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Chair

Mr. Robert Oliphant

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• (1530)

[English]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): I'm very happy to call to order this 44th meeting of the Standing Committee on Public Safety and National Security as we continue our study of Bill C-22, an act to establish the national security and intelligence committee of parliamentarians and make consequential amendments to certain acts.

We're getting down to the short strokes on this study of the bill.

We're delighted to have two witnesses with us for this first hour: Luc Portelance and Anil Kapoor.

Do you have a preference for who goes first? I think we'll start with Mr. Portelance for 10 minutes, and then go to Mr. Kapoor. Then we'll have questions from the committee members.

Mr. Luc Portelance (As an Individual): Thank you, Mr. Chairman and members of the committee, for inviting me here today to speak to you in support of your study of Bill C-22.

I must admit that this is a new experience for me. I have appeared before this committee before, always as the representative of a government department, and this is the first time I've done so on my own. I have a very brief opening statement, and I look forward to the committee's questions afterwards.

I am aware, of course, that in your deliberations you've already heard from a number of witnesses, including experts from various fields, who have mostly endorsed the creation of a national security and intelligence committee of parliamentarians. Let me add my voice of support by stating that I, too, welcome this significant addition to our national security review architecture.

I believe that Minister Goodale, in his testimony, mentioned how this piece of legislation is part of a broader suite of changes required to our national security framework. In fact, the current consultations undertaken by the government are likely to yield a significant public debate around investigative capabilities, privacy, and accountability.

Review is of course a critical element of this complex ecosystem. In many respects, Bill C-22 is the beginning of the broader debate, and the committee of parliamentarians, once created, will have a significant role to play in defining the future of national security in Canada.

As many have said, the legislation as currently drafted is not without some imperfections. You've already received useful advice about the scope of the mandate, exceptions and exemptions, coordination, and other critical clauses.

Thus, as I appear before you today, it strikes me as most useful if I approach my comments from the perspective of someone who was the subject of review for 24 years at CSIS. Of course, I also bring with me the perspective of having led the Canada Border Services Agency for a number of years, an organization whose apparent absence of external review has come under some criticism.

As such, there are only two issues I want to bring to this committee's attention this afternoon.

The first is a question about the value proposition for Canadians. How does this committee differentiate itself from the existing mechanisms, and what might success look like a few years from now?

Some would say that the mere creation of this new committee is a major step forward. Perhaps, but from my perspective, it's less about creating a new review body and more about creating a new mechanism for accountability, transparency, and support. In fact, more review will not necessarily mean better review, unless the committee understands and remains laser-focused on its value proposition.

As currently worded, clause 8 of the bill supports the committee's purpose of bringing about a greater level of accountability and public confidence. Craig Forcece, in his earlier testimony, accurately suggested that Canada—unlike the U.K.—doesn't have a solid track record of accounting for events, other than episodic enquiries over the past 10 years. I believe he is right, and the new committee will fill this important gap, particularly as a result of its broad horizontal reach.

It's important to remember, however, that accountability applies equally to departments and ministers, which should guide your consideration of potential modifications to clause 16 of the bill.

Similarly, I would avoid the temptation to list organizations that fall under the committee's purview, and, rather, let the evidence lead the way, as suggested by Minister Goodale.

A critical element of the value proposition must also include what I refer to as “support”. A mature, experienced committee of parliamentarians will be invaluable in determining whether our national security agencies are adequately tooled and resourced to keep Canadians safe.

Whereas paragraph 8(a) does reference several administrative elements the new committee could review, there is no reference to performance, effectiveness, or adequacy. This may not require explicit mention, as long as this aspect of the committee's mandate is implicitly understood.

While agencies will not stand in the way of increased scrutiny, they will welcome the opportunity to explain their challenges to a receptive but critical interlocutor whose views can shape national security policy.

The value proposition of the committee is encapsulated in two paragraphs of clause 8, which speak to the what but not really the why. Most stakeholders would benefit from greater clarity, as will the new committee, as it seeks to position itself.

● (1535)

My second issue and my key area of preoccupation is the absence of a well-defined overall review architecture and the simplicity of clause 9 as currently drafted. Frankly, I see this as a considerable risk, and one that should not be left to the review committees that are taking reasonable steps to co-operate. Unquestionably, the brunt of agency review will still be conducted by the existing review bodies.

As stated by a previous witness—I believe it might have been Ron Atkey—the new committee will not be a substitute for a detailed review. The relationship between the review bodies—the complementarity, the hierarchy, if any, and the dependencies—should be clearly articulated.

Poor alignment in terms of access, along with the inability of existing review bodies to follow the thread horizontally, are bound to create friction. Any confusion, particularly duplication, redundancy, and lack of coordination, will unquestionably impact the agencies under review. Although these things may sort themselves out over time, there is a real risk that operational capacity will be impacted while review bodies assert their mandate with no mechanism to arbitrate. The government should likely re-examine everyone's roles and mandates, including those of parliamentary and Senate committees whose mandates cover national security and public safety.

In conclusion, there was a prevailing view at CSIS that the existence of SIRC since its creation in 1984 ultimately made the service better. In today's threat environment, with rapid advances in technology, diminishing investigative capacity, and pressure for more transparency and accountability, this new committee of parliamentarians must quickly find the balance between seemingly competing interests. Ultimately, its value will be measured on its contribution to the betterment of Canada's safety and security.

The Chair: Thank you very much.

Mr. Kapoor.

Mr. Anil Kapoor (Special Advocate, Kapoor Barristers, As an Individual): Thank you very much, Mr. Chair and members of the committee. I'm happy to be here.

In particular, I want to address you from the perspective of a special advocate—which is part of what my practice entails—in relation to this bill, Bill C-22. This piece of legislation is crucial to public trust in our security intelligence apparatus.

Commissioner Paulson said as much on November 1 when he said that it's "vital" to the success of the RCMP and their mission that they have the trust and confidence of Canadians in their ability to do their job. Michel Coulombe said on the same date that it's important that there be "an informed discussion" so that people understand "the

threat environment that's out there in terms of classified information".

What is the threat? What are the gaps in the tools that are available to us? From the CBSA, we hear that trust is absolutely essential. From the CSE, we hear similar comments, and in particular, that this will provide this committee, namely, a nice opportunity for the security and intelligence community to speak with one voice, and the committee will have an opportunity to strategically look at the community as a whole.

People are looking to this committee as possibly funding what I call a trust deficit—possibly. There exists a trust deficit today, and we know this from any number of decisions from our courts about the conduct of the RCMP, the conduct of CSIS, and, most recently, Justice Noël's judgment, where he said this:

...in regard to the CSIS's duty of candour, I conclude that it had an obligation, beginning in 2006, to fully inform the Court of the existence of its collection and retention of associated data program. The CSIS also had the duty to accurately describe this program to the Court. The fact that it did not do so until 2016... amounted to a breach of the...duty of candour.

In my view, you can't have a situation where an intelligence agency for 10 years does not tell the court what is going on. This committee, potentially, if properly constructed, can go some distance to recovering that trust deficit. How do we do this?

You've heard from my colleague Kent Roach and from Professor Forcese. They had the three components to the overall security review process, with the committee of parliamentarians being one. Another was a consolidated and enhanced expert review body, and you heard their evidence on that point. You also heard their evidence about the need for an independent monitor of national security law, built on the U.K. or Australian model. But today I want to address you on the three fundamental aspects of this bill. There are three components that I think you should consider. One I call the architecture of the bill. The other is who is on the committee. The third is support for the committee.

Let me deal firstly with the architecture of the bill. There are many things you have read in this bill that people have testified before you are problematic. Most strikingly, I would say, from my perspective as a special advocate, is the fact that this top-secret cleared committee can have information withheld from it. We have had this problem in security certificate cases from the beginning, where the service has not provided us with information that we are entitled to. It took us all the way to the Supreme Court of Canada in Harkat and in Charkaoui number two to get proper disclosure.

That sort of—how can I put it?—passive-aggressive approach from the service just cannot be acceptable with this committee. This committee, those of you who may be on it, will be top-secret cleared. You can be trusted with the information. It's no different from what the Supreme Court of Canada said in Harkat about special advocates. They said, “The special advocates...have the ability to distinguish between...public and confidential” information. They said, “The judge should take a liberal approach in authorizing communications...” In other words, special advocates can be trusted. Committee members can be trusted.

• (1540)

What's the difference, frankly, if you're on the government side of the House and you're sitting on this committee, and then a week later the Prime Minister appoints you the Minister of Public Safety? The day before that happens, we can't get inside the kimono, and the day after, it's open kimono. But you're the same person: you're able to maintain a secret.

In my view, this notion that the minister and these agencies can withhold information from this committee ought to be rejected.

One example is the example that Michel Coulombe gave in his evidence. It is interesting, because what was put to him was about “injurious to national security”. The example he gave was highly operational. Just for your reference, it's from November 1, at page 17, and he said:

I could provide an example.

...Take, for example, what happened on August 10. Had that lasted for three or four days and had it been a counterterrorism investigation—fast-paced with a lot of resources involved—and had resources been assigned to send information to the committee, that would have been a distraction from the operation....

I agree. If you're in the middle of an operation, the last thing you want to be doing is dealing with a review committee. The review committee is meant to review things that have happened, so I have no problem with that kind of operational postponement of information, but the test, “injurious to national security”, has a particular meaning in law, and it is far broader than that. Also, it applies when an operation is concluded.

It can be to protect foreign agencies. It can be to protect sources. Part of your job as a committee may be to inquire into the service's handling of sources, and the appropriateness with which they do so, and you ought to be able to. There's a difference between what you learn in closed...and what you put in a public report. In my view, parliamentarians, top-secret cleared, are capable of making that distinction, just as special advocates are.

Who is on the committee is the next point. This is unglamorous work, trust me. I've been involved in a lot of these national security cases, both on CSIS work and on security certifications, and when I was commission counsel on Air India. It is hard work, it is laborious, and it takes a particular aptitude to get into the weeds and then to be able to get out of the weeds. When you staff it with your committee members, you need that kind of person: someone who is rigorous, diligent, and has the aptitude for what I call unglamorous and rather bookish work.

Finally, on support for the committee, this is crucial. This committee of parliamentarians cannot do this job without a properly staffed secretariat, and I mean this. You are all busy people. You

have other things. You have constituents. You have all kinds of things going on. You need to be able to rely upon the secretariat to properly brief you and to give you direction on where the bodies are hidden, to use the vernacular.

How are you going to do that? Well, you need a competent, highly skilled director of the secretariat—I think that's what they called it—and then you need to staff it up. How do you staff it up? It can't be government lawyers, obviously, so you staff it up with relatively junior and highly skilled people, who are top-secret cleared, to do what I call the grunt work. Then, I suggest, what you need to have are two or three senior counsel who are top-secret cleared and who can direct the inquiry, provide it with focus and shape, and ensure that your staff does what you want the staff to do.

Then you will be briefed. I don't think it's appropriate for counsel to examine witnesses. I think the committee ought to examine witnesses. You will be briefed and you will make your decisions as a matter of policy on what you want to cover. You may have matters one to ten and you may choose to cover one to four, but you will be expertly briefed and able to execute on the questions.

Most particularly, you will not be co-opted by the agencies. You will not. This is a real concern, because they will come in and they will talk to you about the threat level and all the things they need to do. You need to guard yourself against it. Some of it you may accept, and some of it you may not, but review must be skeptical. You can go back to what Justice Noël said about ten years of a lack of candour. That can't happen. You can stop it. You can deal with the public trust deficit.

Thank you.

• (1545)

The Chair: Thank you very much.

We'll begin with Mr. Spengemann, for a seven-minute round.

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

Thanks to both of you for being here.

Mr. Portelance, thank you for your work in our public service. It's good to have you here in a personal capacity so that you can speak freely and in an unencumbered fashion.

I want to continue very much along the direction that you've both already taken, to see if you can help the committee assemble a number of different intentions, ideas, and concepts that we've heard about over the course of the testimony we've received here.

I want to start with Minister Goodale's paradigm, which is basically that we're providing both our cherished charter rights and good security to the public, and it's balancing that fundamental tension, if you will, that we're concerned about.

You both spoke about public trust in government. I think that is really the nub of the value added for this committee, but equally, there is the protection of the efficacy of the process and providing good security. For both of those reasons, the public will either support or reject this committee.

We've talked a lot and heard a lot of testimony about the elimination of overlap with existing review bodies. This body would be a latecomer to the process. It would have to find its own way culturally.

Mr. Kapoor, you spoke very well about how to do that and how to prevent regulatory capture. I think that's a very important component, and I'd like to hear a bit more about that.

We also heard testimony about the tension between experts and parliamentarians. The chair himself pointed out that many of these kinds of committees are staffed by former parliamentarians, so maybe we're underestimating the role that a parliamentarian would take when she is appointed to this committee. She may be more expert than we think. I'd like to hear a bit more from both of you on that.

Lastly, there is the question of how much access and how much review? I think there are many of us who think that we should at least have broad and wide-ranging access, but there is also the question of how much review. What about the exemptions that are being created? What about the definition of "injurious to national security"?

I want to put all those tensions back into your laps to see if you can construct for us, through a thought experiment, how this committee might operate tomorrow were it to start tomorrow, and what, for each of you, are the fundamental gaps that really must be closed through this process that we're engaged in here.

• (1550)

Mr. Luc Portelance: Simple question....

Voices: Oh, oh!

Mr. Luc Portelance: I'll give it a shot in terms of where you might start on day one.

One of the interesting issues is the comparison with the U.K. and the U.S. and some of the existing review mechanisms in those countries. I think what you'll find, certainly in the U.K. and the U.S., is a long history of that sort of review oversight, a maturity, and a sort of handover from period to period for either parliamentarians or congressmen, whatever the term is.

This particular committee, I would estimate, will spend the early days in just getting educated. I think that will take a while. That will have to be structured and constructed, and I think Anil spoke to this. It's not so much about finding out where the bodies are buried, initially. I would say that it's for the committee to figure out where the value added is, such as what is the game plan of SIRC and some of the other review bodies. I understand that there is no real

mechanism to align that, but the early days will be about education, learning, and figuring out where to go next.

Part of the question is whether it is better to articulate today the relationship between review bodies in terms of the value added, or to wait and have it grow organically, which I think has been recommended. I'm sort of on the fence with that. I would like to see words that force co-operation, because my fear would be that it's sort of the shiny thing, right, or in other words, the issue du jour. Maybe, as Michel Coulombe mentioned, it could draw SIRC, could draw other parliamentary committees, and could draw the new parliamentary committee, and suddenly everyone is looking at the same thing.

To me, there needs to be bit of a hierarchy of review. I think it goes to Anil's point. It requires considerable resources and expertise to be able to do effective review, because you have to understand the environment, know where to look for things, and have the proper conversations.

It will take a while for this committee to really reach that level of maturity. In the meantime, what kinds of relationships can exist with organizations like SIRC, that continue to do the brunt of the review, and then how does this new committee position itself perhaps more strategically?

Mr. Sven Spengemann: Can I interrupt you on that point?

Mr. Kapoor spoke about the risk of capture. I would assume that it's particularly acute during that early period that the committee may be captured by the entities that it's supposed to review.

Mr. Luc Portelance: Let me put it this way. I think the agencies will look forward to having the conversations and educating parliamentarians, because I know many of them look forward to having a debate about means, capacity, shortcomings, gaps, and so on.

I wouldn't say that there is a real risk. I think there is a partnership that is required, but as to how that partnership gets defined, I think Mr. Kapoor is right. There has to be a line drawn. It is a little bit about partnership because there is the notion of review, but there is also a notion of shaping public policy around national security. To do that, it has to be somewhat of a partnership.

Mr. Sven Spengemann: Can I put a final question to Mr. Kapoor?

With regard to the state of knowledge on the part of the Canadian public about matters of security, including the existing security and review architecture that we have, how much of a challenge is it? How can the secretariat help to bridge that? The committee will issue periodic reports. Nobody reads them, as far as the public is concerned anyway. How do we make sure the public is engaged and actually recognizes the value that this committee will bring?

Mr. Anil Kapoor: I think one of the problems we have is that our review agencies have no real public profile. I was in the U.K. just last week, dealing with David Anderson, who is the independent reviewer. He gives regular interviews to the press, and the press covers it in a way that our press would if our people made themselves available. The issue is very interesting to the public. We just need to access them, so the chair, whoever that is, has to have a public role. It is important that part of the secretariat's responsibility be media liaison. That's an opportunity that we have just missed, frankly, in terms of our review.

• (1555)

Mr. Sven Spengemann: There is room for some culture change on that front.

Mr. Anil Kapoor: Yes.

Mr. Sven Spengemann: Mr. Chair, I think that's slightly under my time, but those are my questions.

The Chair: You are a little under. We'll remember that.

Mr. Clement, go ahead.

Hon. Tony Clement (Parry Sound—Muskoka, CPC): Thank you, gentlemen, for participating in our review.

Without a doubt, and as you have referred to, there have been some common themes. I want to tease out some of these themes a little more in a series of questions.

First, perhaps I can direct this to Mr. Kapoor. We had a series of deponents here who were concerned about the information flow that you referred to. I think it was Professor Roach who called it—it just stayed in my mind—“a triple lock”. You have clause 8, then clause 14, and then you have clause 16 and the interplay of all those clauses. He was worried—and instilled the worry in me—that there are all sorts of off-ramps for the government to not provide the information.

Both of you gentlemen have said that we are busy parliamentarians who want to do a good job for the people of Canada. It doesn't matter what side of the House you are on: you want to do that. But if we are going to do this.... I came from a government that didn't want to do this, but now we're at the point where we are doing it—

Mr. Anil Kapoor: That's in Macbeth's speech.

Hon. Tony Clement: Yes, as follows:

If it were done when 'tis done, then 'twere well
It were done [well]

Lady Macbeth said “done quickly”, but I would say “done well”. From my perspective, if we are going to do this, let's do it well. Let's not waste our time.

I wanted your comments on this triple lock idea, because I found it a good synopsis of the hurdles in the bill for good flow of information.

Perhaps, Monsieur Portelance, you can comment on this, too, because I think this is the crux of the issue when it comes to the information flow.

Mr. Anil Kapoor: My response to that is that we don't need a triple lock. The only thing that the committee should not gain access to in real time.... If there is a real-time concern on an investigation,

then I entirely accept that the integrity of the investigation needs to be protected, and frankly they don't have time to fund the committee with information and manage all that, because it's a burden on these agencies. But when that has passed, it's over: the committee gets it, period, full stop.

Hon. Tony Clement: Yes.

Monsieur Portelance.

Mr. Luc Portelance: I'm not sure if your question goes to this, but what I would call the misalignment of access between SIRC and the new committee I think ultimately will be a problem. I know there are discussions about how if this committee had no access, would you task SIRC? That doesn't seem to me to be a workable model. In other words, if you're going to clear everyone to top secret, I think there will be a maturity where people understand what is a legitimate concern in terms of public disclosure and what isn't.

I see the misalignment of access to be ultimately a bit of an issue. I think it will cause friction down the road, including, by the way, in the lack of horizontal reach of the review bodies.

Hon. Tony Clement: Yes.

Mr. Luc Portelance: I think that misalignment is also a problem because what this creates is that the committee of parliamentarians has the ability to review horizontally, but the existing review bodies don't.

Hon. Tony Clement: Right.

Mr. Luc Portelance: I think that is something that really, in the future review of the architecture, should get serious consideration.

Mr. Anil Kapoor: Just on that point, I view this committee as not engrafted upon the others. This is a different kind of animal. This is our only universal review. From that perspective—

Hon. Tony Clement: Right, and if you're CBSA, it's the only review.

Mr. Anil Kapoor: That's right. What I mean to say by that is that we shouldn't necessarily be approaching this in a relative way. We should treat this as *sui generis*.

Hon. Tony Clement: Monsieur Portelance talked about how detailed reviews would not necessarily be the purview of this committee. You'd have the review agencies, but this would have a different kind of function.

Again, I'm groping in the dark a bit, because of course this doesn't exist, and we've never been part of the U.S., U.K., or Australian experience on this. My question is, if it isn't detailed review—and I get that—and if it isn't operational review in real time—and I get that too—how do we make this substantive and useful?

• (1600)

Mr. Luc Portelance: My comment about detailed review is that if you look at the sheer complexity of an organization like CSIS, for instance—and Anil talked about some of the challenges in terms of getting to the bottom of issues—and multiply that by 17 agencies, I cannot imagine a world where this new committee has an ability to really do detailed review on an ongoing basis.

I see a bit of a tiered approach. The existing review bodies do detailed review. It's part of a larger plan, larger architecture. This committee starts to concentrate on what I might call strategic issues: the co-operation between agencies, the gaps, the funding. There will be circumstances where a major event is an opportunity for this particular committee to weigh in, like an Air India event or a Parliament Hill shooting event, where the committee will want to satisfy itself that organizations are working effectively and that there weren't any gaps. For the day-to-day review, in terms of the sheer magnitude and complexity, I simply cannot see a world where this committee gets down in the weeds. For that, a relationship with the existing review bodies would seem advisable.

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

The Chair: You have about a minute.

Hon. Tony Clement: I think I've actually exhausted my initial round, if that's okay, Mr. Chair.

The Chair: Sure. I'm going to take a bit of the time left over from that to ask Mr. Portelance a little bit more about CBSA, and the fact that, as Mr. Clement mentioned, it is the body without a direct-line review body. Do you think this precludes that and makes it unnecessary? Or do you think it would be necessary to have a CBSA review agency?

Mr. Luc Portelance: I do believe there's a need to bring greater public confidence in terms of the activities of CBSA. I've made a couple of comments.

Oftentimes, people mix the CBSA in the same conversation with CSIS, the RCMP, and CSEC. The first thing you have to recognize is that CBSA is not what I would call a tier one national security organization. It doesn't collect intelligence. It doesn't generate intelligence. It is a user of intelligence that is developed mostly by CSIS, the RCMP, and so on.

When you look at the CBSA, you find that it has a number of review and oversight bodies and so on. When I moved from CSIS to CBSA in 2008, the most striking difference was the public exposure to activities of CBSA. You can't hold anything back from an ATIP standpoint because, frankly, it doesn't meet the test. Everything you do is quite exposed.

I think the one area that is worthy of consideration is around public complaints. The public complaints that are generated are currently investigated within the CBSA. I've always thought that an organization like the public complaints commission of the RCMP would likely be the right sort of review body, but I think the right way to do this is to look at everything the CBSA does and really focus on the one area.

The last point I'll make is that some of the initiatives I've seen in the past had the CBSA looking far more like a CSEC organization, with that kind of review requirement. It just isn't. It isn't a tier one national security organization.

The Chair: Thank you.

Mr. Dubé.

[*Translation*]

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

I will continue along the same lines. The question is for the two witnesses. I will start with you, Mr. Portelance, since you already have some momentum.

I don't want to misquote you. You talked about misalignment, to the effect that the committee of parliamentarians could practically delegate to the Security Intelligence Review Committee, SIRC, some parts of the mandate, given the lack of access to information. With that in mind, we shouldn't forget about the Privacy Commissioner's report, which states that, as a result of Bill C-51, the majority of agencies involved in information sharing are not subject to review. One example is the Canada Border Services Agency, but there are others, provided they are open to the public, as you say. However, there is nowadays also an issue related to information sharing. The committee of parliamentarians should be looking into that, right?

• (1605)

Mr. Luc Portelance: I would say that's a good example. Information sharing among all agencies, whether they play a lead role or a supporting role in national security, could be part of the annual mandate the new committee gives itself. The committee could carry out an annual study, for example, on information sharing, volume, quality and elements that cause problems, such as compliance with privacy requirements.

It is true that existing review agencies have no horizontal capacity, and that will always be a problem. For example, when the Canadian Security Intelligence Service, CSIS, shares information with the Canada Border Services Agency, SIRC does not have an opportunity to continue its review to determine what the Canada Border Services Agency—

Mr. Matthew Dubé: Allow me to interrupt you before Mr. Kapoor answers.

I would give a very specific example of a recent situation, which was exposed after access to information requests were filed. I'm talking about consular services, which share information with CSIS on Canadians detained abroad. Consular services don't come to mind when we think about intelligence gathering and the protection of public safety. Nevertheless, they can play a role that could require the intervention of this kind of a review committee.

Mr. Luc Portelance: I completely agree. That is why I said in my opening remarks that the organizations to be scrutinized by the new committee should not be limited to those listed. That is because it may potentially be discovered that an organization not on the list is receiving information.

Mr. Matthew Dubé: At the same time, if I may, I would say that we should not limit ourselves to the information based on SIRC, as other organizations will also be covered by the committee of parliamentarians. So the committee will need to have access to that information.

Mr. Luc Portelance: Exactly.

Mr. Matthew Dubé: Thank you.

[English]

Mr. Kapoor, do you want to add your thoughts to that?

Mr. Anil Kapoor: I agree with Luc that there has to be this cross-agency review. That's the beauty of this particular committee. If the committee were minded to take a look at information sharing across the suite of intelligence agencies, they would have to do so with regard to their capacity, but I think that as a matter of principle they ought to do so.

The other area that's very important, I think, is deconfliction between the RCMP and CSIS. It's important that this committee have an understanding of that and how those mandates converge in the counterterrorism effort and where maximum efficiencies can be obtained.

I think those are areas that right now are really beyond any kind of review mechanism. This committee can perform a salutary service by doing that.

Mr. Matthew Dubé: I want to touch on another comment that you also made about the access to the media, the chair having a public role, and the trust deficit that exists. When the U.K. chair was here, he talked about the fact that they elect the chair. With regard to the relationship with the media and with other parliamentarians and with Parliament as a whole, and despite the fact that it's not a parliamentary committee but a committee of parliamentarians, as we've been told, that relationship is nonetheless important.

What are your thoughts on proceeding that way? I know that we keep talking about the growing pains and how we can't get tomorrow to where the U.K. is, but that being said, it's hard for me to see a reason why we should wait.

What are your thoughts on that?

Mr. Anil Kapoor: Do you mean in terms of...?

Mr. Matthew Dubé: In terms of having the members of the committee elect the chair of the committee.

Mr. Anil Kapoor: I don't have a strong view on that one way or the other. I suppose the benefit of having the chair elected is that the person has the confidence of the committee members and isn't someone who is parachuted in, but you guys all know each other and like each other, so....

Mr. Matthew Dubé: Most of the time, absolutely.

Voices: Oh, oh!

Mr. Matthew Dubé: I want to hear your thoughts on another interesting point as well. Something we've heard from other witnesses is how some of the limitations that exist currently in the bill would prevent the review of operations that took place rather a long time ago but are ongoing and that really require the kind of review that Parliament needs, such as Afghan detainees or Air India.

Perhaps I could I have your thoughts on that, given your experience on Air India in particular. How important is it that even though there are certain ongoing elements of those investigations, the committee does need to get access to that information to do its work?

Mr. Anil Kapoor: What I was alluding to earlier were the kinds of things that Michel Coulombe was referencing: real-time and in-

progress problems. When a crime has been committed, and it's 25 years late, this committee can certainly take a look at the information. Frankly, the information is coming in a confidential way to begin with.

The real problem is the extent to which the committee is going to draft a report for public consumption that's going to compromise an investigation. Giving it to the committee doesn't compromise the investigation unless the investigation is at an intense point where resources cannot be devoted.

• (1610)

Mr. Matthew Dubé: How can we define that in the bill, then, to make sure we're not stepping on the toes of CSIS, as you and Mr. Coulombe described? You can say 25 years later, and that sounds obvious. What would be your suggestion for how we should call it?

Mr. Anil Kapoor: I'd say it would be a current ongoing investigation where production to the committee could prejudice the investigation. You might want to tie it to the resources of the agencies, because that's really the problem here. When you're in the middle of an operation—and certainly Luc can speak to it—you don't want to devote resources to some review committee, but when you're down the line, review is a fact of life.

[Translation]

Mr. Matthew Dubé: Thank you.

I don't think I have any time left, but—

The Chair: Mr. Portelance, you can take a few seconds to answer, please.

[English]

Mr. Luc Portelance: Just to add to that, in terms of clause 14, there is no reference, as far as I can tell, to ongoing CSIS investigations: it's ongoing criminal investigations. CSIS tends to run its investigations in the long term. I don't see much in terms of problems with the committee having access to its investigations. What Michel Coulombe described was just a few days of very dynamic investigation.

Law enforcement is another issue. I think there will have to be a reasonableness test, because if you're running a criminal investigation, an active criminal investigation, I can see where you don't want to jeopardize that investigation, but then there's a difference between something that runs year over year, where the case remains open, with no track towards a potential prosecution. I think there's a bit of a grey area there that will have to be worked out.

The Chair: Thank you.

Mr. Mendicino, go ahead.

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

Thanks to both of you. This committee is very fortunate to have the benefit of your evidence today.

Mr. Portelance, I want to begin with you. You mentioned during the course of your opening remarks that you had some concerns with regard to clause 9 of Bill C-22 and the absence of a sufficiently articulated architecture when it comes to the oversight of national security.

Can you elaborate on that? What are the principles of architecture that you think that the government and, by extension this committee, should be taking into consideration when we talk about enhancing oversight and accountability?

Mr. Luc Portelance: In general terms, if you consider the creation of this committee, the new committee, it's being bolted on to what we'll call an architecture that is fairly long-standing. Certainly, SIRC has operated in a certain way now for over 30 years.

I think it was discussed when SIRC was here that, at the end of the day, SIRC is led by a part-time chair and part-time members, with a professional staff. It looks like what the new committee of parliamentarians will be: part-time committee members with a professional staff.

If you think about this new committee and what the existing review bodies do, this is done absent understanding what else could occur within the review environment. They follow the thread. For instance, the ability for some of these organizations to take their review beyond the walls of the organization they review has been mentioned as a problem going back years. The Air India commission mentioned this. I think it is a fundamental problem.

As you bolt on this new committee, absent an architecture that says more specifically that there will be coordination and there will be collaboration, the final point I would make is that once upon a time there were two review bodies at CSIS. There was an inspector general, and there was SIRC. The inspector general position was abolished a few years back, but I can tell you that when I was running operations at CSIS it wasn't unusual to have both looking at the same general issues. The coordination seemed to be the responsibility of CSIS, because the two review bodies would say "we have a mandate and we will do what we will".

I would be worried for the agencies that there would be this sort of redundant and uncoordinated activity. That's what I mean by an architecture.

Mr. Marco Mendicino: Clause 9 mandates the committee of parliamentarians to work with existing civilian oversight to avoid duplication of scarce resources. We've heard evidence from SIRC, when they were pressed on this point, that in the early days conversations would include SIRC's essentially sharing their operational plans with the committee of parliamentarians to avoid the kind of redundancy that I think you're worried about.

Can you take just a brief moment—because then I have some questions for Mr. Kapoor—to talk about the kinds of "statutory gateways", which have been referred to in the Arar commission and elsewhere, that would trigger co-operation between the committee of parliamentarians and existing civilian oversight? What are the principles upon which we can build that co-operation?

• (1615)

Mr. Luc Portelance: Again, I think that if the starting point is a realization that the new committee of parliamentarians must leave in-depth ongoing review to the other review bodies, you have to figure out a mechanism that perhaps is able to task those review bodies absent the new committee's taking on the responsibility.

As the commissioner for CSEC and others in SIRC build their annual report, does this committee have an interest in a horizontal

piece? Do you have the ability to say that "this year it would be useful if everyone looked at this element, because this committee would like to bring this together"?

Mr. Marco Mendicino: Just by way of example—you've alluded to this explicitly—there is no existing civilian oversight for CBSA, nor for the vast majority of other branches that fall within the Public Safety overarching apparatus, so it seems to me that the committee of parliamentarians, within the early stages of its mandate, would have a lot of work just there in terms of overall efficacy, in looking at how to enhance oversight for everybody outside of CSIS, through SIRC and the Office of the Communications Security Establishment Commissioner for the National Defence portfolio. Is that a fair comment?

Mr. Luc Portelance: It's a fair comment.

Mr. Marco Mendicino: Okay.

Mr. Kapoor, I want to take you to the part of your written submission that addresses clause 16. There's been quite an abundance of evidence before this committee on access to information. I want to take you to the second paragraph, where the CBA says, "Put simply, section 16 would gut the proposed law...". That's a fairly strong statement.

I assume that this assumes that the minister, when exercising his or her discretion under that provision, would be doing so in a very restricted and constrained way and would be using the discretion to "impasse" the flow of information to the committee of parliamentarians.

Mr. Anil Kapoor: Right. Well, I mean, I don't know if they'll be doing it that way or not. We know from past experience that ministers aren't shy to claim privilege.

Mr. Marco Mendicino: If we don't know, then it's equally possible that the discretion could be exercised in a manner that allows the committee to fulfill its mandate under paragraphs (a), (b), and (c) of subclause 16(3).

Mr. Anil Kapoor: I guess I would say that discretion in the minister to withhold information from the committee is corrosive to the review process, and the minister just ought not have that discretion except for the very limited circumstance that I have indicated, keeping in mind that the information is not going to have public exposure in the first instance. It's going to come to the committee in a secure manner.

Mr. Marco Mendicino: Right. I'm sorry if I—

Mr. Anil Kapoor: I just don't see the case for withholding information.

Mr. Marco Mendicino: I just wanted to make sure I understood that statement, "gut the proposed law", and that it was founded on an assumption that the minister would be exercising discretion in a way that would obstruct the flow of access to information to the committee of parliamentarians.

Mr. Anil Kapoor: No, it's the opposite. If you as a committee member want to look at something as part of your mandate, you ought to be able to. It's not that the minister is going to misconduct himself or herself. It's that you ought to have access.

Mr. Marco Mendicino: Right.

Is that my time, Mr. Chair? It goes by so quickly in this round.

The Chair: It goes fast when you're having fun.

Mr. Marco Mendicino: I was just getting into the—

The Chair: Thank you.

Ms. Watts.

Ms. Dianne L. Watts (South Surrey—White Rock, CPC): Thank you very much, Chair.

I appreciate both of you being here to give testimony today.

I want to touch on the CBSA. You made two comments. You said that there's no oversight review body, and then you said that there are many review bodies for the CBSA. Are you speaking specifically about the civilian oversight? Can you clarify that comment?

• (1620)

Mr. Luc Portelance: If you compare CBSA with other national security organizations, you'll find that there's no civilian oversight mechanism.

If you look at what CBSA does for a living, my contention is that it is not a tier one national security organization. It does not use the same methods as do CSIS and CSEC. It doesn't work in a top-secret environment. It collects taxes, it deals with immigration enforcement issues, and it secures the border. It is a net user of intelligence and not a net generator of intelligence.

When you dissect what CBSA does, you will find that its immigration role is closely monitored by the IRB, for instance. Its customs role is closely monitored all the way up to the Federal Court. If there is a gap in public confidence, it's around public complaints. It's around the actions of officers.

Ms. Dianne L. Watts: Right.

Mr. Luc Portelance: That is different from having a SIRC or a commissioner of CSEC organization, so there's a sliver of public confidence lacking.

Ms. Dianne L. Watts: I understand that differentiation, but I would also suggest that the border integrity is key when you're looking at the importation of drugs and weapons and human trafficking, and all of those things. The intersection there, I would expect, should be.... The oversight should not just be a civilian oversight. I think there are other elements there whereby the information.... I guess I'll ask you this question. In terms of the sharing of information with CSIS, is that fairly integral or does it happen on an ad hoc basis?

Mr. Luc Portelance: I would say it happens on an ad hoc basis, but if you look at security at the border, you see a combination of information that CBSA receives from the RCMP, from CSIS, and from many others, which goes into the lookouts to protect Canada.

Ms. Dianne L. Watts: Right.

I'll ask you this question because you were the president of the CBSA for five years. When you said that an oversight body would have been greatly relevant to CBSA, were you speaking specifically of the civilian oversight or were you talking of a more integrated oversight?

Mr. Luc Portelance: My view is that whether you call it civilian oversight or review, the one dimension of CBSA activities that is

done in-house is around public complaints. Public complaints of misbehaviour by its officers, let's say, or about what happens in its detention centres, are handled in-house, unless it's a criminal investigation, when it then gets farmed out to the RCMP.

Annually, there are anywhere around 1,000-plus complaints that are handled internally in a very, very rigorous process, but I think public confidence seems to be lacking in terms of what is occurring internally. That portion of it, I believe, is the one that should be brought to a civilian organization.

Ms. Dianne L. Watts: Okay. The public complaints should be taken out of CBSA to the civilian oversight.

My question in terms of what you were saying, Mr. Kapoor, is about understanding the threat environment. I think the general public as a whole—or at least the people I've talked to throughout my life—doesn't have any idea in terms of what numbers there are, what a threat actually is, or the different levels of a threat.

There has to be some public education around this in terms of the national security piece as to why certain things are in place and why mechanisms need to be put in place. How would you address that? How would you roll that out in terms of education of the general public?

The Chair: I'm afraid you have only 15 seconds.

Mr. Anil Kapoor: It's a controversial topic. From an intelligence perspective, you may or you may not want the threat level known.

• (1625)

Ms. Dianne L. Watts: That's true.

Mr. Anil Kapoor: Agencies around the world treat this very differently.

If the committee were to release a report about the threat level, I think it would have to be with the co-operation of the intelligence agencies involved, because they're the ones who will appreciate the extent to which risk is created by revealing the threat level. Or, on the other hand, you may be content to reveal the threat level.

That's something you would take your counsel on from the agencies involved, which are closer to that. I don't think there's one answer to that question all the time.

The Chair: Thank you very much.

Mr. Di Iorio.

[Translation]

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

Good afternoon, gentlemen. Thank you for being here and for the work you are doing. If it's okay with you, we will continue in the same order as for the previous questions. So Mr. Portelance could answer first, followed by Mr. Kapoor.

Should the committee of parliamentarians have the authority to issue subpoenas, require the presence of witnesses and the submission of documents?

Mr. Luc Portelance: I have never thought about that.

Are you talking strictly about subpoenas concerning federal government employees?

If not, are you thinking of any other stakeholders, including provincial police forces?

Mr. Nicola Di Iorio: Exactly. I was talking about both.

Mr. Luc Portelance: I don't think it would be necessary in the case of federal employees. The situation becomes more problematic—and I don't know how much you have taken this into account—when national safety issues involve all stakeholders. I think that 17 departments were talked about. In reality, there is still some pretty close collaboration with provincial and municipal police forces.

If your committee was considering a major case, you would no doubt see that authorities outside the federal government were involved. As I am not a lawyer, I cannot tell you whether that requires subpoenas or other measures. I don't really have an opinion on that. However, I can see that testimony from outside the federal government could be desirable.

Mr. Nicola Di Iorio: Mr. Portelance, as part of the Charbonneau commission, in Quebec, prosecutors had to go to court to obtain the videos of what was recorded by the RCMP. I understand the link you are establishing when it comes to other authorities.

Mr. Kapoor, do you have any comments on the possibility of the committee of parliamentarians issuing subpoenas for attendance and for documents?

[English]

Mr. Anil Kapoor: Yes. I'm firmly of the view that the committee ought to have powers of compulsion. If there are particular pieces of information that you want to get from any one agency, hopefully they'll co-operate and give it to you, but on the off chance that they don't, for some reason, or if you feel that they are not compliant, you ought to be able to compel them. For example, there may be intelligence analysts that you want to ask questions of in any particular circumstance. You ought to be free to do that. It seems to me that there ought to be powers of compulsion.

In terms of civilians, non-government people, they of course could not appear in a secret or a closed process, but similarly, I see no reason in principle, if this committee is going to discharge its responsibilities, why it would not have that power.

[Translation]

Mr. Nicola Di Iorio: Clause 14 covers the identity of individuals. Subclause 14(d) allows for that identity to be withheld.

Yet both of you have alluded in your testimony to the ability to obtain all the information. Please enlighten us.

Why is it necessary to know individuals' names?

You are both fully aware of the extremely sensitive nature of some operations and the dangers they may involve for certain individuals. I would appreciate it if you could provide some clarifications.

Mr. Luc Portelance: I think that you said it well: nothing is more sacred than the protection of informers' identity, especially for an intelligence service whose mandate is to recruit such individuals in order to be better informed. As soon as you undermine that protection, you're out of business.

I don't think it is necessary for the committee of parliamentarians to know those people's exact identity. That won't prevent it from doing its job, as long as it knows what the key elements of the case are. I believe that this principle applies both to the world of police and to that of intelligence. I completely agree on that issue.

[English]

Mr. Anil Kapoor: Yes, I agree entirely with Luc.

Look, I've done a lot of this work, and the identity of the informant, almost nine times out of ten, is irrelevant. What's important is what information was provided and how the agency dealt with that particular person. Their name has very little value added. They could be X, or Smith, or Jones, or Kapoor.

Mr. Nicola Di Iorio: We also had a Mr. Cavalluzzo who testified and he made a distinction between oversight and review. Committees such as SIRC are review committees, and he emphasized that this committee should be an oversight committee.

Mr. Portelance referred to the concept in his initial remarks. I would like him to expand on that, and then you, please, Maître Kapoor.

• (1630)

Mr. Luc Portelance: There's a lot of debate on oversight versus review. I think that a committee such as this one does not want to be in the midst of ongoing investigations to the point where are guiding the investigation and guiding and influencing decisions. I think there's a general agreement that people who are in charge should be making decisions and let things unfold, but then there's a timing issue.

Review does not have to mean a year after the fact. For instance, let's take a case such as the one Michel Coulombe referred to. If the committee wants to understand what transpired in that particular case, there's an opportunity to do it fairly quickly, but I think the idea is that it shouldn't be in real time.

The Chair: Thank you.

Mr. Anil Kapoor: Yes. I think a real-time oversight is really impractical. Can you imagine if you're running a police investigation and you have a parliamentarian saying to you, "Well, why don't you go get a search warrant?" In the meantime, you're trying to investigate a case. I just think it's unworkable.

The Chair: Thank you.

We need to end there.

We have one or two minutes for Mr. Viersen.

Mr. Arnold Viersen (Peace River—Westlock, CPC): Thank you, Mr. Chair.

Thank you to our guests for being here today.

Mr. Kapoor, I was interested in the fact that right at the very beginning you talked about the value of this committee, and particularly about how it would re-engage Canadians and restore their trust. Could you talk about that a bit more, particularly in terms of trust in the RCMP? You more or less alluded to that trust having been eroded. Where do you get that information from? How do you see this committee improving that situation?

Mr. Anil Kapoor: In terms of the RCMP, there are any number of cases. We just had this whole problem, I suppose, of the settlement coming out of the sexual harassment. Also, there are other instances in which the RCMP has had difficulty.

I think there wasn't one particular instance, but a general feeling, and I think this committee can provide efficacy. It can actually reassure Canadians.

I'll give you an example. Let's say that some event happens and people are wondering how it happened. When the committee issues its report and says that everything was in place and that there was no way it could have been prevented, that goes some distance, right? It isn't always a bad news story. There could be circumstances in which somebody was intercepted, arrested, and convicted. A report can come out indicating how well the agencies transacted, which can also provide confidence.

I do think there needs to be a public role for the committee. Our current review committees have no public role.

Mr. Arnold Viersen: One thing I know is that if you can't measure it, you can't manage it. Is there any template out there that is currently measuring Canadians' trust in the RCMP?

You cite some cases in which the trust has been eroded, and I wouldn't deny that, but how do we know that Canadians' trust has gone down or up because of those cases? If we're bringing in this committee to re-engage that trust, is there a measurement of Canadians' trust in these institutions that we can use to say, "Hey, we've brought in this committee and now Canadians' trust in these institutions is going up"?

Mr. Anil Kapoor: I don't know of any metric by which you're going to do it. Pollsters are routinely getting everything wrong, so I don't think they're the answer. I would say, though, that there is a concern. If there have been spectacular, publicly renowned instances of problems with the agencies, I think our assumption has to be that there's going to be some erosion.

I should also say that this committee's role isn't only that. They also have a value-added role to the agencies themselves, but the knock-on effect is, I think, to provide public confidence. Maybe that's a better word than "restore".

The Chair: Thank you.

I think we need to end there. We're going to take a brief moment to recess while we change panels.

Thank you very much for your testimony today.

- _____ (Pause) _____
-
- (1635)

The Chair: We'll resume.

We're just getting our other witness available by video conference. Normally we begin with the video conference witness, just in case something goes wrong.

Can you hear me?

Mr. Peter Edelmann (Executive Member, Immigration Law Section, Canadian Bar Association): I can hear you.

The Chair: We can hear you too, Peter Edelmann. That's very good

We're going to start with Mr. Edelmann, from the Canadian Bar Association. We'll hear from him for 10 minutes and then turn to Mr. Fadden.

You are invited to give your address to the committee members now. Thank you.

Mr. Peter Edelmann: Thank you very much.

[*Translation*]

The Canadian Bar Association is a national association that represents 36,000 lawyers, notaries, law professors and law students across Canada.

The association's main objectives are to improve the law and the administration of justice. The brief provided to the committee was prepared by the sections of immigration law, criminal law, consumption tax law, customs and trade law, military law, as well as the CBA national privacy and access law section.

[*English*]

As you can see, the large number of Canadian Bar Association sections involved in preparing this has to do in large part with the broad scope of the concerns around national security in the legal context. We are generally supportive of the creation of a committee of parliamentarians dealing with national security review and oversight; it is important to understand it in the context of the overall framework and the existing framework.

There are still some major holes or problems, and a lot of those discussions are happening in the context of the green paper. It's a bit difficult, in some ways, to comment on the current composition of the committee without being privy to the overall vision for the framework of the national security oversight mechanisms.

The role of the committee would be twofold, and what's important with respect to both these aspects [*Technical difficulty—Editor*] the representatives who are on the committee in terms of the parliamentarians themselves. The second aspect is with respect to the institutional framework. Given the fact that parliamentarians are neither long-term experts—or that not all members of the committee would be long-term experts—nor would they be full-time in dealing with review, the creation of the institutional aspects of the parliamentary review committee are obviously important. It will be important that it be properly funded as well in terms of being able to provide the institutional knowledge and ability going forward.

I'll have comments both with respect to the mandate and with respect to the tools that are available to the committee.

With respect to the role of the committee, the role of having the parliamentarians in place would be for the higher-level and broad issues within the national security infrastructure in terms of policy and law. It would be very difficult, in our view, for the committee to get involved in the minutiae of complaints or of specific items with respect to the individual agencies. Thus, it continues to be important that the individual agencies that currently do not have independent oversight.... The Canada Border Services Agency is a good example of that, in which we have a very large law enforcement agency that's very heavily involved in the national security context, with no oversight whatsoever outside of the ministerial chain of command.

Also, with respect to the co-operation amongst those agencies, we've seen a broad expansion of the sharing of information between agencies, in particular with the information sharing act that was brought into law with Bill C-51, which has increased the co-operation in information sharing between the agencies, but we continue to see the restrictions on the ability of those agencies to communicate with each other.

In this piece of legislation, we also see a continuing of that siloing effect, in the sense that the committee is not able to share information with the oversight agencies that they would not otherwise have access to. This again creates a problem, where the committee may be aware of things that might be relevant to SIRC, but if that wouldn't otherwise be available to SIRC, the committee is prohibited from telling them about it.

There are some concerns with respect to how the overall framework is going to work and how this fits into it. We are happy to continue to be involved in providing commentary and assistance in developing that framework, but with the information we currently have and the current framework we're working with, we have some concerns with the bill.

• (1640)

The first is with respect to the mandate. We have a reference to “national security” in the mandate, but it's not clear which definition of national security is being referred to or what the scope is. There are two in particular, the one that we see in the CSIS act, which is used quite broadly in other national security-related issues, and then the one in the information sharing act, which is significantly broader. It's unclear which scope of national security the legislature or the drafters have in mind as to whether or not it's the broader one. Presumably, it is, but some clarity on that aspect would be helpful, although you have our comments on the information sharing act where we had concerns about the overbreadth of that definition of national security and the reasons why that's problematic.

There's a second issue with respect to the mandate. Having a clear mandate in terms of having a committee of parliamentarians is a very important mechanism to provide confidence. When we're dealing with the national security context where a lot of things happen in secret and are not accessible to the public, it is important that the public have confidence that the committee actually can and will do its job. We have comments on the composition and functioning of the committee, but I won't belabour them. I'll refer you to our written materials on that basis.

With respect to the the ability of the committee to undertake studies, clause 8 provides some unnecessary restrictions and gives a

great deal of control to the ministers in paragraphs 8(b) and 8(c). In other words, on the broad legislative policy issues that are set out in paragraph 8(a), there doesn't appear to be any restriction, but paragraphs 8(b) and 8(c) would appear to create significant control by the ministers over the topics or issues that the committee could look into. It's unclear to us why those would be necessary. In fact, they should be deleted.

The other aspect of the work of the committee that is of significant concern is the access to information that the committee will have. These problems arise in both clauses 14 and 16 of the act as currently drafted.

I won't go into the individual paragraphs of clause 14, but it's unclear why, on the one hand.... Either there's trust in the committee.... It's clear—there's no question—that there does need to be trust in the committee, both from the public side and from the national security establishment or the people who are involved in doing national security work. If there's no buy-in, for lack of a better term, from those agencies and from the people working for those agencies, obviously the committee will be hampered in its work. But with clarity in terms of its mandate, if there's trust in the committee and the structure itself, it's unclear why these types of limitations on access to information are necessary or even desirable, because either we have a committee that can be trusted or we don't. If it cannot be trusted, it shouldn't be doing this work at all, and if it can be trusted, then the restrictions only serve to undermine the confidence of the public in what the committee can and cannot do, as the ministers have a great deal of control both over the mandate and the topics, but also over the information that the committee might be able to have access to.

With that, I think I've used most of my 10 minutes. I'm more than happy to answer questions. I thank you for your invitation.

• (1645)

The Chair: That's perfect. Thank you very much, and you will get questions, I know.

Mr. Fadden.

Mr. Richard Fadden (As an Individual): Thank you.

Thank you very much for having me here today. I'm particularly happy to be able to talk about a topic that I've thought about over the years.

I think the time has come for an effective role for Parliament in national security matters. Although this new role may not guarantee full public confidence in national security, I suspect that, along with the review bodies, the courts, and the media, Canada will be well on its way.

I would state unequivocally that substantive public confidence in the work of the national security entities is necessary if their work is to be effective. This is not only necessary for the public and for Parliament. If the national security agencies do not have the confidence of the public, then they can't do their work either, and this bill really should help.

Broadly speaking, I think Bill C-22 is a good document. To put it in different terms, if I were one of you, I would have quite happily voted “yea” at second reading.

Having said this, I have a couple of comments. Based on my time both as someone who has worked in national security and as someone who has worried about accountability issues and machinery-of-government issues, at the meta level I would argue that what's needed is post facto review, not the ongoing oversight of national security operations. We sometimes forget that oversight is characteristic of the United States' system of governance, and we shouldn't adopt it here lightly. It's not something that we do commonly in Canada, and just because the Americans do it doesn't mean that we should adopt it.

Clearly, now the work of the committee would extend to operations. I would note that it's not the case in Australia. Also, in the case of the United Kingdom, it took them several years before they gave their equivalent committee access to operations. My advice would be, let's take it slowly and see how the committee does.

To put this into context, the only people in Canada who really know a great deal about national security are ministers and officials. It's a very complex and complicated area. It seems to me that to ask a committee to start off by doing everything from legislation to operations is taking a bit of a risk. I would argue that, to the extent that you allow the committee to carry on in operations, it would be helpful to have some sort of declaration, which says that it should not do so in a way that would interfere with the effectiveness of the work of the various committees.

The bill retains the review bodies and also retains the role of the courts. I appreciate that the burden would vary between the three and four core national security agencies and those who are involved in the periphery, but I do want to suggest that it's worthwhile thinking about the burden that is imposed. The national security departments and agencies exist to promote national security, not to provide opportunities for oversight, review, evaluation, and audit. I'm making a bit of a joke of it, but it's not all that funny when you have a multiplicity of bodies all looking at the same thing, sometimes at the same time.

I think it would be worthwhile if the committee were to consider providing additional guidance in the bill to the committee and the review bodies on the nature of their relationship. If I recall correctly, even Mr. Goodale, when he spoke to you, suggested that this was a potentially problematic area. The bill could say that the review bodies' annual reports are to be tabled in the committee, that the chairs of those committees are susceptible to being called before the committee, and that there be a requirement that the work programs of everyone are to be shared with everyone else.

I make this point in part because over the years I've had a fair bit to do with statutory officers. They tend to take their statutory duties fairly seriously, and a general injunction to co-operate, even with full good behaviour and good intent, may mean that there will be difficulties in the relationships between the review committee and the bodies.

My last point relates to the protection of "special operational information" as it's defined in the Security of Information Act. The bill says that the minister may refuse to disclose such information. I would argue that special operating information, a large chunk of which comes from our allies, is so sensitive that the protection should be reversed and that it should only be released with the

specific authority of the minister. It's not so much information about what is being done; it's often information on how things are done, in terms of technical information. I'm not sure the committee would need this all the time.

In any event, it's important that the committee, as previous witnesses have said, has not only the support of Parliament, the public, and the agencies, but also that of the allies. We need to make sure that organizations in countries with which we share information are absolutely certain that this is a reasonable bill and that their information will be protected.

• (1650)

As I said at the beginning of my remarks, I think this is generally a good bill. It will benefit not only Canadians but the national security departments and agencies.

I hope my comments are helpful. I'd be glad to try to answer any questions you might have.

Thank you.

The Chair: Very good.

Thanks to both of you.

Mr. Erskine-Smith.

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

I'd like to begin, Mr. Fadden, with access to information. You mentioned a bit about it at the end with regard to clause 16.

Obviously the CBA has their submissions, but in fact, the majority of testimony we've heard has focused on the triple lock and the inability to have fulsome access to information. I specifically wanted to mention SIRC. The testimony of SIRC before this committee was that they have access to everything other than cabinet confidences. In your experience, why would this committee have differential access than SIRC has? What would be the justification for that?

Mr. Richard Fadden: I think basically it would be because, Mr. Chairman, the committee of parliamentarians and SIRC have somewhat different mandates. If you look at the CSIS act and the mandate that is provided to SIRC, it really directs it to detail, to making sure that its ongoing operations are lawful and to a variety of other things.

My colleague from the Canadian Bar Association was saying that it's not entirely clear what the mandate of the committee is. The way I interpret the bill is that it will have a broad overarching review of all of the activities in the national security area, which would not require the same level of detailed access. If it had the same access, would the world come to an end? No, I don't think so—

Mr. Nathaniel Erskine-Smith: I tend to agree with you. Look at paragraph 8(a). That's efficacy review and broad strokes looking at how different agencies are working together and how review agencies are all working together. There's more horizontal access for this committee than other committees. If you look at paragraph 8(b), you see that it mentions "any activity carried out by a department that relates to national security or intelligence". There may be a situation where a public inquiry is called for and this committee would want to undertake that inquiry and get into the nuts and bolts of it. Don't you think that clauses 14 and 16 would impede that?

Mr. Richard Fadden: Yes, I think so. It's one of the reasons why I think the relationship between the review bodies and the committee needs to be clarified. I think there's something to be said for the committee of parliamentarians to have the authority to mandate SIRC, for example, to do a review on behalf of the committee. In duplicating all these detailed reviews, at one level I can understand the value, because you bring a slightly different perspectives to bear, but I think we should have some pity on the bodies that are being reviewed. At some point, there's going to be too much.

Whatever can be said about SIRC, they're very good at getting a grip on what's going on in detail. I would argue that it would be worth considering having them do these reviews on behalf of the committee of parliamentarians.

Mr. Nathaniel Erskine-Smith: Though for SIRC, they came before us and they are masters of their own domain. They determine what they're going to do regardless of even what the minister asked them to do, unlike this committee. There may be situations where the committee undertakes to do something, and clause 9 does suggest that there won't be duplication and that they will establish trust and a working relationship.

We had Mr. Portelance before us from a security perspective, who suggested that in collaboration this differential access to information might actually impede that collaboration. Do you think that's fair to say?

•(1655)

Mr. Richard Fadden: I think it is. I was sitting in and listening to part of Mr. Portelance's conversation with you. It seems to me that if there's one thing that oversight or review would benefit from, it is a clear understanding that the committee and the review bodies can share information both ways.

Mr. Nathaniel Erskine-Smith: If SIRC has fulsome access to information and this committee does not, SIRC may be constantly wondering what information they can share with the committee.

Mr. Richard Fadden: True enough, but that's often the case in this area.

Mr. Nathaniel Erskine-Smith: Fair enough.

To the CBA, I was a bit worried about one of your comments about access to information. You noted:

The Canadian Bar Association opposes passage of Bill C-22 if it contains section 16, and recommends that section be deleted.

Clause 14 seemed to me to be a more worrisome clause, because it doesn't allow for any discretion to be exercised by the minister and doesn't have any additional criterion that would require the

disclosure of the information to the committee to be "injurious to national security"... It was mandatory.

We can look at the U.K., hearing from the minister that this committee is largely built on the U.K.'s experience. The minister does have discretion to veto providing information to the committee where it's sensitive information and where the provision or disclosure is deemed to be counter to the interests of national security.

I wonder if you could perhaps speak to why you're so worried about clause 16, and why the additional criterion of "injurious to national security" and the discretion that the minister would exercise—hopefully rarely, akin to the U.K.—is so worrisome. Why would you opposed the bill if it's not removed?

Mr. Peter Edelmann: In regard to the concerns we have in terms of information sharing, I think a number of the concerns were raised by Mr. Fadden as well. The committee itself would presumably be trained and take quite seriously the practices of security clearances in terms of saying that they would only request or want information on a need-to-know basis. The question is whether or not a committee can be effective when there is a veto power by the ministers.

What would be a much more effective process would be to say that if the minister has concerns that information shouldn't be shared with the committee, because of the impact on allies or because of the impact on ongoing operations or whatever the situation might be, those concerns can be communicated to the committee as to why the committee doesn't need to know these things or does not need to know them right now or at this particular or with respect to the study they're doing—

Mr. Nathaniel Erskine-Smith: I'm sorry. I only have a minute left, so if could, I'll jump in.

Should we be that worried about a minister having veto power, where the committee, as Minister Goodale said, can use the report itself as a bit of a bully pulpit if the minister repeatedly refuses information? If the provision of information to a secret committee would be injurious to national security, that seems to me to be a very high bar: where the provision of information in and of itself to the secret security-cleared committee would be injurious to national security....

Clause 16 in fact doesn't worry me nearly to the extent that clause 14 does. I wonder if you could comment on that.

Mr. Peter Edelmann: I think clause 14 is of some concern. One of the things it had where there had been some discussions was whether or not the two parts.... Right now, the way clause 16 reads is that the two aspects of it are conjunctive. In other words, they both have to be in place for—

Mr. Nathaniel Erskine-Smith: That allays my fear to a great degree.

I'm sorry, but I only have a few seconds left, and I wonder, Mr. Fadden, if you could comment. If we were to move paragraphs 14(b) to (g) into clause 16 to require that where that information is refused, it would be the additional criteria of "injurious to national security", would that be a fair compromise in striking a balance?

Mr. Richard Fadden: In my view, yes.

Mr. Nathaniel Erskine-Smith: Thanks very much.

The Chair: Thank you.

Mr. Clement.

Hon. Tony Clement: Thank you, Mr. Chair.

Thank you, gentlemen, for participating in this.

I want to go over some ground and make sure I understand your depositions correctly.

Maybe I'll start with you, Mr. Fadden. I detected a certain amount of reticence in your remarks in regard to some of the risks associated with having a committee of parliamentarians. In my mind, however this committee is composed after the amendments pass or do not pass—it's all in the future, so we don't really know—presumably a party's leadership is going to want to have individuals who are worthy enough to be sworn into the Privy Council. Presumably, there's going to be some sort of swearing in at the Privy Council so that you can be given secrets. That's how we do it in our system.

You are talking about people who are likely to be—and I think invariably will be—people who are trustworthy, who are honourable members, and who want to represent Canadian interests appropriately. I guess I'm trying to reassure you that the risks associated with that are as low as when CSIS hires somebody and sometimes they turn out to be Snowden—unfortunately. Am I running this analogy too far, or do you see my point of view as well?

• (1700)

Mr. Richard Fadden: I see your point of view. I simply take the position that there are some limited categories of information, and when it is not absolutely necessarily for anybody—be it a parliamentarian or anybody else—to have them in order to discharge their functions, then they shouldn't have them. Witness protection is one. Information relating to informants is another.

I really assume that whoever is appointed to this committee will do so in good faith—they'll swear the oath and whatnot—but it does mean that there will be eight more people, their staff, committee staff, and I can keep going on.... In order to be able to serve the committee, these various agencies are going to create secretariats within themselves, which will also have information being shared when it would not necessarily have been the case.

I want to be clear. I'm not talking about general information. I'm talking about very restricted information: informants, military operations, and, in my view, special operating information. The minute you give access to one person, you are in fact giving access to five or six people in this town, just in practical terms.

Hon. Tony Clement: Well, not necessarily. I'll give you an example from when I was the president of the Treasury Board. We had all sorts of secret information, sensitive information about various government departments, but there were times when we had to deal with supersensitive information.

At those times, the packages of information were not circulated to the staff of the ministers of that committee. They were available when we showed up. We kicked out every member of the secretariat except for the deputy minister, and we had the discussion in camera.

Once the meeting was over, all of the documents were returned, and there was no other record that was available to the cabinet members who were members of the Treasury Board.

There are ways of doing this, which are reasonable and responsible, to allay that particular concern you have.

Mr. Richard Fadden: I agree with you, and again, I don't think the world is going to come to an end if your view prevails over mine, but in the case of the Treasury Board, those circumstances where you had those ultra-secret bits of information were relatively rare. It was easy to put into place these very special circumstances.

If this committee does its job properly, it's going to need them rather more frequently. It's going to need to have some measure of archives or something to keep an eye on what they have done and where they're going. I am simply expressing the preference for less rather than more. I do think, though, that generally speaking, with the exception of clauses 14 and, I guess, clause 16, if I had my way, they should get everything else.

I've worked in this area for a couple of decades. Rare were the opportunities, when one of the review bodies really wanted information, that the responsible minister or agency wasn't prepared to make it available. In particular, in this case, when the committee can make a public issue of non-provision, it seems to me that it's a balance.

Hon. Tony Clement: True enough.

Do I have time for a question to Mr. Edelmann?

The Chair: You have two minutes.

Hon. Tony Clement: I just want to tease out some of your testimony as well. You said at one point that the committee obviously will be operating mostly in secret, almost exclusively in many cases, but that the public has to have confidence that the committee will do the job. It struck me that this is a good construction of it. The public is not going to know what the committee is doing most of the time. It will be issuing reports. At that point, there will be something public. In terms of month to month, or what have you, the veil cannot be pierced.

The structure of the committee, or the architecture of the committee, to use your terminology, is very important. If the public doesn't have confidence in it being a true representation of the public interest, then there's really not much point in having the committee. I don't mean to put words in your mouth, but is that what you meant when you uttered that phrase?

• (1705)

Mr. Peter Edelmann: I agree very much with that statement in terms of saying that the very purpose of the committee is to provide confidence that there is oversight and that there is review.

Because it happens in secret, the only thing we can see, from the perspective of the public, is what those structures are. When we're dealing with structures that have significant control and limitations that are in the hands of the ministers, or in other words, in the hands of the very people the committee is being designed to provide review and oversight of, the very point of having the committee is to say that we need to have some oversight outside of the executive, and this is oversight of the executive.

The relationship between the committee and the executive is an important mechanism. In this context, the information sharing is crucial, both in terms of the mandate and the topics the committee can look into, and also in terms of the information they have access to.

The Chair: Thank you.

Mr. MacGregor, welcome to Public Safety and National Security.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Thank you, Mr. Chair.

I hope the committee will bear with me. I'm trying to impersonate Mr. Rankin here and deliver the questions he's left with me.

Voices: Oh, oh!

Mr. Alistair MacGregor: Mr. Fadden, I'm going to start with you. I want to follow up on the exchange you had with Mr. Erskine-Smith.

As you said, public confidence is key. To clarify your answer to Mr. Erskine-Smith, just imagine a scenario in which a foreign terrorist carries out an attack in Canada. We have a detailed investigation, which is called for, into the failures or the gaps that allowed the incident to occur. SIRC could examine CSIS's conduct, but only this new committee could look at the Canada Border Services Agency.

Is it your testimony, then, that clauses 14 and 16 could undermine the committee's ability to conduct a fulsome and detached operational review to the standard necessary for public confidence?

Mr. Richard Fadden: That, Mr. Chairman, is quite the question.

I start from the premise that, except for the three or four core national security entities, all of the others that are listed in the annex to the act do national security part time. I think that's an important thing to keep in mind. It means that the committee of parliamentarians will only be nipping in and nipping out of CBSA, because a large chunk of what they do has absolutely nothing to do with national security.

I think I said during my remarks that I believe that one of the shortcomings in the current bill is that it doesn't provide for a full exchange of information between the review bodies and the committee of parliamentarians. I think that if you, the House, and the Senate eventually put in a provision ensuring that, clauses 14 and 16 don't become so important. It means that the committee can utilize the existing review bodies, which have full access across the board. Someone I think made reference to Bill C-51 and the sharing of information. As long as information is being shared and originates from one of the core national security agencies, I think the review bodies and the committee of parliamentarians should have access.

That's sort of a roundabout answer, because I don't think there's a perfect answer to your question.

After the Bibeau incident on Parliament Hill a while ago, three or four police bodies did enquiries and investigations. None of them were really made public. A committee of Parliament didn't really look at them. The situation is somewhat analogous. A lot of this stuff can be looked at in camera—I think, anyway—not even in secret. I think there's an important distinction to be drawn. When something

happens in public, a lot of what happens and the response by various agencies can be looked at without people being sworn to the level of top secret. I don't think it's as large a problem in the circumstances that you set out as it might be if you were talking about espionage or the proliferation of nuclear weapons, for example.

Mr. Alistair MacGregor: Thank you.

Under the National Defence Act, the CSE commissioner currently has an obligation to inform the relevant minister and the Attorney General of Canada of any activity that he or she suspects not to be in compliance with the law. Do you see any harm in the committee of parliamentarians expanding this whistle-blowing duty to other departments and agencies?

• (1710)

Mr. Richard Fadden: No. I think the committee should organize itself in such a way that for anyone who believes that for a department or agency working in national security and is aware that the law has been violated, there should be a means of providing that information. I wouldn't call it whistle-blowing, because it's a slightly different construct, but no, I think that the responsible minister, the Attorney General, or the committee should be made aware.

Mr. Alistair MacGregor: I apologize if this is a repetitive question or if you have already testified to this.

Michel Coulombe appeared before this committee. Both he and the director of the CSE testified that they've never been uncomfortable with the information they've had to provide to their respective expert bodies or the level of access those bodies have. Do you share that view? Have you ever had concerns about SIRC's level of access?

Mr. Richard Fadden: I was director of CSIS for four years, and during that time, no, although we did have a few discussions about whether they really needed the information. On a few occasions, we came to an understanding that it wasn't really necessary.

Also, there's a difference between a SIRC analyst going to CSIS, having access to absolutely everything, writing up a summary, and then reporting to the committee, as opposed to CSIS testifying before the full committee—and if Mr. Clement will forgive me—with officials in the room and everything else, and a large number of people being made aware of it.

Generally speaking, no, although in a few circumstances we convinced them it wasn't absolutely necessary. In a couple of other instances, they sent an analyst who looked at the stuff and the analyst aggregated it up to the satisfaction of the committee. Generally, it has not been a problem.

Mr. Alistair MacGregor: Thank you.

In principle, do you see any problem with the committee of security-cleared parliamentarians enjoying a level of access that is sort of on par with existing review bodies, keeping in mind that for many agencies, such as the CBSA, this committee will be the only oversight mechanism?

Mr. Richard Fadden: To some degree, you are picking up on the conversation I had with Mr. Clement.

I think you have to go back to what you expect the committee to do. As I understand the bill—and I am subject to correction—the committee is not intended to do detailed investigations. To the extent that this is true, I don't think they need access to every piece of paper produced by CSEC or CSIS. However, I mitigate that by saying that I think the committee of parliamentarians should have access to what CSEC and SIRC produce. I do believe there is a rationale for differentiating access between the various bodies somewhat.

Mr. Alistair MacGregor: I'll get one more question in here.

We've proposed an amendment to require the expert review bodies to provide to the committee as well copies of specific classified reports that they produce for ministers. Would you support such a change?

Mr. Richard Fadden: That is consistent with what I said at the very beginning, so the short answer would be yes.

Mr. Alistair MacGregor: Thank you, Chair.

Thank you for bearing with me.

The Chair: Ms. Damoff, go ahead.

Ms. Pam Damoff (Oakville North—Burlington, Lib.): Thanks to both of you for being here today.

Mr. Fadden, I had prepared some other questions, but you mentioned that the committee would be reviewing legislation, and I wanted to ask you about that. In the mandate, paragraph 8(a) talks about reviewing legislation and a number of other things that this committee actually does. Can you explain in what context you see this new committee reviewing legislation?

Mr. Richard Fadden: I think, Mr. Chairman, that it would be largely in those circumstances where it's other work: either policy review, regulatory review, or general discussions with the review bodies, or when the departments and agencies involved in national security suggest to them that there is a need for a legislative change.

My understanding of Mr. Goodale's intent, when he presented this piece of legislation, is that your committee would continue to be the legislative committee. I think you need a relationship with the committee of parliamentarians that doesn't involve this committee knowing every secret, but it would involve them articulating in whatever fashion the House thinks appropriate their views on when legislative change is necessary. In other words, they would have access to a level of detail that spans all of the departments and agencies, which you would not necessarily have, simply because you don't have the time to do it. Then they could make suggestions to you.

• (1715)

Ms. Pam Damoff: Do you see a reporting role where they would report to this committee, which is not in our...?

Mr. Richard Fadden: I don't believe that happens often between committees of the House. You don't really report to one another, but surely there would be some means, such as by exchange of letters between the chairs, or between the staff, for that matter. I don't really have a view, but it seems to me that if you insisted on a reporting

relationship, you would probably get yourselves in difficulty with the clerk's office, if no one else.

Ms. Pam Damoff: Thank you very much.

Mr. Edelmann, you've given us a number of suggestions in terms of changes that you would like to see in the legislation.

I have a very quick question. If changes weren't made, would you still see this bill as something that's needed and is better than what we had?

Mr. Peter Edelmann: I think we generally support the proposal of having a committee of parliamentarians. Where we see some danger is in creating something that's toothless and in which the public is not going to have any confidence. That's not necessarily going to make the situation any better; you're just going to have an additional layer. I can see some problems there.

In terms of your previous question to Mr. Fadden with respect to the legislative questions, I would point out that there is an entire body of legal interpretations that are secret and upon which the agencies are relying. A good example of that would be in the recent decision from Justice Noël, where we learned that there were internal interpretations that were secret of what metadata is and how that can be dealt with. What this committee might think it's legislating about and what the agencies are actually interpreting that legislation as, or how they are applying that legislation, are often two very different things.

Ms. Pam Damoff: When we're balancing privacy and national security, who do you think is in the best position to make the decision on what should be shared publicly? We are obviously having a lot of discussion about what this committee can receive in terms of information. Would it be the committee deciding what is shared publicly?

Mr. Peter Edelmann: The process within the committee for sharing information is through the report, so there are mechanisms for providing.... It's one thing for members of the committee—for example, opposition members—to be privy to the information. That's a trust question. The second question is in terms of their being able to share the information outside the committee, and the mechanism for that is through the reports. There is no other mechanism for them. An individual member has no power to take information obtained within the committee and share it unilaterally outside the committee. There is a process within the committee.

We would imagine that there would be two processes that would limit that information. One is the need-to-know principle. In other words, the committee itself would not hear information that wasn't necessary, and that's an important principle that would be applied across the board. Even when Mr. Fadden was the head of CSIS, he would, presumably, get only information that he needed to know. Even the head of CSIS doesn't know the name of every informant, or every witness in protection, or whatever it may be, if they don't need to know those things.

Ms. Pam Damoff: When we were talking about what information is shared with the committee, we had some testimony about the fact that if you're still not allowing everything to be shared, at the very least the minister should provide reasons to the committee: "we're not going to share this information with you and this is why." Do you see that as something that you could live with in terms of changes that would be made?

Mr. Peter Edelmann: The question is in terms of who has control over making the decision in the end, and whether it's Parliament or the executive. In terms of getting access to information and the reasons why, the executive needs to have that control. That ultimate decision should lie with the executive. I think that's ultimately a decision for Parliament to make. The question is, what is the rationale for the executive having the last say about information? That's not the case with respect to most other committees. If a parliamentary committee requests information in other contexts, it's not within the power of the departmental executives to say that they're not going to give you information or that they've decided you don't need this information.

• (1720)

Ms. Pam Damoff: I'm going to cut you off there because I only have about a minute left.

Mr. Fadden, you've talked about how important it is for Canadians to be more informed about threats. Clause 21 lays out how the committee will communicate with the public. I'm wondering whether you feel that clause is adequate or if there's anything that needs to be added.

Mr. Richard Fadden: No, I think it's pretty good, but I would also say that while most of the hearings of the committee should be in secret, I could conceive of circumstances where they might want to have some open hearings. I would hope, as well, that circumstances would allow the chair of the committee to periodically be able to make statements or hold a press conference when the report is tabled or things of that nature.

As you suggest, there's a real lack of understanding in this country about these things. The more the committee can do while protecting the information, I think would be to everyone's advantage, but I think this is pretty adequate.

Ms. Pam Damoff: Thank you.

The Chair: Thank you.

On the issue of the inter-committee reporting or relationship, one factor would be that we are a standing committee of the House and they're a committee of parliamentarians, so there's a little difference. I'm looking into the possibility of a requirement under the Standing Orders that their report could have to be automatically referred to this committee, just like the Auditor General's report and reports of the officers of Parliament are automatically referred to a standing committee. I'm looking into the logistics of that now to see whether we can figure that one out, perhaps as an addendum to our report on the actual clause-by-clause.

Ms. Watts.

Ms. Dianne L. Watts: Thank you.

It's interesting that this was brought up, because we heard other testimony that said most of the meetings should be done in public,

and only through certain criteria should they be allowed to be in camera. I think there are opinions on both sides.

I want to drill down to my fellow Surreyite, who is there in Surrey, I understand. Hello.

In the report here, in terms of having no definition of national security, which is very broad, I know that in Bill C-51 there were a lot of elements that tried to identify what that would look like. In terms of having no definition, do you think that it is more problematic to leave it that broad, or should we be attempting to define it?

Mr. Peter Edelmann: I can say that this concern arose from both sides. As I said, many of the sections were involved in the drafting of this document. One of the concerns that was raised with this actually came from the military law section, and it had to do with whether or not you were going to get buy-in from the national security establishment itself. The concern is around both the public and the individuals, the people who are working under the agencies, having confidence in what the purpose is. What is this committee doing? Why are they doing what they're doing? Does it make sense? What is the definition that you're working on with national security? Why are you trying to undertake this study or asking for this information?

With an unclear mandate.... The reason that the mandate is unclear is that, after Bill C-51, we now have a multiplicity of definitions of national security floating around in our legislation. The question is, are we dealing with this extremely broad definition that is in the information sharing act, or are we dealing with a more restricted definition that is in the CSIS act or in other pieces of legislation that generally refer back to the CSIS act with respect to that definition?

It creates some concerns on both sides around understanding what this committee is doing, and why. In terms of the public, what is this committee doing and what is its mandate? Also, from the perspective of the agencies that are under review, there is concern in terms of understanding why the committee is engaging with them and having those working relationships with those agencies.

Ms. Dianne L. Watts: Would it be your recommendation that we try to, not in the broadest of terms, kind of drill down and begin to identify what national security we will be looking at, whether it's cybersecurity, border integrity, or whatever? Do you think we should in those general terms put some type of a framework around that?

• (1725)

Mr. Peter Edelmann: Especially when you have a committee that's going to be working in secret, it would be helpful to know what the committee is doing and what are the boundaries of what the committee is expected to be looking at.

With respect to our recommendation of which definition to use, we made submissions at the time of the passage of Bill C-51 about why the definition in the information sharing act was problematic, in the sense that it's extremely broad. It is not helpful in that respect, because that leads to an overreach and then a dilution of the resources you have with respect to looking at the relevant information. If you have a mandate that's extremely broad or amorphous, the committee may not have the focus, or there won't be the confidence that the committee is focused on the issues that actually matter.

The flip side is that if you have a definition that's too narrow, it may be siloed or not able to look at other issues. This is the problem that arises with respect to.... If the information sharing act is going to continue with its very broad definition, then it makes sense to have a committee that has a similarly broad mandate. Our ideal scenario, or what our suggestion would be, is to restrict the definition in the information sharing act to an appropriate scope that would then reflect that of the committee as to what actually are concerns around national security.

Ms. Dianne L. Watts: Thank you.

I'd pose the same question to Mr. Fadden.

Mr. Richard Fadden: I start from the premise that whatever you do, please don't add another definition of "terrorism". From an operational perspective, that would be terrible.

I don't remember the details, but I do remember that when Bill C-51 was being worked on, the definition in the CSIS act wasn't adopted because there was a view at the time, by some, that it really didn't cover a couple of things that should be covered if you were worried about national security.

I guess I would support the view that you should pick one of the two and embed it in this legislation. I think Mr. Edelmann is absolutely right. If people don't understand what the committee is mandated to do and what its parameters are, I think it would be very difficult to gain its support in public. I think he is entirely correct in that matter.

The Chair: Thank you very much.

Mr. Di Iorio, for three minutes.

[*Translation*]

Mr. Nicola Di Iorio: Thank you, Mr. Chair.

Mr. Fadden, you talked about a situation Mr. Clement mentioned that has to do with the Treasury Board. Very appropriately, you highlighted the committee of the parliamentarians' highly unique nature.

You are an expert on intelligence. Is there a risk of a foreign power trying to set up one of the committee members? Should the legislation contain preventive measures to ensure the defence and the representation of the committee's members?

Mr. Richard Fadden: Absolutely. There is always a risk of a foreign power trying to, in one way or another, set up Canadians, be they public servants, parliamentarians or politicians.

Mr. Nicola Di Iorio: The risk is further enhanced by the fact that the members of that committee are parliamentarians, and, as such, are likely to be subjected to political pressures.

Mr. Richard Fadden: Yes, absolutely. The approach would be slightly different. If there is one thing I can say with certainty, it is that countries that try to obtain information or influence people use those people's specific situation to get information from them.

I don't know what else could be done, but it would be very important for the committee members to be briefed in detail on the risks they will be exposed to. If they have the least suspicion that someone is trying to influence them, they should be actively encouraged to report it to the appropriate authorities.

Mr. Nicola Di Iorio: The other element has to do with the right of access and what is covered by professional secrecy, which is mentioned in clause 13 of the bill. A former Supreme Court justice told us that he questioned the constitutional validity of that provision.

I would like both of you to briefly comment on that.

Mr. Richard Fadden: I'm not here as a lawyer, and it is a bit difficult to contradict a former judge.

All I can say is that, in Canadian legislation, there are a number of cases where the protection of professional secrecy is nearly absolute, but there also others where it is less absolute. In my opinion, it will depend on how people try to apply that provision.

In response to a previous question, I was going to say that it is often possible to answer a question by somewhat changing the level of details in an answer, while providing the basis of the response.

We call that aggregating up.

That is also the case when it comes to professional secrecy. Depending on whether we are in Quebec, in Ontario or in Nova Scotia, and depending on the profession in question, it is always possible to somewhat manipulate answers to enable the review organization to obtain most of the information required without, I hope, spending several months before the superior courts engaged in a constitutional debate.

I know that I am not quite answering your question, but I am somewhat limited.

● (1730)

The Chair: Thank you very much.

It is now 5:30 p.m.

[*English*]

Thank you very much to both witnesses. It is always helpful.

Mr. Fadden, you don't seem very retired to me, which is good.

Voices: Oh, oh!

The Chair: With that, I will adjourn our meeting, and we will return on Thursday.

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