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Chair

Mr. Robert Oliphant

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• (1540)

[English]

The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)): I will call to order this 71st meeting of the public safety and national security committee. Welcome to everyone.

Welcome, Mr. Nicholson and Ms. Gallant. It's good to have you with us.

Pursuant to the order of reference of Friday, June 9, which was 10 days ago, our topic for today is Bill S-231, an act to amend the Canada Evidence Act and the Criminal Code (protection of journalistic sources).

We will have two panels of witnesses. The first panel will be the sponsor of the bill in the House, the originator of the bill in the Senate, and a collaborator on that bill. Our second panel will be members from the Canadian Media Coalition. I just heard from the clerk that Mr. Tom Henheffer, the executive director of Canadian Journalists for Free Expression, is delayed in transit, unfortunately. There have been airplane cancellations, so it is unlikely that he'll be with us today.

I also want to note for the committee that we attempted to get witnesses from the RCMP, the OPP, and the Canadian Association of Chiefs of Police. However, due to short notice as the principal reason, they're not able to be with us today. The Association of Chiefs of Police did submit a written brief. It is a fuller brief than what they were able to present at the Senate hearings on this bill, so I would commend it to your attention as well.

We'll begin the first panel with Senator Carignan, Senator Pratte, and Monsieur Deltell. I understand that we can expect the bells to ring at some point for a House of Commons vote. At that point I will seek unanimous consent to consider going a little longer. We'll just see where we are when the bells ring.

Who will begin?

Monsieur Carignan.

[Translation]

Hon. Claude Carignan (Senator, Quebec (Mille Isles), C): Yes, I can start. Thank you.

Mr. Chair, members of the Standing Committee on Public Safety and National Security, I would like to thank you for agreeing to study Bill S-231 so quickly.

The bill addresses a fundamental issue, freedom of the press, a pillar of our democracy safeguarded by section 2 of the Canadian Charter of Rights and Freedoms. As my colleagues will tell you, I care deeply about the Canadian values that the charter embodies.

As a lawyer, a parliamentarian, and an engaged citizen, I was astounded by the revelations this past fall that journalists were being spied on, so I decided to do something about it by introducing Bill S-231. It seeks to plug a legislative hole, and because of that hole, our current rules are completely out of step with what is expected of us, as a developed country ruled by the highest democratic standards.

The tangible benefits of this bill are many.

[English]

First, Bill S-231 recognizes the fundamental role of journalists in our democracy; protects the privilege of journalistic sources' secrecy, which legislation has yet to explicitly acknowledge; and seeks to protect whistle-blowers. Once the bill is passed, only a judge of a superior court—in Quebec, a Quebec court judge within the meaning of section 552—may issue a search warrant relating to journalists.

[Translation]

Immediately upon execution of a duly authorized warrant, the information collected will be sealed by the court and none of the parties is allowed to access the content without the judge's permission.

An officer wishing to consult sealed information relating to a journalist must send the journalist and media outlet a notice informing them that they wish to do so. The journalist and media outlet will have 10 days to oppose the officer's request for disclosure if they believe the information could likely identify an anonymous journalistic source. If the journalist objects to the disclosure, the onus is on the officer making the request to show that the information is crucial to further the investigation. The burden of proof is thus reversed.

[English]

An objection may be raised before any court or federally regulated body. The organization or tribunal may raise an objection on its own initiative. Bill S-231 protects the rights of all parties. It enables journalists to protect the identity of their sources and police authorities to complete their investigations. Finally, this act will put an end to potential fishing expeditions or source hunts.

[Translation]

In closing, I will say this: the media play an essential role in disseminating information and sparking public debate on important issues. Without journalistic sources and whistle-blowers, journalists could no longer perform their essential role in our democracy. Canadians, deprived of their fundamental right to be informed, would be the big losers. Those who abuse their power or misuse public funds would continue to get away with it, to the detriment of all Canadians.

It is up to us, as parliamentarians, to establish the necessary safeguards to protect journalistic sources and thus preserve freedom of the press and the public's right to be informed.

Thank you.

• (1545)

The Chair: Thank you.

It is now Senator Pratte's turn. You have five minutes.

[English]

Hon. André Pratte (Senator, Quebec (De Salaberry), Independent Senators Group):

Thank you, Chair.

“Democracy dies in darkness”: this has been *The Washington Post's* slogan for a few months now. Like all slogans, it does not really need an explanation. It says it all. Without the spotlight shone by the media on public and private institutions, on those who govern us, citizens lack information and are therefore not able to properly play their role. Democracy collapses.

Unfortunately, even major media outlets, those who have the most resources in terms of investigative reporting, those who are equipped with the most powerful spotlights, can't see everything. You first have to know where to look. Then there are always the shadows, the places where incompetent or dishonest people hide to do their dirty work.

To spot these shadows and bring them to light, journalists need help. Let's call them “lamplighters”, the people inside who secretly light a candle that pierces the darkness and alerts the media, telling them where to turn their spotlights. These lamplighters are the sources. Because they betray the incompetents and the cheats, sources often take great risks. If they're discovered, they may lose their jobs. The punishment may be even heavier if a criminal organization is involved.

Journalists' sources must therefore be protected. That means journalists must be able to keep their sources' identities confidential, except in very special circumstances, even in a court of law and even in a police investigation. This is the only way journalists can reassure their sources and get them to come forward.

[Translation]

Canada does not have a shield law specifically protecting journalistic sources. The recent events in Quebec, involving journalists who were the targets of widespread police surveillance, are troubling not just for journalists, but also and above all, for their sources and society as a whole. If sources are not assured of

confidentiality when coming forward and revealing their story to someone in the media, they will remain silent, and if that happens, darkness falls.

What happened shows that existing legislation is inadequate to protect journalistic sources. It is too easy to obtain warrants for surveillance. The case law would benefit from clarity around the protection of the identity of sources as regards the courts, and that is what Bill S-231 seeks to do.

I know that here, on the Hill, we often criticize the media and journalists, but we must take great care not to forget the essential role they play in our democracy. Of course, like those in every other occupation, some journalists are better than others. Naturally, they are highly critical of the work parliamentarians do, but thank goodness for that, because without their scrutiny, who would keep politicians in check? It goes without saying that they are always on the lookout for things that go wrong, and that can be very frustrating. If they weren't, however, who would let citizens know that all wasn't right with the government?

[English]

Warts and all, the media play a fundamental role in our democracy. Without confidential sources, they could not play that role. Let me insist on this: Bill S-231 aims to protect not journalists but their sources. They are the ones who need protection, because they are the ones who risk their friendships, and sometimes their families and their jobs, because they feel duty bound to inform Canadians of what they know.

Passing Bill S-231 would be a historic step forward for freedom of the press in Canada, in fact the most significant advance in decades. At a time when south of us the press has been attacked in a way it has rarely been attacked before, Canada would send a powerful message on the importance it attaches to this fundamental right guaranteed by our Charter of Rights and Freedoms.

More concretely, journalists' sources, those courageous and lonely lamplighters, would finally be protected for the greater good of Canadian democracy. The flame of a simple candle is fragile, but as long as it is protected from the storm and extinguishers, it is enough to make light, and under the light, democracy shines.

Thank you.

[Translation]

The Chair: Thank you, Senator Pratte.

Mr. Deltell, the floor is yours.

Mr. Gérard Deltell (Louis-Saint-Laurent, CPC): Thank you, Mr. Chair.

What a pleasure to be here with you again, a year after our time together on the Special Joint Committee on Physician-Assisted Dying.

Colleagues, good afternoon and welcome.

I am very honoured and proud to be appearing before you today as the member sponsoring the bill in the House of Commons, as well as a former journalist.

•(1550)

[English]

Mr. Chair, let me pay my respects to our colleagues from the Senate: Senator Claude Carignan, who worked so hard, so fast, and so well, with the support of colleagues like Hon. André Pratte, and all the other people in the Senate who worked to table this important piece of legislation.

As far as I am concerned, this bill is very correct, because it respects every aspect of our society.

[Translation]

To begin with, Bill S-231 correctly defines what a journalist is, in my view. The underlying principle is the protection of the journalistic source, not the journalist. That may seem like an obvious distinction because journalists make mistakes, like everyone else, but sources wishing to come forward with information must be protected. That is what this bill seeks to achieve.

One of the bill's many merits is the fact that, going forward, only superior court judges would be allowed to determine whether investigations pursuant to search warrants could proceed. Experience has unfortunately shown that they were sometimes issued too hastily by peace officers. In the case of Montreal's police force, the SPVM, such requests were granted 98% of the time.

The bill also reverses the burden of proof and ensures that the execution of a warrant relating to a journalist is truly the last resort.

[English]

A few of my colleagues may recall that in Quebec, in the last month, it was a real turmoil situation for journalists.

[Translation]

This past October, we found out that journalist Patrick Lagacé had been the target of 24 surveillance warrants by police in recent years.

To give you an idea of the type of individual we are talking about, I will tell you that Mr. Lagacé is a seasoned journalist with over 20 years of experience and recognized by all Quebecers as an established journalist. If he were in the military, he would be active in all three forces. As a journalist, he works in television, print, and radio, and has a daily column. He is a seasoned journalist who was put under police surveillance, further to a warrant, 24 times, and that obviously raised considerable concern in Quebec.

More revelations followed. It came out that some 15 journalists in Quebec had also been put under police surveillance; they were all very experienced and worked mainly in investigative journalism. Patrick Lagacé, Vincent Larouche, Marie-Maude Denis, Alain Gravel, Isabelle Richer, Éric Thibault, Denis Lessard, André Cédilot, Nicolas Saillant, Félix Séguin, Monic Néron, Joël-Denis Bellavance, Gilles Toupin, Daniel Renaud, and Fabrice de Pierrebouurg had all been the subject of a police investigation by the Sûreté du Québec, SPVM, or RCMP.

We see Bill S-231 as a fair and balanced response to an intolerable situation.

[English]

In my final notes, Mr. Chair, let me just remind you that 45 years and one day ago, a newspaper named *The Washington Post* published a small article about a burglary that happened in the Democratic Party headquarters in Washington. The Democratic Party headquarters was situated in a building named Watergate. Two years later, all the world recognized what happened there, and it also recognized the importance of whistle-blowers. This is what this bill wants to protect.

[Translation]

The Chair: Thank you, Mr. Deltell.

Ms. Damoff, you can start off the first round. You have seven minutes.

[English]

Ms. Pam Damoff (Oakville North—Burlington, Lib.): First, I would like to thank all three of you for being here today, and for your leadership in bringing this important legislation through the Senate and to us here in the House.

I do have some questions. You've had the benefit of far more time to study the bill in the Senate than we've had here, obviously. This is our first meeting on it. When I read the definition of "journalist", it strikes me that in some ways it is somewhat backwards-looking. Journalism is certainly changing. We are seeing alternate forms of journalism, such as podcasts on social media and blogs. Having said that, I also recognize the importance of defining what a journalist is, to ensure that this term is not used to hide organized crime or terrorism. Finding that balance is no doubt challenging.

I'm just wondering if you have any suggestions that we might be able to make that would allow us to maintain the public safety aspect of it, while also being a little more forward-looking in terms of the definition of "journalist". If you think this definition covers it all, I'd be happy to hear that as well.

•(1555)

[Translation]

Hon. Claude Carignan: Thank you for your question.

Initially, the definition was much broader. Both the coalition of Canadian media and police forces thought the definition was too broad, and could include bloggers working for free in their basements. That was problematic for police officers in terms of when the legislation would apply. They weren't quite sure when they would need to request a search warrant. They could not guess that a journalist was involved, even using reasonable means to verify the person's identity. Police organizations therefore had concerns and feedback around the application of the legislation.

In addition, some media outlets wanted to make sure it extended protection to journalists who earned their living working for a media organization, be it a weekly local paper or a web-based publication, but at a certain professional level. They wanted to make sure that not just anyone could claim protection of sources, so they proposed a definition of what a journalist was. There was consensus on the definition, which had the backing of such associations as the Quebec Press Council, I believe. I was in favour of their request.

I have here a passage from the Supreme Court's ruling in *R. v. National Post*, which establishes limits on what constitutes a journalist.

It reads as follows:

To throw a constitutional immunity around the interactions of such a heterogeneous and ill-defined group of writers and speakers and whichever "sources" they deem worthy of a promise of confidentiality and on whatever terms they may choose to offer it (or, as here, choose to amend it with the benefit of hindsight) would blow a giant hole in law enforcement and other constitutionally recognized values such as privacy.

That statement refers to the weight given to a blogger's source as compared with a professional journalist's source. Even the Supreme Court saw a problem with that, so that is why I agreed to make the necessary corrections to the bill.

[English]

Ms. Pam Damoff: To be honest with you, one of the concerns I have is that we don't have anyone from the police side to testify before us today. They weren't available. We don't have the benefit of their testimony as we're looking at this.

Did you consult with any of the ethnic media, for example, OMNI TV, or some of the more non-traditional media, in particular the ethnic media, which we have a number of? OMNI TV is a much larger one, but there are several smaller newspapers.

[Translation]

Hon. Claude Carignan: We heard from associations who represented all journalists, including those in local and ethnic media. The definition obviously refers to a journalist who is being paid. That can include freelance journalists, so the scope of the bill is very broad.

I don't think it excludes basic constitutional protections, which exist in common law as well, in other situations that might have similar elements. The Criminal Code, as amended, would specifically extend protection to journalistic sources but would not necessarily exclude the common law dimension for others.

•(1600)

[English]

Ms. Pam Damoff: You mentioned one broad organization that represents a number of journalists, but there isn't one specific organization that represents all journalists. I mean we don't have the Canadian Bar Association, for example, or we don't have—

I can think of, for example, in my riding a woman who runs an Indian online TV show. She does take advertising, so there is compensation involved, but I'm wondering if some of the smaller media like that have been part of the discussion on this bill, as opposed to the larger media outlets and journalists.

[Translation]

Hon. Claude Carignan: The journalist association, whose name escapes me right now, would probably be the one that best represents journalists in small local and ethnic media. Its representatives gave us a clear sense of the position of small media.

[English]

Ms. Pam Damoff: Thank you.

I think that's my time.

[Translation]

The Chair: Your time is indeed up.

[English]

Ms. Gallant.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): Mr. Chairman, I'll be sharing my time with Mr. Nicholson.

I'd like to start by commending Mr. Deltell and senators Carignan and Pratte for their work in protecting independent and impartial journalism in Canada.

I agree with what you said in the House, Mr. Deltell, that the passage of the bill is a good day for democracy and freedom of the press, but I want to focus on freedom of the press for a moment before we get into the nitty-gritty of the bill. As a former journalist yourself, can you comment on how the \$350-million slush fund that the government is proposing would impact the freedom of the press?

Mr. Gérard Deltell: I think there was a huge debate in the last general election, and we all recognize that all the parties had straight positions.

It's very touchy when we talk about funding Radio-Canada/CBC because, as we know, this is a press group, and a press group shall be independent from any political power.

So the responsibility belongs in the hands of all journalists, and when I talk about hands, I talk about the fingers, the ones that hold the pencil, the ones that hone the machine, the ones that write or say something about the actual government. You always have to remember that when you work at CBC—during my 20-year career, I worked there for two years, and I know what I'm talking about—you have to think about the interests of the people, period.

You never have to add any political agenda, but for sure, when you see a huge debate surrounding the financing of this public institution—because it is a public institution—the responsibility belongs to every journalist to be frank, to be honest, to be equal, and to be non-partisan.

Mrs. Cheryl Gallant: I'd like to go to section 488.02 of the Criminal Code. The bill refers to documents and says:

Any document obtained pursuant to a warrant, authorization or order issued under subsection 488.01(3) is to be placed in a packet and sealed by the court

How is it that the authorities come to acquire a document in the first place? How do they know a document exists unless the article which the journalist has written refers specifically to it?

Mr. Gérard Deltell: That's quite a good question, Madam Gallant. I do appreciate that. I will start an answer, but I'm sure my colleague, Senator Carignan, will be more accurate than I am.

The bill is designed to protect the whistle-blower but to let the journalists do their job, but if the policeman is going to make an inquiry regarding a journalist, then, first, it must be the last step of the inquiry, and second, he has to convince a judge, a superior court judge, not a *juge de paix*, as we have now in Quebec. As I said in my presentation, in the whole administration—if we pass the bill—in 98% of the inquiries made by the SPVM, which is the municipal police in Montreal, they get it from a *juge de la paix*.

This is why we made it tougher for a policeman to make inquiries about a journalist, to be sure, first of all, that this is the last step of his job, and second, that it has been approved by a superior court.

This is my personal and first-draft answer, but I'm sure Senator Carignan will be more precise.

• (1605)

Mrs. Cheryl Gallant: I'm looking for the types of documents that would be used to justify the warrant.

[Translation]

Hon. Claude Carignan: The definition of “document” is the same one that appears in the Criminal Code. I don't know the exact section, but it's the definition used in the Criminal Code. “Document” refers to any evidence or piece of evidence on any medium, computer-based or otherwise, on which data is registered or marked, and that document is sealed. If the document is a hard copy, it is placed in a packet and sealed. The same goes for a computer-based device. What matters is that the item is sealed to prevent police or the individuals executing the warrant from accessing it before the journalist or media outlet has been notified. The journalist or media outlet could then advise the individuals seeking the information that the computer or hard drive contains a multitude of other documents that have nothing to do with the case in question but that could be considered information likely to identify journalistic sources.

For a model, I relied heavily on the procedure used in the case of law firms. When a search warrant is executed on a lawyer's office, the information is protected by solicitor-client privilege and steps are taken to ensure that privilege is not violated.

[English]

Mrs. Cheryl Gallant: Okay. Here's what I was trying to get at. How are the authorities getting the documentation in the first place to get a warrant issued if they haven't been doing something they shouldn't have been doing in terms of knowing that a journalist has something?

[Translation]

Hon. Claude Carignan: To obtain a warrant, police must have reasonable and probable cause to believe that the office or location in question contains information likely to prove that a crime was committed. Those are the ground rules.

[English]

The Chair: You have 20 seconds.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much. That's very generous.

Voices: Oh, oh!

Hon. Rob Nicholson: Thank you to my colleague.

The Chair: I'll give you a minute.

Hon. Rob Nicholson: Fair enough.

Senators, thanks to you and to the member for doing this. With the proliferation of information these days, it is becoming more critical to get something like this.

Senator Carignan, you said that this was very specific with respect to the protection of journalists and journalistic sources, but you made the comment that protection still exists throughout the common law. This is not the exclusive protection. Give me some examples of that protection that might otherwise exist and is not included in this bill.

[Translation]

Hon. Claude Carignan: The protection for journalists currently available is through common law. We used some of those criteria in the bill, but we raised the current level of protection by setting out a very specific procedure for the obtaining and disclosure of information.

We also reversed the burden of proof, meaning that it is up to police, believing the information to be of benefit to the investigation, to show that the information or document cannot be produced in evidence by any reasonable means other than by executing a search warrant at a journalist's office or media outlet.

Although a series of Supreme Court decisions do grant some protection, the bill clearly defines that protection in relation to the journalist. That obviously does not exclude protection for others who are not explicitly covered by the definition. In those cases, the court's decisions would be relied on for greater clarity.

• (1610)

The Chair: Thank you.

Mr. Dubé, you have eight minutes.

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

Senators, Mr. Deltell, thank you for being here.

I don't often do this in the presence of witnesses, but I'm going to take a moment to editorialize a bit, which may not be entirely inappropriate given what we were just talking about.

It was mentioned that we weren't able to get any witnesses from police organizations because of the short notice. That's an interesting point, because, for far too long in Canada, the balance of power has been all too often tipped in the police's favour when it comes to cases involving journalists. I think that's why we are seeing these abuses. Contrary to claims, those abuses are not limited to Montreal or Quebec police. There are cases involving the RCMP as well. Mr. Bellavance, of *La Presse*, among others, could speak to that.

[English]

The other thing that I think is worth pointing out is there was a piece just today where Canada has fallen another four places to number 22, after falling 10 places last year in the press freedom index, which is very edifying. Given that the U.S. and the U.K. have already had this type of journalistic shield law in place for many years, I certainly want to be on the record as saying we need to get this done as quickly as possible.

[Translation]

That said, I have some questions mainly for the senators, because they are the ones who heard from witnesses in the Senate on certain provisions in the bill.

Mr. Carignan, you talked a bit about a journalist being investigated in a case that does not necessarily involve a source being identified. Given what you heard from the Canadian Association of Chiefs of Police, for example, do you think the current version of the bill provides enough flexibility? In fact, it's important to make sure that the bill doesn't create a loophole that police can take advantage of to claim that they are investigating a journalist for another reason entirely—be it fraud or what have you—when they are actually trying to discover the identity of a source through the back door, if you will.

Do the police organizations and other stakeholders you heard from see the current version of the bill as appropriate in that regard?

Hon. Claude Carignan: Yes, of course. We took into account the briefs we received from police forces and the organizations who appeared. Their primary concern had to do with how the definition of “journalist” would be applied. That is why we relied on the feedback we received from police and the Canadian media coalition to reach a consensus on a definition specific enough for police to determine when they needed to obtain a warrant from a superior court judge, in accordance with these provisions.

Is it possible that police could reasonably and in good faith claim that they did not know a journalist was involved? Yes, that is possible. For instance, despite using reasonable means to ascertain whether the investigation involves a journalist, a police officer may not realize that a journalist is involved and thus obtain a search warrant without following the appropriate procedure. What consequences would that have? That's a situation where amendments could provide greater clarity.

No doubt, you've had some experience in dealing with police in your life. That's true for me, at least. They usually have a pretty good idea of what you're up to, before they go to your home and sit down with you.

Mr. Matthew Dubé: I don't mean to cut you off, but I only have so much time. I get just one turn.

I wanted to discuss clause 2, which seeks to add paragraph 39.1 (2), known as an override provision, to the Canada Evidence Act. The provision reads as follows:

(2) This section applies despite any other provision of this Act or any other Act of Parliament.

I'd actually like to hear your thoughts on the importance of the provision. When an act of terrorism, some form of violence, or

another crisis occurs in any country, people feel the need for heightened security measures. I'm a bit biased, but that's what I observed during the debate on Bill C-51. The October crisis, in Quebec, comes to mind as well.

Do you think this provision is important to make sure that, in such situations, national security cannot be used as an excuse to undermine freedom of the press?

I'd like to hear all of your opinions on that, if possible.

• (1615)

Hon. Claude Carignan: I'll give you a quick answer.

Mr. Matthew Dubé: Of course.

Hon. Claude Carignan: Yes, I included it because I think it's an important provision. Is it essential? Could it have unintended consequences? Perhaps. The idea is to show how important it is to protect journalistic sources and to ensure that in a very specific way.

However, the rule of interpretation stipulates that specific provisions override general ones. Is that adequate? Perhaps, but the idea behind the bill is to send a strong message about the protection of journalistic sources.

Hon. André Pratte: I would say the same thing. With this bill, I think we have an important first step. It is often said that we should not throw out the good in pursuit of the perfect, so I think we need to look at what we can achieve today without necessarily trying to get it perfect. We also need to take into account any consequences that conflict with what we are trying to achieve.

Personally, I think we've already laid some crucial groundwork with this bill. I wouldn't want to lose that because we were hell-bent on getting everything right.

Mr. Gérard Deltell: I would refer to two cases.

First, I would point to what Patrick Lagacé, himself, said a few weeks ago: it may be appropriate in certain situations to spy on or wiretap a journalist. In other words, it comes down to pure common sense.

As a former journalist, the example I always give is this. If, on June 5, 1944, I had found out that something was going to happen the next day in Normandy, I never would have reported on it, because I would've had the sense not to.

Mr. Matthew Dubé: Thank you.

Mr. Pratte, I want to pick up on what you said. I'm not sure whether your colleagues agree, but you rightly called this measure a first step. Clearly, a tremendous amount of work is necessary in order to flesh out the bill in a way that allows journalists to do their job.

Would you agree with that observation?

Hon. André Pratte: Are you referring to the fact that it's a first step and that there is still a long way to go?

Mr. Matthew Dubé: Yes.

Hon. André Pratte: There is no doubt about that.

We need to test out the measure first to see how it will work. It establishes many parameters, which judges will have to interpret. I do think, though, that those parameters are extremely sound and that they should hold water come what may.

Mr. Matthew Dubé: I'm almost out of time, and I have one last comment.

Hon. André Pratte: Go ahead.

Mr. Matthew Dubé: When you compare Canada with the United States or the United Kingdom, we do, after all, have a fair bit of ground to make up in terms of shield laws.

Hon. Claude Carignan: There is no denying that.

To use someone else's words, I think we are the dunces when it comes to protecting journalistic sources. I think this bill will propel us into the big leagues. It's important to keep the Constitution in mind; we are applying the parameters of constitutional law as well.

Mr. Matthew Dubé: Thank you.

[*English*]

The Chair: Thank you.

I owe the Liberals about eight and a half minutes. I understand that two of you are sharing, Mr. Spengemann and Mr. Di Iorio, so you get four minutes and 15 seconds each.

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): That's very kind. Thank you, Mr. Chair.

I would like to thank all three of you for your championship of this bill and for bringing it to us. It's a very important subject.

Senator Carignan, you said it very well, that the profession of journalism is a pillar of our democracy. It's an institution that very much falls into the fabric of Canada's democracy, and yet there are challenges. It's a complex subject. It's as much about the bill that's before us today as it is about the financial aspects of the profession, the financial challenges, the structural changes, and the employment relationship that journalists face today. The media environment is transforming, with so much information now making its way through social media to us.

I also want to put it to you that there is a prospect of people using the vehicle of journalism to do us harm. I sit on the defence committee, in addition to this one, and the whole paradigm of fake news and intentional misleading through journalistic channels is something we need to take very seriously. I want to echo my colleague Pam Damoff's concerns that we do not have representatives from the police forces in front of us this afternoon, even though we have a written brief.

The subject matter is complex. In addition to having the aspiration of being expedient with this bill, the committee also needs to be mindful of the various facets and aspects of this important piece of legislation.

Senator Pratte, I would like to ask you to give to the committee, and also Canadians, your snapshot of the state of the profession as it exists in 2017, and how you see it evolving over a short-term horizon, say, the next five years. What is journalism all about these days? What does the committee need to be mindful of when we talk

about a bill such as this one, even though this might be only the first step, as my colleague just pointed out?

• (1620)

Hon. André Pratte: In 30 seconds, yes....

Mr. Sven Spengemann: Well, you have two minutes.

Hon. André Pratte: It's a difficult situation because there's not an obvious business model for journalism, but at the same time I think there is a positive side because if you look at what's going on in the U.S. today, it is obvious that people are yearning for quality news. There is a lot of fake news, but people want quality news. It's a matter of finding the right business model. You can see that in the United States. Quality newspapers are doing quite well right now. *The New York Times* and *The Washington Post* are finding ways of getting back in the black. That's good news, but those are exceptions right now. It's a matter of finding how to get advertising back to traditional newspapers or news organizations, and that's very difficult. I worked for 30 years for *La Presse*, which is now one of the more innovative news platforms in the world, and they're in difficulty.

If I might add a word about police forces, in the Senate committee where we studied Bill S-231, we tested that definition of "journalist", and they agreed that this definition alleviated their concern. They were satisfied with it. I think it's important to know.

Mr. Sven Spengemann: Perhaps I could take the remaining minute to ask you more specifically on the prospect of somebody using the vehicle of journalism and all its salutary aspects to do us harm, to deliberately send news that is false from foreign channels or through foreign channels or whatever the case may be, even domestic channels. That is not to say that this goes into the paradigm of terrorism, but it's simply deliberately misleading and false information about international developments, about domestic elements. How does your bill protect against that? To the extent that we need to ask questions, what kind of questions should we ask?

Hon. André Pratte: I'm not sure the bill would protect against this, but I'm not sure if the bill has anything to do with that either. One thing is for certain: the bill says that journalism has to be his or her main occupation, and it has to be remunerated. Someone who is not a real professional journalist will not be protected by the bill.

Mr. Sven Spengemann: Mr. Chair, with your indulgence, if a foreign government, for example, hires a journalist in our sense of the term to deliberately spread false information, are there any safeguards that we should put in place?

Mr. Gérard Deltell: First of all, this bill is to protect the whistleblower, the journalist's sources, not the journalist himself. We define a journalist quite clearly, who in some cases is not a real journalist. I have three points. At the end of the day, a superior court judge will decide if this guy or this woman is a journalist and if we can make inquiries of him correctly if not. Let me remind you that all journalists are human beings. They are not above the law. They must respect the law in their activities, but first and foremost, we have to protect the whistle-blower.

Mr. Sven Spengemann: Thanks.

[Translation]

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

My first question is for Senator Carignan.

In former times, when I was your law professor, you were the one asking me questions. Today, it is I asking you.

• (1625)

Hon. Claude Carignan: That must mean I passed the course.

Mr. Nicola Di Iorio: The only time I asked you a question was on exam day.

Each of you referred to the Patrick Lagacé affair and cases involving other journalists. There were indeed many. You described what happened. An inquiry led by Justice Chamberland of the Court of Appeal of Quebec is diligently examining the issue. The report is expected in the not too distant future.

How do you explain passing a bill before we know all the facts that prompted its creation in the first place?

Hon. Claude Carignan: I would say that a combination of factors led to the bill being introduced. The facts surrounding the Joël-Denis Bellavance spying case, which had nothing to do with the Chamberland commission, also played a part.

What's more, I can't remember whether you were the one who taught us about this case, but I would point to the Supreme Court's decision in Keable, in 1978. It had to do with the province's authority to establish a commission of inquiry into a matter under federal jurisdiction. In this case, we are clearly talking about a federal matter. With all due respect to the Chamberland commission, it doesn't have the authority to take action in an area under federal jurisdiction. It is therefore up to us, in Canada's Parliament, to address the issue pursuant to our authority under the Constitution and Criminal Code. They can intervene—

Mr. Nicola Di Iorio: Yes, but wouldn't it be informative and useful to know exactly what happened?

Hon. Claude Carignan: Through the media, we are finding out what happened. Nevertheless, beyond those cases and even if nothing had happened, the fact remains that we need a mechanism to protect journalistic sources. The proof is in the cases that went all the way to the Supreme Court, be it *The Globe and Mail* or the *National Post* case, which involved journalists being spied on in order to find out who their sources were. They were being pressured to reveal their sources.

If, then, matters have made their way to the Supreme Court, it means there is a problem, regardless of what comes out of the Chamberland commission. What we are trying to do is establish a mechanism—

Mr. Nicola Di Iorio: Still, the work Justice Chamberland is doing is quite significant.

Hon. Claude Carignan: Yes, it is very significant, but at the end of the day, what it will mean is instructions for police on how to apply the provincial legislation. Bill S-231 amends the Criminal

Code, the measures on how to obtain a search warrant and produce evidence in Canada.

Mr. Nicola Di Iorio: You talked about provincial jurisdiction and federal jurisdiction. At the provincial level, you have common law or civil law, and at the federal level, you have criminal law. Would it not be a good idea to align the protection within civil or common law with the protection available in criminal law?

Hon. Claude Carignan: I've kept tabs on the work the Chamberland commission is doing, and I can tell you that reference was made to this bill. I think that if Parliament passes this legislation, the Chamberland commission will surely take notice and ensure that it introduces any necessary changes or directives at the provincial level, as part of its work.

Mr. Nicola Di Iorio: What would the impact be if you were to wait for the Chamberland commission's report before finalizing the bill?

Hon. Claude Carignan: That will take at least six months, and in the meantime, sources are not coming forward and some may even die. People with information that is in the public interest are not coming forward because of the current conditions. As members of the media stated in November, the Lagacé affair has had a chilling effect on sources, making them fear for their safety.

Waiting would mean extending that chilling effect and choking off the supply of sources. These are things that are happening, effects that can't necessarily be measured but are being felt.

Mr. Gérard Deltell: You know—

[English]

The Chair: I'm afraid I need to end it there.

Mr. Gérard Deltell: I need just one sentence to say this very quickly.

[Translation]

The two are not mutually exclusive.

We applaud the provincial government for undertaking this initiative, but we should also applaud the upper chamber for its initiative, which everyone supports and endorses and whose passage was unanimous. It even has the support of the justice department, police forces, and journalists groups. That's unheard of.

The two are not mutually exclusive. Can we afford to wait six months while more people choose not to come forward? No.

[English]

The Chair: Because we've gone quite a bit over on that side, Mr. Nicholson, I want to give you another couple of minutes if you want them. Then we'll end this session.

Hon. Rob Nicholson: I think I'll leave my questions until the next group. Thank you.

The Chair: Okay. Very good.

Thanks to our panel. That was very good. I think we could go on quite a bit longer.

I know that members were waiting for a vote. There is a concurrence motion in the House that will be debated for some time, so that's why there were no bells for a vote. That's also been fortuitous, because Mr. Henheffer is en route from the airport. It's serendipitous for us in regard to being able to continue with our second panel.

I'm going to suggest that we suspend for five minutes. Mr. Henheffer will arrive, and then we'll begin with our second panel. Thank you.

• (1625) _____ (Pause) _____

• (1640)

The Chair: I'll begin by thanking our witnesses from the Canadian Media Coalition and Canadian Journalists for Free Expression for being here. We'll be able to go for maybe even up to an hour in this panel, if you're good for that. I believe there are a lot of questions from the members.

We've agreed on five minutes from each of the two groups. I'll be a little liberal with that—small-l liberal.

We'll begin with the media coalition.

Ms. Jennifer McGuire (General Manager and Editor in Chief, CBC News, Canadian Broadcasting Corporation, Canadian Media Coalition): Mr. Chair and members of the committee, good afternoon.

My name is Jennifer McGuire. I'm the general manager and editor-in-chief for CBC News. I wish to thank all of you for this opportunity to address this important topic once again.

I'd like to stress right up front how important we feel Bill S-231 is. I can say on behalf of our coalition of media organizations that speedy passage and implementation of Bill S-231 would be a great service to the country.

Why do I say this? Because investigative journalism is a vital component of a healthy democracy. It shines light on issues that matter, whether those are sexual assaults on Canadian campuses, questionable offshore tax havens, or unethical real estate practices—the sorts of stories that pave the way for legislators to make better public policy.

This journalism frequently relies on people who are brave enough to tell their stories and to share stories that would otherwise be untold: sources, especially confidential sources. It also relies on a journalist's ability to protect these sources. Today in Canada that ability is undermined because it is too easy for police to obtain a warrant allowing them to conduct surveillance missions on reporters.

Late last year, we learned that some of Radio-Canada's top investigative journalists were being spied upon by the Sûreté du Québec. Five years of their phone records were asked for; some of the journalists had their locations tracked, and all of them had their freedom infringed upon, all because police wanted to know who their sources were.

It's bad enough that these journalists were spied upon by the authorities, but consider the impact this news had on their ability to do their jobs. What confidential source would share information knowing they could not rely on any protection a journalist might

offer? What whistle-blower might decide that it's better to stay quiet rather than risk being swept up in a police investigation? By scaring confidential sources into silence, we will never know how many cases of wrongdoing remained secret and how many cover-ups were made possible.

Right now, the bar for obtaining warrants to conduct this type of surveillance is far too low. As just one example, dramatic testimony in recent weeks at the Chamberland commission in Quebec has shown us that even baseless sexual innuendo can be enough.

Last Thursday, Radio-Canada's Marie-Maude Denis testified that one of the justifications made by police for spying on her was that she had an intimate relationship with another police officer who was one of the targets of the investigation. I want to point out that this was completely false and based on no credible information. That police made this allegation before a justice of the peace was shameful. That it was persuasive is frankly depressing.

The clear implication was that successful women in journalism use sex as a way to get information. If you need proof that the bar for obtaining a warrant needs to be higher, look no further.

Let me be clear: we realize that there must be exceptions. When a journalist is legitimately suspected of a crime, police may well have a good reason to track their activities. If it can be shown that there is no link between the investigation and the journalistic activities, then the suspect should not be able to invoke their profession as a shield, but as soon as the nature of the investigation has a link with the practice of journalism, then the protections of Bill S-231 should apply in full force, and this decision rests properly with a superior court judge.

Thank you for your time. I will pass this on to my colleague, Michel Cormier.

• (1645)

[*Translation*]

Mr. Michel Cormier (General Manager, News and Current Affairs, French Services, Canadian Broadcasting Corporation, Canadian Media Coalition): Hello. Thank you for having us.

I'm Michel Cormier, the executive director of news and current affairs for Radio-Canada's French services. I'm the boss of Marie-Maude Denis and other Radio-Canada journalists who were electronically monitored by the Sûreté du Québec.

Radio-Canada and the Canadian Media Coalition appreciate the government's support for the bill being shepherded by Senator Carignan.

Confidential sources, whom this bill is designed to protect, are essential to investigative journalism. No one disputes this fact, which was recognized a number of years ago by the Supreme Court of Canada. However, the past few months have shown us that the existing police and judicial system falls short of providing adequate protection for journalistic sources.

Over the last few weeks, the Chamberland Commission hearings have given us an opportunity to hear what motivated police officers to obtain the telephone records of several journalists, including three of Radio-Canada's most distinguished investigative reporters. Their grounds were inadequate and their methods were doomed to failure.

In our opinion, the testimony at the commission of certain police officers involved in monitoring the journalists demonstrated to what extent our reporters and their sources were victims of abuse of authority. It has been acknowledged that the order issued by a presiding justice of the peace granting access to five years' worth of records of journalists' incoming and outgoing telephone calls, and, in two cases, their physical locations at the time of the calls, proved nothing regarding the crime under investigation, a potential leak of wiretapping information. However, it substantially jeopardized the identity of the journalists' sources.

In our view, this was clear from the very start. As a number of police officers have testified at the commission, far too many people had access to the wiretaps, and simple telephone contact between police officers and journalists proves nothing. So, why did they request access to five years of call logs? These questions could have been asked by the presiding justice of the peace. Indeed, they should have been asked, but clearly weren't, since the orders were issued without further proceedings.

I would ask you to reflect for a few seconds on what that means. The police officers gained access to call logs that could reveal the identity of confidential sources, although anyone could see, right from the outset, that the logs would serve no purpose. Breaching the confidentiality of journalists' sources through these court orders wasn't only completely pointless, but also a serious abuse of authority.

The police officers in question were or should have been aware of this fact before requesting the first of the court orders. However, the system completely failed to stop them.

According to Reporters Without Borders, as the member said, Canada did not rank among the top 20 countries for defending freedom of the press this year. Several other democracies and even some American states have laws protecting journalistic sources.

This bill must be adopted to change things, and to ensure that confidential sources will be protected and that never again will a police force in Canada be authorized to spy on journalists without regard for their sources and the crucial role they play in a democracy.

However, the coalition would like to stress that one of the proposed amendments creates a loophole in the protection of confidential sources. The new subsection 488.01(4.1) would exempt any order from the act when it's alleged that a journalist has committed an infraction. If this amendment is adopted, it would suffice for investigators to claim that they suspect a journalist of having worked with a whistleblower for all protections afforded under Bill S-231 to be completely voided and for sources' identities to be revealed.

This loophole would encourage unjustified allegations against journalists, whereas no investigations involving journalists in the past have ever led to charges being laid against them.

Our proposal provides what we feel is a fair solution to this problem. It ensures that, in the case of journalistic work, the judge applies the test outlined in Bill S-231 before approving the warrant, while exempting investigations into common law crimes from this requirement.

We're very satisfied with this bill. Not only will it put an end to abuses of authority and restore journalistic sources' trust in the system, it will allow Canada to join those jurisdictions that legally protect all these brave people who come forward to expose unacceptable situations and whose actions contribute to a freer and more democratic society. That said, we ask that you pay special attention to the suggestions detailed in our factum.

Thank you.

• (1650)

The Chair: Thank you, Mr. Cormier.

We'll continue with Mr. Henheffer.

[English]

Mr. Tom Henheffer (Executive Director, Canadian Journalists for Free Expression): Thank you.

I apologize for being late. I think we've all had experiences with Porter Airlines before. Thank you for allowing me to testify.

I am speaking today as executive director of Canadian Journalists for Free Expression, CJFE, a non-profit, non-governmental organization that works to promote and protect press freedom and free expression around the world. We would like to use our time today to speak to the importance of passing the legislation now, the definitions in this bill, and the amendments proposed by the government.

CJFE strongly supports Bill S-231, the journalist sources protection act. If passed today in its present form, Bill S-231 would be the country's first journalistic shield law, bringing us closer to compliance with international standards for the protection of sources. This is a badly needed bill, and its coming into force would be an important step forward for press freedom in Canada.

As recent events in Quebec and elsewhere in Canada demonstrate, journalists today are vulnerable to arbitrary and summary treatment concerning search warrants and production orders with regard to sources. Bill S-231 was first introduced last November, following appalling revelations that police had obtained warrants to track *La Presse* journalist Patrick Lagacé's phone and to monitor the phone calls of several other journalists.

Canada needs this bill now more than ever. In addition to the reports of Quebec police spying, no fewer than four Canadian journalists have been arrested this past year. VICE News' Ben Makuch continues to fight a court ruling forcing him to hand over communications with a source to the RCMP. Justin Brake of The Independent faces up to 10 years in prison for reporting on a protest. Cori Marshall, a freelance journalist in Montreal, was spuriously charged with unlawful confinement for simply covering a protest inside a government building, charges which were dropped in large part due to CJFE's intervention. Photographer David Ritchie and Global News videographer Jeremy Cohn were arrested by Hamilton Police Service for their coverage of a pedestrian collision. David Ritchie, as has just hit the news today, has now been remanded and is still facing a court date for these charges on July 20.

Canada fell four places on this year's Reporters Without Borders world press freedom index. In recent years, we've dropped from the top 10 to 22nd in the world, largely because journalists in the country are not currently protected by any shield law.

Despite our suggestions to improve this bill, which I will lay out in a second, we believe this is significant and necessary legislation, and we would impress upon committee members the importance of its swift passage. Let me be clear: Canada needs this legislation to be in effect today. However, passage of this bill in its present form is only a first step to addressing many issues facing journalists in Canada today. This is because many of the definitions are still too restrictive. Further reforms will be required in the future so these protections reflect the reality of Canada's modern media landscape, but we do not believe that this should prevent the passage of this bill in this session.

For example, the bill has a narrow definition of who can legally call themselves a journalist. We would suggest the definition should eventually be widened to reflect the emergence of newer practitioners of journalism, such as bloggers, and to include the many journalists who would not list the craft as their main occupation, such as student journalists and freelancers. They also deserve to be covered under this law.

We endorse the amendment proposed by Matthew Dubé to broaden the definition to:

any person who contributes directly, either regularly or occasionally, to the collection, writing or production of information for dissemination by any media, including newspapers, magazines or other print media, or television, radio, online dissemination or other electronic media, or any person who assists that person in doing so.

We see similar problems in the current definition of a journalistic source, which reads:

a source that confidentially transmits information to a journalist on the journalist's undertaking not to divulge the identity of the source, whose anonymity is essential to the relationship between the journalist and the source.

The deficiencies in this definition are vividly demonstrated by the ongoing case of Ben Makuch of VICE News. Makuch is currently seeking leave to appeal to the Supreme Court a court order to turn over his communications with his source to the RCMP. The order against Makuch sets a precedent that is potentially ruinous and has wide-ranging implications for press freedom and the integrity of journalism in Canada. While we strongly support Bill S-231, it must be stated that this will provide no protection in the context of the Ben

Makuch situation because, although his source refused to disclose his identity, he did not conform to the strict definition of a confidential source as defined in this bill. This leaves our country open to a situation in which a young Canadian journalist could soon be behind bars for simply doing his job.

Clearly, this demonstrates a need for stronger legal protections. Again, we believe this can be fixed in later legislation and this should not prevent this bill from passing in its current form. Requiring an undertaking of confidentiality is problematic, as sources, by their nature, are confidential. Journalists and their editors have a right to decide which parts of an interview are published publicly, regardless of whether that interview was with a confidential source or for attribution.

•(1655)

The definition we propose is as follows: "journalistic source" means any source that transmits information to a journalist. This is broader than the current bill, but there are two reasons for this. One, since a court or police agency cannot know whether a source is in fact "confidential" or not in advance, this should not be part of the threshold that triggers special care. Two, as in the Makuch situation, compelling information about any source, whether or not they meet the strict definition of a confidential source, has a chilling effect. While this change may be outside the scope of consideration for the current bill, the protection of sources that are not anonymous must form a part of further discussion and factor into future measures to protect press freedom in Canada.

The government proposes to amend the wording of proposed subparagraph 39.1(8)(b)(i) to replace the word "essential" with "important". We believe this change would undermine the principle of the bill and be inconsistent with existing protections. Existing jurisprudence says that it must be a last resort to force the media to pass over information. Setting the threshold for information at "important" falls short of this standard.

The government proposes that the requirement to demonstrate that "due consideration was given to all means of disclosure that would preserve the identity of the journalistic source" become a separate criterion, applicable at each stage of the analysis, rather than a specific branch of the test provided for in proposed subsection 39.1(8). We support this change.

The government proposes that the additional conditions for the attainment of a warrant would not apply in cases where the journalists themselves are suspected of criminal activity. This is meant to prevent the application of Bill S-231 in a context outside of journalistic activities. The Media Coalition has offered remarks regarding this matter and has offered a suggested amendment, both of which we strongly endorse.

The government proposes that the precedence clauses of proposed subsections 39.1(2) and 488.01(2) be withdrawn from the bill, and has expressed its belief that these clauses would unduly affect privacy and national security laws. As the wording of proposed subparagraph 39.1(8)(b)(i) already provides for the disclosure of information or a document that is essential for public safety, we believe the government proposal would unnecessarily undermine the effectiveness of the act.

We thank those who spearheaded this effort, including Senator Carignan and Mr. Deltell. CJFE would also like to commend the Liberal government for its support of Bill S-231. It is a promising, concrete follow-up to Prime Minister Justin Trudeau's previous strong statements of support for press freedom in Canada, and will help establish Canada's position as a world leader on this issue.

Thank you.

The Chair: Thank you.

Before we begin with the round of questioning, I want to put Mr. Pierre-Roy on notice that I think the committee may want his comments on the suggestions around the amendments, just as a lawyer helping the coalition.

Mr. Sébastien Pierre-Roy (Lawyer, Chenette, Litigation Boutique Inc., Canadian Media Coalition): Yes.

The Chair: If you'd like to make them now, you'd be welcome to.

Mr. Sébastien Pierre-Roy: No. Since I am a litigation attorney, I was told that I should not address the committee unless asked a direct question, because I would use everyone's time. I will answer only legal questions that my colleagues here are not able to answer to your satisfaction.

Thank you.

The Chair: All right. If you would like a chance to comment on those things, I want you to think about it, because I think we could take some time to do that.

Mr. Sébastien Pierre-Roy: Thank you, Mr. Chairman.

The Chair: We'll begin questions with Monsieur Picard.

[Translation]

Mr. Michel Picard (Montarville, Lib.): Thank you, Mr. Chair.

I'll share my speaking time with my colleague, Mr. Arseneault.

I want to welcome the witnesses and thank them for being here.

First, I want to say that I have great respect for journalistic work. A number of years ago, in another life, I was at times a journalist's source, contributor and coach. It's an essential and necessary occupation. We must do our best to support the work of journalists.

That said, the bill concerns the protection of sources. We spent an hour discussing the definition of "journalist". However, I think the focus must be on the sources themselves. Our approach must also be current and contemporary

How would you assess the Chamberland Commission's current work? What do you expect from the report the commission will release?

Mr. Michel Cormier: I can talk about it because some of our journalists are testifying before the Chamberland Commission. I don't see any incompatibility between this bill and the commission's work. There's simply the fact that Radio-Canada has journalists working in Canada's 10 provinces, whereas the Chamberland Commission hearings concern the work of journalists in Quebec.

From the start, we've always wanted the Chamberland Commission's work to explore what occurs when warrants are obtained rather than focus on the journalists' work. We must see what improvements can be made when it comes to obtaining these warrants, whether the warrants are issued by justices of the peace or by superior court justices, as proposed in the bill. There's the whole issue of an individual's involvement in politics and how this influenced the police. The cases being studied by the commission typically concern these issues.

We also certainly want to set guidelines for certain things, as the bill proposes. These include the type of evidence needed to obtain surveillance warrants and the criteria that must be met. We're confident that the commission will look at this. According to the testimony we've heard, the commission's work seems very broad and concerns all the factors that affect these issues.

● (1700)

Mr. René Arseneault (Madawaska—Restigouche, Lib.): Gentlemen, thank you for being here.

Since I don't have much time, I'll keep my question short.

This bill is mainly to protect confidential information. At one end of the spectrum, the information must be protected. However, at the other end, the interest of the general public must be protected. Somewhere in the middle, these two concepts collide.

I may ask my question backward. I don't know who can answer it. Maybe you can, Mr. Cormier.

Am I right to think the bill doesn't provide absolute protection for the source?

Mr. Michel Cormier: It doesn't provide protection—

Mr. René Arseneault: Absolute and ironclad protection for the journalistic source.

Mr. Michel Cormier: We discussed an amendment to make sure this will be the case.

This may be the time to ask Mr. Pierre-Roy to clearly explain the details of the amendment, which we think would improve the bill.

Mr. Sébastien Pierre-Roy: You're perfectly right, Mr. Arseneault. The bill doesn't provide absolute protection. Far from it.

Mr. René Arseneault: Is there a practical example that could enlighten us, or a case where we could say the journalistic source wouldn't be protected by the bill?

Mr. Sébastien Pierre-Roy: If the bill were in effect, the 2010 *National Post* case would be settled exactly the same way. The bill seeks, like the Supreme Court did at the time, to balance certain interests.

All we're asking is that the information on the source be protected until the balance can be determined by a judge. Once the police officer shows that the information is essential to the investigation of a crime, we expect the warrant to be issued.

Mr. René Arseneault: You're referring to the 2010 Supreme Court case involving the *National Post*. We were discussing it earlier, before the temporary suspension of the meeting.

I'll refer to subsection 39.1(8) on page 2 of the bill:

(8) The court, person or body may authorize the disclosure of information or a document only if they consider that

(a) the information or document cannot be produced in evidence by any other reasonable means;

This is perfectly legitimate.

(b) the public interest in the administration of justice outweighs the public interest in preserving the confidentiality of the journalistic source, having regard to

(i) the essential role of the information or document in the proceeding,

Since you're familiar with this Supreme Court case, you know that Justice Abella dissented. Her dissent concerned precisely this issue.

Mr. Sébastien Pierre-Roy: *The Globe and Mail* decision was made at the same time. The Supreme Court determined that, to override the source privilege, we must be dealing with a central issue, which is the wording used in the English version. This means an issue that's essential to the resolution of the dispute, according to the French translation. In other words, if the issue is peripheral to the matter that must ultimately be settled by the judge, it's not worth it to violate the source privilege. However, if the issue is central or essential, it becomes possible to do so.

I think these words are only the fulfillment of the criteria set out in the *The Globe and Mail* case.

Mr. René Arseneault: However, the Wigmore criteria cited in the *National Post* decision didn't seem to focus on the essential role of the information once that information is obtained. At least, that's what I understood. I'm not much of a constitutional expert.

Mr. Sébastien Pierre-Roy: I don't want to take up all the committee's time. However, we must combine the Lessard decision with the *National Post* decision for a complete picture of what a police officer can do when looking for information from any media. The essential role of the approach with the media is one of the criteria in the Lessard decision.

I think this bill consolidates the jurisprudence of the past 25 years for searches of media premises. The *National Post* and *The Globe and Mail* cases aren't the only ones reflected in the bill. The Lessard decision is also included.

I'll answer a question you didn't ask, but it may help you understand. The *National Post* decision can be applied concretely only if the police officer arrives at the media premises with a warrant and says that he wants to seize the computers. At that point, the journalist can appear before a judge.

●(1705)

[English]

He can argue the Wigmore criteria to try to have the privilege recognized, but what is happening right now is that police officers are obtaining phone registers without the journalist's knowing. He will learn about it five years later, when all the names of the sources are disclosed. *R. v. National Post* cannot be applied, and that's the main problem this bill is fixing.

[Translation]

Mr. René Arseneault: I imagine that you're referring to the Lagacé case, among others.

Mr. Sébastien Pierre-Roy: All the recent cases involve orders issued secretly.

Mr. René Arseneault: Thank you, Mr. Chair. You've been generous.

The Chair: Thank you, Mr. Arseneault.

[English]

We'll continue with Mr. Nicholson.

Hon. Rob Nicholson: Thank you very much.

I think there's probably a consensus that the bill's not perfect, but we have to move forward on this or we basically will have nothing.

I have a question that I was going to ask the previous witnesses, and I'll probably ask you, Ms. McGuire. We've heard that Canada is far behind a lot of countries: the United States, Britain, others. Would this bill in its present form basically make us consistent with the protections that are in place in the United Kingdom and the United States, or would you be in a position to answer that?

Ms. Jennifer McGuire: I'll defer to Sébastien on the benchmarks worldwide, but it's our view and that of the coalition overall that this represents a significant step forward in this country, both in the level of oversight in terms of the judicial intervention and in reframing the process for access to source information.

Hon. Rob Nicholson: I'm pleased to hear that, because it seems to me that the longer we go without something specific in writing, the more difficult it will become in the future, for some of the reasons Monsieur Pierre-Roy mentioned.

Monsieur Cormier, you mentioned something with respect to one of the sections in the bill, specifically the section that has an amendment for dealing with the commission of an offence by a journalist. I just want to make sure that I understand this. Are you satisfied that the amendment provided by the government is good?

I'll get to you on this one, Mr. Henheffer, in a second.

What was your comment with respect to the amendment? Was it that it is as good as it could be, or not good, or does not go far enough?

Mr. Michel Cormier: We want to make sure that a police officer cannot just go to the judge and argue that just because they believe a journalist has participated in a crime committed by a source that it's enough to have a mandate of inquiry. We would rather have more safeguards in the process and make the role of the judge, in layman's terms, stronger. Maybe Sébastien can argue the finer points of the law on this, but basically that's the gist of it.

Hon. Rob Nicholson: Fair enough. I suppose one of the safeguards we heard is that these warrants will be in the hands of a superior court judge, which is one more level of responsibility.

Mr. Henheffer, you mentioned that in your comments, and also that you may have your own amendment with respect to the section. I believe this is the section you're talking about, the one where there's a suspicion of an offence by a journalist. Is that the one that you said you have a specific amendment for?

Mr. Tom Henheffer: Yes. We certainly feel that if the police suspect that a journalist has actually committed a crime this type of immunity would not apply in that case. But, again, to echo what the Media Coalition is saying, the fact that there may be suspicion that a crime has been committed, that a source may have committed the crime, having that in there can completely invalidate the strength of the bill if there's no protection just because a source has potentially committed a crime.

Hon. Rob Nicholson: My colleagues and I are new to this committee. This is my first time on this committee. You may have distributed that amendment. Do we have the amendment, Mr. Henheffer, with respect to that?

Mr. Tom Henheffer: We haven't supplied an entire amendment. We deferred to the Media Coalition in that regard.

Hon. Rob Nicholson: Fair enough, then.

Thank you. Those are my questions, Mr. Chair.

The Chair: Okay.

Mr. Dubé.

[Translation]

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

[English]

I'll start with you, Mr. Henheffer, but I'll hear the others as well on this idea of the definition of a "journalist". Obviously, there's an evolving media landscape, with freelancers who have different tools at their disposal to protect themselves. For example, I say this with all due respect, the journalist working for a larger media conglomerate probably has more legal tools at their disposal to protect themselves in court. I just want to hear from you a bit more on that. For example, there have been many intervenors in the Ben Makuch case because they have been required, given that he wasn't at one point able to muster the appropriate resources to defend himself. How important is that?

• (1710)

Mr. Tom Henheffer: I think that really is crucial. Again, I believe that the bill in its present form is still worth passing. I would strongly recommend that the committee adopt this amendment by Mr. Dubé.

A lot of times I've heard people say that just because someone tweets doesn't mean they should get protection of it. Just because someone is a blogger doesn't mean they're necessarily a journalist simply because they maintain a blog, and that they should not get this protection. I have more faith in the judges in this country to be able to distinguish between someone who has tweeted occasionally or had a blog or something like that who would claim these decisions. I believe that the judges in our country are well enough trained to be able to tell the difference.

The fact is the nature of journalism has changed. Many journalists now are freelancers. They are not getting paid for it as their primary job. A lot of journalists get 60% to 75% of their income from writing technical manuals or speeches or things like that and the rest of their journalism is a passion project.

There are organizations out there like Discourse Media on the west coast, the *Halifax Examiner* on the east coast, VICE News in Toronto, and CANADALAND, which everyone is familiar with, that rely on freelancers, many of whom might only write one or two stories for them a year, but which could have extremely important impacts on Canada. Often, depending on the type of outlook and the stories they're working on, they will have confidential sources whom they need to speak to in order to get this information, and yet they would not be covered by this very narrow definition of a journalist. That is why we feel that it needs to be somewhat broader so that it is left up to a judge, and a judge can make the decision as to whether someone should fall under this protection.

Mr. Matthew Dubé: If I may, before we hear from Ms. McGuire, I think that CANADALAND—and I don't want to get into the weeds, because journalists sometimes will argue who broke the story first and so forth—is a great example, because they had a large role to play in the Jian Ghomeshi affair.

Mr. Tom Henheffer: Absolutely. I'm in a very privileged position in my job, where I get to know the majority of journalists, at least in Toronto. So I know a lot of people who write for them. One of their main freelancers at the moment is a guy whose main career was as a political staffer and then he decided to gradually go into journalism. He has broken some very interesting stories on the rise of the alt-right in Canada and some dangerous extremist groups on that side.

He would not have been able to talk to those people had they feared that their conversations were being spied on, because all of the sources are confidential. Again, he would not fit into the definition of a journalist.

CANADALAND is just one example. There are many others—

Mr. Matthew Dubé: It's tangible for folks.

Mr. Tom Henheffer: Including the CBC, which also uses freelancers.

Mr. Matthew Dubé: Ms. McGuire.

Ms. Jennifer McGuire: Freelancers connected to the CBC would be considered part of the CBC for the nature of this exercise.

I hear the point, but I also think the reality is that a lot of the investigative journalism in this country would be captured by this bill, and for the greater good, it's a really positive step forward.

Mr. Tom Henheffer: I encourage that.

Mr. Matthew Dubé: I have a question that I raised with the first panel. If you go to clause 2 of the bill, it reads in part, "This section applies despite any other provision of this Act or any other Act of Parliament".

The question I posed to the last panel was to nail down the importance of that, given that when we are in periods of crisis or when there is a terrorist attack or some kind of national disaster or something like the October Crisis in Quebec, when these crack-downs happen, journalists are often collateral damage. How important is a piece like that in a bill like this to make sure there aren't any loopholes that allow a crackdown later on from other legislation or something like Bill C-51, for example?

Mr. Michel Cormier: If there were questions of national security or a crackdown like the October Crisis, the protection of confidential sources seems like a small element of that. We have the Constitution. We have the Bill of Rights. What supersedes what would be quite an interesting question.

I think for the immediate purposes, it's important to pass this piece of legislation even though it's imperfect and we all have issues with it. I think we have to establish that watermark quickly and then the other issues will still be out there and can be dealt with later.

• (1715)

Mr. Tom Henheffer: Again, I agree with this. This bill is much 80% a step in the right direction. There's just 20% there of ways that it could be improved, but we should not let that 20% prevent its passage.

In regard to this, a lot of people would argue that ISIS is a crisis that the country is dealing with right now. Some other people may not feel that way, but Ben Makuch was able to get extremely important information about this terrorist group disseminated to Canadians, including the security forces, because he was able to speak to a source who believed that his communications would not be released to the police and would only be sent out to the public according to the terms of what they agreed to. If Ben gives up his notes eventually, then all of a sudden those types of sources will dry up, and Canadians will lose that information. That's just one example of how important it is that we maintain that balance and that respect for the right of journalists to do their jobs.

Mr. Matthew Dubé: I just have one final question.

The Chair: Mr. Nicholson's time was very underutilized and generous, so you can keep on going, Mr. Dubé.

Mr. Matthew Dubé: I just have one last question, if I may.

The Chair: Take your time.

Mr. Matthew Dubé: The last question is just about a lot of stories that have come out in the media. One that's referenced constantly, especially for those of us from Quebec, is Patrick Lagacé. But this isn't something new, so I want hear folks on how overdue this is, in the same spirit as the question Mr. Nicholson asked.

Mr. Michel Cormier: I'll take that one. It's not just overdue; it's the fact that the current state now has dried up a lot of journalistic

sources. We have lost sources at *Enquête*, who have disappeared. People will not talk to us because they're afraid of being exposed.

The last thing is that it's the records of five years of our best investigative journalists in our most prominent program that have been surveilled. So you have tens and tens of sources now who live in the fear that they will be exposed, notably in front of the Chamberland commission. They have been fighting to be sure that their names remain secret. This is the actual effect; it's not just a hypothetical effect. There would be real effect now from not passing this legislation. That's the best argument I can make.

Ms. Jennifer McGuire: I'll put an accent on it outside of Quebec. When we were investigating sexual harassment within the RCMP, we had more than 50 sources within the RCMP tell us that they were more afraid of the internal climate within the organization than the criminal activity they were dealing with outside the organization. The act of convincing a source to talk is an act of trust, and it's an act that's built over time. One source talking and one story can lead to more sources coming forward, which is absolutely what we saw with the upselling by the banks, which I think we had a committee hearing on last week. I think it's really important to understand that the chill affects the ecosystem overall, not just what was happening in Quebec.

Mr. Tom Henheffer: To bring in the international perspective on this, for decades there have been these protections in almost every other Western democracy in the world. Germany, the U.K., Australia, Holland, and 37 states in the United States all had these protections. Basically almost every country in the European Union has these protections. It is a dark spot on Canada's part that we do not have a press shield law in this country, so this will absolutely bring us in line with international norms.

[Translation]

Mr. Matthew Dubé: Thank you.

[English]

The Chair: Thank you, Mr. Dubé.

Mr. Spengemann.

Mr. Sven Spengemann: Mr. Chair, thank you very much.

I asked this question earlier of colleagues who were in front of the committee. I'm wondering if you could describe for the committee and Canadians how you see the state of journalism today in 2017. We talked a little bit about the pressures and the financial or structural changes in terms of employment contracts. Some members had conversations with stakeholders like Unifor, who are quite concerned on the financial side about the sustainability of the profession as an independent pillar of our democracy as it is currently structured. Where do you see that going in the next half decade or so? What's the current trend? I see this bill as an element of protecting the profession, but there are other components that the committee should be mindful of as we deliberate on what we should do with this particular instrument.

● (1720)

Ms. Jennifer McGuire: We are seeing clear fragmentation in the environment around journalism. We have multiple sources of information and people choosing to go only to certain sources that sometimes just reaffirm their own point of view. With the rise of digital and social channels, you have incredible reach. The ability of a story to have impact and reach more people is profound. It's like it never has been before. Is it complicated in terms of the business model? Absolutely. We are seeing that in the private sector, particularly with newspapers. In the public sector, we've had our own issues with shrinking budgets and trying to do more, because we are feeding more digital platforms all the time.

All the research I've seen.... The RTDNA just did a study that shows that trust in legacy media is actually growing slightly in this environment, which is cluttered with all kinds of disinformation as much as journalism.

I think the promise behind the brand in journalism becomes more important, but the business case is not solved. There is no solution on the horizon that we can see.

Mr. Sven Spengemann: Could you elaborate briefly on that study you referred to? Is it based on survey data that basically reflects the opinion of Canadians?

Ms. Jennifer McGuire: The RTDNA, which is one of the journalism organizations in Canada, recently did a survey about trust in media. One of the findings is that trust in mainstream sources of media has increased in this age of fake news.

I would be happy to get it if it's of interest.

Mr. Sven Spengemann: Can you comment on the state of the profession in terms of people enrolling in journalism programs and what incentives this bill might provide to support Canadians in their decision to seek a career in journalism?

Ms. Jennifer McGuire: I think it's probably unrelated, but we have an obligation as journalistic organizations not only to connect with schools to encourage people to consider journalism as a profession, but also to invest in critical thinking and journalism education in terms of how to consume media. We do that, and we are doing more of it moving forward.

Mr. Michel Cormier: In this environment of fake news, the only thing we have is our credibility. That is the most precious thing we have—and the most fragile. If we make a mistake, it has even more impact today than it had before. You can be assured and confident that we are careful when we publish information taken from

confidential sources, and that it has been checked two or three times to make sure that it is in the public interest and is accurate. If not, it's a huge setback for us.

That's the commitment we have, and I think it's even more important for us now in this new environment, where so many people do whatever they want or produce fake news.

Mr. Sven Spengemann: On the subject of fake news, which I think is in the forefront of the minds of many Canadians, how are journalists protected against sources that are deliberately created to spread fake news?

Mr. Michel Cormier: We never rely on one source. The first rule is for a minimum of two sources, and more if it's even more sensitive. A source is not just somebody who shows up one day, and then you publish the stuff. We usually cultivate the confidential sources we use for weeks and months, sometimes years. We get to know these people, to make sure that they are trustworthy and that what they actually tell us is true and believable. We have all kinds of safeguards to make sure that we don't fall into that kind of trap.

Ms. Jennifer McGuire: I'll just add to that. Any piece of investigative journalism is built on a mountain of information, which includes documents and other kinds of source material in addition to people. With a touchy investigation, we do more than double-source. We have multiple people around anything that is at that level. I mentioned the RCMP investigation that we did. We had multiple sources, and we tested their credibility.

Mr. Sven Spengemann: In your view, then, coordinated disinformation campaigns placed against a Canadian journalist who is trained, not to a regulatory standard, but to the Canadian standards of what we know to be an independent, free press, would not be successful.

● (1725)

Ms. Jennifer McGuire: I can speak only for the CBC. We have a series of checks and balances, both in terms of our journalistic practices and our values around these things. There are checks and balances all the way through.

Mr. Sven Spengemann: That's very helpful.

What can you tell the committee about generation divides in terms of how people get their news, what their preferences are, and what their appetite is for investigative journalism?

Ms. Jennifer McGuire: I'm going to surprise the committee and tell you that millennials are actually interested in journalism. CBC News reaches 52% of millennials in this country via digital media.

They consume it in a different way. They don't consume it on television or radio, but maybe via podcasting and, certainly, on their smart phones. We see different generations going to different places to consume news. That piece is real, but we see the younger generation still having an appetite for information and news, and that's heartening.

Mr. Sven Spengemann: Here's my last question, Mr. Chair, with your indulgence.

Is there a gender component in investigative journalism? We can look at specific areas, such as, for example, work in the area of women in the sciences, technology, engineering, and math. If somebody were to write an investigative article on that state of affairs in Canada, are there particular aspects women journalists would face that require greater levels of protection, or would the bill as it's currently framed be satisfactory in terms of the protection of sources from a gender perspective?

Ms. Jennifer McGuire: As the woman on the panel, I will take that.

We have fantastic female investigative journalists and see no gender imbalance in who does this work, but we were concerned with the framing of this in Quebec, which I referenced in my opening remarks, around Marie-Maude Denis and the implication that a relationship was part of the tools she used in her journalistic trade.

In terms of people practising journalism, we have quite a good gender balance in investigative work.

Mr. Michel Cormier: I'll just add that they may feel more vulnerable to sexism and to innuendo. At the same time, Marie-Maude Denis and Isabelle Richer, the two women journalists who were caught in this fishing expedition, want very strong protection for every journalist, regardless of sex.

Mr. Tom Henheffer: If I could, I'll add a little bit of extra context on the state of journalism in this country. First of all, as the panel's resident millennial, I suppose—

Voices: Oh, oh!

Mr. Tom Henheffer: —I'd like to say that my generation does consume news ravenously. There's more of an appetite out there for news than there ever has been. The problem is that in our country the news industry has literally been decimated, if not more than that. I mean that in the literal sense. A tenth has been destroyed, and probably quite a bit more than that.

I cut my teeth at *Maclean's* magazine. When I was there, I believe there were 50 people working in the editorial side of the newsroom. Now there are approximately 15. That's in a matter of 10 years. That's a frightening decline, and it's one that we've seen across the country.

I like to look at the journalism industry in this country as being like a forest or a jungle and that large parts of it, unfortunately, have been completely burned to the ground. But that has left us some fertile soil, and there are some new things sprouting up. There are a

lot of organizations that are doing really wonderful things despite these challenges. I think CBC is an excellent example of what we've had, but it's the same thing with *The Globe and Mail* and *Toronto Star*, the legacy media.

The thing is, there is still a massive hole in this country. While people are ravenously devouring content, there aren't as many people providing good, quality content. There's more noise and less signal out there now. Also, because sources are drying up, we need legislation like this to give journalists as much of a fighting chance as we can and to make this pillar of democracy as strong as possible. Taking away those sources by not having a shield law is a serious issue.

The Chair: You have one minute.

Mr. Sven Spengemann: Very briefly, given your most recent comments, would you consider our being at a stage where we now have a structural concern with the health of Canadian democracy?

Mr. Tom Henheffer: Yes, I would certainly say so. We funded the news poverty project at Ryerson University. I would encourage everyone to take a look at it if you want to see a stark example of how many dozens of newspapers, broadcasters, and online outlets have closed, and how few have opened across Canada in the last five or so years.

Mr. Sven Spengemann: Thank you very much.

● (1730)

The Chair: Thank you.

That has really come to the end of our time for debate, but if you have questions, Mr. Brassard, I'm happy to give you five minutes.

Mr. John Brassard (Barrie—Innisfil, CPC): Thank you. I'll only take a couple, Mr. Chair.

I find it ironic as we sit in this room and look straight ahead to see the mural *The Printed Word*. If you look over your shoulder, you see another mural. Clearly, journalism and freedom of the press are important with respect to our democracy and really build on that openness and transparency.

As I sat through this debate, I heard that Canada would go from laggard to leader with this shield law. Based on your experiences with news organizations in the United States, for example, and in other western democracies, how important is this to Canada in terms of the experiences of these other countries?

Mr. Michel Cormier: As a former foreign correspondent, I'll take that question. I was a correspondent in China and Russia, which are not paragons of the free press, and you realize at that point how lucky we are to operate as journalists in a country like Canada, despite some shortcomings.

So this is essential, I think, to the image of Canada in the world. The press now is attacked in places where it hasn't been attacked before, like Turkey. Egypt is still a very big problem, and the whole Middle East. So if on something so fundamental as the protection of confidential sources we can't adopt the protections that are given to journalists in most western liberal countries, then I think it's a real shortcoming.

Ms. Jennifer McGuire: And I would say that at the end of the day it comes down to the public we're trying to serve, and if sources don't come forward and the stories don't get told, we're ultimately doing a disservice to them.

Mr. John Brassard: Thank you.

Tom, just so you know, Porter called. You've been bumped off your flight, based on your opening comments.

Mr. Tom Henheffer: Something tells me that I will probably not be able to get on my flight back to Toronto this evening.

Mr. John Brassard: Thank you, Chair.

The Chair: You're welcome.

Ms. Damoff, do you have a question?

Ms. Pam Damoff: Thank you very much. I have two very quick questions actually.

I think it was you, Mr. Cormier, who said that it was important to pass this bill in order to protect the identity of the sources in the commission that's going on in Quebec? Did I understand that correctly?

Mr. Michel Cormier: No, what I meant is that this whole exercise is not contradictory. Somebody said that maybe we should wait until the commission finishes. We have journalists across Canada, not just in Quebec, so we need the same protections across the board.

Whatever they come up with in recommendations, they'll be more than about a law to protect journalists. They will deal with police work and ways to better regulate the way they operate, and also the whole relationship between ministers and the police and sources, and how that works.

It's a broader view because the problem was bigger than just the sources or the journalists.

Ms. Pam Damoff: I don't know if I thanked all of you for being here, but thank you for being here.

My second question has to do with the definition of journalist. Our previous panel spoke about how there was quite a lengthy conversation at the Senate, involving both the police and journalists, where they came up with the definition that is currently in the bill.

Ms. McGuire, did I understand that you can live with this definition?

Ms. Jennifer McGuire: Yes, we're supporting this definition.

Ms. Pam Damoff: Okay. I think all of us recognize that perhaps the bill isn't perfect, but it's a gigantic step from where we are right now, and perhaps as we move forward, we can fine-tune that as we look at it. I just wanted to confirm that you are okay with the definition in the bill.

Ms. Jennifer McGuire: Yes, the coalition is supporting the definition.

Ms. Pam Damoff: Okay. Thank you very much. That's all I had.

Mr. Michel Cormier: We're very happy with this definition.

The Chair: Do the Conservatives have any other questions? You're good?

Mr. Dubé? Any others?

Thank you to our panel of witnesses.

We'll suspend for a few moments and then move to clause-by-clause consideration of this bill.

• (1730)

_____ (Pause) _____

• (1740)

The Chair: We can begin.

Just before we begin, I wonder if there has been any news on Larry Miller's mother. Nothing? I know that she was sick last week and he wasn't able to come, so I wanted to share that.

Also, I would mention to the committee that apparently Dianne Watts had an accident or incident with her ankle and has hurt it. That's that's why she is not here today.

Ms. Pam Damoff: She fell outside the Wellington Building. Is that what you're referring to?

The Chair: Maybe it was from that. I don't know when or where it happened.

We begin clause-by-clause of the bill now. We welcome Mr. Wong and Mr. Noël from the Department of Justice, who are here to help us with any questions we have. Monsieur Méla is here as our legislative clerk to help us with any procedural questions we have regarding our clause-by-clause process.

We are going to begin. As is our custom we will postpone clause 1, the short title.

(On clause 2)

The Chair: As you can see from your amendment package there are three amendments to clause 2.

I am going to note for the committee that there was discussion about the eligibility of NDP-1 and whether or not it was within the scope of the bill. I have read it and have decided that yes, it is within the scope of the bill, because the scope of the bill is broadly the protection of journalistic sources. So I think it is appropriate for us to begin with it.

I will turn to Mr. Dubé if he would like to move that amendment.

• (1745)

Mr. Matthew Dubé: Certainly.

I will defer to Mr. Henheffer's testimony as to why it's an important amendment to broaden the definition of "journalist", given the changing media landscape, and leaving, quite frankly, the criteria open and letting the judge decide, as already prescribed by the bill.

I just want to add one last piece, Mr. Chair. There was also testimony in regard to the current definition being acceptable. I certainly don't disagree with that, but I'm not in the business of taking good first steps. We have a long way to go, so if we can get there more efficiently and more quickly, I think that is certainly our responsibility as legislators.

I move the amendment.

The Chair: Is there discussion or comments about the amendment?

(Amendment negated [See *Minutes of Proceedings*])

The Chair: We move now to LIB-1.

Ms. Damoff.

Ms. Pam Damoff: Thank you, Chair.

I can say this about all of my amendments, so I don't need to repeat it. They all add further precision to the bill.

LIB-1 would remove the override provisions. They are not necessary and could conflict with other federal legislation. They are not needed to give effect to the protection of journalistic sources that are in the bill.

The Chair: Are you on LIB-1?

Ms. Pam Damoff: On LIB-1, "deleting lines 1 and 2 on page 2".

The Chair: Okay.

Ms. Pam Damoff: I understand you have a comment on part (b).

The Chair: Yes, just with respect to part (b), I have suggested that there are two instances of a question of renumbering the subsections, but that is not necessary. There was some discussion among the clerks in the House and the Senate that it was required; however, Philippe has informed us that after those discussions, it's considered not necessary as an amendment, so I understand that you're not moving part (b).

Ms. Pam Damoff: That's correct, I'm moving only part (a).

The Chair: Is there any discussion about amendment LIB-1, part (a).

(Amendment agreed to)

The Chair: Moving to LIB-2, Ms. Damoff.

Ms. Pam Damoff: Again, on that one I'm not moving part (d).

On this one, I'm just going to leave it that it's providing further precision to the bill.

The Chair: Mr. Dubé.

Mr. Matthew Dubé: Thank you, Chair.

I just want to say we changed "essential role of the information" to the "importance of the information". As for the "central issue in the proceeding", I think the language has become a little vaguer, so my reading of it is that it creates a little bit of a loophole that jeopardizes somewhat the objective of the bill, so I am voting against the amendment.

The Chair: Is there any other discussion?

Mr. Arseneault.

[*Translation*]

Mr. René Arseneault: I only want to make the following comment. There's always a conflict between the public interest in the administration of justice and the interest in preserving confidentiality. Nevertheless, in light of the Supreme Court of Canada jurisprudence, which we were discussing earlier with Mr. Pierre-Roy, I have no problem accepting these amendments. They're entirely consistent with the Supreme Court decision.

I support this amendment.

• (1750)

[*English*]

The Chair: Are there any other questions or comments?

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 2 as amended agreed to)

(On clause 3)

Chair: On amendment LIB-3, go ahead, Ms. Damoff.

Ms. Pam Damoff: Amendment LIB-3 deletes any reference to any other act of Parliament. The override provisions are not necessary to give effect to the protections for journalistic sources contained in the bill and, as I mentioned in regard to another amendment, they could conflict with other federal legislation.

I will leave it at that.

The Chair: That's good. Are there any questions or comments on the amendment?

Mr. Dubé.

Mr. Matthew Dubé: Thank you, Chair.

Once again, from my reading of the amendment, it does create a lot of leeway for police, as Mr. Carignan was noting, in regard to this whole notion of not knowing that the person is a journalist. I should probably just leave this comment as a ditto for a few of the amendments, but I feel that the pendulum in Canada is too far to one side in favour of police powers and very little for journalists. As we've heard, this is only a first step, so once again I will be voting against the amendment.

The Chair: Are there any other questions or comments?

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: On amendment LIB-4, Ms. Damoff, go ahead.

Ms. Pam Damoff: This one adds some additional subsections to ensure that the new test for warrants doesn't apply when the application relates to a journalist's criminal activity.

I'm going to leave it at that.

The Chair: Are there any other questions or comments?

Mr. Dubé.

Mr. Matthew Dubé: Thank you, Chair.

This speaks to an amendment that Monsieur Pratte brought to the Senate after hearing testimony from the Canadian Association of Chiefs of Police. It adds to that. Considering that the compromise was already acceptable, it once again, as far as I'm concerned, goes too far in the direction of leaving loopholes open for police. In this case, when it is related to other offences that a journalist may have committed, there was a concern raised by the Canadian Association of Chiefs of Police related, for example, to someone who might have outstanding charges from driving under the influence or something of that nature that is completely unrelated to the source, but the ongoing criminal investigation into that journalist on this other matter could be seen as a way to find a source. The bill was originally drafted in a way that completely isolated the two proceedings, which the police did not like and, rightfully so, Monsieur Pratte had already found a compromise. I don't feel that going further in this direction is necessary.

The Chair: Are there any other questions or comments?

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: On amendment LIB-5, Ms. Damoff.

Ms. Pam Damoff: Liberal 5 has to do with the powers of the judge. It introduces new subsections, and once a judge becomes aware of a warrant relating to a journalist, police would be required to inform the judge of a superior court, refrain from examining or reproducing the evidence, and seal it until the superior court judge disposes of the application.

Again, we're just adding some precision to it. As the bill went through the Senate, they didn't have the benefit of Justice officials looking at it. Having had discussions with the Justice officials, I think all of these are appropriate.

• (1755)

The Chair: Mr. Spengemann.

Mr. Sven Spengemann: Thank you, Mr. Chair.

I have a subamendment to the second part of LIB-5 dealing with the powers of a judge under proposed subsection 3(8). This relates to proposed subsection 488.01(8). I will read out the English. I'm told that we have it in both languages.

The Chair: Exactly where is it going? I missed that.

Mr. Sven Spengemann: It's the proposed subclause 3(8) that adds subsection 488.01(8) in LIB-5, which deals with the powers of a judge, the first paragraph of that. The language in its entirety is:

(8) On an application under subsection (7), the judge may

(a) confirm the warrant, authorization or order if the judge is of the opinion that no additional conditions to protect the confidentiality of journalistic sources and to limit the disruption of journalistic activities should be imposed;

The Chair: It is a subamendment to proposed paragraph 3(8)(a), with an additional sentence.

Mr. Sven Spengemann: That's correct.

The Chair: Okay. Could you get that to the clerk?

Mr. Sven Spengemann: Yes.

Hon. Rob Nicholson: Isn't that covered in proposed paragraph 3(8)(b)?

Mr. Sven Spengemann: Mr. Chair, proposed paragraph 3(8)(b) relates to the variance of warrants. This is just the initial step of confirming the warrant, without any evidence to vary it. They are two distinct approaches.

The Chair: I'm looking at the Justice officials, whether they have any comment on that—because you're here.

Mr. Normand Wong (Counsel, Criminal Law Policy Section, Department of Justice): Thank you, Mr. Chair.

I think the way that proposed paragraph 3(8)(a) has been moved in the subamendment is a mirror of 3(8)(b), so it doesn't replicate the considerations in 3(8)(b), and the judge may confirm the warrant authorization or order if he feels that no additional conditions should be imposed to protect journalistic sources or the freedom of the press. I don't think they're inconsistent or replicative of each other.

The Chair: Proposed paragraph 3(8)(b) then stands. Proposed paragraph 3(8)(a) mirrors the consideration in 3(8)(b). Am I clear on that?

Mr. Normand Wong: Yes.

The Chair: Okay.

Mr. Brassard.

Mr. John Brassard: Is there any chance we can get a text of the subamendment you put forward, Mr. Spengemann?

The Chair: We could suspend in order to get a copy of it, if that is your desire.

Mr. John Brassard: I would like to see it, yes.

The Chair: I see that it is handwritten, but it is well written. It's fairly straightforward. Would you like to read it?

Let's just take one minute for Mr. Brassard to read it, but don't move. I'll lose you.

We are considering the subamendment to Liberal-5.

Mr. Brassard.

• (1800)

Mr. John Brassard: I have no discussion on it, but if we are going to vote on this, we'll vote on division.

The Chair: Okay, thank you.

All those in favour? Opposed?

(Subamendment agreed to on division [See *Minutes of Proceedings*])

The Chair: Now we will have a vote on the amendment. Is there any more discussion on Liberal-5 as amended?

(Amendment agreed to on division [See *Minutes of Proceedings*])

The Chair: We'll now move to Liberal-6.

Ms. Damoff.

Ms. Pam Damoff: This amendment is proposed to ensure that journalists' sources can be protected, even when the journalist is under investigation for criminal activity.

The Chair: Are there any comments or considerations?

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Liberal-7.

Ms. Damoff.

Ms. Pam Damoff: This is a purely technical consequential amendment and in no way affects the meaning or effect of subsection 488.02(2).

The Chair: It appears to remove a redundancy.

Ms. Pam Damoff: Yes.

The Chair: Is there any discussion on amendment LIB-7?

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: To the last amendment, LIB-8, Ms. Damoff.

Ms. Pam Damoff: This motion deletes section 488.03's override provision from the Criminal Code portion of the bill, because it's not necessary to give effect to the protections for journalistic sources contained in the bill and could conflict with other legislation.

The Chair: Good.

Are there any questions or comments?

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 3 as amended agreed to)

The Chair: Shall the short title carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Some hon. members: Agreed.

The Chair: Shall the chair report the bill as amended to the House?

Some hon. members: Agreed.

The Chair: I will report it as soon as we are able to clean up the text.

I think that complete the business before the committee.

You guys didn't have to work too hard today.

Voices: Oh, oh!

The Chair: You should have seen the last officials we had here for clause-by-clause.

Voices: Oh, oh!

A voice: I heard.

The Chair: You got it easy. You owe them one.

All right. Seeing there is no other business, the meeting is adjourned.

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