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Chair

Mr. Pat Martin

Standing Committee on Access to Information, Privacy and Ethics

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• (1100)

[English]

The Chair (Mr. Pat Martin (Winnipeg Centre, NDP)): Good morning, ladies and gentlemen. We will call the meeting to order.

We will ask those with TV cameras and microphones to leave the room, and the other journalists are welcome to stay.

Welcome, ladies and gentlemen, to the House of Commons Standing Committee on Access to Information, Privacy and Ethics. We're convened today pursuant to Standing Order 111.1(1) to examine the certificate of nomination of Daniel Therrien to the position of Privacy Commissioner, referred to the committee Wednesday, May 28, 2014.

We welcome Mr. Therrien.

Congratulations, Sir. We would ask you to make briefing opening remarks. We have very limited time today to spend with you, so we would ask you to keep your remarks to five minutes or so, and then we'll be opening the floor to questions from committee members.

Welcome, Sir. You have the floor.

Mr. Daniel Therrien (Nominee for the position of Privacy Commissioner of Canada, As an Individual): Thank you very much, Mr. Chair.

[Translation]

Thank you, ladies and gentlemen members of the committee. I will try to be as brief as possible.

I am very honoured to be here today as the person nominated by the Prime Minister for the position of Privacy Commissioner.

My name has been put before you after a lengthy advertised process conducted by the government. However, I want to assure this committee that I fully understand that the position is that of an agent of Parliament and, for that reason, I am here to present my qualifications and aspirations, answer any questions you may have and hopefully demonstrate that I am worthy of your trust. If my appointment is approved, my allegiance will be to Parliament, and I will perform my responsibilities in a manner that is completely impartial and objective. I will be pleased to answer any questions you may have in that regard.

Privacy is a fundamental human right, and my career has always been about respect for human rights in the application of various government programs affecting liberty and security.

I started my career in corrections, then moved to immigration and, more recently, to public safety and national security. My resume refers to a few achievements, and I assume you may ask me later about one—the privacy principals adopted under the Beyond the Border Accord with the United States. As legal counsel to Citizenship and Immigration Canada some years ago, I was also involved in enhancing the refugee protection regime under the Immigration and Refugee Protection Act.

I see respect for human rights as the permanent theme in my career that should allow me to make a successful transition as ombudsman, defender and promoter of privacy rights. I would also bring to the position considerable knowledge of how government works, particularly public safety agencies, which I see as an important asset that should make me effective in my oversight role. My experience of 20 years as a government manager and senior executive would also help me exercise the leadership required as head of the Privacy Commissioner's Office.

[English]

Some say that privacy is dead, that it is an obsolete notion. I wholeheartedly reject this, and it would be a very sad day if it were true. But privacy is certainly at risk. Governments collect, analyze, use, and share much greater amounts of personal information than ever before. So do private companies. Canadians are legitimately concerned. At the same time, Canadians want government to protect their personal safety and they want easy access to the services companies provide through the Internet and other technologies. At the centre of the privacy debate is the notion of control. How much control over their information, and therefore their lives, are Canadians willing to give up in order to get the benefits they expect from government and the private sector?

Conversely, how much information should government or private companies collect without the control or consent of the individual? In order to improve privacy, one needs I think to play on the factors enhancing the control of the individual: more transparency by government and companies collecting information; more justification for collecting information without consent; more information by the Office of the Privacy Commissioner on the privacy risks faced by individuals and more security safeguards so that personal information is safe from those with malicious intent.

The goal of my actions, therefore my overall priority, would be to improve these control factors for Canadians. This does not mean that I would disregard reasonable needs of government and companies, but I would ask them tough questions to determine whether what they claim is a reasonable need is in fact just an easier or cheaper way of proceeding and whether alternatives that offer better privacy protection have been considered.

• (1105)

[Translation]

I want to acknowledge the superb work accomplished by Jennifer Stoddart and her office during her term as privacy commissioner. I intend to rely on that team to make the most effective use of the authorities conferred on the privacy commissioner, as Ms. Stoddart did so well.

On a more personal level, an immediate priority would be to lay the ground for good working relationships with civil society and stakeholders from the private sector. I realize that I am not well known outside government, and I intend to meet with interested parties by the early fall. I would of course also meet with fellow privacy commissioners from provincial jurisdictions.

In closing, I would like to touch on an issue that will be on your mind. Given my background as counsel to public safety agencies, how will I assess, from a privacy perspective, proposals to augment the investigative powers of law enforcement or national security officers?

I will of course examine whether the new power is reasonable under constitutional law, but more broadly, I will consider the question from the perspective of most citizens, who want both privacy and public safety, and not one at the expense of the other. From that perspective, I think the following questions arise. First, has the government justified the need for this new power and, more importantly, its scope? Second, has the government been transparent in the use it will make of that power, or at least as transparent as it can be without disclosing its methods to criminals? Finally, will the government be accountable for its use of that power?

I am afraid that, too often today, Canadians learn of investigative methods for which these demonstrations have not been made. If these questions are answered appropriately, I will support the new powers sought, as I think most Canadians would. If appropriate answers are not provided, I will request further clarifications.

Thank you for your attention.

I will now be happy to answer questions from members of the committee.

[English]

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

We're going to proceed directly to questions from committee members, but I will caution that these are seven-minute rounds and that the time includes the questions and the answers. I'm going to be very strict with that rule, because our time is extremely limited and I want to give an opportunity for as many questions as possible.

The answer should be roughly the same length as the question, Mr. Therrien. That is what we expect.

First, for the official opposition we have the ethics critic, Mr. Charlie Angus.

You have seven minutes, Charlie.

Mr. Charlie Angus (Timmins—James Bay, NDP): Thank you, Mr. Chair.

Thank you, Mr. Therrien, for coming and presenting yourself today.

I would echo my colleague, because we only have seven minutes and there are so many issues regarding privacy that I'd like to keep our conversations short and to the point.

The interim Privacy Commissioner who has just left, Chantal Bernier, raised concerns about the warrantless access provisions in Bill C-13, about which she said there was "a lack of accountability mechanisms".

Would you share her belief that Bill C-13 should be split in two so that the warrantless access provisions are given further scrutiny, aside from the issues of the cyberbullying provisions?

Mr. Daniel Therrien: Thank you for your question, Mr. Angus.

Since I'm still a public servant and this bill is presented by the Minister of Justice, I feel I'm in a bit of a sensitive position here. I think I will decline to answer questions about the bill, but I think you would have heard in the last portion of my opening remarks the kinds of questions I would ask if a bill were presented to Parliament, if and when I become Privacy Commissioner, and these questions would, I think, be relevant to the examination of the bill in question.

• (1110)

Mr. Charlie Angus: Okay, so you have declined to answer—

The Chair: I'm going to interrupt you there, Mr. Angus.

Mr. Therrien, by the rules of the House of Commons, in the standing committees you don't have the right to not answer a question. You don't have the right to remain silent. I expect an answer to a question put to you.

I'm going to—

Mr. Paul Calandra (Oak Ridges—Markham, CPC): I have a point of order.

The witness is here to talk about.... We're investigating him and deciding whether we will approve his appointment. He has raised a very important point, that he is a public servant who, at this particular point, has not been recommended by the committee. He still has to follow an act—

The Chair: We're dealing with a point of order currently. I don't accept it.

Unless you have a specific point of order, I don't accept your intervention.

Mr. Paul Calandra: I feel that he has answered the question, and I don't think he's here to break the law or break the rules.

The Chair: I'm simply going to say that not answering the question is not an option. You have no right to silence here. It's different from a court of law. You have to answer questions put to you, sir.

If you're applying for this very important job, I think committee members have a right to know your view on one of the important privacy issues of the day.

Mr. Angus, you didn't lose any time.

Mr. Charlie Angus: Thank you very much.

We'll put that as not answering.

Yesterday, the information and privacy commissioners for Ontario, Alberta, and British Columbia spoke up in a letter to Parliament saying:

...Bill C-13 will entrench and possibly encourage the expansion of warrantless disclosure of private sector data to law enforcement....

Do you share their concerns?

Mr. Daniel Therrien: I will return you, again, to the end of my opening remarks. So I think these are—

Mr. Charlie Angus: Sorry, do you share their concerns, yes or no?

Mr. Daniel Therrien: I think they raise very legitimate concerns, yes.

Mr. Charlie Angus: So then I will go back to—

The Chair: We have a point of order.

Mr. Calandra, what's your point of order?

Mr. Paul Calandra: I've just been reading the Standing Orders with respect to the study of a point here, and I draw your attention to this. It says, with respect to the study of an appointee or nominee:

The committee, if it should call an appointee or nominee to appear pursuant to section (1) of this Standing Order, shall examine the qualifications and competence of the appointee or nominee to perform the duties of the post to which he or she has been appointed or nominated.

And that's it. We're not here to ask him about his interpretation of legislation that is before the House.

The Chair: Is there any further debate on the point of order before I rule on it?

Mr. Calandra, you noted when I opened this meeting that we're here pursuant to Standing Order 111.1(1). You're quoting 111.1(2). Under 111.1(1) it says, from O'Brien and Bosc on page 1,014:

...the Standing Orders do not impose specific limits on the scope of the examination when a proposed candidate appears before the committee or on the number of sitting days that may be devoted to the appearance.

I think you're quoting from the wrong standing order, sir, so you don't have a point of order.

Mr. Angus.

Mr. Charlie Angus: Thank you, Mr. Chair.

I'm not trying to put you hard on the spot here, but there have been numerous editorials raising the question of conflict of interest with your position. So for you to say you can't answer questions on the biggest single piece of legislation that's defining privacy rights in this Parliament, that you have no opinion or that you're going to defer your opinion, I find concerning.

On the issue of Bill C-13 being split into parts, do you feel you're in a conflict of offering an opinion when it has been the opinion of the privacy commissioners across the country that the bill should be separated? If you say you want to ask "tough questions" and improve control mechanisms, will you just tell us whether you think it would be better to have that part of the bill separated?

Mr. Daniel Therrien: I've answered generally, and I will now answer specifically since I understand that is what expected of me. I've raised the issues I would raise generally, so is the law necessary? Is it appropriate? Are there alternatives?

With respect to Bill C-13, I would say, of course, that everyone would agree with the creation of the crime of cyber intimidation that is in that bill. I would also agree that Canada must modernize laws on criminal investigations in the Internet age. But the justification for having personal information in that bill that is apparently given is that it is the equivalent of what is found in a telephone book, and my view is not—

● (1115)

Mr. Charlie Angus: Okay, I'm sorry, I have to interrupt you there.

Privacy Commissioner Jennifer Stoddart has specifically pointed out that IP information is not like accessing a telephone book—

Mr. Daniel Therrien: This is exactly where I was going.

Mr. Charlie Angus: She says it allows the profile of citizens' activities, interests, and even their location. So do you believe that should be obtained without a warrant?

Mr. Daniel Therrien: No, I do not. I was going to follow by saying IP addresses are much more than telephone information because they do include information of interests in websites, for instance, or location. So when I asked the general questions before, transposing this to Bill C-13, I would say there has been no demonstration yet that I have heard that such a level of personal information in an IP address is required, particularly through volunteer disclosure without warrants.

Mr. Charlie Angus: Thank you very much for that. This is helpful.

Now in regard to Bill C-13, Conservative MPs have suggested that the only threshold needed for obtaining private information on Canadian citizens from telecoms is a cop's so-called spidey sense. In terms of your expertise in law, do you believe that's an adequate threshold for warrantless information?

Mr. Daniel Therrien: I think I would go back to the issue that warrantless disclosure is a concern, particularly given the information that was made public a few weeks ago that this is occurring very frequently, so that is a cause of concern.

I think on that bill I would agree in the end that there needs to be more transparency and I would agree with the Canadian Bar Association that the bills should be divided and that there should be an independent review of privacy interests in the context of electronic investigations.

Mr. Charlie Angus: Thank you, but did you say that you do agree the bill should be divided?

Mr. Daniel Therrien: Yes, and that there should be an independent review because I think Canadians want to know more about why police and security agencies require information. They want to hear this in order to have an informed debate as to the viability and need for this type of legislation. So I would encourage all information to be provided so that this information is out and that a less pluralized debate leading to legislation occurs.

Mr. Charlie Angus: Thank you for that.

Under Bill C-13 the provision for warrantless access will now be extended to peace officers, public officers, mayors, reeves, tax officers, and small-town reeves who all can rely on their spidey sense to get warrantless information on Canadians.

Do you believe that will create major problems or do you believe that is warranted?

The Chair: That's the last question. A brief answer, please, Mr. Therrien.

Mr. Daniel Therrien: On that particular point I think I would ask for assistance from the Office if I'm appointed. We're getting into a point of detail that I would not be comfortable talking about.

The Chair: Thank you, Mr. Therrien.

Thank you, Mr. Angus.

Next for the Conservative Party, Mr. Jacques Gourde for seven minutes, please.

Jacques.

[*Translation*]

Mr. Jacques Gourde (Lotbinière—Chutes-de-la-Chaudière, CPC): Thank you very much, Mr. Chair.

Mr. Therrien, thank you for appearing before the committee.

Over the course of your public service career, you were in charge of a certain number of files. You mentioned some of them during your presentation.

Can you provide us with more details on your resume?

Mr. Daniel Therrien: Yes.

In my resume, I mention, among others, the privacy principles related to the Beyond the Border Accord with the United States. That accord involves some 30 individual agreements, most of which aim to share information with the United States under certain programs. We have known, since the Iacobucci and Major inquiries, that this kind of information sharing has to be regulated.

Before any specific agreements on information sharing are concluded with the United States, it was deemed useful to establish privacy principles that would govern that whole accord. The agreement, which I negotiated with colleagues from the Department of Public Safety and American colleagues, essentially aims to harmonize the two countries' privacy principles and, on the Canadian side, to implement the recommendations of the Major inquiry, which established certain rules in terms of information sharing.

• (1120)

Mr. Jacques Gourde: As privacy commissioner, you would oversee programs you used to work on.

The opposition members think that your knowledge of the machinery of government makes you less credible. We can't blame them, as they have never worked in the government. However, the opposition said yesterday that your experience represented a clear conflict of interest.

Can you explain to us how you will take on this new role and in what way your experience will be useful to you?

Mr. Daniel Therrien: Thank you for the question.

With the indulgence of the committee, I will first talk about principles. Afterwards, I will discuss the values.

When it comes to the principles, I would say that I am acutely aware that the position of commissioner requires total independence and complete impartiality. My legal training enables me to understand these concepts well, and I will deal with all the issues that are referred to me with a completely open mind in terms of the facts and the provisions of the law.

I would not be the first government lawyer to become an officer of Parliament or a judge. I will make an analogy with crown prosecutors who become judges and can be very demanding of their former crown colleagues when evidence is presented.

It is also important to understand that, in my capacity as a government lawyer, I am an advisor to the government with respect to the legality of its actions. My role is not to take those actions myself. If I become commissioner, I will no longer be bound by my duty of allegiance to the executive, and I will exercise my responsibilities completely independently.

I will now talk about the values. I am here this morning to offer my services. I believe in the public service. I am familiar with security agencies, and I have a passion for human rights. I certainly do not want to impose my will, and I want my actions to be useful and effective. Ultimately and soon—I hope—I think I will be able to show my impartiality through my actions.

At the end of my opening remarks, I made statements that are very similar to those made by the former commissioner, and that is not a coincidence. I made those statements because I am a lawyer. I am familiar with the applicable principles and I am here to defend them, as I did at the Department of Justice and as others are doing currently at that department.

Thank you.

Mr. Jacques Gourde: Mr. Therrien, the leader of the opposition claims that, if you are appointed commissioner, you will be required by law to withhold certain information, since you were the attorney general of the government of the day.

Could you remind the committee of the privacy commissioner's responsibilities and clarify how you intend to fulfill them?

Mr. Daniel Therrien: I just talked about impartiality. I did not deal with Bill C-13 as a Department of Justice lawyer. So there would be no conflict of interest in that regard.

I don't see any other conflicts of interest that would prevent me from taking action. If a conflict of interest were to arise, I would withdraw from the file. I note that the law provides for the appointment of an assistant or ad hoc commissioner. That could be an adequate mechanism.

After seriously considering the issue—and examining my conscience—I currently do not see any conflicts of interest that would force me to withdraw from a file.

[*English*]

The Chair: Thank you.

Thank you, Mr. Gourde.

Next for the Liberal Party we are pleased to welcome Mr. Irwin Cotler.

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

I want to join in expressing our appreciation for your appearance here today, Mr. Therrien. May I, at the same time, thank the outgoing interim commissioner, Chantal Bernier, for her steadfast work and also the former Privacy Commissioner, Jennifer Stoddart, with whom I've had the pleasure as well of working on some of these matters.

Mr. Therrien, I had the benefit of your counsel about nine years ago in an appearance before the then Sub-Committee on Public Safety and National Security of the Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. That dealt, among other things, with the relationship between security and rights. One of the things that arose then, and which I want to address now, is the question of a parliamentary oversight committee for national security to watch the watchers. You served in the Department of Justice as chair of national security and intelligence.

Since there have been calls for many years in both the House and the Senate to create a parliamentary oversight committee to watch the watchers, as it has been put, and given the vast amount of data that is now collected by law enforcement agencies and government agencies, do you agree with the merit of this idea? If so, why would you support it, and if not, why would you not support it?

• (1125)

Mr. Daniel Therrien: Thank you for your question, Mr. Cotler.

As I have tried to say before, I'm in favour of all measures that would increase the control of the individual over their information. That includes more transparency and more accountability by police and intelligence agencies that collect and use and share information in relation to individuals. Certainly one means of being accountable would be for a committee of parliamentarians to be struck to look at these issues. Other countries have certainly adopted similar committees, and I think it is a healthy thing in a democracy for these issues to be reviewed by parliamentarians.

Hon. Irwin Cotler: You mentioned, sir, in your testimony today that you see respect for human rights as the permanent theme in your career and that this respect for human rights would allow you to make a successful transition as ombudsman, defender, and promoter of privacy rights.

In the matter of the relationship between security and human rights, can you expand on that particular relationship and provide examples in which you have been engaged in seeking to maintain that balance with a kind of underpinning respect for human rights always.

Mr. Daniel Therrien: I would refer in part to the privacy principles that I have described. The principles in question require that when information is shared, in this case with the United States, or with another country, that the information be accurate, be current, be up to date, and where necessary that it be the subject of conditions, if there are concerns with respect to mistreatment after the information is shared. All of these important considerations, outlined by Mr. Justice O'Connor at the end of his inquiry, we are trying to incorporate in these principles with the United States.

Hon. Irwin Cotler: Let me, if I may, regarding the principles in the United States, say that 115 years ago a distinguished American lawyer who went on to become a member of the U.S. Supreme Court, Justice Louis Brandeis, spoke in a seminal article of the right to privacy as “the most comprehensive of rights and the right most valued by civilized men”.

How would you relate to that foundational privacy principle?

Mr. Daniel Therrien: I would agree. I think it is still absolutely valid, full stop.

At the same time, as I said in my remarks, Canadians want to be safe, and I think government is entitled to present proposals to promote security, but not in a way that impedes human rights, including that to privacy. So the two notions that I said do not exist one at the expense of the other can both exist and should exist, and privacy absolutely should be fully respected.

Hon. Irwin Cotler: I think I may have time for one more question. The Privacy Act was proclaimed into law more than 30 years ago and has not received any significant amendment since that time. A committee studied the issue in 2009 and made recommendations to amend the act.

On October 9, 2013, as you recall, Canada's access and privacy commissioners passed a resolution urging the federal, provincial, and territorial governments to update their respective access and privacy laws.

What is your position on privacy act reform? Would you see it as a priority going forward?

• (1130)

Mr. Daniel Therrien: There is no doubt that, because of the age of the legislation and the numerous technological and sociological changes since then, this legislation warrants review. A number of recommendations have been made to revise the legislation.

I think I'll stop there.

Hon. Irwin Cotler: Just on that point, in May 2013 the former Privacy Commissioner Jennifer Stoddart set out her office's position on reform in a position paper entitled, "The Case For Reforming the Personal Information Protection and Electronic Documents Act".

She outlined four recommendations for reform, wherein she called for the following: one, stronger enforcement powers; two, mandatory notifications of breaches of personal information; three, increased transparency on the use of exceptions under PIPEDA allowing law enforcement agencies and government institutions to obtain personal information without consent or judicial warrant; and finally four, the introduction of enforceable agreements to help organizations improve their privacy practices following an investigation or audit.

Do you share these recommendations for reform?

The Chair: Mr. Cotler, I think we're going to have to leave that as a comment rather than a question.

However, I'll allow you to answer, Mr. Therrien, if you have a very brief response. Mr. Cotler is well over his time.

Mr. Daniel Therrien: I do share these views.

The Chair: Very good. Thank you.

Next, for the Conservative Party, we have our vice-chair of the committee, Pat Davidson.

For seven minutes, please, Ms. Davidson.

Mrs. Patricia Davidson (Sarnia—Lambton, CPC): Thanks very much, Mr. Chair.

Welcome, Mr. Therrien. It's a pleasure to have you here before our committee today.

As a long-serving member of this committee, I also want to pass along my thanks and appreciation to our past members, Jennifer Stoddart and Chantal Bernier. They certainly represented us well, and it was a pleasure to work with them.

I congratulate you on your nomination and look forward to hearing more questions answered.

During your opening remarks, you highlighted a very important balance—at least, I felt that it was a very important balance—when you said, "Governments collect, analyze, use, and share much greater amounts of personal information than ever before." You went on to say, "So do private companies."

Canadians are concerned about what's happening with their privacy, but they do want government to protect their personal safety. I think that a lot of times ordinary Canadians who are not involved with the government side of things look at government and think, "You are the ones who should be protecting me." They also want easy access to all these services that our companies are providing. We have the Internet and all the other technologies that we try to deal with today. It's a very fine balancing act, I believe.

How do you see the relationship between government and private companies developing so that we can meet the demands of Canadian consumers while still protecting their privacy?

Mr. Daniel Therrien: I think my role as Privacy Commissioner, if my appointment is confirmed, would be to be a champion for privacy rights. I have said in my remarks as well that I would work—and that would be my priority—to increase, to improve, the control individuals have over their information, for instance, in relation to private companies, by ensuring that the consent individuals give to the collection and use of information is truly informed. That is a very important concept in privacy law, and that is one I would try to promote to the extent possible.

Mrs. Patricia Davidson: On that very point, that's one of the things that I think we have heard a lot about at this committee: the consent procedure and how it's not very easy to understand in most cases. Do you see that being something that needs to be revamped or revised?

Mr. Daniel Therrien: I would think so. I note that there is a bill in the Senate to expand on the information that individuals have when they consent to collection, use, and so on, and I note, like everyone else, that the consent we give to companies when we use technologies is very difficult to understand. So all measures to assist individuals in having more control over their data and consent in an informed way to its use, I would strongly promote.

• (1135)

Mrs. Patricia Davidson: During your opening remarks, you also mentioned your experience as legal counsel to Citizenship and Immigration Canada. Was there any specific reason why you highlighted this role? What balance does it demonstrate in your work experience?

Mr. Daniel Therrien: I have mentioned that because it's another indication of my experience with human rights, although not privacy particularly. In Citizenship and Immigration, the protection of the person in a case of persecution, for instance, or other mistreatment, is important.

When I refer in my curriculum to enhancing refugee protection, I have regard to legislation 12 years or so ago, where the grounds for which protection is granted to refugees were expanded from those of the refugee convention to other risks of mistreatment. This was an important development, I think, in immigration and refugee law, that I'm proud to have contributed to and I offer as an example of work towards human rights that I've done in my career.

Mrs. Patricia Davidson: You also, in your opening remarks, clarified that as a commissioner, you would not “disregard reasonable needs of government and companies.”

How would you qualify a reasonable need, on both sides?

Mr. Daniel Therrien: That is, of course, a notion that has to be interpreted based on each situation. In the case of government, if we go back to the law enforcement context with which I'm most familiar, police and security agencies already have certain authorities. If they were to ask for additional authorities, I would ask whether those were necessary, whether there were sufficient existing authorities to achieve the ends they needed in order to meet the protection of the public, and, if there were a need for new authorities, whether it was well crafted, whether it was of proper scope, and whether there were alternatives to the authorities being granted. In that sense, a legitimate need, in the case of government, would be to protect the population, but we would need to go beyond the label and go into what was truly necessary to achieve that end. That would be, I think, a big part of my role: to ensure that claims for additional powers to assist the population—and I'm absolutely in favour of measures to protect the population—were well crafted and that they did not go further than what was necessary to achieve the end.

The Chair: You're at just about exactly seven minutes.

Thank you.

Mrs. Patricia Davidson: Thank you, Mr. Therrien.

The Chair: Next we'll have the NDP.

That concludes our seven-minute rounds. We're going to five-minute rounds so I recommend people tighten it up that much more. I understand the NDP will be sharing their time between Mr. Ravignat and Mr. Rankin. Is that correct?

Mr. Mathieu Ravignat (Pontiac, NDP): That is correct.

Mr. Rankin will start.

The Chair: Mr. Rankin is first, then.

Mr. Murray Rankin (Victoria, NDP): Thank you, Chair.

Bonjour, Monsieur Therrien.

The Barreau du Québec has a code of ethics, a *code de déontologie*, which states that a lawyer cannot reveal confidential documents or information he or she learns from a client. There are also stringent restrictions on disclosure in the government classification system and the clearance system that you would have to observe in your present role.

Given these restraints, do you believe you would be able to do your job as a neutral watchdog when you would learn secrets on Public Safety, CSIS, or Immigration? Have you sought specific legal or related advice on these constraints?

•(1140)

Mr. Daniel Therrien: The constraints on the disclosure of information have to do with details that are quite specific. In order to achieve my role as commissioner, if I'm appointed, I think I would bring a knowledge of the general issues, the legislation, and the policies of police and security agencies that I've acquired, which would actually be useful for me to have, and I would not need to rely on information of a classified nature in order to perform my role. The knowledge of the policies and legislation and practices of agencies would be sufficient, in my view.

The Chair: Mr. Ravignat.

[Translation]

Mr. Mathieu Ravignat: Thank you, Mr. Chair.

Mr. Therrien, do you think the privacy commissioner should appear before a committee with regard to Bill C-13?

Mr. Daniel Therrien: Did you use the feminine or masculine pronoun?

Mr. Mathieu Ravignat: I used the feminine pronoun.

Mr. Daniel Therrien: You are asking me whether the commissioner should appear regarding Bill C-13 now?

Mr. Mathieu Ravignat: Yes. Should she appear as a witness in the ongoing study of Bill C-13?

Mr. Daniel Therrien: As far as I understand, the acting commissioner is still in office, right?

I think Bill C-13 is clearly a very important piece of legislation when it comes to privacy issues.

Mr. Mathieu Ravignat: So your answer is yes. You feel that the privacy commissioner should appear.

Mr. Daniel Therrien: I have given you my views on several aspects of Bill C-13.

Mr. Mathieu Ravignat: So, if you were in office, you would like to appear during the study of Bill C-13.

Mr. Daniel Therrien: Yes, along with my officials.

Mr. Mathieu Ravignat: The privacy commissioners of three provinces wrote to the Chair of the Standing Committee on Justice and Human Rights, Mr. Wallace, to ask him to take a break in the study of Bill C-13.

If that was done—and depending of how long that break would be—you could appear yourself.

Do you agree with your provincial colleagues to put the study on hold?

Mr. Daniel Therrien: I would say that I do. That's in line with what I said a bit earlier, to the effect that the bill should be divided and that a comprehensive study should be carried out on the privacy issues covered in the bill.

Mr. Mathieu Ravignat: Thank you very much. You answered my question.

You were the Assistant Deputy Attorney General, Public Safety, Defence and Immigration Portfolio. Those three departments were trying to obtain personal data and information on Canadians.

In your capacity as Assistant Deputy Attorney General, were you asked to provide your opinion and advice regarding Bill C-30 introduced by Minister Toews?

Mr. Daniel Therrien: No. That advice was provided by a legal service that comes under my jurisdiction, but not directly by me.

Mr. Mathieu Ravignat: Do you feel that Bill C-30 was balanced?

Mr. Daniel Therrien: Bill C-30 had some flaws and, just as Bill C-13, needed to be examined more thoroughly, in my opinion.

Mr. Mathieu Ravignat: Okay.

You are talking about Canadians' rights, but also about human rights in general. I have no reason to doubt your sincerity. However, in the performance of your duties, you had to deal with those rights, more specifically when it comes to the North American security parameter.

I am wondering whether, after having been part of the process, you now have any concerns in terms of Canadians' human rights and privacy, given the relationship between the United States and Canada in the context of the security parameter.

Mr. Daniel Therrien: Information sharing with any countries always implies some risks.

Mr. Mathieu Ravignat: Do you have any regrets over that agreement?

Mr. Daniel Therrien: Absolutely not.

Mr. Mathieu Ravignat: So you basically feel that Canadians' privacy is not jeopardized by that security perimeter.

Mr. Daniel Therrien: I think that adequate measures have been taken, especially under privacy principles, to protect Canadians' privacy.

Mr. Mathieu Ravignat: Thank you, Mr. Therrien. I think that...
[English]

The Chair: I have to interrupt you there, Mr. Ravignat. Thank you. That concludes your time.

Next we're going to the Conservatives and Mr. Paul Calandra.

Five minutes, please.

• (1145)

Mr. Paul Calandra: Thank you, Mr. Chair.

Sorry, Mr. Therrien, but I just want to drill back into your career and your qualifications a bit. You were called to the bar when?

Mr. Daniel Therrien: In 1981.

Mr. Paul Calandra: You're a member of what bar?

Mr. Daniel Therrien: The Quebec bar.

Mr. Paul Calandra: Is that when you started your career in the public service? In 1981?

Mr. Daniel Therrien: Yes, I did. I've spent almost all of my career in the Department of Justice, short of a year or two at Citizenship and Immigration as director general of refugees.

Mr. Paul Calandra: Back in 1981, where exactly were you in the Department of Justice? What were you doing? Do you remember?

Mr. Daniel Therrien: I spent roughly 10 years in my career in the correctional law area, advising the then Solicitor General's department, the penitentiary service, and the national parole board.

Then I worked for more than 10 years in the immigration area and, for the last nine years, in public safety and national security.

Mr. Paul Calandra: Through that time, obviously, it goes without saying that you've been a public service adviser to both Liberal and Conservative solicitors general and ministers of justice. Have you ever had a problem reverting when it went from a Liberal government to a Conservative government? Have partisan politics caused you difficulty in how you approach your job?

Mr. Daniel Therrien: No. I'm a public servant. I believe, as I said, in the public service; I have a passion for it. I have a passion for human rights. I have served, as a public servant, Conservative and Liberal governments, and I haven't had any problem with that.

Mr. Paul Calandra: I only bring that up because I have been pleasantly surprised at the level of support that we've obviously received from the Liberal Party on this, and in particular those people who actually had the opportunity to work with you during their time in government. They've been able to provide a lot of I think important information with respect to your qualifications.

I noted yesterday... I found it a little disturbing that the leader of the opposition called you "creepy". He said that Canadians would find you creepy—

The Chair: Mr. Angus.

Mr. Charlie Angus: On a point of order, I think my honourable colleague would want to correct the record.

He never made a personal slight against Mr. Therrien. He said the appointment was creepy. He never said that Mr. Therrien was creepy.

I think that's a very over-the-line statement. He'd probably want to withdraw it.

Mr. Paul Calandra: As I was saying, the leader of the opposition, in a question yesterday in the House of Commons, said that Canadians would "find it more than a little bit creepy that...this guy"—presumably you—wants to protect their privacy.

The general theme from the opposition has been that you have no ability to separate the work that you've done in the public service, that whatever you've done in the public service you will carry on through as the Privacy Commissioner.

How do you respond to that?

Mr. Daniel Therrien: I would say that I am a lawyer by trade, and public servant, and I'm guided by the law. I always have and I always will.

I would leave it at that.

Mr. Paul Calandra: In your time in public service, have you ever been afraid to express your opinion to either Conservative or Liberal ministers of justice? Have you ever been so terrified of the minister that you've thought that to do your job you'd better just be quiet and say nothing?

Mr. Daniel Therrien: No. I've had actually occasion to give advice to ministers that what they were proposing to do might be illegal, unlawful. I've never shied away from that, always trying to provide a lawful alternative to achieve the policy objectives needed.

But when needed, I have on occasion, on several occasions, I would say, given that kind of advice to ministers.

• (1150)

Mr. Paul Calandra: Okay. Thank you.

Mr. Chair, I have the following motion:

That, pursuant to the Order of Reference of May 28, 2014 and Standing Order 111.1(1), the Committee report back to the House that it has considered the proposed appointment of Daniel Therrien as Privacy Commissioner of Canada and recommends that he be confirmed by the House of Commons of Canada's next Privacy Commissioner.

The Chair: Thank you.

Just for the record, the interim Privacy Commissioner appointment ends today. I think there was some confusion about whether there is a Privacy Commissioner in effect.

The motion is in order. It has been submitted. We will finish the rounds of questioning, I suppose, and deal with that at the end....

No: it's been moved, so it has to be dealt with now, I suppose.

Mr. Angus, on the motion.

Mr. Charlie Angus: Thank you.

I would like to begin with my sincerest apologies to Mr. Therrien. I think this began as a very fascinating discussion, and I believe that you are being set up here. We have less than an hour to discuss with you some very serious issues. These are issues that you obviously take seriously. You understand there's a complexity of issues, yet we are seeing this being rammed through without a chance to really delve into them.

This appointment will be forced through as the interim commissioner, Chantal Bernier, leaves her post today, and we've seen no remote indication from the government that they will hear from any of the privacy commissioners on Bill C-13. Bill C-13 will be the defining issue of privacy in Canada for this coming term.

Today we have begun to get a sense of where we would go with you as Privacy Commissioner and what your concerns would be. First you did not want to talk about splitting the bill, but then, when you reflected on it, you agreed that splitting the bill is important, because this is about ensuring that due process is done.

We're talking about constitutional rights. We're talking about the basic rights to privacy. We're also talking about issues of security. This is not a circus. This is something that needs to be reflected on.

We asked about the fact that the Conservatives have raised the trial balloon that a cop's spidey sense is all that's needed to gain private information from Canadians. You clearly suggested that you were concerned with that.

I would have thought that having an opportunity to have you come forward and talk more about this would allow us to understand what's at stake here.

Yesterday we had three of the privacy commissioners from across Canada raise very serious concerns about this government's attempt to push through Bill C-13 without hearing from the Privacy Commissioner of Canada, the commissioner's staff, or other privacy commissioners in the country. They said, "given the heightened and pressing interest in Bill C-13, we urge the Committee"—this was the committee for justice and human rights—"to postpone hearings on Bill C-13 until such a time as the Privacy Commissioner of Canada can appear and speak to this Bill".

You certainly indicated you would be willing to do that, and you shared their interests.

Mr. Therrien, this has nothing to do with your qualifications, but this has everything to do with credibility regarding the independence of officers of Parliament to do their job and to be accountable to Parliament. We're not questioning who you are or what your history is, but we need to know and we need, within Parliament, to have that opportunity. I hear what you're saying, and I think you understand that an independent officer of Parliament has to be able to speak to the broader issues rather than to the short-term partisan agendas of any government.

I'm very disturbed at this time that these issues have been raised, issues regarding warrantless access and the concerns that you yourself have raised, coming out of the justice department, about the threshold that has not been proven for gaining access to Canadians' private information.

I do want to apologize for not hearing you correctly when you shared Ann Cavoukian's concerns that an IP address is not the same as a phone book. We've heard from this government again and again and again that if they just call up and they can get that information, it's like looking in a phone book. You, on the other hand, have identified, coming from your Justice background, and the privacy commissioners have identified from their expertise that this is basically the digital profile, the digital fingerprint of every Canadian as to who they are, what they do online, and where they can be located at any given time. That warrantless information needs a higher level of scrutiny.

Now, are there cases in which there are safety issues at stake? Certainly. We know about the issue of telewarrants and the need to be able to move. We know that if an immediate violent crime is in play or there is an issue of terrorism, police are able to access that and the telecom companies turn it over. However, my colleagues over on the other side say that every single case of the 1.2 million requests that were made last year—which we find an extraordinary number—was only to deal with terrorism and violence. I'm wondering, given your background in Justice, whether you think Canada is such a dangerous place.

So, we cannot go through with this motion at this time, because we have not had the chance to bring forward the people from civil society, the people who are experts in this field.

Mr. Therrien, this has nothing to do with you and your position.

• (1155)

We note that the last time a Privacy Commissioner was appointed under a Liberal government, a committee that was chaired under a Liberal government said that two meetings were not enough and that there needed to be a process in place, because this is about ensuring the constitutional rights, this is about ensuring public safety, and this is about ensuring where Canada stands in the global community in terms of privacy.

We did not even get to the issues of data breach. We don't have the time. We didn't even get to the next round of questioning, because this government does not want to have that.

I'm very sorry, Mr. Therrien, that this is being played out on your watch. I think it has the potential impact to damage your ability to do your job, because of the tainted manner in which this government has approached this.

The Chair: On the motion, we have a speakers list.

Mr. Ravignat.

Mr. Mathieu Ravignat: Thank you, Mr. Chair.

Of course, I share many of the concerns that my colleague has, as well as some sympathy for your situation, Monsieur Therrien. Clearly, 45 minutes to be able to ask you some questions, when in the past at least two hours and witnesses were allowed when dealing with the nomination that's as important as yours...

Our privacy laws are antiquated, as you know, and the person who we choose going forward in the post-Facebook world is going to have to review our laws. Therefore, your appointment is crucially

important for the privacy of Canadians, and of course I decry the fact that we've been given only the time that we have.

That is the reason why I gave this notice of motion at the last meeting: "That, pursuant to Standing Order 111.1(1), and subject to the order of reference of May 28, 2014, the Committee undertake a study of no fewer than 4 meetings to examine all matters regarding the proposed appointment of Daniel Therrien as Privacy Commissioner of Canada, that the committee invite Daniel Therrien to appear"—which you have, but only for an hour—"and that the Committee report its findings and recommendations to the House..."

I also suggested in the motion that "the Committee invite the former Privacy Commissioner of Canada"—who you suggested was probably a good resource when dealing with all issues of privacy—"Jennifer Stoddart, and the Interim Privacy Commissioner of Canada, Chantal Bernier, to assist the Committee in its study of the proposed appointment of Daniel Therrien as Privacy Commissioner of Canada..." Finally, I suggested that "the Committee invite legal and constitutional experts, and other experts in the protection of privacy, to provide testimony regarding the proposed appointment of" yourself as Privacy Commissioner.

It seems like this is the minimum we could do when we're dealing with overhauling a law that is going to protect the privacy of Canadians for generations, as well as the role of the Privacy Commissioner in the future.

Mr. Chair, what I don't understand is.... Perhaps I'm not fully in agreement with the process here. I had given notice of motion, and I thought that, following due process, we would discuss these motions before any other motion was on the floor. That is my understanding of the process. If so, I think this is the motion that we should be debating presently, and not the motion to approve the nomination of Mr. Therrien.

Thank you.

The Chair: On that, Mr. Ravignat, you served notice of motion, but you did not choose to move the motion at the committee. Mr. Calandra moved a motion that was in order, so therefore that's the motion currently under debate.

Does that conclude your remarks?

Mr. Mathieu Ravignat: Mr. Chair, I do have a question about that.

The Chair: That's my ruling on the point of order.

Mr. Mathieu Ravignat: I just have a question, a point of information. We did agree to debate one of the motions that I set down, and therefore there was agreement that the motion was tabled. If not, there couldn't have been a debate on that motion. If you check the record, Mr. Chair, I do believe that we did have a debate on the motion, and we never voted on this motion. In my opinion, the motion is still open and further debate is necessary before we entertain any other motions.

• (1200)

The Chair: Let me consult with the clerk, Mr. Ravignat.

We're somewhat limited in what we can share, because the planning that led to the holding of this meeting took place at an in camera planning meeting.

Your motion was read into the record; your notice of motion was introduced while we were in public, and therefore it was circulated, etc. But to our recollection, at no time did you formally move your motion. In fact, it would have been out of order in the general context. And in the subject of a planning committee, in the in camera context, the decision was made by committee that we would hold a one-hour interview with Mr. Therrien to discuss his nomination and to subsequently ratify or deny the nomination, to affirm or not affirm the nomination.

A motion has been made. Mr. Calandra's motion is in order. We're currently debating that motion.

We interrupted you, but if you're finished your remarks on Mr. Calandra's motion, we'll move on to the next speaker.

Mr. Mathieu Ravignat: Well, I'm finished apart from saying that this was kind of a ridiculous process to have 50 minutes to deal with a nomination of this importance to the history of privacy law in this country and to privacy matters in this country.

However, I do thank Monsieur Therrien

[*Translation*]

for joining us today.

[*English*]

That's all, Mr. Chair.

The Chair: Next on the speakers list is Mr. Calandra himself.

Mr. Paul Calandra: I'll be very brief.

I don't know if we want to release the witness, Mr. Chair. I'm not sure how long we'll be doing this. It's probably unfair to have him sit here while we deliberate; it's not like he can respond. So if you want to consider releasing him, that would be great.

I will say this, Mr. Chair. My opposition friends talk about the process. As you will know, they actually rejected the nomination of Mr. Therrien before he actually appeared before committee. The moment he was suggested as the next Privacy Commissioner, they actually outright rejected his appointment. They did the same in the House.

I'm not certain what continuing on...with respect to an investigation, as to why the NDP rejected an appointment before they even had the opportunity. So now they want to bring it to committee and

have an extensive study. But when they...before they had the opportunity to do this, they had chosen to just reject outright.

I suspect that Mr. Therrien could walk on water and the NDP would outright reject him. I don't see the point of sitting here for four days on something that they rejected in advance of even hearing from the witness.

With respect to certain bills that are before the House, if he's approved as the commissioner, we'll have many, many years and many opportunities for him to appear before committees to provide testimony and his thoughts on that.

I note that our members on this side did review his resumé. We reviewed his career in the public service. We did take the opportunity to speak to not only our ministers; I took the opportunity to speak to former Liberal cabinet ministers who had the opportunity to work with Mr. Therrien to get their advice with respect to what they thought about his appointment.

We've done all of that, Mr. Chair. Based on all of that work to this point, we're prepared to move forward and undertake a vote on the motion.

• (1205)

The Chair: Thank you, Mr. Calandra.

To be fair, any time I've sat at one of these committee meetings dealing with the nomination of an officer of Parliament, the nominee has always expressed that they couldn't possibly do their job without the full confidence of Parliament. What you've heard today, in all fairness, expresses concern about approving this particular nomination.

Are there any other speakers on Mr. Calandra's motion?

Mr. Cotler.

Hon. Irwin Cotler: Yes, Mr. Chairman, I find myself in a difficult position here because, on the one hand, I know Mr. Therrien. I know of his qualifications. As I said, I've had the benefit of working with him. On the other hand, I don't believe in short-circuiting a process of such importance and having only one hour for his appearance, let alone any other considerations that might have otherwise been given, and as said, was the process at the time I served in the Liberal government.

My concern is that if I were not to vote for the motion, it might be inferred as my not supporting Mr. Therrien, which I do. On the other hand, if I vote for the motion then it might be inferred that I'm satisfied with the process as it's been undertaken. That's why I think we've been put in a quandary in this regard, and I regret that it had to lead to this.

The Chair: Thank you.

Just to be clear, Mr. Calandra's motion suggests that the committee report back to the House that it has considered the proposed appointment of Daniel Therrien as Privacy Commissioner of Canada and recommends that he be confirmed by the House of Commons as Canada's next Privacy Commissioner. It makes no mention of the process, of course, but I understand your point.

Mr. Ravnat.

[Translation]

Mr. Mathieu Ravnat: Mr. Chair, this is unbelievable. We have less than an hour to ask Mr. Therrien questions. In the past, we have had at least two hours at our disposal, and we could hear from witnesses. We are far from that today. However, Mr. Therrien is probably the person who will change or renew statutes on privacy for future generations. In that context, this situation is totally unacceptable.

The official opposition wanted to do its work. We knew that the Conservatives would get what they wanted, but we still wanted to do our work thoroughly and hold at least four meetings to consider your nomination. We would have liked to hear experts' testimony and to learn from previous commissioners about the major challenges attached to the renewal of this country's privacy legislation.

However, we were denied that opportunity. After less than an hour reserved for questions, we are being pressured into approving or disapproving your candidacy. In my opinion, Canadians are the ones who lose out in such a situation. This government's track record in terms of accountability and transparency is pathetic, as evidenced by this process.

We all have the right to be a little frustrated by this state of the affairs. You are clearly not to blame, Mr. Therrien. In a way, I sympathize with you, as you are forced to participate in a sham appointment process. Nothing like this has probably been seen in Canadian history. In my opinion, my colleague Mr. Cotler did a good job of pointing this out. As parliamentarians, we must be thorough and do our job.

It is clear that my government colleagues don't feel like putting in the work and are making a mockery of the process that should be followed for such an important appointment.

Thank you, Mr. Chair.

[English]

Mr. Paul Calandra: Maybe next time you won't reject a candidate before you have a chance to hear from him. Maybe you'll take the process seriously then.

The Chair: Mr. Rankin, were you seeking the floor?

Mr. Murray Rankin: No, sir.

•(1210)

The Chair: Are there any other speakers on the motion from Mr. Calandra?

(Motion agreed to)

The Chair: Just to summarize then, the committee or I, on behalf of the committee, will report to the House that the committee has approved the nomination of Mr. Daniel Therrien as the next Privacy Commissioner of Canada. If there are any minority opinions to

attach to the report, please make them known, I would say, within 24 hours.

Can we have a motion to that effect?

Mr. Mathieu Ravnat: Mr. Chair, I assume that the motion will need to be translated.

The Chair: The motion is in both official languages.

All right. That being said, we're going to release the witness.

Mr. Therrien, thank you very much for appearing today. Congratulations. You're officially released.

Mr. Daniel Therrien: Thank you.

The Chair: We'll suspend the meeting briefly while we release Mr. Therrien and bring on the next panel.

•(1210)

_____ (Pause) _____

•(1215)

The Chair: Ladies and gentlemen, we'll reconvene our meeting. I hope people have had time to load a plate, and we'll have a working lunch.

We're going to welcome our witnesses for the ongoing study of identity theft and its economic impact.

Today we will be welcoming Mr. Tamir Israel, staff lawyer for the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic. Mr. Israel will be here shortly, and we appreciate his being in attendance.

From the Canadian Identity Theft Support Centre we have Mr. James Dorey, the executive director, and Mr. Kevin Scott, the president. They'll be joining us shortly, I'm sure, as well.

Perhaps just to make the best use of what little time we have, Mr. Dorey, we would ask you to begin with your opening remarks on behalf of the Canadian Identity Theft Support Centre. Are you prepared to do that, sir?

Mr. James Dorey (Executive Director, Canadian Identity Theft Support Centre): I'm not prepared. Kevin will start, but he'll be here in one minute.

The Chair: I see. Well then why don't we just suspend for a moment then and we'll allow our next panel to prepare themselves?

Welcome back, ladies and gentlemen. We'll resume our study on the growing problem of identity theft and its economic impact. We'll welcome as the first witnesses today, from the Canadian Identity Theft Support Centre, Mr. James Dorey and Mr. Kevin Scott.

Mr. Scott, I understand that you, as the president of the association, will be making the opening remarks.

Mr. Kevin Scott (President, Canadian Identity Theft Support Centre): Thank you, Mr. Chair, and thank you, committee, for the invitation to testify today.

I've been working on identity theft for over 10 years now, and it's been a long hard road to get individuals to pay attention to the severity of the issue across the country. I applaud this committee for taking this on and putting this study together. I think it's very timely and very important for the Canadian public, so I want to say thank you.

My name is Kevin Scott, and I have worked on identity theft, in a variety of different forms, over the past 10 years. I'm the president and founder of the Canadian Identity Theft Support Centre.

With me today is Jim Dorey. He's the executive director of the Canadian Identity Theft Support Centre. He's basically responsible for the day-to-day actions and responsibilities of the centre. Jim will be jumping in during the presentation and going a little more in depth on what we do on a day-to-day basis.

I think it's important, first, for me to give a bit of background of who we are and where we came from, so the committee has an understanding of our mission and our goals.

We put together a study, back in 2004, which examined the federal privacy law and identity theft, how the two related, and how federal law could help stem some of the identity theft in Canada. That was a report that was funded by the Privacy Commissioner of Canada's office, and it was done by the BC Freedom of Information and Privacy Association. We then moved forward and decided that we needed to get more attention to the issues, so we used the report to develop a conference, in 2008. This conference was held in Vancouver, British Columbia. We had over 200 experts from across the country: private sector, law enforcement, and government. It was an extremely successful conference.

We looked at three different streams in that conference. The first stream was law enforcement and law; the second stream was technology and identity theft, and the third was victims. The first two streams had very clear outcomes and had organizations and individuals who were ready to take them on and move forward with them. The findings from the conference on victims was a very different story because there was nobody working on support in Canada for victims of identity theft.

We were quite shocked to find this out. We kind of knew it when we went in, but it was very much reinforced as we heard from individuals across the country. We went to the Department of Justice and told them of the issue, the situation, and they were able to give us a small grant of about \$70,000 to do a feasibility study to start putting together a support centre for victims.

We did that over an eight-month period, and then came back and said, "This is very necessary. There's opportunity, and there's several different private sector government agencies who would be very supportive of this". So we moved forward and began putting together the centre, putting together our materials, our legal backgrounds, and also developing a very close working relationship with the Identity Theft Resource Center, in San Diego, which has been running for 20 years. This is a very impressive organization. It has looked at identity theft on the victim's side and said that in a more severe case of identity theft, it can take up to 400 hours for an individual to regain control of their identity. The emotional impact of that is mind boggling—I'll just say that.

That relationship was developed. We put together all of our materials, working very closely with Pippa Lawson, who I know was at the committee about a month ago. She helped take the U.S. system and Canadianize it, and basically we were able to put together all of the materials that we required to move forward.

The centre was then launched, in June 2012. That was here in Ottawa, and also in Vancouver. It was a very successful launch. The Privacy Commissioner of Canada was our keynote speaker for that, and she was very eloquent and was able to bring a lot of attention to the issues. We were on the front page of almost every newspaper in Canada.

Now, I've taken the time on my plane ride here to read the testimony of everybody who has appeared in front of the committee, and I have to say that the work that individuals are doing to reduce and try to modify systems within their organizations, their ministries, is every important. But the one thing that I don't see in the record thus far is the victim's side. That's what Jim Dorey and I hope to bring to you today, talking about those victims and what they're going through and what type of support they need.

● (1220)

As I alluded to a moment ago, when an individual is a victim of identity theft, their life becomes a spiral of confusion. They don't know where to turn, they don't know what to do, and they don't know how to get out of the maze—I think is the best way to put it. There are 15 to 20 different agencies, organizations, banks, and so on that an individual needs to speak with to start getting the issue under control. Each one of these different agencies requires a different form, a different explanation, and a different type of format to explain the issue.

Now, when an individual is going through the emotional impact of identity theft, trying to sort through all of these different forms and requirements, they just get to a point of complete overload. So with that 400 hours of confusion, the U.S. organization has been able to streamline their process down to 15 to 20 hours with a very systematic tool kit of forms, scripts, and so on to basically get the individual out of this quagmire.

I think it's probably best to throw it over to Jim Dorey, who can talk to you about what that process is, how we've made it Canadian, and how he deals with these individuals on a day-to-day basis.

● (1225)

Mr. James Dorey: Thank you, Kevin.

Hi. I'm Jim Dorey. I'm the executive director of the Canadian Identity Theft Support Centre.

There are three main streams that the Canadian Identity Theft Support Centre is currently working on. One is victim support. That's the key one that we're speaking to. The second one is education and prevention, which we've heard a lot about. The third one is research and data collection.

In terms of victim support, the core resources that we've developed over the last three years are fact sheets to help people; scripts, so they can actually call separate companies with set scripts and just insert their name to streamline the process; different forms; sample letters; contact lists; a workbook; and a standardized affidavit form created by Pippa Lawson directly for us but now used at law agencies across Canada. The thing that we are most proud of is our "Victim Toolkit". The victim tool kit has all these forms in the one booklet and can actually take someone from beginning to end in order for them to regain their identity.

All these resources are found online on our website. That's good for some people. Some people are very adept and can just jump on the website and follow the forms, and it helps them. Most people need someone to talk to, as Kevin was saying, as they are trying to unravel this puzzle. What we've set up is a 1-800 number with a call centre, and people are able to call the call centre and actually get a human, caring voice on the other end of the line.

When someone does call the 1-800 number, they're most likely to be frustrated, confused, and very overwhelmed. That's why we need people who are knowledgeable and able to streamline this process quickly for them. All of the people who we work with or who answer calls have been trained either by me, who was trained down in San Diego by the Identity Theft Resource Center there, the group that's been doing this for 20 years....

What we do is to talk them down. They're always very excited and frustrated. Once the individual is in a little bit more of a calm state, we get into our five-step process to help determine this, and we present them with materials, resources, and support to help them regain their identity. In more severe cases, we've also been able to go out and establish different partnerships across Canada. One partnership would be with a group like Equifax. We've met the vice-president there and he's given me their direct line, so in deeper cases where we're having trouble with a client who is trying to figure out some of their credit rating information, I can just make a direct call to the VP and he'll get the information to us.

Of course, we don't just focus on victim support. Because identity theft is a billion-dollar-plus expense to Canadians, the second core aspect of our mission is to assist Canadians in reducing and preventing the risk of identity theft. To help Canadians reduce and prevent identity theft, we've created four different manuals: one for youth, one for seniors, one for the general public, and one specifically geared to online situations. They're in-depth manuals and are all found on the website. I won't go into detail, because I know we're a little short on time today.

We've also created a mobile education unit. This mobile education unit is used at public events, special engagements, and conferences.

Finally, we're currently developing a new education and outreach program. This is very interesting. This is currently focused on two specifically targeted demographics in Canada that are being affected increasingly by the bad effects of identity theft. The first program is going to be an outreach program directed towards youth. The second one is going to be an outreach program directed towards seniors.

With the rise of technology and social media, youth today are very comfortable handing over their personal information on sites like

Instagram, Facebook, etc., so more education is needed to help our youth here understand the importance of holding their information a little bit tighter.

For our seniors program, we are currently developing it in partnership with CARP and the director of community development there, Anthony Quinn. It is also important, if not as important as the youth program. Seniors across Canada, some who are savvy with regard to technology and some who are not as savvy, are being hit directly with a number of scams in this day and age, and this is only going to grow.

• (1230)

The third core stream of the Canadian Identity Theft Support Centre is its work with research and data collection. At this point, I'm going to turn it back to Kevin to finish this up.

Thank you very much.

The Chair: I'm just going to interrupt you briefly.

Normally when the lights are flashing and the bells are ringing, we're being summoned to a vote, but I understand that these are half-hour bells. I think with the agreement of committee members, because we're so close to the House, we could go for 15 minutes and leave 15 minutes to get to our vote. That will give time for both of our witnesses to at least enter their presentations into the record.

Is there agreement?

Some hon. members: Agreed.

The Chair: Very good.

We'll continue for fifteen minutes.

Mr. Scott, usually opening remarks are five to ten minutes and you're well over that now, and we want to leave time for Mr. Israel to do the same.

Mr. Kevin Scott: If I could just make some closing remarks, that would be great.

This committee has the opportunity to really affect long-term identity theft in Canada, and I really hope that the study that comes out will make certain recommendations that will see that on-the-ground transformation.

I'll make one observation, three recommendations, and I'll conclude.

The first observation is that identity theft is happening right now in Canada. Over 100,000 people are dealing with this issue as we speak right now, and they need support. We're going to be able to reduce identity theft if many of the measures that the different agencies are working on are put into effect. But right now there are individuals who are suffering. That is basically what we are here to do.

So I'm hoping that all of you will make recommendations that will include increased victim support from government and the private sector, increased education and outreach, and also the development of a national index of what's going on with identity theft. I think those are three critical areas that this committee could recommend.

Thank you very much, and thank you very much for taking this very important issue on.

The Chair: Thank you very much, Mr. Scott and Mr. Dorey. We'll certainly benefit from the recommendations and the work you've done to date on this file, and we appreciate your coming all the way from British Columbia to share your presentation with us.

Next, we'll invite Mr. Tamir Israel, please, to make his presentation and opening remarks.

Mr. Israel, for five to ten minutes please.

Mr. Tamir Israel (Staff Lawyer, Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic): Thank you, Mr. Chair and members of the committee.

Good afternoon. My name is Tamir Israel, and I'm staff lawyer with the Samuelson-Glushko Canadian Internet Policy and Public Interest Clinic. CIPPIC is very grateful for this opportunity to provide our input into this important study on the growing problem of identity theft and its economic impact. I'll cut my comments a bit short, given the time constraint, so that if there are questions, there will be a bit of time for them.

In many ways identity crime is the crime of the information age. The U.S. Federal Trade Commission's Consumer Sentinel Network collated and classified over two million consumer complaints in 2013, and identity theft complaints comprised the top category across all these. Identity theft is a vehicle for a range of identity crimes. The false identities built on this theft are used to procure loans, government benefits, and fake credit cards. These false identities are also used as a jumping off point for other crimes. As a result, the economic and social costs of identity crime remain difficult to measure.

In spite of these difficulties, it is safe to say that identity theft is on the rise. Identity theft 2.0 is taking hold, where identity thieves take full advantage of the rich information stores available on social media and mobile devices with increasingly savvy methods. Illegal online markets for identities have developed where e-mail account access, credit card numbers, and full identity profiles can be bought and sold en masse. The OECD estimates that lists of valid e-mail addresses can be purchased at between \$1.70 U.S. to \$15 U.S. per megabyte, and that access to compromised e-mail accounts ranges from \$1 U.S. to \$20 U.S.—or it did in 2009—depending on the black market fluctuations. Putting aside the economic costs, however, the most insidious impact of identity crime is on the individual who's the victim of identity crime. The time, effort, and

trauma involved with recovering from identity crime cannot be easily measured in economic terms.

In the remainder of my comments I'll address three essential and necessary components of any comprehensive response to the problem of identity theft. They are prevention, research and education, and victim support. Before turning to these I wish to speak briefly about another essential component, which is investigation and enforcement.

We've done a lot in Canada to improve the ability of our various agencies, including the Office of the Privacy Commissioner of Canada, the Competition Bureau, and our various law enforcement agencies, to investigate identity crimes as well as to address many of the underlying offences that facilitate these types of offences. That being said, these initiatives include the addition of several Criminal Code provisions and the passing of S.C. 2010, c. 213, which is Canada's anti-spam and spyware legislation. These steps have been critical, but it's important to recognize that identity theft is here to stay, and an enforcement solution alone will not be enough to address the problem. With that, I turn to some of the other solutions that are necessary to supplement what we've done in Canada.

First and foremost, more needs to be done to help individuals protect their identity information so that it doesn't end up in the hands of identity thieves in the first place. The most effective way to do this is through stronger data protection frameworks, including a stronger PIPEDA and Privacy Act.

PIPEDA in particular needs to play a central role in any comprehensive response to identity crime. Today's social networks and mobile devices are a repository of information, but this information is often disclosed in unexpected ways, be it to the general public or to invisible third-party applications. PIPEDA also obligates organizations to put in place reasonable technical and other safeguards in order to prevent unauthorized access to customer data. Security breaches are not only becoming more frequent with each passing year, but the number of identities exposed with each breach is increasing dramatically. Symantec's "2014 Internet Security Threat Report" registered a 260% annual increase in the number of identities exposed by each average breach, meaning that these are essentially cyber-breaches targeting large repositories of data in one go. This makes the adoption of strong technical safeguards a very important tool in the prevention of identity theft.

Against this backdrop the need for a PIPEDA framework that is rigorously enforced and applied has never been greater; however, the current framework does not reflect this. As this committee recognized in its recent study, "Privacy and Social Media in the Age of Big Data", quoting former Privacy Commissioner of Canada Jennifer Stoddart, with the emergence of Internet giants, the balance intended by the spirit and letter of PIPEDA is at risk, and the risk of significant breaches and of unexpected, unwanted, and even intrusive use of people's information calls for commensurate safeguards and financial consequences not currently provided for in PIPEDA.

•(1235)

Bill S-4, currently before the Senate, takes an incremental step towards making PIPEDA somewhat more enforceable by providing for optional consent orders. However, full enforcement powers and administrative monetary penalties for non-compliance are required, so that companies have effective incentives to comply proactively with PIPEDA's obligations. Bill S-4 will also enact far overdue breach notification obligations. These will obligate companies to report any privacy breaches that raise a real risk of substantial harm to affected individuals and to the Privacy Commissioner of Canada. A company that fails to disclose will be guilty of an offence and subject, upon summary conviction, to a fine of up to \$10,000. While the breach notification obligation in Bill S-4 is a positive step forward, it is not sufficiently calibrated to deter security breaches. It focuses too closely on the risk of direct harm to an end-user resulting from a specific breach. In reality, in many instances it will be difficult to know whether a particular vulnerability was or was not exploited, meaning that much laxity in technical safeguards will remain unreported. This makes it an ineffective mechanism for encouraging and incentivizing companies to strengthen up their technical safeguards.

Recently a number of government departments have also seen high-profile breaches. These have included, for example, a breach over at HRSDC involving a hard drive that contained sensitive information for over 500,000 students who had applied for student loans. In spite of this, the Privacy Act lacks not only a breach notification obligation but also the basic obligation to adopt technical safeguards.

I'll turn now to research and education. In addition to prevention, a comprehensive response to the problem of identity theft requires education and outreach initiatives. A number of government agencies have developed some solid identity crime-specific consumer education materials. The Competition Bureau's "Little Black Book of Scams" is a good example. It's available online if anybody wants to take a look. These are supplemented by growing efforts by non-governmental bodies such as the Canadian Identity Theft Support Centre, whose Victim Toolkit is an excellent resource, as is some of their other stuff, which they've already talked about. But more can be done, particularly with respect to education on the victim recovery process.

There is also a need for coordinated and sustained research on the scope and parameters of identity crime. There has been minimal systematic research on this within Canada since about 2006. While there are some non-Canadian initiatives that provide some insight into the scope and parameters of the problem within Canada, there is a need to stimulate and coordinate more Canada-specific research on identity crime through an initiative such as the breach repository that Kevin was talking about.

Finally, I turn to victim support, and I'll make this brief, because my colleagues here did an excellent job of outlining many of the elements that are necessary for an effective victim support framework. Many of my comments overlap with theirs, so I'll just make this brief.

The recovery process for an identity crime is highly complex. Victims must deal with creditors who are reluctant to believe their debt is not theirs. Even if a victim is successful in convincing immediate creditors, bad credit ratings can follow victims of identity crime for years. A number of steps can be adopted to mitigate these problems. For example, a customer seeking to convince creditors she is a victim of identity crime will often need to undergo completely diverse and complex processes for each provider in order to prove her identity. Often these will require different documentation, and this greatly multiplies the hours it takes to recover one's identity. In this vein, the type of standardized documentation provided by entities like the Canadian Identity Theft Support Centre is really crucial. It's also crucial to make sure that it's accepted by both law enforcement and service providers as an acceptable means of providing documentation of identity theft. Other useful and necessary tools would be the availability of cost-free credit freezes and online access to credit reports, which this committee heard about earlier.

Finally, the ongoing availability of a victim support centre is essential to the overall recovery process. Having someone to talk victims through the identity recovery process and to assist them in their dealings with law enforcement and other agencies as well as with creditors is essential.

•(1240)

Overall, a national strategy on identity crime victim support should be adopted that will establish clear parameters for cooperation between the various entities involved in the victim support process, such as the Canadian Anti-Fraud Centre, the Canadian Identity Theft Support Centre, and the various regulatory agencies that deal with identity theft matters. It should also establish a clear road map for adopting these various identity recovery mechanisms.

Thank you.

The Chair: Thank you very much, Mr. Israel, for your input and your comments today. We very much appreciate the effort you've made, and we will benefit from your recommendations and remarks.

Ms. Davidson.

Mrs. Patricia Davidson: Mr. Chair, I wonder if we could request that the gentlemen send copies of their remarks to the clerk, so we could have them, since we don't have time to ask specific questions.

The Chair: Yes, I appreciate that recommendation.

If you wouldn't mind, if your remarks haven't been translated, could you submit them to the clerk. We will translate them and circulate them to all committee members.

Unfortunately, there is no time for questions. We have to be in our chairs in the House to vote in just a few minutes. I'm sorry for the delay in hearing you, and we very much appreciate the effort you've made. We may have further questions for you; we could correspond with the clerk by e-mail or telephone.

Thank you for coming.

This meeting is adjourned.

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