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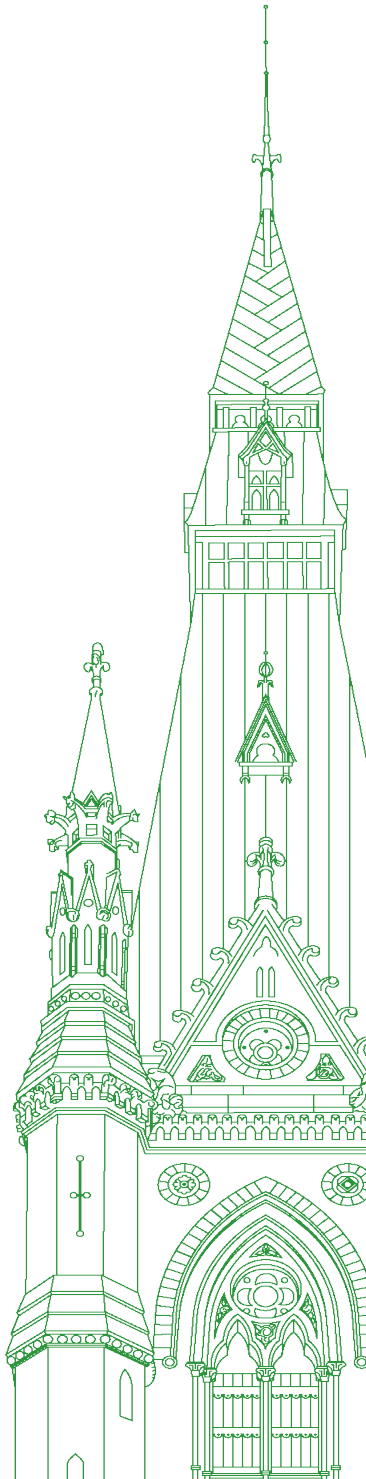

Chair: Mr. Joël Lightbound

Standing Committee on Industry and Technology

Tuesday, October 17, 2023

● (1610)

[*Translation*]

The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)): I call the meeting to order.

Welcome to meeting number 89 of the House of Commons Standing Committee on Industry and Technology. Today's meeting is taking place in a hybrid format pursuant to the Standing Orders.

Pursuant to the order of reference of Monday, April 24, 2023, the committee is resuming consideration of Bill C-27, an act to enact the consumer privacy protection act, the personal information and data protection tribunal act and the artificial intelligence and data act and to make consequential and related amendments to other acts.

I'd like to welcome our witnesses today. From the Department of Industry, we have Mark Schaan, senior assistant deputy minister, strategy and innovation policy sector; Samir Chhabra, director general, marketplace framework policy branch; Runa Angus, senior director, strategy and innovation policy sector; and Surdas Mohit, director, strategy and innovation policy sector.

Thank you for appearing before the committee yet again in connection with our study of Bill C-27. I expect we will probably ask you back, but since you were here with the minister for his recent appearance, there aren't any opening remarks. Without further ado, we will go straight to questions.

You may go ahead, Mr. Perkins. You have six minutes.

[*English*]

Mr. Rick Perkins (South Shore—St. Margarets, CPC): Thank you, Mr. Chair.

Thank you to what almost seems like our weekly regular witnesses and officials. I appreciate that.

In the minister's opening testimony here in September on Bill C-27, he said, "we will propose an amendment to recognize a fundamental right to privacy for Canadians."

In the letter that was sent to the committee in response to our production of documents resolution from about a week and a half ago, the details of number one on page 1 of the appendix of the letter are that they will amend clause 5 "to qualify the right to privacy as a fundamental right." There's stuff in there about the preamble, but ultimately the preamble doesn't matter because it has no legal basis once the statute is passed.

Clause 5 of Bill C-27 reads, "The purpose of this Act is to establish...rules to govern the protection of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information".

Can you tell me which words in that clause will change?

Mr. Mark Schaan (Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector, Department of Industry): Thank you, Mr. Chair, for the question.

Subject to the ultimate drafting decisions of the drafters, I think the intent is to ensure that the fundamental right is considered within that paragraph.

We look at the words, "The purpose of this Act is to establish...rules to govern the protection of personal information in a manner that recognizes the [fundamental] right of...individuals with respect to their personal information and the need of organizations to collect, use or disclose personal information". That is probably the likely location.

Mr. Rick Perkins: Then the rest of the paragraph in the clause is likely to stay the same.

Mr. Mark Schaan: The intent of the proposed position would be to explicitly recognize the fundamental right. Right now it notes the right of privacy, but it does not note the word "fundamental".

Mr. Rick Perkins: If I were to abridge this, it actually balances. It says, "The purpose of this Act...and the need of organizations to collect, use or disclose personal information". That clause sets out that it's basically balanced and that they're of equal importance. This is the most important clause in the bill because it sets out the purpose of the bill from a legal perspective.

The question I have is.... It will be a fundamental right, and combined—and of equal value—is the need for an organization's ability to use the information. These words matter in this very fundamental clause.

Mr. Mark Schaan: The degree to which the "and" is doing work in that paragraph is to note that it must respect the fundamental right of the privacy of individuals and the need of organizations to collect, use or disclose personal information, but not at the expense of the fundamental right of privacy of Canadians.

Mr. Rick Perkins: But those last words you just said are not being added to this.

Mr. Mark Schaan: No, but by nature of the fact that—

Mr. Rick Perkins: You can't say "the fundamental right" and "organization" and then "but not at the expense", because it's not going to say "not at the expense".

Mr. Mark Schaan: The words "that a reasonable person would consider appropriate in the circumstances" are also at the end of the second sentence, and the "and" clearly notes the fact that it must meet both tests.

Mr. Rick Perkins: This goes to the main purpose of why we need these amendments. These are fundamental reasons why witnesses are going to come here and say whether or not clause 5 does what they think it should do.

For example, as you know, the Privacy Commissioner has made it very clear that clause 5 should make sure that this fundamental right is of paramount importance, of primary importance, not of equal importance to the needs of an organization. However, without the wording, it's difficult for us to know what the intent of the government is, because if it's just keeping the balance the same way as it is here, then that doesn't achieve the net end, in my view.

I'll move on to the second one in the minister's letter. It deals with children. Nowhere in this bill does it define what a minor is. The minister's letter talks about the preamble again, which is useless because it doesn't have any legal standing, but it does say that it's going to amend section 12, which deals with what express consent is, what the process for express consent is, and what the exceptions for express consent are, but it doesn't say what's going to be changed in section 12; it just says that section 12 is the focus. By the way, section 12 provides all the fence posts we need to protect information sensitive to children. Again, the minister's words in committee were very precise about this, and this is the reason we have an issue.

I'm not going to ask you to respond to that, because I have only a minute left and I do want to propose a motion. I believe it's a compromise motion, which I think we can distribute in both languages.

We could consider moving a motion right now on a point of privilege that the minister has not produced the documents required by the committee, which requires a certain process. I'm not going to move that at today's meeting.

As a compromise, I'm going to move the following motion:

> That, in relation to its order of reference concerning Bill C-27, An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts, and given that
>
> (i) the Minister of Innovation, Science and Industry gave evidence to the Committee on September 26, 2023, stating "I want to put on the table specifically what our government will propose to improve the bill. These are the amendments that we are proposing to the bill",
>
> (ii) in response to the Minister's evidence, the Committee, on September 28, 2023, ordered the production of "the amendments discussed by the Minister in his opening remarks to the Committee on September 26, 2023", and
>
> (iii) the Minister's response to the Committee's Order refers to "highlighting...areas for amendments in my remarks", includes an annex providing "detail related to the amendments we would propose", suggests "Government members would propose amendments" and that "we are ready to work with committee members to develop amendments", and asserts "My officials are currently working with the Department of Justice to draft these amendments",
>
> the Committee is deeply concerned about the contradictions in the Minister's oral and written evidence to the Committee and, therefore,
>
> (a) renews its invitation issued to the Minister of Innovation, Science and Industry to appear before the Committee, for at least two hours, provided that if he does not agree, within one week of the adoption of this motion, the Chair shall be instructed to report to the House forthwith a recommendation that this Committee be empowered to order his appearance from time to time;
>
> (b) a summons do issue for the appearance of Simon Kennedy, Deputy Minister of Innovation, Science and Economic Development, to appear before the Committee, for at least two hours, at a date and time determined by the Chair, but no later than October 19th;
>
> (c) orders the Minister, his department and the Department of Justice to produce the draft texts of amendments to Bill C-27 discussed by the Minister, provided that these documents shall be deposited with the Clerk of the Committee, in both official languages, no later than October 19th;
>
> (d) orders the production of (i) the draft speaking notes recommended to the Minister's office, for the Minister's use before the Committee, by his department, and (ii) the final version of the speaking notes which the Minister relied upon during his appearance before the Committee, provided that these documents shall be deposited with the Clerk of the Committee, in both official languages, prior to the Deputy Minister's appearance on October 19th;

● (1615)

> (e) orders the Office of the Law Clerk and Parliamentary Counsel to produce copies of the texts of any amendments to Bill C-27 drafted for members of the government party and consistent with the drafting instructions which the Minister provided to the Committee in response to the Committee's Order, provided that these documents shall be deposited with the Clerk of the Committee, in both official languages but with the sponsoring member's name and constituency redacted, within one week of the adoption of this motion; and
>
> (f) directs that all further meetings in relation to Bill C-27 be postponed until such time as the witnesses mentioned in paragraphs (a) and (b) have appeared and the documents mentioned in paragraphs (c) to (e) have been produced.

It's a lot of wording. I don't know if you want me to speak to it or let it sit for a moment.

The Chair: I'll recognize Mr. Turnbull.

Mr. Ryan Turnbull (Whitby, Lib.): Thank you, Mr. Chair.

I think we have some very important witnesses here today and I think we can hear from them on this important study. I know the minister has provided a substantive package of information, including documents. I consider it more detailed information than what you would receive in the legalese of actual amendments. The minister, in good faith, showed up at this committee and presented areas for an openness to amendments. We all got information at the same time.

In my view, we should adjourn debate on this matter and move on to questioning the witnesses.

I move to adjourn debate.

● (1620)

Mr. Rick Perkins: Mr. Chair, before you recognized Mr. Turnbull, I had asked you if I should speak to the motion now or let it sit, and then you recognized Mr. Turnbull.

The Chair: I am sorry, Rick. I thought you were done.

Mr. Rick Perkins: No, that was just the motion. I asked if I could speak to the motion.

The Chair: I'm sorry, Rick. I didn't mean to do that.

I've recognized Mr. Turnbull and he's moved to adjourn debate, which calls for a vote.

Mr. Rick Perkins: I challenge the chair on that.

The Chair: I don't think you can challenge the chair when there's a motion to adjourn debate.

Mr. Ryan Turnbull: It still needs to be voted on.

The Chair: It needs to go to a vote right away, but it's up to the committee if they want to hear more.

Mrs. Goodridge, I'm sorry, but a vote has been called so we're in the roll call.

Mrs. Laila Goodridge (Fort McMurray—Cold Lake, CPC): Prior to the vote being called, I had my hand up, which was the precedent in many of the committees I've sat on up to this point. I was trying to get your attention, but I didn't want to shout, because that would be impolite, in my opinion.

I was trying to speak on a point of order to be called in regard to the fact that when Mr. Perkins was giving his speech—

Mr. Iqwinder Gaheer (Mississauga—Malton, Lib.): I have a point of order, Mr. Chair.

The Chair: Just one second, please.

Mrs. Goodridge, I'm sorry, but at this point I have to.... It might have been my mistake not to recognize Mr. Perkins—I thought he was done with his intervention—but the fact of the matter is that I recognized Mr. Turnbull, so he had the floor and moved the motion to adjourn debate. It's now up to the committee to decide whether the committee wants to adjourn debate or not.

When that motion is on the table, it calls for a vote immediately. We'll deal with that vote, and then we can resume, depending on the results of the vote.

Mr. Iqwinder Gaheer: Just to clarify, are we voting on Mr. Turnbull's motion?

The Chair: We're voting on the motion to adjourn debate by Mr. Turnbull.

(Motion negatived: nays 6; yeas 5)

The Chair: I'll now return to Mr. Perkins, and then we have Mr. Masse.

Mr. Rick Perkins: Thank you, Mr. Chair.

We have spent two meetings on this—I understand that—but it's a fairly fundamental parliamentary issue.

I'll go back to what the minister said when he appeared in September to start the discussion. He said, “I'm here to propose a number of amendments, which you will see will allow us to move forward very quickly on that, because we have listened to you.” He then went on to say this, as I mentioned previously, but I'm going to go through all of these: “First, we will propose an amendment to recognize a fundamental right to privacy for Canadians.”

I'll read to you what the minister's annex says—and we've heard the response from officials that they're unsure about what the wording will be. It will probably replace some of the wording at the beginning of the clause or in the middle of the clause that refers to the privacy of individuals, but maybe the balance with organizations' rights is still there.

This is why the words.... Government members might say this is not legalese, so it's better. Actually, it does not help. It makes things worse in studying a bill, because we're about to have 15-plus meetings on this bill with witnesses who have studied the legal text of this bill, so their testimony can only be based on what's available to them in the legal text, not on the generalities of this letter, which says, in this case, “We're going to amend clause 5 in some manner or way. Trust us.”

If I go on to number two, which I mentioned, again, it mentions the preamble. For those who don't understand, the bill has a preamble, but once a bill passes into law, the preamble is not part of the statutes of Canada. It has no legal impact, so what goes into the preamble is irrelevant.

Most of what the minister said about number two.... I'll quote from the Hansard what he said at the committee meeting about number two. He said, “That is why our government will put forward amendments”. He didn't say, “We're open to amendments” or “We'll propose amendments”, or that somehow they're not drafted. He said, “That is why our government will put forward amendments to recognize and strengthen the protection of children's right to privacy.”

In his letter, he says it will be in the preamble, which is of no meaning. It basically says, “We'll make some amendments to section 12”, which refers to consent, but it gives no details about what will be done to section 12. It then says, nevertheless, that there's a bunch of stuff in section 12 that protects minors, who are not yet defined in this bill anyway.

The third is privacy. I thought we were being fairly collegial a week and a half ago, after our last meeting, when I said that all the minister has to do right now is make his three privacy proposals, which he said exist. He can do those three now, and the five proposed amendments on artificial intelligence he can work on through the system and get them done for when we start studying that six to eight weeks from now, but he didn't choose to do that. He had a week and a half to get three amendments done. I can get these amendments done by the law clerk of the Library of Parliament in about two days. It's not that difficult.

I know he has a cabinet process to go through, but I find it hard to believe that a minister of the Crown would sit here with a prepared text—prepared through the department—and read it into the record, making statements about eight amendments he will make without going through the cabinet approval process.

I believe there are contradictions between what he said in his testimony and this. As you see, he actually said, “we will propose amendments” in his testimony on number two—on minors—and then in the letter, he doesn't propose amendments. He says, “clause 12 is good enough.”

On number three, in his testimony before the committee the minister said, “That's why we will propose amendments”—not “we're open to amendments”—“to give the commissioner more flexibility to reach compliance agreements”. This is the third of the amendments to the Privacy Act. He's only making, out of 90 pages, three proposed amendments, but nonetheless, he's proposing amendments to give more flexibility on number three.

● (1625)

In the letter, he says that the government will propose an amendment “that the terms of a compliance agreement may also contain financial consideration.” He doesn't say anything about more flexibility to reach compliance agreements in the letter that he wrote to the committee. The letter to the committee says there will be an ability to do financial penalty, but in committee, he said something else. Where would that go? There are sections dealing with compliance agreements, sections 80 and 90, and the minister has made no reference to what he's going to amend in those sections on compliance agreements.

On number four, in committee the minister said...and this is where he turned his attention to artificial intelligence. I get that in a lot of ways the artificial intelligence ones are much more complicated and this world is moving very fast. However, he did say about the first of the artificial intelligence amendments by the government—in other words, the fourth proposed amendment to the bill—“We will propose an amendment to define classes of systems that would typically be considered high-impact”. Yes, there were lots of people who did that.

In the letter, he goes into a quite lengthy, almost two pages, list of general descriptions about what high-impact systems are, which would be included somehow in a schedule—not in the act, but in a schedule. I understand that the schedule becomes more flexible in the way it's proposed, so it can be changed from a regulatory perspective—if it's given Governor in Council authority—as this world is changing more quickly.

However, he doesn't say he's making an amendment to the act, so how does that schedule work? What are the legal words, not the general words here, for the seven areas that are put here? Within the next six weeks—and he's already had three weeks since his appearance—if this is such an urgent priority, surely the minister and the department know what it is they want to do and can get the Department of Justice to draft the regulations and take that through the cabinet approval process.

By the way, the government sat on the bill for a year after tabling it before they brought it for second reading in the House. Now they want the committee to give it superficial study, and they are dismissive in saying they're going to make these amendments but they're not going to show them to us. They're not showing them to us, and they're not going to show them to the 60, 70, 80 witnesses who are calling and saying, “What am I supposed to comment on in this bill? I'm going to comment on something that's out of date, that's irrelevant, and I'm going to be here talking about something that will not exist in the future, because the minister said he has amendments to these areas but he won't share them.”

With regard to number five, the minister said on AI, “we will introduce specific and distinct obligations for general-purpose AI systems like ChatGPT.” In the letter—you actually have to skip because they don't line up—if you go further down to page 6 in the appendix, it outlines “distinct obligations for general purpose AI systems”, or generative AI, as some call it. Again, it says the government is going to “propose amendments to create distinct requirements for AI systems...that are designed to be used for many different tasks in many different contexts.” It gives examples of those, but the examples are all ones that they say they're going to deal with in regulations, if I'm reading this right.

So the letter doesn't actually talk about the amendments he intends to propose; it talks about the regulations he intends to propose after the bill receives royal assent. Again, there's a contradiction between what he said in committee before us, when he said they are making “distinct obligations”, which was part of making these amendments, and then the letter says, “We're going to do that in regulations, so don't bother; we're not going to share that with you.”

● (1630)

On number six, he said, “I've heard that a clearer differentiation of the AI value chain—that is, a person who develops AI systems versus one who manages and deploys AI systems in their business—is necessary to ensure [compliance].” For those of you who don't know what that means, the bill currently would allow the minister and the government to put somebody in jail for up to five years if they were an academic and they developed an AI system, which somewhere down the line, five years from now, some company commercialized. That has absolutely nothing to do with the input of the individual scientist who developed it, yet the bill has this massive flaw in it.

So he says, great, I'm going to propose amendments to do that. The letter actually doesn't list any section of the bill that he's going to amend or any legal wording that he's going to amend on something that can put people in jail for five years. There's no legal wording, no section, just a lot of generalities about what's going on.

You have six weeks to get this part done. I would encourage you to do so. I'm more than willing to say that if you agree and the government agrees to those five on AI, we'll be here before we start the study on AI, and they'll be public so that people can.... All we need to do is have those three on privacy now, as we said a week and a half ago, so that when the Privacy Commissioner, the Information Commissioner, the lawyers and all the folks who are experts come here, they will actually know the words, the legal words that matter. That's what the courts will interpret this on. This is about how the Privacy Commissioner, the privacy tribunal and the courts will interpret this act and whether a company or an individual has had their privacy breached. Without the legal words, there are only vague generalities.

On number seven, the minister said in committee, “we will strengthen and clarify the role of the proposed AI and data commissioner”. In the letter, the last thing on page 7 of the appendix says, “The Government would support amendments to clarify more specifically the functions and roles of the AI and Data Commissioner.” In the committee, he said he was going to make an amendment to clarify. In the letter, he said, “Hey guys, I don't know what I'm going to do. If you want to propose some amendments, go ahead.”

Either the minister misled the committee in his opening statement, or he's misleading it in here. That's why, at this time, I'm going to put a point of privilege forward on contempt of this committee in an effort to try to solve this problem of the minister telling two stories—one before committee and then another when he wrote the letter.

On number eight, he said, “[the final amendment] we'll be proposing in terms of amendments that I wish to highlight is to align with the EU AI Act”. The government member was saying that he just meant he'd listen and propose. That's not what he said. He said, “We are putting in an amendment to align with the EU AI Act.” That was from a written text, which he did not table with the committee.

I don't believe the minister freelanced and did that all on his own. We know that departments have considerable input into what a minister says before a bill and before a committee—unless his officials want to confirm that the minister wrote this opening speech all on his own without departmental input.

Number eight.... The minister said he was proposing these amendments. Again, what does it say in here? It says that the government “would propose amendments to broaden the scope of AI systems...and align with evolving international discussions.” Then it goes on to say—this is on page 4 of the attachment—that the government “would propose amendments in which sections 8 and 9 of AIDA would be replaced with new sections laying out [these] responsibilities”, and then there is what I'll call a page of general descriptions of those responsibilities.

Again, how is a lawyer—and we have lots of lawyers coming to appear on this bill—or a privacy expert, or a company that is in this business—or a company that has to make a presentation to this committee about whether or not this bill sets out a proper public policy framework—to cover the things that we need to cover if we can't actually see the legal wording? That legal wording is what will cause companies to be fined up to 5% or 10% of their global revenue, I believe, and be sentenced to up to five years in jail if they breach this. These are serious penalties that the minister has in here.

● (1635)

On the one hand, we have some of the largest companies in the world saying this summer that artificial intelligence is an existential threat to humanity's existence. We have others we have all talked to. I know the minister said the department has met with 300 people. I'm sure some of those were professors and other people in the industry who have said that at this stage it's just another version of supercomputing.

There's a lot of work that has to be done to understand what the government is trying to set out in a legal public policy framework, which then gives it its own regulatory framework to design stuff without going back to Parliament.

It's vague. The bill is vague. The letter is vague. I'm not a lawyer, but I've dealt with enough lawyers in my life and I've dealt with enough lawyers in this role as shadow minister for industry to know that every single word in this bill matters: what that word is, where it is, what clause it's in, what its priority level is, in clause 5 and other clauses—whether an individual's right is balanced with an organization's right, or whether an individual's right is superior; whether it is more important than that of an organization or less important.

These are the things that witnesses want to talk about based on the legal wording we have. The minister has said that the legal wording we have is not the legal wording that's going to exist in the bill from the government's perspective. That's wasting the time of witnesses to come before this committee to comment on a piece of legislation whose key provisions.... These are not minor technical errors or translation errors. These are fundamental, high-level public policy frameworks.

The minister came here and started this off by saying that he is going to make these amendments, which means that everything we're reading in this bill, in these sections, is useless for any witness to come and comment on. The letter is useless, because it doesn't provide legal language. No lawyer in their right mind would say that they're going to go to court and defend their clients based on this vague, general wording. They want to see the legal wording.

If the minister had come here and said, “It's a great bill. It's marvellous. There have been lots of meetings, and it does great and wonderful things, so let's get on with it”, guess what we'd be doing right now. We'd be hearing from witnesses, and then he would have amended it in clause-by-clause, but he didn't. He chose to come here and say that his bill is flawed in eight key, high-level, strategic areas.

I do not believe that he came and said that without the authority of cabinet. If he did, I would suspect he's going to have some trouble with his cabinet colleagues. He came here and said that he was amending these eight areas. He said that these fundamental areas in the bill are going to change, but he's not going to tell us what they are until clause-by-clause.

It's a reasonable compromise in my motion, if somebody wants to add it to the appropriate paragraph, to say that the three privacy amendments need to be here before we start seeing witnesses, other than officials. We need those three privacy amendments because we've chosen as a committee to break up the witnesses, primarily in the first 10 or whatever meetings—it's still in fluctuation—on privacy. The details of AIDA will happen, and those witnesses will be at the back end of the witnesses. The three privacy amendments can be tabled now or in the next few days.

I'm willing to allow that over the next six weeks the department and the minister, through his members on the committee, can work on and table the other five amendments to AIDA, to give them the time to take that through the process. I just do not think it's appropriate to allow these hearings to progress and to hear from witnesses who are going to talk about this bill but not about what the bill is going to be.

Thank you.

● (1640)

The Chair: Thank you, Mr. Perkins.

Just before I go to Mr. Masse, I give my apologies for not leaving the floor with you earlier. That was not my intent. I misunderstood.

Mr. Masse, the floor is yours.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair.

I'll be supporting the motion, but I have a couple of amendments.

Briefly, this is a train wreck for no reason. We had Bill C-27 tabled in the House of Commons. The reason it's tabled in the House of Commons and goes through first reading is so that we can have discussion and it can be publicly examined, not only by ordinary citizens but also by the groups that want to have input. That's why we have a process of debate. It took a long time to get out of the House, and it came here.

I won a prima facie case in the past because my ability as an MP was impeded by the actions of another government. It resulted in changes, to this day. This is how I view it: You had the minister come forward. He talked about amendments. There were going to be goals and objectives from those, which had to be clarified. After this was clarified, I had a point of privilege, and then it was admitted there weren't amendments. Government members went back to saying, “Tell me more about these amendments.” We're back to where we shouldn't have to be. I've heard nothing but shock from people who are interested in this bill. What is the government's agenda on this?

I think it is a fairly reasonable approach—and that is my appeal—to look at getting the three privacy ones in front of us. In fact, it should be separate legislation. However, the government created flawed legislation by putting three acts together when it probably shouldn't have done that. That was a critical error to begin with. This was raised, and it's probably one of the reasons why, structurally, we have issues right now. There's no reason we can't do some of these things separately. In fact, it would have been wiser and we would have actually gotten things through.

To me, the minister can't just come here and say, “Okay, we have eight specific amendments” and then not provide them—not for us, but for the other people coming here. We have groups and organizations paying lawyers to draft legalese and make submissions to us. They need to know what's in front of us. We don't have that anymore. That's terribly unfortunate. Having the background letter from the minister is fine, but I also want to go over a best practice.

I knew it was going to be bad when it began, because the minister.... A lot of times, ministers come to committees with prepared documents and table them for members to go through while they give their presentation. That's a fairly common practice. A minister will come with a preamble and even the material they will present. Not only did we not get that.... I asked for that. I made a joke about how we'd have to put that testimony into ChatGPT to create the amendments for the minister, because that's all we have to go by.

I want to see whether we can move forward with some consensus here.

I would like to amend the motion to have the three privacy amendments...and I would also like to make an amendment to drop section (f). The reason for dropping section (f) is that—I'll be quite frank—I don't need the minister to come here anymore. I just need his amendments so others can see them. I don't need to have another group of clown cars showing up and distracting us from the work we have to do. That's what this is about. For my part, I would like the three privacy amendments to be tabled, and I don't need the minister to come here anymore. I want to get on with the work here. I can't have people continuing to speculate about what they have to present in front of us. It continues to be like a dog chasing its own tail. That's what we're doing right now.

I'd like to amend section (e) for the three privacy amendments; it can just say “privacy amendments”. Then I'd like to drop section (f), because I don't need the minister to come here.

A voice: The minister is in section (a).

Mr. Brian Masse: I'm sorry. Thank you. Yes, I got it wrong. It's section (a).

I don't need the minister here anymore. If he wants to come, he can come.

● (1645)

The Chair: There's now an amendment by Mr. Masse on the floor to the motion we're discussing.

Could you sum it up again, Mr. Masse, so we're all clear on what your amendment is?

Mr. Brian Masse: It's for section (e) to be just the privacy amendments. I know exact wording would be best, so I'm open to that. Then we drop section (a), not section (f). I'm sorry.

Mr. Rick Perkins: Could I make a suggestion on that?

The Chair: I think Rick has a suggestion on the wording for section (e).

Mr. Rick Perkins: MP Masse, if I'm hearing you right, section (e) starts out with "orders the Office of the Law Clerk and Parliamentary Counsel to produce copies of the texts", and then instead of "of any amendments to Bill C-27", it would read, "of the three privacy amendments".

Mr. Brian Masse: I am worried that if they drop one, though.... Should it just be "Privacy Act amendments", or do we want to keep the "three"? He did say three, though.

Mr. Rick Perkins: There are three. The other five are to the AIDA.

Mr. Brian Masse: Okay, let's do it that way.

Mr. Rick Perkins: Then we can say, "You can produce the AIDA amendments by...."

Mr. Brian Masse: Absolutely.

I think this is a good compromise for us to get back on track as a committee, to not have a distraction and to have some expectations delivered.

Again, I'll leave it to you, but I don't want to get down a wormhole of trying to bring the minister here and all that. I understand the reasons why, so I'm not being critical about that, but I really want to get on with the work here, so I don't need the minister to come here again and go through that again. I don't need another Abbott and Costello skit—if you're old enough, you'll remember these things.

The Chair: We have the amendment by Mr. Masse on the floor. It is up for discussion before we vote on it. You've all heard the terms.

● (1650)

Mr. Brian Masse: As Mr. Perkins has noted, section (e) is adding the three privacy amendments.

Mr. Rick Perkins: It would be "copies of the text of the three privacy amendments to Bill C-27".

That's the last one, MP Turnbull, on the first page.

So, it's "copies of the text of" and then, instead of "any amendments to Bill C-27", we have "the three privacy amendments to Bill C-27". We would also drop paragraph (a) above.

[*Translation*]

The Chair: Mr. Lemire wanted to comment on the motion itself. Since the amendment takes precedence, are there any comments on that?

[*English*]

Mr. Ryan Turnbull: I wonder if we can have a short pause to review the wording. It's a lot to consider here—the whole thing with the amended version of it. It's just so we can have a huddle on it.

The Chair: I'll grant about five Liberal minutes.

Voices: Oh, oh!

● (1650)

_____(Pause)_____

● (1700)

[*Translation*]

The Chair: We can now resume, honourable members.

Mr. Masse has something to propose to amend his amendment.

The floor is yours, Mr. Masse.

[*English*]

Mr. Brian Masse: Thank you, Mr. Chair.

Yes, section (e) starts with "orders the Office of the Law Clerk", and the introduced language is "amendments proposed by the minister in his presentation". That's just to get specifically to what we're looking for, which is the three privacy amendments, so we want to be consistent there. That's really what we're after, so we can use whatever language is easiest.

The Chair: So it's something to the effect of "orders the minister to produce to the committee the three amendments referenced in his presentation before committee on September 26, 2023, that pertain to part 1 of the bill."

Mr. Brian Masse: Yes. Thank you, Mr. Chair.

It's part 1, specifically, yes, because hopefully the thing here is that if they are being done, there shouldn't be a problem for the government to support this, and we'll get them in for sure and we can move on. Then we'll get the other stuff, so we can go on about that later. I don't need the minister here again.

So, that would be the intent.

The Chair: Just to be clear, before we vote, we're debating the amendment by Mr. Masse to remove section (a) of the motion entirely and modify section (e) to order the minister to produce the three amendments he referenced in his presentation before the committee on September 26 pertaining to Part 1 of Bill C-27.

Are there any comments on the amendment proposed by Mr. Masse? I see none.

Madam Clerk, I will ask for a vote on the amendment proposed by Mr. Masse.

We have a tie. I'll vote against it.

(Amendment negatived: nays 6; yeas 5 [*See Minutes of Proceedings*])

● (1705)

The Chair: That brings us back to the motion.

[*Translation*]

We now go to Mr. Lemire, followed by Mr. Généreux.

Mr. Sébastien Lemire (Abitibi—Témiscamingue, BQ): Thank you, Mr. Chair.

I think a number of messages have been conveyed throughout today's meeting. Obviously, we don't support the idea of gag orders. For the sake of credibility, it is paramount that the committee have this debate. This may be one of the most important debates of the next two decades. Bill C-27's passage will have consequences that go beyond politics. That is why I would like us to begin examining its content as soon as possible.

However, I think the concerns raised by my Conservative and NDP colleagues are entirely legitimate. I urge the government members to provide the documents requested. I don't think we need a formal motion to obtain clarification. That would only delay what comes out of this work. Clarification and predictability, by the way, are keywords the minister uses to send the industry a message. That is the message we, as parliamentarians, need to hear. The industry needs to hear it, as do all the witnesses who come before the committee. I think the committee should receive the text of the amendments.

That said, I think the letter the minister sent is a worthwhile mea culpa. It recognizes aspects of his testimony that provide clarity, specifically in relation to the application of Quebec's law 25, which could take precedence over the Canadian data protection law. I encourage the committee to proceed with its work, and begin the study by hearing from witnesses.

The Chair: Thank you.

Over to you, Mr. Généreux.

Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC): Thank you, Mr. Chair.

Given what we've heard since the beginning of the meeting, I want to point out that I agree with the Bloc Québécois member that this is a paramount bill, one that will have long-term consequences. The minister said he wanted the bill to be as flexible as possible. There's a difference, though, between the perception or the intention he expressed during his appearance on September 26 and what appears in the letter he sent us.

Here's where we differ with the Bloc Québécois: we believe the words matter. Not only does how they are written matter, but so, too, does how they are measured and given effect, by all the witnesses, as they relate to the bill as a whole. We obviously believe that the witnesses who appear before the committee throughout this process must be able to make a judgment, one based on words that clearly outline what the government is trying to achieve through the bill. We can't just wait for the clause-by-clause study, at the very end. We have a duty to provide all the witnesses who come before the committee with the proper text of the bill, so that they can make their own assessment and comment accordingly.

We have shown good faith, and I want to make clear that we have absolutely no intention of filibustering this committee. What we want is not to waste the time of the very important valuable witnesses who appear before us. As I said, we want to make sure the proper text of the bill is available to them. Hopefully, the government will share it with us. As my fellow member said earlier, we are working in good faith and want to put time into this.

The government could potentially put forward eight amendments. We want the first three so we can start the work. We are meeting with the Privacy Commissioner Thursday, but again, we don't have the amendments. That means we'll be asking him for his take on something he hasn't formally seen. That makes no sense.

I still believe that my fellow member is right. The Bloc Québécois is partly right, but we disagree on where to draw the line. As the member said privately earlier, the important thing is establishing a balance so that our work isn't for naught. The words in a bill that deals with privacy and artificial intelligence are fundamentally important, in our eyes. Let's face it, AI will be running our lives in 10, 15 or 20 years. That's why we need the proper text of the bill.

● (1710)

The Chair: Thank you, Mr. Généreux.

I have Mr. Lemire's name here, but I can't recall whether Mr. Masse had asked to be on the list.

[*English*]

Mr. Brian Masse: Yes, Mr. Chair.

The Chair: Mr. Masse, go ahead. Then we'll have Mr. Lemire and Mr. Williams.

Mr. Brian Masse: I'll be brief, to allow my colleagues to intervene.

It's unfortunate. For people who didn't know, it was a courtesy provided to the government to take a break and figure out where they're at. In that, I'm still trying to find a process here where we can find some consensus and move on. I might take the floor again later on.

I'm trying to figure out how we get past this. For the government members to say this is like stonewalling, I'd be interested to break down how many times in this committee we've had to break and take a pause, a time out, for the Liberals to get their act together and come back. We're probably into a couple of hours at least in that.

It's difficult to see how we can go forward without having some resolution to this. The government says the amendments are coming, but we don't have specifics in terms of a guarantee or anything like that. If I had a dollar for every time I was told that, I'd be a very wealthy man. I'd like to find a way for us to get past this point. If not, I fear it's going to go back to the House at some point.

I'll just leave it there for now, and I hope we can find a way through this. The legislation should have been separated anyway. Why we're not dealing with this for this one section alone, I have no idea.

[*Translation*]

The Chair: Go ahead, Mr. Lemire.

Mr. Sébastien Lemire: Paragraph (f) of the motion calls for the committee to postpone its work. That's why I intend to vote against the motion. I propose adjourning debate and moving to the vote before hearing from the witnesses. I don't recall the exact language for requesting a vote.

That said, my message to the government is very clear: if the legitimate request of parliamentarians is not met and they are not provided with the material by next week, I may vote differently. For the time being, I think we have enough information to vote and hear from the witnesses.

The Chair: Mr. Lemire, I want to be sure I'm clear on what you said. Are you moving to adjourn debate?

Keep in mind that we can't vote as long as the motion is being debated.

Mr. Sébastien Lemire: Yes, I move that debate be adjourned.

The Chair: Very well.

We won't be voting on the motion, but we will be voting on the motion to adjourn debate.

Mr. Sébastien Lemire: Is Mr. Williams the only one left on my list?

The Chair: I have Mr. Williams and Mrs. Goodridge.

Are you still moving to adjourn debate?

Mr. Sébastien Lemire: Will you be quick, Mr. Williams?

[*English*]

The Chair: Past behaviour is the best predictor of future behaviour, so I would say no, but it's up to you, Mr. Lemire.

Do you move to adjourn debate?

[*Translation*]

Mr. Sébastien Lemire: I'm counting on Mr. Williams to keep his remarks brief.

● (1715)

The Chair: All right. We don't have a motion to adjourn debate.

Go ahead, Mr. Williams.

[*English*]

Mr. Ryan Williams (Bay of Quinte, CPC): Look, I know we're going around and around here, and I think it has been said, but there are big problems here with this, and we have to get this straight and right.

When a minister comes here, a minister who's trained in law, words matter. When a minister states—and I know this has been stated over and over—that there are amendments, and the minister agrees to provide these amendments.... The National Post said:

> While a spokesperson for Champagne initially said Friday the government plans to publish the amendments "as soon as possible—aiming for next week," the ministry later said that the government won't actually provide the full text of the amendments until the study is completed.

It was stated to the committee that he was going to do this in good faith, and afterwards he admitted that he didn't have those amendments. Again, this is in good faith. This is why we have to go to a motion.

Mr. Lemire, if you would like to do an amendment, let's just amend section (f) and get that off there. In good faith, let's get the amendments to the committee, not for us, but for the fact that I have calls coming in—I'm sure you have had calls too—from witnesses, and we hope to get this bill right. We all want this bill to work. They have all stated, "I don't know what I'm actually testifying on because the amendments aren't there."

Unless we think this is going to be a 7,000-word essay that we're asking for that needs to be proofread and perfected, I think we're asking for pretty reasonable grounds, when words matter. We have asked for something very simple. If we take section (f) out of here, then certainly I think this would allow us to continue the study, move on and get the things we want.

I would certainly be willing to offer that as an amendment, Mr. Chair, that we remove section (f), which means we continue with the study and just get the information we need. If we don't do this and we don't go through this motion.... Already half of this committee is upset, but it's not about the committee. It's about letting the people who are putting in their time to be witnesses understand exactly what the minister has proposed two years later to the original bill. I think that's the whole premise of this. We need those amendments in writing.

We're not asking for anything that's out of the ordinary, or something that's really hard. I'm sure the staff here would agree that what has been stated on paper could be easily drafted as amendments, and we would go on our merry way with those witnesses, with the committee, having respect for the fact that the minister already, from this article in the National Post, agreed to this.

Why don't we take section (f) out and not suspend the testimony that's coming forth? Let's not see this happen again. Let's move forward. We have a lot of great witnesses. I know we would like to see it split into a few different parts. Right now I think we're agreeing to study the privacy portion first, and then AI, but we don't want to get into this every time we have to deal with a section, and we certainly don't want to get into this in the House. We want to make this smooth and go forth correctly.

Mr. Chair, I'm going to make the amendment that we remove section (f) from the motion. We're going to remove “directs that all further meetings in relation to Bill C-27 be postponed.” With that amendment, we will just continue the study.

Thank you, Mr. Chair.

The Chair: There is a proposed amendment on the floor to remove section (f) of the motion.

MP Goodridge, I'll come back to you, unless it's on the amendment.

Otherwise, are there comments on the amendment by Mr. Williams?

I see none, so I will call a vote.

(Amendment agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

The Chair: The amendment is carried, which brings us back to the motion as amended.

MP Goodridge, go ahead.

Mrs. Laila Goodridge: Thank you, Mr. Chair.

I appreciate the conversations going on and the fact that amendments keep being made to this motion to try to find consensus. I think there is something critically important in that, and that's one of the values that we have when it comes to committee work, compared to what we sometimes see in the House.

It's critical that we have these amendments. I have been in and around politics for many years—not quite as long as Mr. Perkins, but a few years—and in many cases ministers come in and say that their bill is good but that they would welcome amendments. This deviated when the minister came in and stated outright that he planned on having amendments, which means there will be amendments that the government or government members will be putting forward. Not to have the exact text of those amendments before going into clause-by-clause seems absolutely asinine, because you might be arguing and having witnesses talk about what they think the best or the worst part of the bill is, and something that is amended will completely negate all of that or bring forward other pieces, so it is critically important that we have these actual conversations on the actual content the government plans on putting forward in the bill.

Yes, there will always be some amendments that might come up at some later point in time as witness testimony comes about, but if the government has intentions of having amendments before we even get to witness testimony, it is critical for the sake of efficiency that we actually have this. Otherwise we're going to be sitting here many years from now potentially still not having this bill passed because they will be going back and forth. I don't anticipate that the government would be welcome to go to clause-by-clause and then bring witnesses back, then go back to clause-by-clause and play that game back and forth, because that's not an efficient way of passing legislation.

I think this motion, as amended, strikes the right balance, and I would suggest that everyone vote in favour of it, including the government. This is a time to show that you guys mean business and want to see this bill pass or be the best it can possibly be.

Thank you.

● (1720)

The Chair: Thank you.

I'm looking to see if there are other speakers before we go to a vote.

I see Mr. Masse has his hand up, so I will yield the floor to Mr. Masse.

Mr. Brian Masse: Thank you, Mr. Chair.

I'm going to test the waters on one last attempt to build consensus.

The crux of this is just trying to get the three privacy amendments. I would just remove sections (a), (b), (d), (e) and (f).

The Chair: Section (f) has already been removed.

Mr. Brian Masse: Thank you, Mr. Chair. Yes, we have one done.

In section (c), just add “no later than October 20”, related specifically to amendments to section 1.

A voice: It's part 1.

Mr. Brian Masse: It's part 1, yes. Thank you. I need my lawyer friends.

To summarize really quickly, we're dropping all of the other stuff that is orbiting around this and just saying that it's those three amendments for that. It gives our witnesses time on the weekend to have the three amendments that are related to the Privacy Commissioner. Then we can move on and go from there.

I think that's a very reasonable way. It allows the department and the minister just to focus on that. It gives them plenty of time. They don't have to worry about the other stuff that's in here. Some of the stuff is actually important. I give credit to the drafter of this.

I think if we're going to have some type of general sense of civility in the committee and the expectation that when you do present in front of us.... There's a precedent here. If we don't deal with this responsibly, we're telling anybody else who comes and sits in this chair that they can mislead us whenever they want. That's really what this is about at the end of the day. Their expectations should be measured in the same way we treat the minister. That's really what this is about. It's not personal to the minister. It's what we have to deal with and the fact of all the different people who will be sitting in those chairs.

If we're going to allow this to continue like this, we're wasting time. Also, we're setting a precedent that you don't have to come here and tell us the truth. It's not necessary. Do what you want when you sit there and there will be no consequences.

I'm hoping that maybe this is the final point to try to find some consensus and move on.

The Chair: Thank you, Mr. Masse. I appreciate that consensus-building effort.

It's removing (a), (b), (d) and (e), and it orders the minister's department and the Department of Justice to produce draft texts of amendments to Bill C-27 as discussed by the minister on September 26, pertaining to part 1 of the bill, provided that these documents shall be deposited with the clerk of the committee in both official language no later than October 20, which is this Friday.

That is the amendment proposed by Mr. Masse.

Is that correct, Mr. Masse?

● (1725)

Mr. Brian Masse: Yes, sir. Thank you.

The Chair: Are there comments on the amendment?

Mr. Perkins, go ahead.

Mr. Rick Perkins: Thank you, Mr. Chair.

I appreciate MP Masse's desire to try to find a way to the crux of the issue, which I think he captured well, in addition to the specifics about the legal text. I am very concerned about what I believe to be—I'm assuming unintentional—misleading testimony by the minister at this committee. If we had just accepted it, it would have made it difficult for any of the witnesses who come. I think MP Masse makes a good point about every witness who comes here, particularly ministers of the Crown when it comes to their own legislation, because it changes the total tenor of what witnesses may or may not say about a bill that is outdated. I won't go over that again.

I certainly would like to get to the bottom of this issue, which would be driven by a discussion here in the committee with the deputy minister. This is essentially item (b), which would allow us to try to figure out.... I think there is a fundamental parliamentary principle we have to go by here.

We don't want to delay this, because we only have another half-hour left.

I would support what MP Masse suggests in the sentence—by the way, I think it's part 1, not section 1, just to be clear—in order to get to the crux of the issue, which is to ensure that the Privacy Commissioner.... I think we have the Privacy Commissioner on Thursday, and he won't have access to these if we wait until Friday, so I think we need to talk about when the Privacy Commissioner comes. We can do that separately off-line from here. I think the Privacy Commissioner should be able to comment on the amendments that are about the Privacy Commissioner and the powers of the Privacy Commissioner's office.

I understand that government members have suggested that we will probably have these amendments perhaps in the next few days anyway—the three, not the eight—so I think it would be great to have the Privacy Commissioner come and have a session with the officials on Thursday, but I'll leave that to the committee, Chair.

I would like to reserve as an element—not in this motion and not for now—that I think we need to have some sort of more formal discussion at some time in the future with the deputy minister to understand how we got into this situation with such a large parliamentary element at stake. I will leave that for another day.

We're trying to achieve a bunch of things in this and get to the root of that issue. Ultimately, what we're trying to do is make sure that the witnesses who are going to speak over the next number of meetings on privacy have a knowledgeable way to do that with the legal wording. If the government is able to ensure that we can get that by the end of the week, in the next few days, I think all will be well and we can get on with the study. I would hope our Bloc colleague would see the value of supporting that.

Thank you.

The Chair: We have the amendment by Mr. Masse.

Is it clear to everyone what the terms of the amendment are?

[*Translation*]

If there are no other comments, I'm going to ask the clerk to proceed with the vote on Mr. Masse's amendment.

[*English*]

(Amendment agreed to: yeas 11; nays 0 [*See Minutes of Proceedings*])

The Chair: The amendment worked, so the motion is amended.

Thank you very much, Mr. Masse.

That brings us back to the text of the motion as amended.

The only part that remains of the lettered parts is part (c), which is “orders the Minister, his department and the Department of Justice to produce the draft texts of amendments to Bill C-27 discussed by the Minister pertaining to part 1, in both official languages, no later than October 20.”

That is the motion, basically, plus all the wording before it, the preamble.

Are there any more comments? Seeing none, I will ask the clerk to go to a vote.

[*Translation*]

(Motion as amended agreed to: yeas 11; nays 0)

● (1730)

The Chair: The motion passes unanimously. Thank you everyone.

The witnesses are still with us. I want to thank them for their impressive display of patience, which has been tested over and over again.

Without further ado, we go to Ms. Lapointe for six minutes.

Ms. Viviane Lapointe (Sudbury, Lib.): Thank you, Mr. Chair.

[*English*]

I'd like to thank the witnesses for their patience.

It's my understanding that we haven't looked at, or made changes to, privacy laws for over 20 years, so this is very important work that will touch all Canadians.

When the minister was here, he mentioned in his remarks that there were more than 300 meetings with stakeholders to listen to the concerns about the bill. Can you tell us what you heard during those meetings and how it influenced the proposed amendments the minister outlined in his speech?

[*Translation*]

Mr. Mark Schaan: I'd like to thank the member for her question, Mr. Chair.

[*English*]

I think we heard a number of important elements that both make up the basis of what the minister spoke to and also reinforce important parts of the bill. What we heard through the dialogue with stakeholders was a commitment that privacy legislation is important to modernize and that we absolutely need to bring it up to fit for purpose in the digital era.

We heard some very particular aspects from stakeholders that I think are a reflection of what was at the heart of some of what was discussed in the remarks.

One, we heard very clearly from the Office of the Privacy Commissioner that enshrining the fundamental right to privacy is a very important element in ensuring that the foundations of our private sector privacy law are rooted in individuals' ability to enjoy privacy in their ongoing commercial relationships with industry.

Second, we heard a number of elements related to the enforcement powers. We heard a lot of recognition of the very important work that the bill was already doing with respect to bringing enforcement powers into a modern era. The enforcement mechanisms under PIPEDA, as they currently stand, lack a lot of the capacities for the Office of the Privacy Commissioner to meaningfully engage in enforcement activity. There is no capacity, necessarily, for meaningful penalties. There's no capacity for the Office of the Privacy Commissioner to issue orders or to suspend activities related to the collection and use of personal information when there are actual harms occurring. All of that was reinforced in many of the stakeholder discussions.

It was also reinforced that there need to be important guardrails, fairness and due diligence around the use of that enforcement power. Many people underscored the value of a tribunal, which would be a check, in some ways, on what are extraordinary powers now being afforded to the Privacy Commissioner.

With the amendments related to consent or compliance agreements, the notion was that, in many cases, you might be able to get to the heart of an issue between the industrial player and the Privacy Commissioner without actually having to go to the tribunal to pursue an administrative monetary penalty. Providing that additional flexibility to come to a common agreement is an important element that could be added in.

So, we have the fundamental right of privacy, the checks and balances around meaningful enforcement, the new capacities for the Privacy Commissioner around that effective enforcement, and then some definitional work. People dug in, not surprisingly, in the many meetings—many of which were with a lot of technical experts and specialists—and spoke to the fact that we need to be very clear about things like de-identified information and about the definitions in a number of spaces, and I think you'll find that those are important aspects that we've introduced in this bill.

● (1735)

Ms. Viviane Lapointe: This committee will have the Privacy Commissioner appear on Thursday, and it's my understanding that he has made some recommendations. I recall there may have been 50. Can you tell us if or how you've responded to the recommendations?

[*Translation*]

Mr. Mark Schaan: I'd like to thank the member for her question, Mr. Chair.

[*English*]

We took the recommendations and the feedback of the Office of the Privacy Commissioner extraordinarily to heart. It was a foundational element of our work to consider, both coming into the bill and also what was shared in terms of ways in which the bill may need to shift to reflect the important powers.

When you go through the list of the Privacy Commissioner's desires for what would improve the overall outcomes, we've tried to meaningfully address those. The big ask around a fundamental right to privacy, the capacity to reach a compliance agreement, and having a rigorous, emboldened enforcement actor, all of that is very much at the heart of what we were up to.

Ms. Viviane Lapointe: I'll go back to the consultations very quickly.

Can you tell me if you've had consultations since the bill was written?

Mr. Mark Schaan: Just as a quick refresher, the government had already begun this effort, in some ways, with the consultations that we led on the overall development of the innovation and skills plan. That identified data and digital as an important pillar of work related to the functioning of the modern economy, so a secondary public, open consultation on data and digital was held on specific pillars, one related to privacy and trust. That netted a significant amount of feedback, which then resulted in the digital charter and its 10 principles.

When the digital charter was released, a subsequent consultation was held on specific proposals related to the modernization of the Personal Information Protection and Electronic Documents Act, or PIPEDA. That feedback then informed what ultimately became the bill—first Bill C-11, and then this bill.

Since this bill was tabled, in June 2022, we've had more than 300 discussions with key stakeholders across the continuum to make sure that we are continuing to understand their understanding of the bill and also things related to it that they think are important.

[*Translation*]

The Chair: Thank you very much.

Go ahead, Mr. Lemire.

Mr. Sébastien Lemire: Thank you, Mr. Chair.

When Minister Champagne was here, I asked him about Quebec's data protection law. In his letter, he mentions that a few provinces have privacy legislation that is substantially similar to PIPEDA, meaning that, in many circumstances, the provincial law applies instead of the federal law. The paragraph basically says that that will continue.

In the specific case of Quebec, it is anticipated that the designation of its provincial privacy regime as "substantially similar" will continue and that its law would apply instead of the consumer privacy protection act, or CPPA. I think that addresses the first issue related to law 25, which could indeed apply.

Currently, is a transition period anticipated? That's new information that came out the day after the minister appeared before the committee. Until Bill C-27 is passed, will Quebec companies have some sort of transition period?

Mr. Mark Schaan: I'd like to thank the member for his question.

I want to stress two things before I answer the question.

Under the new legislation, Quebec's law and other provincial laws deemed substantially similar to this one will have vested rights, so to speak. Quebec's law will replace the new act for activities within the province. The act provides the authority to make regulations, in co-operation with the provinces, regarding the need for a stronger regime in the future.

Bill C-27 provides that substantially similar legislation will continue to apply until the designation is otherwise defined under a new regime. That means the status of Quebec's law will not be impacted until consultations are held and new regulations regarding the definition of substantially similar legislation are made.

● (1740)

Mr. Sébastien Lemire: That is clear.

Switching topics, I want to discuss copyright, especially as it pertains to AI.

The government pledged to ensure a modern and innovative market. Copyright in the AI realm opens the door to infinite possibilities and tremendous concerns.

How committed are you to protecting creators? Protecting them means making sure they receive fair compensation. Can creators count on the government to make sure that the Copyright Act will also be applied fairly and that they will receive fair compensation? The government announced something along those lines in budget 2022.

Can we expect an updated Copyright Act, one that puts fair compensation for authors at the fore?

Mr. Mark Schaan: Thank you to the member for that great question.

The government announced consultations on the link between AI and copyright in order to bring needed clarity to the role of copyright in the age of AI and all sorts of new technologies. The aim is to ensure that creators in creative industries are fairly compensated. That's important because the most effective way to address those concerns is through the Copyright Act. That's why the government has launched another consultation on the issue.

Bill C-27 would enact the artificial intelligence and data act, a law of general application addressing all uses of AI systems that have significant societal or economic impacts. That may include certain aspects of the creative sector, but the law was designed to take into account all the ways in which AI could harm society overall.

For that reason, consultations on the copyright framework are also taking place. You're right that copyright rules determine how creators are compensated.

Mr. Sébastien Lemire: Minister Champagne said he wants to achieve alignment with Europe's General Data Protection Regulation, GDPR.

What best practices would you say the European Union, or EU, follows? Are you drawing on some of them? Is there a working group looking into that? Are there talks going on?

Mr. Mark Schaan: The privacy link between Bill C-27 and the EU's regulation is important in a few ways. The bill lays out some important definitions and elements to support interoperability between the two pieces of legislation.

As far as alignment with the EU is concerned, we are engaged in an ongoing process with our EU counterparts. It began three years ago, and we are confident it will result in the right connections between the two pieces of legislation.

● (1745)

The Chair: Thank you.

Go ahead, Mr. Masse.

[*English*]

Mr. Brian Masse: Thank you, Mr. Chair.

Thank you for being here again.

On September 27, the day after the minister was here, he announced a voluntary code of conduct on the responsible development and management of advanced generative AI systems. Can you tell us more about that initiative and who's involved and who isn't?

I was part of creating the right to repair bill. It's a voluntary agreement. Some didn't even join the agreement and there are issues with it.

If you could give us a bit of background on that, it would be appreciated.

Mr. Mark Schaan: Thank you, Mr. Chair, for the question.

The operating context for the code on generative AI is important, because it actually falls within a broader milieu that I think is useful. At the digital ministerial of the G7 in Gunma, Japan, earlier this spring, digital ministers of the G7 recommended to leaders that they undertake work related to generative AI and that they come to some conclusions that could be shared with ministers.

Then, at the Hiroshima meeting of G7 leaders, this was formalized in a call from G7 leaders to their respective digital ministers to do work related to generative AI, notably work on aspects of principles for governance of generative AI systems and potential work on a code of conduct. That prompted a lot of work between Canada, which was very active in the development of the actual recommendation from ministers, and our international colleagues around some of the work that needed to be done around guardrails for generative AI.

An early adopter, or an early mover in some ways, was the United States. Our counterparts, under the Biden-Harris administration, produced a set of commitments from their largest foundation model developers to a certain set of standards that they would hold themselves to in the development of foundation models, or what's sometimes called generative AI.

Canada recognized that we not only wanted to be a participant in the Hiroshima G7 process and have value added in terms of the discussion around principles and the code of conduct, but we also have our own domestic recognition of what would be important guardrails. That's particularly because AIDA, the artificial intelligence and data act, has regulations that will take shape in many ways, but the potential for concerns and harms related to generative AI and foundation models is already present in many instances.

That spawned a set of discussions with the AI ecosystem, particularly those that were actively involved in the deployment of foundation models and generative AI within their private sector and commercial context. We held a number of round tables ultimately leading up to the development of the voluntary code, which was announced at the All In conference in Montreal. It depends on how one counts, but the signatories now include a number of key foundation model companies in Canada, notably Cohere, Coveo and Aida. It also includes endorsement from the Council of Canadian Innovators, which represents a much larger swath of leaders, as well as a number of some of the larger ecosystem players like OpenText and BlackBerry.

Mr. Brian Masse: Are there any holes or are we missing certain sectors that need to be brought in on this? I haven't looked; I'll be looking in the future. I haven't had time. Are we missing a certain component of the sector, which we need to shore up?

Second, the problem we have with some of the bill here, as I understand it, is that some stuff will be left to regulatory powers. It sounds like this actually crosses over to some of that, potentially. How much of the code of conduct is actually going to be in the regulations of the bill? Also, going back, are we missing any holes with regard to building this voluntary arrangement?

Mr. Mark Schaan: As it relates to the development of the voluntary code, a key component was obviously that those who would actually implement it and be signatories to the implementation of the code were principally involved in its structure.

That said, we also went broadly to a number of academics and civil society actors. I think we're still very open to the conversations around its function, particularly because the G7 Hiroshima process continues. Canada will continue to work on both the principles to the development of AI foundation models and the code of conduct that we imagine will emerge internationally through the G7 process.

As it relates to the relationship between the code and regulation, we have been clear that the code is not regulation and the code will not be regulation. This is a bridge between now and when regulation will be in place.

That said, it would be silly of us—and it was not our intent—to make the code anathema to where we would ultimately head. Its principles are actually related to the principles and the general pillars that are related to the companion document we produced on AIDA. The general headings are the same.

In many ways, therefore, signing on now and and beginning the important work of actually doing the risk assessment, mitigation, transparency and accountability work related to generative AI will put companies in very good stead when we actually have regulatory systems in place.

● (1750)

Mr. Brian Masse: We were able to get some agreements internationally on human cloning and things of that nature.

Is this kind of like the precursor to trying to get some international understanding on the deployment of AI that goes beyond? Is this where we're trying to head with this?

Mr. Mark Schaan: I think it's a recognition of the fact that frontier technologies are often global by nature, in that the use of data, the transcendence of data and the continued function of models in a borderless digital economy require a certain commitment to interoperability as well as a certain calling out of those who are not necessarily playing within that realm.

I think the goal of the G7 AI process is very much to ensure that we have effective international co-operation on these guiding principles and foundational elements, recognizing that it will look different in domestic contexts in terms of how they actually import that to either regulation making or legal precedent. In the EU case, that's the EU AI Act, as well as other functions of their own legislation. In Canada, that would be AIDA. In the United States, that's the Biden-Harris commitments, as well as what we understand through the press to be the forthcoming executive order on artificial intelligence.

Mr. Brian Masse: Thank you.

Thank you, Mr. Chair.

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

We have about 10 minutes, so I'll go three, three, one and one.

Mr. Williams, go ahead.

Mr. Ryan Williams: Thank you.

Quickly, why was privacy not included as a fundamental right in the first draft of this bill?

Mr. Mark Schaan: Mr. Chair, I thank the member for the question.

I think we have continued to hear how best to reflect the nature of Canadians' rights in the bill itself. I think the important feedback of the Privacy Commissioner was fundamental in actually calling for the insertion of a fundamental right.

There have often been tricky questions about how the federal government engages in questions that actually transcend some of its roles in the economy. This is a private sector commercial bill and, fundamentally, I think we were very encouraged by the feedback from the Privacy Commissioner to contemplate its actual insertion.

Mr. Ryan Williams: You met with the Privacy Commissioner prior to drafting this bill. Is that correct?

Mr. Mark Schaan: We have an ongoing engagement between the Office of the Privacy Commissioner and both my secretary and my branch because we have ongoing interests in a number of pieces of legislation.

Mr. Ryan Williams: Did you meet specifically about this bill prior to the draft?

Mr. Mark Schaan: I have met with the Office of the Privacy Commissioner with respect to Bill C-27.

Mr. Ryan Williams: We'll have him here on Thursday, but did he recommend specifically before—he's made comments since, as the minister has—that privacy should be included as a fundamental right in the bill?

Mr. Mark Schaan: The Privacy Commissioner issues an annual report and also publishes a letter to this committee with respect to his findings on the bill. I think you'll see the—

Mr. Ryan Williams: I'm just asking for a yes or no. Did he give recommendations prior to the bill being drafted, when you met with him?

Mr. Mark Schaan: Prior to the bill being drafted—

Mr. Ryan Williams: I mean, through consultations when you were putting this bill together.

Mr. Mark Schaan: We had engagement with the Privacy Commissioner in the lead-up to the tabling of Bill C-27.

Mr. Ryan Williams: Whose definition of "minor" will be used when enforcing this bill?

Mr. Mark Schaan: Right now, as you'll note, there is no definition of "minor" in the bill. I imagine that's a question this committee will continue to contemplate as it studies the bill.

● (1755)

Mr. Ryan Williams: I see the issue that it potentially creates 13 different enforcements of the protection of children's privacy, as the definition of a minor changes from province to province.

Was there any other reason why this was left undefined?

Mr. Mark Schaan: The contemplation of the age of majority is one that is currently contemplated to be within the provincial purview. That said, I think there is ongoing engagement about the best way to ensure that there is an effective protection for minors, notwithstanding the fact that the age of majority is something that's determined at the level of the province.

Mr. Ryan Williams: Why were our privacy impact assessments, PIAs, not made mandatory for all organizations when choosing to collect Canadian data?

Mr. Mark Schaan: I'll turn to my colleagues for more on this.

I think the fundamental recognition is that there are a number of elements of the privacy law that will require organizations to contemplate the privacy impacts of their actions, and there are a number of recourse mechanisms should they not.

I'll turn to my colleagues.

[*Translation*]

Mrs. Runa Angus (Senior Director, Strategy and Innovation Policy Sector, Department of Industry): Thank you for your question.

[*English*]

In terms of the privacy impact assessments, the act, as Mark said, does incorporate a lot of the considerations. When they are developing privacy management programs, all Canadian companies have to develop privacy management programs where they have to consider the sensitivity of the information, whether there are better ways to collect it, minimization rules and things like that, which are principles that a privacy impact assessment would also include. In effect, it does take the approach of privacy by design or privacy impact assessment.

Mr. Ryan Williams: I have a quick question, so I'm looking for a quick follow-up.

Would a PIA be similar to a privacy management plan?

Mr. Mark Schaan: I'll start, and then Runa can answer.

The answer is yes, in the sense that it will inform all privacy-related actions. It's actually broader than a privacy impact assessment, in the sense that all companies will be required to have a privacy management program for their use of personal information, which gets at all of the elements that were noted. In fact, in the case of small and medium-sized enterprises, we require the Office of the Privacy Commissioner to work for a certification that SMEs can live up to with respect to their PMPs.

The Chair: Ryan, you've taken two more minutes, and we're already short on time, so keep that goodwill in mind.

You're next, Tony, briefly.

Mr. Tony Van Bynen (Newmarket—Aurora, Lib.): Great, I'll be brief.

Thank you for being here.

What are the penalties for non-compliance with AIDA and CPPA?

Mr. Mark Schaan: They're a little bit different, and there are a number of functions that are important.

I'll start with the CPPA, and then I'll turn to AIDA. My colleagues will kick me under the table and join in if I get some of these elements wrong.

Under the CPPA, part of this bill fundamentally creates a robust enforcement regime that has a number of tools in the tool box related to how privacy infractions will be contemplated. One of the ones that are not a penalty per se is the order-making power that's granted to the Office of the Privacy Commissioner, which is an extraordinary power that allows the Office of the Privacy Commissioner and the Privacy Commissioner to order a firm to alter its privacy practices, including potentially the cessation of the collection, use or disclosure of personal information of Canadians.

Subsequently, though, there's also the capacity for the Privacy Commissioner to make a recommendation about administrative monetary penalties for violations of the law. He or she would make that recommendation to the new tribunal that's created in part 2, and the tribunal has the capacity to issue administrative monetary penalties that are the strongest in the world. Those penalties are a function of a maximum amount as well as a percentage of overall global revenue.

I'm going to turn to Samir to remind me of the specific numbers related to both of those.

Mr. Samir Chhabra (Director General, Marketplace Framework Policy Branch, Department of Industry): Yes, I'm happy to do that.

With respect to the CPPA, currently in the drafting, the Privacy Commissioner would have the ability to recommend administrative monetary penalties up to $10 million or 3% of global revenue, whichever is higher. The act also specifies a number of specific offences for egregious contraventions of the act, which carry higher penalties of up to $25 million or 5% of global revenues, whichever is higher. Some of the examples of an egregious offence would be an organization that disobeyed an order directly, an organization that obstructed investigation, an organization that retaliated or attempted to retaliate against a whistle-blower or one that did not inform the commissioner of a breach of privacy.

Mr. Tony Van Bynen: Given the scope and scale of global enterprises today, how do you feel these fines would act if they were considered to be just a cost of business? “It's 3% of global revenue. Fine. We'll continue.” How do you stop that?

● (1800)

Mr. Mark Schaan: Thank you, Mr. Chair. I appreciate the question.

I think we tried to set an administrative monetary penalty limit that is and would be considered deeply meaningful. The 3% of global revenue—that is not 3% of global profit, but 3% of global revenue—we believe to be meaningful for even the largest of actors.

Moreover, the order-making power that is afforded to the Office of the Privacy Commissioner is such that should there be an ongoing violation of the CPPA insofar as a company has been ordered by the tribunal to pay but continues the privacy infraction practices, we have the capacity to shut down the intake and the continued usage of the personal information via the powers we have afforded to the Office of the Privacy Commissioner. I think that's deeply meaningful.

Go ahead, Samir.

Mr. Samir Chhabra: I'll just add to Mark's point that the administrative monetary penalties and the offence penalties I just identified would be the highest in the world, so I think we see them as very significant and meaningful potential financial hurdles.

The Chair: Thank you, MP Van Bynen.

Colleagues, we have a hard stop at six o'clock.

I understand I have granted you one minute, Monsieur Lemire. If you have one very pressing question, I'd let it go.

[*Translation*]

Mr. Sébastien Lemire: Thank you. I have two quick questions.

Can an adult request that an organization dispose of data from when that individual was a minor? If personal information was collected when the person was a minor, can they, as an adult, have the information deleted?

Mrs. Runa Angus: Thank you for your question.

The short answer is yes. That is actually a new right that has been provided for in the consumer privacy protection act. It's very much in line with the EU's GDPR.

Mr. Sébastien Lemire: Very good.

If organizations violate the law in relation to minors, are they liable to monetary penalties only? Can civil or even criminal actions be brought against them?

Mrs. Runa Angus: Yes. Bill C-27 also establishes a private right of action.

Obviously, regulatory recourse is available, going through the commissioner and so forth, but there are ways to initiate legal action against private organizations.

Mr. Sébastien Lemire: Thank you very much.

The Chair: Thank you to the witnesses and members. I also want to thank our interpreters, analysts and clerk.

No doubt, we will see each other again very soon.

The meeting is adjourned.