms of protecting the infrastructure here in Canada?

Mr. Terry Jamieson: Again, I would offer my opinion that these facilities, the nuclear power plants and the Chalk River facility, are protected probably to the best extent and the best practical extent that they can be protected. I think this is evidenced by the fact that there has never been an attack on one of these facilities in Canada.

If you recall the case of the Toronto 18 a few years ago, we do have reason to believe that at one point they had considered attacking the Pickering power plant, but upon doing their initial checks of the situation, they determined that the plant was too hardened a target to even consider.

Mr. Hoang Mai: Thank you very much.

The Chair: Thank you.

Our next questioner is Mr. Armstrong from the Conservative Party.

Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC): Thank you, Mr. Chair. I'm going to direct a couple of questions to our representative from Transport Canada.

Ms. Dagenais, do you think the regulatory framework in Canada is already in a position to accommodate the provisions of Bill S-9?

• (1555)

Ms. Marie-France Dagenais: Yes, I believe so. As I say, we work in collaboration with the commission to ensure that the transport is done in a safe manner. They handle more of the security side of things under Bill S-9, but I believe the regulatory framework is quite appropriate right now.

Mr. Scott Armstrong: You talked about different classifications of materials. You said that most of these provisions surround class 7. Can you expand on that a bit and describe what is contained in class 7 as a provision?

Ms. Marie-France Dagenais: Under the United Nations classification of dangerous goods, there are different classes. There are about nine classes. All the radioactive materials fall under class 7. That's a specific class for all types of radioactive nuclear materials. That's how it works. You can have class 1, which is explosives. You have liquids. You have solids. They're all classified under the United Nations classification model.

Mr. Scott Armstrong: If any of these goods are being transported within the boundaries of our country, Transport Canada has the responsibility to make sure that we have those provisions in place.

Ms. Marie-France Dagenais: Yes, in a safe manner.

We also have a response mechanism, so we also have emergency response assistance plans that are put forward and that are approved by Transport Canada. When nuclear materials are transported, the companies need to have an approved emergency plan, so that if there is an accident, not necessarily related to security, but related to safety, they have measures in place so they can respond in an effective manner to make sure that the danger and the safety of the environment, people, and health are properly handled.

Mr. Scott Armstrong: If there's a company or a group of individuals in violation of these requirements, I'm assuming that Transport Canada would have some ability to fine them or charge them.

Ms. Marie-France Dagenais: We have inspectors across the country who inspect those companies. We actually do have a prosecution mechanism in the act, so we can prosecute under the Criminal Code.

Mr. Scott Armstrong: Thank you.

I have one other question for you. The Belfer Center for Science and International Affairs at Harvard University, in their 2011 report entitled "The U.S.-Russia Joint Threat Assessment on Nuclear Terrorism", noted, "Of all varieties of terrorism, nuclear terrorism poses the gravest threat to the world."

Do you agree with this statement that, of all the threats right now, nuclear terrorism is the greatest threat to the world? Is nuclear terrorism really a threat to us here in Canada? What's your opinion on that?

Ms. Marie-France Dagenais: It's kind of funny because I was quite involved in the 2010 Olympics, and there was a risk and threat assessment done by the RCMP and CSIS. They actually identified that the worst threat was a transport of propane or a fuel tank. That was more dangerous than a nuclear threat, so I think it's there and it needs to be looked at, but I wouldn't say that it's the highest threat right now.

Mr. Scott Armstrong: Thank you.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Armstrong.

Our next questioner is Mr. Jacob, from the New Democratic Party.

[Translation]

Mr. Pierre Jacob (Brome—Missisquoi, NDP): Thank you, Mr. Chair.

Thank you to our witnesses.

My next question is for any of the four witnesses.

The Canada Border Services Agency is Canada's primary counter-proliferation enforcement arm. The agency screens nearly all shipping containers coming into the country for radiation.

An agency official told the Standing Senate Committee on National Security and Defence that the agency had to risk manage the screening of items leaving the country.

What percentage of containers are screened as they leave Canada? What about cargo leaving the country via air, rail and land transportation?

Mr. Raoul Awad: You might be better off asking CBSA that question. In terms of nuclear substances or radioactive sources, no cargo crosses the border or leaves the country without a Canadian export licence. Similarly, the same process applies to imported products. Our oversight is done through import and export licences.

Regardless, CBSA would be in a better position to answer that question.

[English]

Mr. Terry Jamieson: In terms of the number of containers that are inspected, of course a 100% inspection can't be achieved, but there is scanning on virtually 100% of these containers as they leave the major port facilities in Canada. The scanning is very effective to the point that containers with slightly contaminated coat hangers, and I think in some cases it was toasters or other household appliances, were detected. So in fact, there is a very rigorous and very sensitive screening system in place.

• (1600)

[Translation]

Mr. Pierre Jacob: Thank you.

Protecting critical infrastructure has trans-border challenges, because that infrastructure is shared not just provincially and territorially, but also internationally, most notably by Canada and the U.S.

As far as that type of protection goes, could you tell us what the current and anticipated challenges are? When it comes to the laws and regulations in place, and the resources dedicated to protecting nuclear facilities, how does Canada compare with its close allies?

Any one of you can respond.

Mr. Raoul Awad: I can assure you that Canada's nuclear safety regime is virtually envied the world over. Our experts are invited all over the world to discuss Canada's approach to protecting its nuclear facilities. We are probably a world leader in that area. Our experts even participate in

[English]

IPPAS, the International Physical Protection Advisory Service, that IEA put in place.

Recently, just last year, we did one mission in the U.K., and last year in Romania. We have many IPPAS missions planned in advance. They always ask for the Canadian expertise to participate because we are recognized as the best regulatory framework regarding the security of nuclear facilities.

Mr. Terry Jamieson: If I might add, these IPPAS missions are important for two reasons. As Monsieur Awad has just said, they clearly demonstrate that our expertise in the physical protection of nuclear materials is top-notch and sought after by other countries when they look to review their own systems.

It does allow us to more freely exchange practices and to learn from these other countries as well.

The third item I'd like to add is in terms of comparing our proficiency at protecting nuclear installations. I mentioned in my opening remarks that there are annual competitions among these protection forces. I do want to stress that Canada is routinely among the leaders. In fact, in terms of the competitions for non-U.S. Department of Energy teams, teams from Bruce Power and Hydro-Québec have won those competitions. These are highly trained individuals and highly proficient forces.

[Translation]

Mr. Pierre Jacob: Thank you very much.

Thank you, Mr. Chair.

[English]

The Chair: Thank you.

I have no other questioners on my list, so we'll consider that everyone has asked their questions.

I want to thank the panel for being here for this discussion of Bill S-9. We will be dealing with it on Wednesday on clause-by-clause. I want to thank you for that.

You're excused.

With unanimous consent, I will now move to committee business and the notice of motion from Madame Boivin, because we have about half an hour, if that's okay with everyone.

Some hon. members: Agreed.

The Chair: Madame, if you want to move your motion, you have given the proper notice and it's in order, so you have the floor.

[Translation]

Ms. Françoise Boivin: You've probably all had a chance to look over the motion, which reads as follows:

That the Standing Committee on Justice and Human Rights conduct a thorough study of the practice under section 4.1(1) of the Department of Justice Act since its enactment:

4.1(1) Subject to subsection (2), the Minister shall, in accordance with such regulations as may be prescribed by the Governor in Council, examine every regulation transmitted to the Clerk of the Privy Council for registration pursuant to the Statutory Instruments Act and every bill introduced in or presented to the House of Commons by a minister of the Crown, in order to ascertain whether any of the provisions thereof are inconsistent with the purposes and provisions of the Canadian Charter of Rights and Freedoms and the Minister shall report any such inconsistency to the House of Commons at the first convenient opportunity;

and report its findings and recommendations to the House.

I will make no secret of what led me to put forward such a motion. It was a situation that gave me serious cause for concern, whether founded or not. I am not making any value judgment on the proceedings that were initiated, nor do I have any intention to put anyone on trial here. However, when a government employee says that he was asked to do something illegal and that the test set out in subsection 4.1(1) of the Department of Justice Act was not applied, it weakens my confidence in the system.

Ours is a system where the rule of law must reign supreme. I always assumed that, as far as studies of government or Senate bills went, the necessary legal opinions had been sought and the appropriate tests passed. I was under the reasonable impression that that was the case, whether I was for or against the political content of the bill.

After asking the minister some questions and considering the answers I got, I had the sense I was being told that information was private or confidential, that it involved the type of relationship the lawyers around this table are used to. In short, we were told that this was a matter of lawyer-client privilege. The problem there is that the client is the Canadian public. It's not me or you, it's not the minister or department employees. It is, in fact, Canadians.

So that is the backdrop for my motion, which I would like the committee to study when it has time and not for the purposes of a witch hunt, of course. You can see the motion was not written in such a way as to impose a new agenda, as the one we have is already quite full. We have to study the issue swiftly and seriously at some point to, at the very least, assure ourselves that the tests described in subsection 4.1(1) are followed, that the necessary approvals are obtained and that genuine efforts are made to ensure the content of bills is consistent with the Constitution and the Canadian Charter of Rights and Freedoms. It seems to me that should go without saying.

No such study has been done in a long time, and I think it would be worthwhile to do. I often talk about perceived justice. Justice is one thing, but perceived justice is another. When the entire system is called into question, whether rightly so or not—and I don't want to get into the details of the case—the Standing Committee on Justice and Human Rights has a duty to report to Parliament on whether the tests are being applied correctly and whether the process can carry on as usual. But one thing is crucial: the importance of the rule of law in Canada cannot be overstated. That is the crux of my motion.

•(1605)

The Chair: Thank you.

Mr. Cotler, go ahead.

[*English*]

Hon. Irwin Cotler: Mr. Chairman, I want to express my appreciation to my NDP colleague for bringing this motion forward.

Members of the committee will note that I have had an interest in this whole question of section 4.1 of the Department of Justice Act not only in terms of my responsibilities as a former minister of justice and attorney general—it falls on any minister to have that concern—but prior to that even, during my years as a law professor and being particularly involved in constitutional law and charter concerns.

Accordingly, on November 6 of last year, when the current Minister of Justice was before this committee, I put questions to him on the standard being applied to prospective legislation with regard to section 4.1 review. The minister responded: ...the standard is that we comply with all the constitutional documents, be it the charter or the Canadian Bill of Rights. We satisfy ourselves that all legislation is in compliance.

As members may recall, I found the answer at that point to be insufficient and therefore asked more questions about the particular standard of review. Regrettably, the minister did not further

enunciate the particular standard that he and the department applied to legislation.

I believe it's important for both parliamentarians and the public to know the scope and the nature of the review that is conducted on bills put forward by the minister and department before they are tabled in Parliament, for a number of reasons.

I'll try to be brief in this regard, Mr. Chairman.

First, there are serious cost implications when the government enacts a statutory scheme that may be challenged before the courts. While there are certainly costs to defending any government legislation, we ought not to be inviting complex and protracted constitutional litigation at great cost to the taxpayers, particularly since as parliamentarians we have not only an important role to play but I would say an important constitutional responsibility in the oversight of the public purse, let alone in the oversight as well of the constitutionality of legislation.

Second, and in a related fashion, we need to be concerned with the existing strain on our already, at times, overtaxed legal and judicial resources. While the government, as I've said before, should be assisting those who have legitimate claims to bring before tribunals—and I would be remiss if I did not parenthetically note my regret about the cancellation of the court challenges program—we don't want to be inviting litigation simply because we adopted legislation that has not been properly constitutionally vetted.

The third consideration relates to the aphorism that not only must justice be done, but it must be seen to be done. It's an oft-abused cliché, but one that still has relevance. The government has, if you will, somewhat of an attendance problem when it comes to the charter.

For example, when it came to the 30th anniversary of the charter, for the most part—and I can say this as somebody who participated in a good number of the commemorative initiatives with respect to the 30th anniversary of the charter—regrettably the government that should have been at the forefront of that commemoration, that should have been celebrating the 30th anniversary of the charter, was very often simply missing in action.

It's not clear, when one looks at these things, whether the government, in looking at the charter, sees it as something that deserves the compelling respect and responsibility that we owe to adhere to it, or whether it sometimes sees it as something of an impediment to pursuing its agenda, or worse, as something unnecessary or unimportant.

I say that, Mr. Chairman, because if one looks at the record, one will see that not only has there been a series of legislative initiatives that have invited constitutional challenges that could have been in my view avoided with a proper due diligence and vetting, but that in fact courts have, in a series of judgments, whether of the Federal Court or the superior courts or even the Supreme Court of Canada, such as in the *Insite* case, found to be unconstitutional.

The last concern, and I'll touch on this briefly, is how a department allocates its resources in these matters.

●(1610)

In other words, if a charter analysis is at an extreme end an automatic process, a kind of rubber-stamp process, then how many civil servants are involved in that process, and how many are in fact needed, and at what cost to taxpayers?

Conversely, if it is, as I believe it to be, a more complex and protracted process, we might ask ourselves whether we have enough people assigned to the task, a task which, as I say, goes to the whole question of public oversight.

In returning to the matter before us, you can properly put the question to me, and it would be deservedly put to me, whether or not, when I was Minister of Justice, we in fact engaged in that kind of approach. I think, Mr. Chair, if you will look at the record, I said as I wrote before becoming minister, but even at the time of being a minister, that I regarded that as an ongoing superintending responsibility and priority for the Minister of Justice, and that, before we tabled any legislation, we had to be sure that it had what I called the good housekeeping seal of constitutional approval.

The question then becomes, what is the standard to be used? The thing that concerns me at this point is there is now a statement of claim before the court that has made some reference—and I'm not going into any of the matters regarding the merits of the claim or anything of that regard—but the question is that the standard of legislative review being applied by the department is whether “some argument can reasonably be made in favour of its consistency, even if all arguments in favour of consistency have a combined likelihood of success of 5% or less...”.

Mr. Chairman, I regard that as a very low standard and, indeed, a standard that would be inappropriate for Parliament and the public to adhere to.

Let me just close by saying that a question can be put to me, “Did you ever table any legal opinions when you were the minister?” I have questioned the present minister as to why he has not tabled any legal opinions, and that properly could have been put to me as well.

My answer would be twofold in that regard. Number one, we operated at such a high level of superintending review that, in fact, the whole objective was to ensure that we would not be tabling any legislation that might be suspect from a constitutional point of view, for all the reasons I mentioned. And when an issue did arise where I thought there might be a constitutional concern and where the standard of review would thereby be engaged that had to do with the prospective same-sex legislation, we referred the matter to the Supreme Court for an advisory opinion so we would not have to get into protracted litigation of a constitutional character at multiple levels in different provinces in that regard.

It would seem to me that this question is something that we ought to address and review in terms of should we perhaps have more by way of a reference to the courts with regard to that issue. What in particular should be the standard for review? How do we ensure there will be appropriate compliance with the directive authority in section 4 of the Department of Justice Act?

Thank you, Mr. Chair.

●(1615)

The Chair: Thank you, sir.

Our next speaker to this motion is Madam Findlay.

Ms. Kerry-Lynne D. Findlay (Delta—Richmond East, CPC): Thank you, Mr. Chair.

With respect to this motion, I oppose it, both for practical reasons and reasons of principle.

Subsection 4.1(1) requires the minister to examine government bills presented to the House of Commons and “ascertain” whether they are inconsistent with the purposes and provisions of the charter. If so, this must be reported to the House. It was very clear legislation.

The process of reviewing legislation for charter risks, which underlies it, has been in place since the inception of subsection 4.1 (1)—that's since the mid-1980s—and has served all governments well.

With respect to Mr. Cotler's comments on whether we celebrated the charter at 30 years, we don't tend to celebrate legislation; we highlight it. The Prime Minister made statements about it. But I don't believe the former Liberal government had a big party at the 20th anniversary either. It's part of a series—

Mr. Irwin Cotler: We actually did.

Ms. Kerry-Lynne D. Findlay: —of constitutional legislative initiatives, including our British North America Act, and our Bill of Rights which came in under Prime Minister Diefenbaker. No study is necessary, in our view, into a process that is clearly working and ensures effective charter review.

I have had the benefit of looking back on transcripts of testimony in the House and Senate committees, as well as the House itself, from Minister Nicholson, and before him, Minister Toews, and before him, Minister Cotler, and even Minister Blais in 1993. Their responses are basically identical as to how the process works. The proposals are reviewed for charter and other legal risks throughout the policy development process, up to and including the introduction of legislation. Relevant risks are brought to the attention of senior officials and ministers, and every effort is made to mitigate them. Once the government bill is introduced, the chief legislative counsel certifies—there is a certification process—on behalf of the deputy minister of justice that the necessary review has been carried out. If a Minister of Justice were to conclude that a given government bill was at the time of introduction inconsistent with the charter, a report under subsection 4.1(1) would be issued. In other words, that is the triggering event.

In practice, the review process ensures that concerns potentially rising to such a level will have already been addressed. The process I have outlined works. It has been respected by government. It is our view that this study is unnecessary. I would urge the members of this committee to defeat this motion.

The Chair: Thank you.

Our next speaker to the motion is Mr. Marston.

Mr. Wayne Marston (Hamilton East—Stoney Creek, NDP): Thank you, Mr. Chair, and I appreciate the opportunity.

I'm a product of the 2006 election, when the government took office primarily on talking about transparency and accountability. I respected that. That's one of the reasons I ran. I was running against Conservatives, but I wasn't against them on that particular point.

The thing that's concerning when you're new to the justice committee, as I am, is this threshold of 5%. Yes, there's minister after minister who has come before Parliament and its various committees and has said that they were satisfied with how it had been done before.

However, as an example, there is the Insite case, the challenge that followed, and the turnaround that took place. Nobody is sitting here saying that the legislation put in before is completely wrong. What's being asked is for this committee to take a look at it to ensure that it meets the goals. Some doubt has been raised about it, and I think it's worthwhile for the committee, not necessarily immediately, but over a period of time, to take the time to look it over. I would encourage people to reconsider this.

• (1620)

The Chair: Thank you.

Our next speaker to the motion is Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): Thank you.

Ms. Boivin, during your presentation of the motion I missed something. It might have been in the translation, I'm not certain, but I'm confused about the motivation for this. You mentioned an article and a court case. I'm sorry, but I'm just not familiar with it.

I'm intrigued by your motion, frankly. I think Parliament, and certainly this committee, has an obligation to ensure that the legislation that goes through Parliament is charter-proof, but I'm perplexed about what you hope this study would accomplish. This is a legislative committee, and the legislation exists. Is it your suggestion that the legislation's not being followed?

The Chair: We don't have cross-debate.

Madame Boivin is next on the speaker's list so I'm sure she can answer your question.

Do you have any more comments on the motion?

Mr. Brent Rathgeber: No.

The Chair: Okay.

Madame Boivin.

[*Translation*]

Ms. Françoise Boivin: That's an excellent question.

The first time I wondered about this was over the holidays. It may not have been news in your neck of the woods, but I'm from the national capital region, so it caught my attention when the media here reported on the case, even though I was out of town at the time. As the justice critic, anytime anyone casts doubt on the justice system, I take notice, regardless of the party it's coming from.

Department of Justice employee Edgar Schmidt filed a claim against the Attorney General of Canada, and the case is now before the Federal Court. I won't read you his entire claim, because I don't

think that's what matters. I don't want to get into a debate over who is right and who is wrong. The fact of the matter is that the Attorney General of Canada has been taken to court over a claim that the government is not properly honouring its legal obligation under section 4.1 of the Department of Justice Act. The Conservatives are not the source of the problem. I understand what Mr. Cotler was saying earlier, but the claim of the individual in question indicates that this situation dates as far back as 1993. The department's position has always been that even a 5% likelihood of success is sufficient to discharge the government of its obligation.

People may not be very familiar with that obligation. I included it in my motion because I felt it was important. We all know the situation. The opposition has often criticized the government for using private member's bills to get around the obligation. That has always been my sense, to a certain extent, but now, it's worse. In our democracy, the cornerstone of our system has to be the rule of law; otherwise total chaos and anarchy will take hold, and I don't think anyone wants that.

There is no problem if we assume that the exercise is being done correctly when government bills are passed by the House and referred to committees for study. And I am talking not only about justice-related bills, but about all bills. This test is mandatory in every single case.

Mr. Cotler pointed out, and rightly so, that the system was designed that way to benefit Canadians, at the end of the day. They are told that a test was done and that the legislation is deemed to be reasonable and to comply with the charter and constitutional powers. Then bills move along in their usual fashion and receive more in-depth consideration.

The current case, however, suggests something quite different. As a lawmaker, I find that very troubling. Anytime I speak with the minister, regardless of the committee, I'll think that the people at the department might not have done their job on this or that. It's troubling because it suggests a disregard for compliance with the charter. Our job is to question witnesses about the substance of bills. As part of our detailed study, we will have to question whether a provision we wish to amend in Bill S-9 was analysed for charter compliance.

I will just finish by saying I don't think this motion is dangerous for the government. It is in everyone's interest to make sure the rules are being followed properly. That was the idea in all this.

• (1625)

The story came out over the holidays, in December or January. I thought I would put the question to the minister and, depending on his answer, determine whether I needed to take things further. I would figure out if I needed to ask the committee to study the issue, hear from department officials, basically look into the problem identified in the Schmidt case. The courts will deal with that specific case, but perhaps the committee could examine the intellectual process followed to assure the minister that everything complies with subsection 4.1(1) of the Department of Justice Act and that when—

[English]

he signs off on a law that it is all right. And if it's not, they can also say "notwithstanding the charter" because we want this implemented, and there's nothing wrong with that.

The Chair: Thank you.

We have about three minutes before 4:30 p.m. I'd like to get back to the regular agenda, unless this isn't going to take too much longer. We have one more speaker that I know of.

Mr. Rathgeber, you're up again.

Mr. Brent Rathgeber: Thank you, Mr. Chair.

Ms. Boivin, thank you for that explanation. I am very sympathetic to your motion and to your desire to make sure the legislation is charter-proof.

I am concerned, since there is litigation before the Federal Court, that this study would be in contravention of the *sub judice* convention, so I'm not inclined to support it.

However, if I may, I'll make a suggestion. Would you be prepared to table this on Thursday? This committee should think about this. This is an important motion.

A voice: Was that a motion to table?

The Chair: That wasn't a motion to table. Somebody needs to move a motion.

Mr. Brent Rathgeber: I'm suggesting that to the mover.

Ms. Françoise Boivin: Wednesday? You said Thursday.

Mr. Brent Rathgeber: Sorry, yes, Wednesday.

Ms. Françoise Boivin: It would be Wednesday.

That's why I gave notice last Wednesday, thinking it would permit people.... But I can understand that not knowing necessarily all the facts.... I find that this is such a serious motion. It's not a game. I think it's our obligation. So, no problem—

The Chair: Here's your choice, Madame Boivin. We can take the vote or you can move to table.

Ms. Françoise Boivin: But tabling, meaning that we come back on Wednesday.

The Chair: Table it with a date.

Mr. Wayne Marston: Table it until Wednesday.

Ms. Françoise Boivin: Table until Wednesday, then. I have no problem. If it's serious to consider.... I think it's too serious anyway. Otherwise, I know what's going to happen. I'm giving myself a chance.

A voice: That's better.

The Chair: The tabling motion is non-debatable. I'll go to the vote on that.

(Motion agreed to)

The Chair: It's tabled.

We will suspend for about 30 seconds while we get our next guests in order.

● (1630)

(Pause)

● (1630)

The Chair: I call this meeting back to order.

I want to welcome our guests, Mr. Davies, from the Department of Public Safety and Emergency Preparedness, and Mr. Malizia and Mr. Tremblay, from the Royal Canadian Mounted Police.

I know you have opening statements. We'll start with you, Mr. Davies.

Mr. John Davies (Director General, National Security Policy, Department of Public Safety and Emergency Preparedness): Thank you.

My name is John Davies. I'm the director general, national security policy, at Public Safety Canada. I'm joined today by my colleague Emmanuelle Deault-Bonin, who is the senior analyst and manager in my group, and an expert in counter-proliferation policy.

[Translation]

I am pleased to be here today to speak with you about Bill S-9 and to explain how the bill, if passed, will complement the Government of Canada's counter-terrorism and counter-proliferation efforts.

[English]

Nuclear terrorism is a significant threat to Canada and to global security, and it is one that continues to evolve. The Government of Canada takes seriously its responsibility to mitigate this threat. Two of my minister's key responsibilities are to exercise national leadership on matters of public safety and to coordinate activities of Canada's federal law enforcement and intelligence agencies.

With regard to counter-proliferation, this means that Public Safety Canada works with more than a dozen federal departments and agencies to identify proliferation-related threats, to uphold Canadian laws and regulations related to proliferation, including sanctions against countries we know have nuclear aspirations, and to ensure that our policy and legal frameworks for counter-proliferation remain current and effective.

You've heard today from officials from the Canadian Nuclear Safety Commission. With me at the table are representatives from the Royal Canadian Mounted Police. These two agencies are examples of the breadth of expertise brought to bear in Canada's counter-proliferation efforts. Activities range from intelligence gathering to controlling the export of dual-use goods to raising awareness of proliferation risks in the private sector and academic world to enforcing sanctions against foreign states.

● (1635)

[Translation]

Bill S-9 will strengthen Canada's counter-proliferation framework by creating four new Criminal Code offences related to nuclear terrorism, such as the possession or export of nuclear or radioactive materials and devices.

[English]

Internationally, Canada is also a committed partner. For example, the Prime Minister announced at the 2012 Seoul Nuclear Security Summit a funding commitment of \$365 million over five years for the global partnership program. Among other things, this program aims to help secure nuclear facilities to prevent nuclear materials from being used for illicit purposes around the world.

Further, the government promotes cooperation among its international partners through its diplomacy and advocacy work to implement and strengthen multilateral initiatives and international legal instruments such as the two treaties that Bill S-9 would allow Canada to ratify. This bill is an indication of Canada's commitment to engaging in international efforts to combat proliferation.

I would like to conclude by saying that should Bill S-9 be adopted, it will further improve our domestic framework to counter nuclear terrorism and signal to our international partners the importance Canada places on having a robust regime to address threats to global security.

[Translation]

Thank you to the committee. I would be happy to answer any questions.

[English]

The Chair: Thank you very much.

Will there be any opening statements from the Royal Canadian Mounted Police?

Assistant Commissioner James Malizia (Assistant Commissioner, Federal Policing Operations, Royal Canadian Mounted Police): Yes, Mr. Chair.

Good afternoon, and thank you for inviting us here today to provide some law enforcement context about Bill S-9.

I have with me today Chief Superintendent Larry Tremblay, director general of federal policing, criminal operations.

Canada's counterterrorism strategy asserts, as one of its six fundamental principles, that terrorism is a crime that will be prosecuted. The deny-and-detect elements of the strategy aim to deny terrorists the means and opportunities to carry out their activities. A key objective in this strategy is to disrupt the acquisition of weapons of mass destruction.

Bill S-9, the Nuclear Terrorism Act, would strengthen law enforcement's ability to meet this important objective by specifying that actions associated with making, possessing, using, transferring, exporting, importing, altering, or disposing of nuclear and radioactive material with intent to cause death, serious bodily harm, or substantial damage to property or the environment will be deemed a serious crime with severe penalties.

Bill S-9 classifies criminal actions, for example, committing an indictable offence under federal law for the purpose of obtaining radioactive material, as terrorist acts. Bill S-9 raises the public consciousness about the seriousness of nuclear-related terrorist activities, and highlights the risks posed by people, organizations, and state actors engaging in these actions.

[Translation]

Another key aspect of this bill for law enforcement is that clause 3 criminalizes these activities if they occur outside Canada. Bill S-9 is thereby consistent with all other terrorist-related offences listed in the Criminal Code.

Nuclear terrorism is a threat to international security with the potential to cause significant loss of life, as well as substantial environmental and property damage.

[English]

Based on reports from the International Atomic Energy Agency, in the past two decades there have been approximately 20 cases of weapons-grade material on the black market. It is reported that illicit procurement networks are trafficking highly radioactive material across Europe, Africa, and the Middle East.

The investigative techniques that come into play when pursuing cases involving acts of nuclear terrorism are not significantly different from other complex terrorist investigations. Countering nuclear terrorism requires coordinated government action, including diplomacy and international cooperation, border controls, physical and information security, and law enforcement.

A primary objective of law enforcement would be to prevent nuclear radiological material from falling into the hands of terrorists. It would be critical to disrupt a terrorist plot at the earliest opportunity.

Law enforcement, the intelligence community, and border officials often work hand in hand to uncover plots. These actors are vital in uncovering the illicit movement of controlled goods and detecting and tracking illegal shipments. Intelligence and forensics also play a critical role in helping to prevent nuclear terrorism.

Law enforcement is critical to the government's response in countering nuclear terrorism, and therefore requires the appropriate authorities to execute its mission effectively. Bill S-9 will assist us when we investigate activities associated with nuclear and radioactive material.

The RCMP has developed close partnerships with the Canadian Nuclear Safety Commission, as well as with the owners and operators of Canada's nuclear power plants. The key to denying terrorists the capabilities to engage in nuclear terrorism is effective cooperation among the full range of security and intelligence partners, both domestic and international.

The Yadegari investigation and prosecution, while not a nuclear terrorism case, exemplifies how government agencies can and should work together to counter proliferation. Mahmoud Yadegari was charged for attempting to export pressure transducers from the United States to the United Arab Emirates through Canada. The investigation determined that the pressure transducers, which are crucial components used in uranium enrichment, were ultimately destined for Iran.

Yadegari was charged with 10 offences under various statutes, including the Customs Act, the United Nations Act, the Export and Import Permits Act, the Nuclear Safety and Control Act, and the Criminal Code for false documents.

Bill S-9 would criminalize proliferation in situations where an indictable offence is committed with intent to obtain nuclear and/or radioactive material, or to obtain access to a nuclear facility.

[*Translation*]

Global and domestic cooperation, sharing of intelligence and industrial security measures are critically important in achieving the goal of denying, detecting and deterring the trafficking of nuclear and radiological material.

[*English*]

Bill S-9 would contribute to law enforcement's counterterrorism efforts by specifying certain activities associated with nuclear and radiological material as serious crimes and enhancing the authorities available to police.

Thank you. I welcome your questions.

• (1640)

The Chair: Thank you, sir.

Our first questioner is Mr. Marston from the New Democratic Party.

Mr. Wayne Marston: Thank you, Mr. Chair.

Welcome to the witnesses. I certainly appreciate your being here today.

You're probably aware that in one of the newspapers today there's an article about liquid bomb-grade uranium.

First, just so we don't get people overly concerned, but maybe they should be somewhat concerned, would this be weapons-grade material?

The Chair: Can anybody answer that question?

Mr. John Davies: Sorry, I cannot answer that question.

Mr. Wayne Marston: No, that's fair. I didn't think anybody was a physicist here, but the reality is that it will probably be top of mind for people.

In terms of developing nuclear weapons, deliverable weapons, for a terrorist group or for somebody who wants to do some serious damage, the fissile material requires highly specialized knowledge, physicist-level knowledge, to do this. Many times we hear where different countries are suspected of being close to getting yellow-cake, and they're getting close to getting other aspects of the processing to get to this point. How do you transfer that to the level where somebody could actually do it from a physical standpoint? Again, I'm not asking for the science. I'm talking from the policing perspective.

I presume it would mean that it would have to be small enough to be transportable to get it to Canada, that it wouldn't be something we would anticipate developing in Canada. What would be your outlook on the potentials for that?

We had the U.S.-Russian joint threat assessment on nuclear terrorism. In that assessment, they would be talking about the risk factors. How do you see that relative to Canada? We're somewhat different target-wise, hopefully, from the United States, but still we have concerns.

Mr. John Davies: I'm going to try to start.

I can't speak to the science behind the conversion, but I think there is a broader point of the ongoing interest of certain terrorist groups in weapons of mass destruction. Previously al Qaeda has clearly indicated an interest in obtaining anthrax and in obtaining improvised nuclear weapons. The technical hurdles to doing that are still very high, but I don't think you can discount the effects of any kind of an attempt, even a small initiative by al Qaeda or any terrorist groups using weapons of mass destruction—not necessarily just the physical harm, but you can think of the economic repercussions, the psychological effect. I think it's not just the scientific ability to go up the knowledge curve to be able to pull off a nuclear attack; it's the aspirational attempt, which is still a big part of the threat assessment.

• (1645)

Mr. Wayne Marston: Just like 9/11, and the implications of 9/11 from the psychological side of it, not only the damage that occurred to the World Trade Center. Had the towers not fallen, the symbolic attack would have been significant.

I believe I'm running out of time.

The Chair: You have a minute and a half, sir.

Mr. Wayne Marston: That's okay. I don't mind having more time. It's always a good thing.

The Chair: Now you have a minute.

Mr. Wayne Marston: He's from a neighbouring riding. You can tell.

In closing, I just want to say that I appreciate the work you do. There is a hard balance between transparency and clarity to the public and keeping close to your vest what you need to.

I just want to thank you for being here today.

The Chair: Our next questioner is Ms. Findlay from the Conservative Party.

Ms. Kerry-Lynne D. Findlay: Thank you, Mr. Chair.

Thank you all for being here today to enhance our understanding of this legislation.

Mr. Davies, when you testified before the Special Senate Committee on Anti-terrorism on June 4, 2012, you said this:

...Bill S-9 represents a concrete step in strengthening Canada's criminal laws relating to nuclear terrorism. It will further allow Canada to ratify and implement two important international treaties, thus signalling our commitment to nuclear security.

I note today in your remarks you talked about the bill being “an indication of Canada's commitment to engaging in international efforts to combat proliferation” and “signal to our international partners the importance Canada places on having a robust regime to address threats to global security”. Clearly, you're putting this within the international context of us working with our partners.

Public Safety Canada's role, as I understand it, with regard to proliferation and terrorism is to coordinate and support interdepartmental efforts at the federal level, as well as to leverage expert knowledge to better examine the threat, identify the risks that Canada faces, and develop sound policy and advice to help guide the government.

In that context, do you feel that Bill S-9 would complement existing national security policy and operational frameworks that are currently in place?

Mr. John Davies: Yes, I do very much. I think there are a lot of benefits to Bill S-9.

The Minister of Justice talked about the importance of particularizing the offence around counter-proliferation in the Criminal Code and extending the sentencing. I think both of those around proliferation offences send an important signal, a strong message, that the government considers this an important issue.

Also, there are more tools for law enforcement and for prosecutors: the reverse onus on bail, wiretapping provisions, and so on. There are more tools in the tool kit. Any national security issue is about expanding tools as much as you can to give flexibility and other options for law enforcement and for prosecution.

For us as well, this is obviously an important international commitment that we're living up to here. It strengthens the international regime around counter-proliferation. It's a good momentum piece for Canada and for the world going into the next Nuclear Security Summit in 2014.

I think there are a lot of benefits for this legislation.

Ms. Kerry-Lynne D. Findlay: Thank you.

Do any of the other witnesses want to comment on this, either from the international or domestic perspective?

A/Commr James Malizia: Certainly from a law enforcement perspective, and Mr. Davies touched on it, the added tools that we would benefit from would involve amendments to part VI of the Criminal Code, enabling us, of course, to apply for an intercept of communications without having to demonstrate that we've exhausted all other means of investigation, which are key in very timely and urgent and complex files such as these.

Also on the request for notices of interception, we can actually make a request for them to be delayed for up to a period of three years, which again provides us time and space to conduct our investigations.

Finally, there is the utilization of DNA warrants, given that these offences are considered primary designated offences for the purposes of DNA warrants and collection orders.

Ms. Kerry-Lynne D. Findlay: That's it.

The Chair: Thank you very much.

Next is Mr. Cotler from the Liberal Party.

Hon. Irwin Cotler: Thank you, Mr. Chair.

There is a lot of concern now with respect to Iran in the whole matter of a breakthrough, because of the highly enriched uranium

threshold, which facilitates the breakthrough capacity for a nuclear weaponization program.

That brings me to the question of Canada. To what extent are we being a good international citizen in that regard? I noted that in 2010 the Canadian government's decision to permit Ottawa-based Nordion to sign a 10-year deal with Russia to import highly enriched uranium for use in our medical isotopes production process was criticized by a coalition of arms control advocates. Similarly, we don't appear to be involved in moving ourselves from high enriched uranium to low enriched uranium approaches.

I have two specific questions.

We now have two nuclear research reactors, one at McMaster University in Hamilton, and the other at École Polytechnique in Montreal that rely on highly enriched uranium as their base fuel. Where do we stand at this point with regard to the conversion of these two nuclear research reactors to a low enriched, an LEU, alternative?

Can you explain why Canada has chosen not to participate in the joint effort among France, Belgium, the Netherlands, and the United States, to convert their medical isotopes production facilities to use low enriched uranium rather than highly enriched uranium?

• (1650)

The Chair: Those are interesting questions. Can anyone on this panel answer any of those questions?

Mr. John Davies: I think that is more of a question for the Canadian Nuclear Safety Commission. I think they're more the lead on that than Public Safety.

The Chair: I'm assuming the RCMP cannot answer that question.

A/Commr James Malizia: Yes, I'm of the same opinion as Mr. Davies.

The Chair: They do not have an answer.

Is that it, Mr. Cotler, or do you have other questions for these witnesses?

Hon. Irwin Cotler: Most of my questions have to do with this whole question. Let me just put a question that might be more... In other words, if you take the four categories of a nuclear terrorism threat—the use of a stolen nuclear weapon, the use of an improvised nuclear device, the use of a dirty bomb, and sabotage of a nuclear facility—what would cause you the greatest concern and why? Would the greatest threat to Canada's nuclear security come from inside or outside Canada?

Mr. John Davies: We don't look at the threat assessment for necessarily higher or lower, inside or outside Canada. Counter-proliferation as an issue has a lot of different layers to it. There are issues of financing, export, tracking and control, capacity building abroad, protection of nuclear facilities, and so on. Each one of those issues has its own set of risks framework around it and ways to mitigate that risk. I'm not really answering your question here but I think it's hard to categorize whether the risk inside or outside Canada is really the way to look at it or the best way to look at it.

From our point of view, it's important to understand from an aggregate level the counter-proliferation risk and to be able to explain it a lot more to Canadians. This is a difficult issue. It's complex. Most of the things that come with it take place far away. There are issues of dual-use technologies and very complicated financing regimes and so on.

We're still working on our ability to express ourselves in aggregate on the risk of counter-proliferation.

A/Commr James Malizia: I'd like to add that, of course, criminal proliferation networks are complex in nature and always seek existing loopholes, so it would be difficult at this point to rank the threats and say which one would be the greatest from an RCMP perspective.

What I can say is that from the proliferation cases that we have seen, there have been efforts to often misdeclare the origin of goods. That's one example. It's the same thing with the end destination, trans-shipping the goods through different countries, changing the name of the consignee on export documents, changing the businesses that are named along the way, utilizing a number of trans-shipment countries to do that, and then whatever the imagination or the innovative thoughts of criminal networks can bring about. That's what we are seeing, a variety, and to actually pinpoint one particular one would be difficult.

•(1655)

The Chair: The next questioner is Mr. Seeback from the Conservative Party.

Mr. Kyle Seeback (Brampton West, CPC): Thank you, Mr. Chair.

I have two questions. I don't think they'll take a lot of time.

To start, the prohibition against making a device I think was added at the Senate when it was being studied there.

John—and if anybody from the RCMP wants to answer, that's fine—would you say that adds strength to the bill, and if so, why do you think it does?

Mr. John Davies: I think it would be better for our Justice colleagues to answer. My recollection is that the minister, or perhaps it was the senior counsel, thought it would help clarify. It wasn't overly needed but it was helpful in clarifying.

A/Commr James Malizia: I would have to agree that it would be a question better suited for our colleagues at the Department of Justice.

Mr. Kyle Seeback: Okay.

It was noted by one witness who testified before the Senate committee that Canada has been a leader in the effort to secure nuclear materials worldwide and to prevent nuclear terrorism.

John, you mentioned the funding of \$365 million from the 2012 Seoul Nuclear Security Summit. I think that was for the global partnership program. Taking that into account, do you support the swift enactment of Bill S-9 as moving with that, and if so, why?

James, if you want to answer that as well, I'm happy to hear that.

Mr. John Davies: The bill doesn't directly talk about capacity building abroad, but I think that issue is embedded in a lot of the

other aspects of the various regimes around controlling proliferation of weapons of mass destruction. In that sense, absolutely that's an important initiative originally born out of earlier G-7 and G-8 meetings.

The important thing that's happened with the global partnership program is how it's starting to look around the world more strategically. Originally this was about helping countries of the former Soviet Union contain their nuclear supplies and stockpile. Now that the program has been adapted to work anywhere, it makes it a lot more flexible and it helps us build capacity consistent with the regimes out there. A lot of those regimes are looking to Canada and to other countries with the capacity to take that knowledge and help others build and broaden their capacity.

A/Commr James Malizia: Maybe I can just touch on the international aspect of cooperation. By ratifying the convention it allows us to take advantage of the mutual legal assistance treaties that all signatory countries will be part of. That is a key advantage for law enforcement as we proceed and look at different tools or mechanisms to be able to cooperate internationally.

As you know, most investigations today, aside from being very complex, are global in nature.

Mr. Kyle Seeback: Thank you, Mr. Chair.

The Chair: Thank you, Mr. Seeback.

Our next questioner is Madame Boivin from the New Democratic Party.

[*Translation*]

Ms. Françoise Boivin: Thank you, Mr. Chair.

Thank you to our witnesses for being here.

My first question is for Mr. Davies.

In your brief and your comments, you spoke about your role and that of Public Safety Canada, which is to work with more than a dozen departments and agencies to identify proliferation-related threats.

I realize that it's not always easy to give details. But for the benefit of those watching and for us, here around the table, would you mind giving us a brief explanation of what you mean by identifying proliferation-related threats? I know what the words mean, but what does the statement actually mean for Canada specifically or for the world? Why do we need these kinds of treaties or agreements with our allies?

[*English*]

Mr. John Davies: Thank you for your question.

There's a lot of different layers again, I think, to how you would look at threats in this area. The first is as I mentioned before, the aspiration of terrorist groups to obtain these weapons and then to use them. That's one angle, a lot of known, publicly available intelligence and facts of certain groups that want to obtain them and use them against Canada and Canadian interests.

The second one is the issue of the spread of weapons of mass destruction. Obviously, a number of known countries aspire to obtain nuclear capability. The most obvious now is Iran. There's North Korea...political instability perhaps in Pakistan. The more countries that try to obtain nuclear capability to begin with, the greater the potential for proliferation and for access of terrorist groups. That's another angle.

On the third angle in terms of the threat and looking at the threat, I would talk about perhaps the Canadian context, Canada being an obvious advanced economy. A lot of technology, a lot of advanced knowledge and expertise of components or dual use equipment could find its way away from civilian uses. We're an attractive target for that point of view, but also it's our proximity to the U.S. and trading relations and so on.

The fourth way to look at the threat of counter-proliferation is just on the process of globalization, in general. This is not just beyond those that have weapons of mass destruction or even energy, like nuclear power and so on, that could be converted over to nuclear for nefarious reasons. There's just the issue of greater trade flows, greater movement of people. Finance is globalized, and knowledge. I think knowledge is the bigger thing that's come up. When you think of knowledge, it's the ability, the expertise to actually put one of these things together.

I would look at it probably from those four angles. That might help people understand the threat.

• (1700)

Ms. Françoise Boivin: It does. It does become helpful. Thank you.

That's why I was a bit surprised, and maybe it's because we don't understand it. My colleague Mr. Marston was talking to you about those big headlines that usually can scare people, when they read about the transport of something that sounds very nuclear, that if it gets in the wrong hands and so on....

I understand it's more

[Translation]

the Canadian Nuclear Safety Commission and the authority for the transportation of dangerous goods,

[English]

but you all work together, I assume.

[Translation]

It's not a vacuum.

[English]

Technically, shouldn't you be informed that there will be some type of transport that could possibly be viewed by some terrorist elements that are in Canada or elsewhere? Maybe it's because we don't exactly understand the material that they will be transporting. But for me, anybody with bad intentions could use those and transform them and maybe do something. So you should be aware of that.

The Chair: Thirty seconds.

Mr. John Davies: Again, we're from the policy group at Public Safety. We have a lot of links to the operation side and national security.

Ms. Françoise Boivin: You're not saying that it's your branch policy. You're not telling us that

[Translation]

only the Canadian Nuclear Safety Commission deals with those types of matters. I would think that branches in your department deal with them as well.

[English]

Mr. John Davies: I'm not sure if Public Safety would be normally informed on these kinds of things. I imagine a number of the portfolio agencies.... Certainly the CBSA would be as materials cross borders. Perhaps there are components at the RCMP. Obviously, Transport Canada would play a big role in facilitating that. I don't want to leave the impression with anyone that there's not a full regime in place, there's not a lot of support to get those materials to where they're supposed to go.

The Chair: Thank you very much.

Our next questioner from the Conservative Party is Monsieur Goguen.

Mr. Robert Goguen: Thank you, Mr. Chair.

My question deals with the enforcement aspect, so I'll direct it to Assistant Commissioner Malizia.

Assistant Commissioner, our Conservative government has recently announced that counterterrorism strategy asserts as one of the six fundamental principles that terrorism is a crime that will be prosecuted. The deny element of this strategy aims to deny terrorists the means and the opportunity to carry out their activities. I know you know that.

A key objective of this strategy is to disrupt the acquisition of weapons of mass destruction. Do you think that Bill S-9 would strengthen law enforcement's ability to meet this important objective by specifying that actions associated with possessing, using, transporting, exporting, importing, altering, or disposing of nuclear or radioactive materials will be deemed a serious crime with severe penalties?

• (1705)

A/Commr James Malizia: The provisions that are being proposed would certainly assist us in the disrupt and the detect portions of the strategy.

When we look at the additional tools that I described earlier as they relate to wiretap provisions—DNA warrants, the MLAT requests, being in a position to extend notice of interception of communications—those are all key tools that allow us to do our job better.

Of course, as you know, these types of investigations, whether we're talking about nuclear-based investigations or counter-proliferation investigations, are very complex. They require a whole-of-government approach, where many agencies work together. I'm sure you've heard from most of them here. It's certainly a type of investigation that on a regular basis we're able to exchange on with our colleagues from other agencies, assess the threat, and then take appropriate actions accordingly. It could be a criminal charge. It could be a disruption activity by a partner agency or by the RCMP. Depending upon the investigation, the situation, and the best way forward, that's always taken into consideration in a whole-of-government approach.

The Chair: Thank you.

Our next questioner is Mr. Mai from the New Democratic Party.

Mr. Hoang Mai: Thank you, Mr. Chair.

[*Translation*]

I want to thank the witnesses for joining us today. Your input goes a long way towards helping us understand what happens on the ground when we review a bill.

Bill S-9 introduces new offences related to nuclear terrorism under the Criminal Code.

My question is for Mr. Malizia.

Do you think these new Criminal Code offences will mean more investigations and a heavier workload for the RCMP?

A/Commr James Malizia: I don't think the workload will increase, but it will give us more tools to do our job. It will give us greater flexibility. But I don't foresee an increase in workload per se.

Mr. Hoang Mai: On the more practical side, are there already specific charges related to these nuclear activities? You mentioned the Yadegari case. Are there others?

A/Commr James Malizia: On average, we have about 20 of those investigations a year. Of course, we are always working with our partners. We get referrals from partners, both domestically and internationally. Information sharing is key. It allows us to lead our investigations properly, to work with our partners, as I mentioned earlier, and to contribute to a broader government approach.

Mr. Hoang Mai: You said there were 20 or so investigations. Will the passage of Bill S-9 and a larger arsenal of tools lead to more successful prosecutions? Will it change things?

A/Commr James Malizia: It's hard to say whether it will have an impact on how successfully a case is prosecuted. That being said, it gives us a bigger tool box. The 20 investigations I mentioned involved proliferation, in general, and were not necessarily specific to nuclear proliferation.

• (1710)

Mr. Hoang Mai: You talked about tools, and this is an area where public safety is really at the forefront. We have some privacy concerns on our side. We want people's privacy protected.

How will you strike a balance in that respect? In this case, specifically, how can we reassure people that their privacy will be protected?

A/Commr James Malizia: That's a good question, and I thank you for asking it.

I want to make something clear: the same standards we adhere to in any criminal investigation we conduct will remain in place for these types of investigations, particularly those related to terrorism. Following the O'Connor commission, we centralized our investigation monitoring.

So in terms of all activities we undertake as part of these investigations, we make sure that we follow all the relevant legislation and policies; we also make sure we monitor our investigations closely. The same procedures apply to these offences as well.

[*English*]

Mr. Hoang Mai: Mr. Davies, do you have anything to add on that front?

Mr. John Davies: Yes, just that probably what you're aware of is that any time a policy or legislation is brought forward, or civil servants are working on them, you work all the way along with legal services, which provide advice relative to privacy, consistency with the charter, and so on. Also, there's almost always a discussion with the Privacy Commissioner, their internal privacy experts, and most departments.

A good example of this would be the Beyond the Border initiative. If you look at it, you'll see that one of the commitments we negotiated with the U.S. is the commitment to privacy, the privacy principles. That was also discussed with the Privacy Commissioner before it went out, and so on. All along the spectrum or continuum of building new ideas to cabinet approved and Parliament approved policy and program legislation, there are waypoints to consult on the privacy issue.

The Chair: Thank you very much.

Our next questioner is Mr. Albas from the Conservative Party.

Mr. Dan Albas: Thank you, Mr. Chair. I certainly appreciate the opportunity to discuss this important legislation with our panel.

To the panel, I want to thank you for your expertise and experience. It's most welcome.

As the Minister of Justice said in his testimony in the last meeting, terrorism, nuclear or otherwise, is a "borderless" issue, and we must work cooperatively with our international partners.

Assistant Commissioner Malizia, in points that you raised in your briefing, you said that one of the keys to denying terrorists the capability to engage in nuclear terrorism is the effective cooperation among the full range of security and intelligence partners, both domestic and international.

For an example of this, I note that the briefing note points to a recent case to illustrate the importance of cooperation. It's the arrest of Mahmoud Yadegari, an Iranian Canadian citizen, in April 2009.

In the Yadegari case, a U.S. company tipped off U.S. export officials about Mr. Yadegari's attempts to purchase and hide the specifications of pressure transducers, which can be used in gas centrifuge plants to measure the pressure of uranium hexafluoride. Such dual-use technology has been linked to Iran's efforts to produce weapons-grade nuclear material. U.S. Immigration and Customs Enforcement alerted both the CBSA and the RCMP about Mr. Yadegari's efforts. Thanks to the cooperative efforts, Mr. Yadegari was prosecuted and received jail time.

You touched on some of the measures that we are taking internationally to build further cooperation against these kinds of cases. In your opinion, has the RCMP developed close partnerships with the Canadian Nuclear Safety Commission and Atomic Energy of Canada Limited, as well as the owners and operators of Canada's nuclear plants?

A/Commr James Malizia: Yes, in fact, our critical intelligence infrastructure team is one of the areas. There are others as well, through our federal policing program, but we've developed good relationships with these agencies through our outreach program.

As you mentioned, the key, of course, is a good exchange of information, not only among law enforcement intelligence agencies but also among corporate entities and others. We've continued to work with them. We also provide them access to a suspicious incident reporting system, which is an online system whereby they can report suspicious incidents. All these reports come in, are collated centrally at the RCMP, and then analyzed to see if there are trends that we should be concerned with.

As well, we also take part in proliferation workshops, not only with the industry but with other agencies, such as, for instance, the U.S. ICE, U.S. Immigration and Customs Enforcement. We'll actually do some joint training with them.

There are several different initiatives that allow us to extend our reach, if I can say it that way, and allow us to share that information and ensure that all the pieces are connected.

• (1715)

Mr. Dan Albas: How much time do I have, Mr. Chair?

The Chair: You have one minute and 15 seconds.

Mr. Dan Albas: Thank you.

Keeping on with international, because this again is a borderless issue, under clause 2 there is reference to the Attorney General of Canada through this legislation to have the ability to charge for extraterritorial cases, obviously working with the federal policing operations of the RCMP. It's my assumption that you would be working with the Attorney General of Canada if such a case were to happen. Could you give us a couple of examples of where this might be applicable, and if you think that this is an important aspect of this legislation?

A/Commr James Malizia: The extraterritorial clause is advantageous for us in the sense that it allows us to charge a Canadian, of course, involved in such acts. It also allows us to charge a non-Canadian citizen who might have departed their home country and is residing within Canada, and there are some conditions around that. But certainly the extraterritorial reach, which is in line with the other terrorism offences in the code, allows us that greater flexibility to

extend again with our international partners our ability to investigate those individuals and bring them before the courts.

The Chair: Our next questioner is Mr. Jacob from the New Democratic Party.

[*Translation*]

Mr. Pierre Jacob: Thank you, Mr. Chair.

Thank you to our witnesses for being here.

I am going to ask my question again, and it is for Mr. Davies, in particular.

The Canada Border Services Agency, or CBSA, is Canada's primary counter-proliferation enforcement arm. The agency screens nearly all shipping containers coming into Canada for radiation. An agency official told the Standing Senate Committee on National Security and Defence that it had to risk manage the screening of items leaving the country.

What percentage of containers are screened as they leave Canada? What about cargo leaving Canada via air, rail and land transportation?

[*English*]

Mr. John Davies: Thank you for the question, but I cannot give you those percentages. I'm not sure if the committee is hearing from members of the Canada Border Services Agency, but they may be able to give you precise numbers. If not, we could undertake to look into that for you.

Essentially it's a risk-based system. They look for a number of systems and frameworks to decide where to prioritize their resources and how to control exports.

The Chair: Are you able to do the research?

Mr. John Davies: We could undertake it, if you weren't already meeting with them, to talk to them about whether there are some numbers—

The Chair: If you could send that to the clerk, he would distribute that to everyone.

Mr. John Davies: I'm not sure if they're available, but we will undertake to—

The Chair: Thank you very much.

[*Translation*]

Mr. Pierre Jacob: Thank you.

CBSA recently experienced some cutbacks. What impact have they had on national security and defence?

• (1720)

[*English*]

Mr. John Davies: Though I'm part of the portfolio that includes the CBSA, I don't directly work with the CBSA, nor do I know exactly how they managed any kind of budget cuts they faced during the latest financial cuts. Why don't we undertake to talk to them about that, and we can report to the committee on how they managed their resources?

[*Translation*]

Mr. Pierre Jacob: Very well.

This next question is for everyone.

Cooperation between intelligence and law enforcement agencies is essential in tackling nuclear smuggling and stopping plots involving nuclear material or devices.

What are the current and anticipated challenges in the investigation and prosecution of cases involving nuclear terrorism? Is there a good level of cooperation? Money is a key element in the war, as we know, but intelligence is also of the utmost importance.

A/Commr James Malizia: Thank you.

Intelligence sharing is indeed vital. Sound intelligence shared in real time is not only important but indispensable if we are to properly investigate any type of terrorist threat. All investigations, not just those involving nuclear materials, depend on information being shared on a daily basis, on a regular basis. It is a matter of having well-established lines of communication with both our domestic and our international partners.

As for the wide range of investigations we conduct, I would say it's going quite well. The level of cooperation is excellent. The systems in place ensure that intelligence is shared effectively and allow for thoughtful decision making on which intelligence is shared, particularly at the international level, with certain countries. It is important to realize that the approach is very targeted and well defined, as a result of the changes introduced in the wake of the O'Connor commission.

I would say the relationships are not just well established, but also quite solid.

Mr. Pierre Jacob: I'm already out of time.

Thank you.

[*English*]

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

Thank you to our panel for coming this afternoon.

I want to thank the Department of Public Safety and Emergency Preparedness for coming.

I want to thank the RCMP for being here. My grandfather was an RCMP officer and, in fact, in the Musical Ride. We're very proud of the work he did, and I want to thank you for your service.

Just as a reminder to committee members, it would be preferable that amendments come in advance. We will be doing this bill clause by clause in the second hour of our Wednesday meeting, so amendments to Bill S-9 would be greatly appreciated 24 hours in advance.

Also, to all parties here, if you have witnesses you're interested in seeing for the two studies we'll do after we get back from our break week, on Bill C-273 and Bill C-394, the two private member's bills, if you would provide those to the clerk in the near future, that would be greatly appreciated.

With that, we'll adjourn and call it a day.

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