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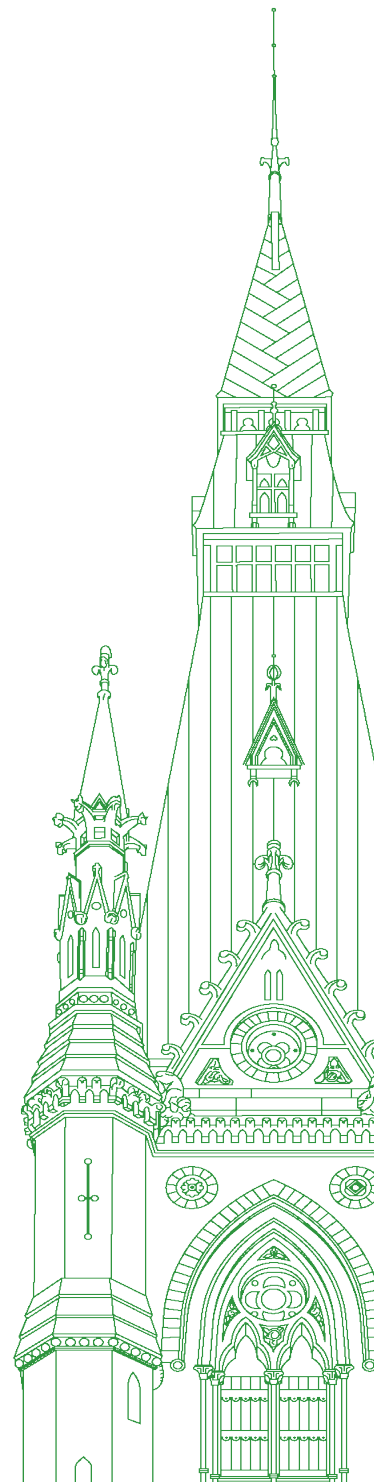
Standing Committee on Public Safety and National Security

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Tuesday, June 9, 2026

Chair: Jean-Yves Duclos



Standing Committee on Public Safety and National Security

Tuesday, June 9, 2026

• (1600)

[Translation]

The Chair (Hon. Jean-Yves Duclos (Québec Centre, Lib.):
Good afternoon. Thank you for being here.

I now call to order meeting number 42 of the House of Commons Standing Committee on Public Safety and National Security.

Before we resume our study of Bill C-22, I want to ask the committee to consider the supplementary budget the clerk sent out to members a few hours ago. It's an estimate of the committee's financial needs. Obviously, the amounts listed are estimates, so the actual amounts could be lower. If so, any unspent funds will go back to the Liaison Committee, as you know.

You've probably seen the budget proposal by now.

Are there any questions about it?

Is it the pleasure of the committee to adopt the proposed budget?

Some hon. members: Agreed.

The Chair: Now that the budget has been adopted, we can move on to the agenda.

Pursuant to the order of reference of the House of April 20, 2026, and the motion adopted by the committee on April 30, 2026, the committee is meeting to study Bill C-22, an act respecting lawful access.

Go ahead, Mr. Ramsay.

Jacques Ramsay (La Prairie—Atateken, Lib.): Thank you, Mr. Chair.

Given the importance the government places on Bill C-22, given the desire to dispose of the bill before the House rises for the summer, given that law enforcement authorities are eager for lawful access tools, and given the slow pace of progress, I would ask if you could arrange for us to have the necessary resources to get through everything by the time the House rises, possibly by extending sitting hours.

The Chair: All right. Your message has been heard.

Mr. Caputo, go ahead.

[English]

Frank Caputo (Kamloops—Thompson—Nicola, CPC): We are already having extended sitting hours. The last time I checked, I think we are currently sitting for four hours. I'm not sure how fair it is to the staff or to other people here.

The reality is that the extended sitting hours were necessitated by ramming this bill through. We had witnesses—often three experts to a panel—and we couldn't even hear from those experts. The reality is that the Liberals have tried to ram this bill through, especially when it comes to part 2.

I wrote a letter to the Minister of Public Safety today that has been publicly released. Law enforcement has spoken about two parts. There is part 1 and part 2. Conservatives are prepared to pass part 1 as amended.

If I'm prepared to take my colleague Mr. Ramsay at his word, which I am, then we can get part 1 dealt with before we rise. Conservatives will amend part 1. I believe we should amend it, and I hope we will find common ground on some of our amendments. I think that among the Bloc, the NDP and the Conservatives, you see a similar thread running through. If the whole point of this exercise is to get the bill right—and we take what Mr. Ramsay had to say as true—and law enforcement wants what's in this bill, I would hope they would want part of what is in this bill.

My exhortation and my suggestion to the government.... I would love to hear from the witnesses on this point, but I know they can't opine outside of questions that are provided to them. The reality is that I think we can give them part 1. I believe that law enforcement has asked for part 1. Then the government can go back to the drawing board on part 2, or we can have further study on part 2.

I haven't heard from the government that they are prepared to accept part 1. We will give them part 1—I want to be unequivocally clear—so long as appropriate amendments are made to part 1.

I am really puzzled as to why there has not been agreement to say to the Conservatives and Bloc that we should get through part 1, amend it, look at that standard of reasonable grounds to believe versus reasonable grounds to suspect, and split that off.

In fact, I had a motion in the chamber today to divide this bill into 22A and 22B. If law enforcement wants part 1 and if one of the issues we have is the confirmation of subscriber information and a streamlined process for production orders, which means there's a court order, can somebody tell me why we wouldn't give that to law enforcement sooner rather than later, if we can come to common ground, which I believe we can, notwithstanding that we still have to go through the process? If we can get through that, why wouldn't we?

I hope I'm not jumping the gun here, but I'd love to hear from the officials on whether they would take part 1 if we could get it passed.

• (1605)

The Chair: Unfortunately, that's not for them to answer at this point, but your points are well understood and well noted. Thank you, MP Caputo.

[Translation]

Mrs. DeBellefeuille, I think you wanted to comment as well.

Claude DeBellefeuille (Beauharnois—Salaberry—Soulanges—Huntingdon, BQ): Yes, Mr. Chair, I want to say something quickly.

I just want to make the committee members aware of something. I think everyone here knows I'm not afraid of hard work, but when the committee is dealing with a bill that is highly technical and I have to wear my earpiece for four straight hours, so I can listen to the interpretation and follow what's being said, it's a lot. I'm sure the members opposite want me to contribute to the discussion and to fully understand what's being said. I challenge anyone to keep their earpiece in for four straight hours listening to the interpretation while I speak French. Then they'll see how hard it is.

Nevertheless, I choose to do this. Today, we are meeting for four hours, but I hope the Liberals don't intend to keep us here until midnight or we're all exhausted. I hope they'll have respect for all the committee members. A decision to keep us here that long would push me beyond my limits. The fact is I am the only unilingual French speaker on the committee, so I have to wear my earpiece the whole time to hear the interpretation of what's being said.

That's what I wanted to say to my fellow members. I am ready and willing to work, but I expect members to hear what I'm saying. That, too, is an indicator.

There's something else I want to say. I agree with Mr. Caputo, and I think it's unfortunate that the Privacy Commissioner isn't here. That is information we are missing. The department officials have consistently challenged the proposed amendments, so I'm curious. Why is that? I wish the commissioner had been given the opportunity to explain his recommendations. I don't understand why there's resistance to inviting him here for a half-hour or hour, so he can explain why these amendments are important. Philippe Dufresne isn't just anyone. I don't understand the resistance. Why don't we invite him here to explain his rationale?

It's like we're conducting a trial without taking the time to hear from a witness. He did not have a chance to address what the de-

partment officials have told us, about the amendments being overly restrictive.

In short, I'm prepared to work hard and to work co-operatively with my fellow members, but I would ask that they respect my limits.

• (1610)

The Chair: Thank you. You have made yourself clear, and your limits are duly noted.

That brings us to today's agenda and the matter we are scheduled to discuss for the next four hours. As has been mentioned, we have a lot to do in a short amount of time, so we'll try to work as a team as efficiently as possible.

I'll take a moment to quickly introduce the witnesses, even though you already know most of them.

From the Canadian Security Intelligence Service, or CSIS, we have Ramzi Nashef and Juanita M.

From the Department of Justice, we have Kimberly Gibner and Normand Wong.

From the Department of Public Safety and Emergency Preparedness, we have Richard Bilodeau, Shannon Hiegel and Fenton Ho.

From the Royal Canadian Mounted Police, or RCMP, we have Chief Superintendent Richard Burchill and Sergeant Aaron Gilkes.

(On clause 4)

The Chair: When our meeting ended last week, we were discussing Bloc Québécois amendment 3, or BQ-3, to which Mr. Mantle had proposed an amendment. Mr. Mantle's subamendment was translated and distributed to members, and that's where we're at.

Would anyone like to comment on the subamendment?

Mr. Caputo, you may go ahead.

[English]

Frank Caputo: Thank you.

I have one housekeeping issue.

I want to double-check. Do we know whether we have all the briefs that have been submitted at this point?

The Chair: I believe it was last Friday that you were sent an update on the state of the translation of the briefs. It obviously will have changed since then.

Frank Caputo: Okay. I was just double-checking. Thank you very much.

Could I be on the speaking list and move on to the subamendment, please?

The Chair: Yes.

Frank Caputo: Thank you, Mr. Chair.

I would like to ask the whole table about this. You heard my initial monologue, if you will. I won't call it a soliloquy. It did talk about part 1, and we are talking about subamending part 1.

Within the whole issue of getting through this bill, I think all the officials here would agree that the issue of lawful access has come before Parliament many times, most notably in 2014, I believe. It has now been 12 years. The Internet has changed substantially.

I'm not going to ask every person to go through this one more time, but my impression is that from an official's point of view, speaking objectively, there is a need for lawful access. That's why we're all here. That's what we have been told. That's why we had a number of people from your agencies come to committee and tell us that we need the powers that are in this bill.

We have parted company, obviously, on the precise powers that are in the bill and whether those should be granted in the form of legislation or whether those should be tweaked or not. At the end of the day, it has been very clear from officials and from witnesses that the current state of crime and the evolution of technology require new tools. I think there's no doubt about that.

Where I think we haven't gotten into the meat and potatoes is the "why". We've been told, "We want to catch terrorists and want to catch predators." It is the job of the government to convince Canadians. It is not the job of the opposition. The job of the opposition is to scrutinize and to ask questions on behalf of Canadians. That's where I think part 2 has really broken down.

Would any of the witnesses be prepared to say that, yes, part 1 is integral to what we do, and these are powers that we need sooner rather than later? Is anybody prepared to acknowledge that?

Richard Bilodeau (Acting Senior Assistant Deputy Minister, Department of Public Safety and Emergency Preparedness): If I may, there is no doubt that part 1 is important, but so is part 2. Our job as the public service is obviously to hear concerns about gaps in the system. In this case, it's lawful access and some of the difficulties of law enforcement and the intelligence service in getting access to certain information because capabilities are not uniform across a particular sector. We've talked about the unevenness and about how this legislation, especially part 2, is creating some consistency across core providers, for example, which would likely be telecoms in the first instance. It is about creating a level playing field.

We've heard the concerns from law enforcement. We've developed policy options. The result is the legislation that's before you today. Part 1 and part 2 are obviously—it goes without saying—distinct parts of the legislation, but they are both equally important to solving some of the gaps that have been identified in various lawful access regimes and can help law enforcement and intelligence services fill those gaps.

The legislation that's been put forward is the result of years of effort and policy and is trying to achieve the balance of having lawful access within the Canadian system while respecting the charter. That's the legislation before you. Obviously, we're here to support you in answering questions about amendments and providing our best information and advice on those amendments so that you can make an informed decision.

• (1615)

Frank Caputo: I am mindful of that.

Part 2 aims at solving crime, and I understand that. I don't think anybody around this table is saying, boy, we want more crime. The question is about getting it right.

To Mr. Bilodeau and to all the other witnesses, we have heard from so many witnesses. Frankly, not enough time was given to them because sometimes we had three experts on a panel. If you have an opening statement of five minutes each, that's 15 minutes, and that leaves 45 minutes for questions and answers, sometimes with three outstanding witnesses. Really, we could have had one of them, so we didn't always hear the in-depth knowledge.

I sound like a broken record, I know, but I think the chief issue here that we are dealing with is that we didn't get a lot of the technical information. We were told that we needed this, and Mayor Brown touched on that. We need this because we want to catch criminals. I get that, and we get that, but how does proposed subsection 5.2 relate to that? How does the ministerial order relate to that? How do the different categories of metadata relate to that? How do location services relate to that without intruding on privacy, notwithstanding the requirement for a court order? Those are all very live issues in part 2 that I don't think we really dealt with.

I apologize. This might not seem like a fair question, but I think it's an apposite question. If given the choice of having part 1 or nothing, I assume the officials would say that we need the powers in part 1. Is that an accurate statement?

Richard Bilodeau: As you noted in your first question, it's not for us to answer the question about whether or not part 1 is sufficient and say that if we get part 1, can we park part 2. That is not up for us to answer.

My first answer stands. Both parts address gaps in the system and are important for law enforcement and intelligence so that they can help further their investigations.

We've answered questions—and law enforcement were here separately from us—on the necessity of some metadata.

There are amendments, I understand, which are part of the proposals to be heard by this committee, that address some of the issues you just mentioned. I'm happy to answer questions about that to see what we can provide you with in terms of information and advice that can inform your decision.

Frank Caputo: I get that, Mr. Bilodeau, and I'm not trying to put you in a corner. Officials are presumed independent. I understand that, and I still know you all have your own views. I am somebody whose professional life, frankly, revolved around data and its existence or lack of existence and how that created an evidentiary chain or an evidentiary gap, because that was just the way it went. When you had an evidentiary chain, you had a prosecution and a potential conviction. When you had an evidentiary gap, you didn't have an arrest or charges typically. I'm very mindful of that.

The point I'm trying to get to is that if part 1 is important, and I know you can't say this or it seems that you can't—

Richard Bilodeau: It is important, no doubt.

Frank Caputo: If part 1 is important, then why aren't we passing a piece of important legislation?

Can anybody weigh in on whether part 1 would help if it were passed on its own, notwithstanding that part 2 might be important as well? If they're both important, why aren't we passing some of that which is important?

• (1620)

Richard Bilodeau: It's up to Parliament and MPs to make that determination. As much as part 1 is important to advancing investigations, we have had real examples provided by CSIS and law enforcement about shortcomings in advancing terrorism investigations and child sexual exploitation investigations because we didn't have the gaps filled that part 2 fills. That's why I said that both parts are important. Gaps have been identified in instances that harm the advancement of investigations and in holding the people who commit those crimes accountable.

Frank Caputo: I'm very mindful of that. The reality is that we've heard a lot of testimony, if we're being candid, especially about part 2, that has left Canadians with questions, in my view. I can't speak for all Canadians, but I'm reading the mail and reading editorials, and we have media here. There are questions about that. I don't think there is the same degree of questions....

I'm not sure if I can ask the RCMP this. I'll be direct. If part 1 were passed tomorrow, would that be of assistance to the RCMP?

Richard Burchill (Director General, Technical Investigation Services, Royal Canadian Mounted Police): From an RCMP perspective, we work within the legislative context we're provided. Whatever Parliament decides to pass, if it provides tools for law enforcement to use, we'll do that, but as far as what that is, we're not part of that decision.

Frank Caputo: Chief Superintendent Burchill, I'm going to hearken back to a lot of the testimony, which was that we are often going on fishing expeditions and that we have 10 service providers and just need to confirm whether somebody is a provider. We're going to look at amendments within that, but my impression from hearing from the witnesses is that they said, "We need both parts." If witnesses and law enforcement want both parts, they clearly want one of them.

My point here to the committee, to Parliament and to Canadians is a very clear one: If part of the equation is part 1—which I think we can get to common ground on—and it would help, I don't think it's a stretch for officials to say, "Yes, that would help us." Now, you can't say, "Please pass it alone." I get that, but what I'm trying to get to—and perhaps through silence we're getting there; I don't know—is this: Why wouldn't we give you some of the powers you're seeking when we can come to common ground?

On part 2, we're nowhere near common ground. The government came in, and the minister sat, I believe, where Ms. Gibner is sitting. I asked flat out, "Will you address encryption?" We got answers like, "We're open to amendments." Now here we are, three weeks later, and the minister is holding a press conference, not to get

asked questions but to tell Canadians, "Whoa. Wait a minute. We're not just open to amendments. We're going to put forward amendments on encryption."

Three weeks ago it was, "Well, we'll see. We'll do as we please." That was the gist of it. Then we heard testimony for three weeks, and Canadians rightly created an opinion of the legislation in their own heads. Once that happens and Canadians aren't convinced, as a member of His Majesty's loyal opposition, it's not our job to plug those holes, those gaps.

I've spoken long enough on this. I know you can't answer the question, but if part 1 is going to help you, I don't know why we're not passing it and dealing with Mr. Mantle's subamendment within that point and Ms. DeBellefeuille's amendment within that point. I think we can get to common ground.

I'll leave it at that. Thank you.

[Translation]

The Chair: Thank you, Mr. Caputo.

Shall Mr. Mantle's subamendment carry?

[English]

I'm sorry. I didn't see Mr. Mantle's name.

MP Mantle, go ahead.

Jacob Mantle (York—Durham, CPC): Thank you, Mr. Chair.

I presume everyone has now received the subamendment in both official languages. This is just to level set the purpose of the subamendment to Ms. DeBellefeuille's very good amendment, which originated from the Privacy Commissioner's suggestion to narrow the scope of information that could be available in a confirmation of service request.

You'll recall that we had an exchange with Ms. Gibner and Mr. Wong on that. There was some disagreement or confusion on my part or their part—it doesn't matter—on how the list of subscriber information as described in the bill should be understood. Specifically, it was whether the types of subscriber information listed in the bill are just that and nothing more, or whether this provides some sort of illustrative or non-exhaustive list.

My suggestion was to delete the word "including" in proposed paragraphs 487.011(a), (b) and (c). The advice from the legislative drafters was to not only delete the word "including" but also include the English word "namely"—forgive me; I don't know the exact translation in French—so that it is a closed list. What is described in proposed paragraphs 487.011(a), (b), and (c) would be the list itself.

That's why you received it as deleting "including" and including "namely". I just wanted that on the record since my understanding of the advice I received from the drafters was different from my own suggestion.

I want to talk a bit about why I moved that subamendment, but prior to that, I will just build on one point from MP Caputo with respect to the officials who are here.

I want to ask the RCMP and CSIS if they could tell me how they were invited to appear before the committee for clause-by-clause.

• (1625)

Richard Burchill: I became involved because of my current role as the director general overseeing our technical investigative services branch. Lawful access falls within my remit. Since last summer, when they started doing the tech briefs, I was involved from the RCMP perspective. I just became part of the process. That's how I ended up being here.

I asked my chain of command if I could have Sergeant Gilkes attend with me for last week's appearance and any appearances going forward because of his subject matter expertise in operations. They were okay with that. I think he's been a good addition for us as a witness here at the committee.

Jacob Mantle: What about CSIS?

Ramzi Nashef (Director General, Policy, Planning and Accountability, Canadian Security Intelligence Service): It's a similar answer from our side, MP Mantle.

I'm the director general for policy at the service. My teams have been involved in this and in all of the policy and legislation that we participate in as an organization. My colleague Juanita has been the senior policy analyst most responsible for our portions of Bill C-22.

Jacob Mantle: Okay, that's helpful.

To clarify further, Mr. Burchill, did you ask to be part of clause-by-clause, or were you asked to be part of clause-by-clause?

Richard Burchill: Organizationally, I don't remember being asked or asking; I was just—

Jacob Mantle: It was from the RCMP, I guess.

Richard Burchill: From the RCMP perspective, because I've been involved in the process since last year, when asked by parliamentary affairs who would be appearing, naturally I said I would be appearing.

Jacob Mantle: You were asked by parliamentary affairs from the minister's office to—

Richard Burchill: No. It was RCMP parliamentary affairs.

Jacob Mantle: They would have spoken to Public Safety, presumably.

Richard Burchill: Presumably they did, but I'm not sure.

Jacob Mantle: Or maybe someone proposed—

Richard Bilodeau: I can answer the question.

I don't know the logistics about who sent an email to whom. I would just say that in my time at Public Safety, I have done a few of these bills, and it's common to have the people who are the operators, so to speak. As we're doing clause-by-clause, if there's a question about the impact of an amendment, it's important to get the views of the people who will be on the ground using the amendments in order to understand the impact from a practical perspective.

If we go back to Bill C-70 on foreign interference, we had colleagues from RCMP, I think, and definitely from the service.

• (1630)

Jacob Mantle: I don't know if CSIS has anything they want to add on that.

Ramzi Nashef: The only point I would say is that the CSIS Act would change as part of Bill C-22, so even if there wasn't...I think we would be because of equities. I would say that's a double reason we're here: The CSIS Act changes, which we are most responsible for, and some of the equities in part 2 immediately impact our stuff.

Jacob Mantle: Is it fair to say that you wanted to be here because it affects your line of work, whether it's RCMP or CSIS, and Public Safety wanted you to be here for the same reason? They wanted your expertise at the table. Is that a fair summary?

It doesn't seem like there was a specific ask one way or the other, but it's a natural progression from your involvement in the considerations of Bill C-22. Is that fair?

Richard Bilodeau: This is about trying to be helpful, and the way that we think we can be most helpful is by having a diverse range of experts who can answer your questions.

Jacob Mantle: Absolutely. For my part, I agree with that. I think it's helpful to have you guys here, the RCMP and CSIS.

To the RCMP and CSIS, it's fair to say that you're seeking the powers that are in part 1 and part 2, that you support them.

Richard Burchill: As I said previously to Mr. Caputo, at the end of the day, law enforcement and the RCMP work within the legislative investigational context we're provided. If there is a move to put forward legislation that will give us tools to do better investigations for victims in Canada, we're certainly going to be supportive of that, but as described, we're here to try to help give the committee the responses it requires from the RCMP to make its decisions on this legislation.

Jacob Mantle: You take no position as the RCMP on whether part 1 or part 2 of Bill C-22 should be passed.

Richard Burchill: As I said, the position we would take is that we need to operate within the legislative context we're provided. If legislation is passed that gives law enforcement more tools to do better investigations in a more timely manner for victims, I'm supportive of that, yes.

Jacob Mantle: Your view is that Bill C-22 does the things that you just described.

Richard Burchill: I think with the way the bill is introduced, if it were passed as it is with parts 1 and 2, it would give us timely access to data in a structured, uniform way.

Jacob Mantle: Thank you.

What about CSIS?

Ramzi Nashef: I have nothing significant to add to that.

Jacob Mantle: Do you agree with that assessment?

Ramzi Nashef: We've talked a bit about it today, but it isn't our job to advocate for a particular position. It's our job to give insights into our views on how to strike a balance between the things we've talked a lot about here, which are tools for security and law enforcement, as well as privacy considerations.

As I said before and would reiterate, it's in nobody's interest on this side to be stepping into more of an advocacy role that could potentially, for example, erode the social contract that we have as key agencies of the Government of Canada. We're here to give you our insights into the work we do and how we do it and where the challenges are, and then obviously to take the will of Parliament and implement it as best we can.

Jacob Mantle: That's fair, and I would agree with that.

I want more insight on a technical bill like this.

I don't know who was here at the table in 2013—I'm not sure of the exact time—when Bill C-13 was considered.

Mr. Wong, I think you indicated that you've been here and working on this for some time.

Was anyone else here for Bill C-13?

Mr. Wong, were you here for Bill C-13? Do you recall who was here on behalf of the government during clause-by-clause for Bill C-13?

Normand Wong (Acting General Counsel, Policy Sector, Department of Justice): I don't have a recollection. I think there was probably someone from the RCMP with me.

[Translation]

Jacques Ramsay: I have a point of order, Mr. Chair.

The Chair: The floor is yours, Mr. Ramsay.

Jacques Ramsay: Could the honourable member get back to the topic at hand, specifically the subamendment?

The Chair: Yes, we need to understand the point behind this line of questioning, which is starting to drag on.

[English]

Jacob Mantle: I will be coming back to the subamendment shortly.

One of the points I wanted to make, building on the discussion about part 1 and part 2 and who has been made available to the committee, is about the departure from previous practice when Parliament considered Bill C-13 in the past.

This wasn't my review. Dr. Geist made this point earlier today. I'll read one small paragraph of his article, which caused me some concern.

• (1635)

Anthony Housefather (Mount Royal, Lib.): Mr. Chair, I have a point of order.

The past practice of the committee on a bill from 2013 does not relate to the question of whether we should have an inclusive list or a non-inclusive list. It doesn't relate to the subamendment.

If we follow the practice of the House, he needs to speak to the subamendment that he's put forward, not to a general framework that could be used to talk to every single amendment and subamendment repeatedly throughout the entire clause-by-clause.

I do not believe he's being relevant. I would ask you, Mr. Chair, to bring him back to order.

The Chair: Part of my job is to try to help committee members achieve a balance. As we said earlier, there is limited time. We want conversations to focus on what the task is.

I invite MP Mantle to attempt to do that.

Jacob Mantle: Sure.

Let me explain how this ties back to the subamendment. I think all of my comments thus far have been substantive. I just want to make it clear that I'm trying to get to a substantive discussion here.

I'm asking these questions because Madam DeBellefeuille's amendment and my subamendment are directly related to the recommendation from the Privacy Commissioner. That was a recommendation written to the public safety committee and discussed during the Privacy Commissioner's testimony here.

One of the problems I am pointing out is that we do not have the Privacy Commissioner here while we are discussing the subamendment and the amendment, which are directly from the recommendation. My point is that that's a problem and a departure. What we are engaging in here is a departure from past practice.

I want to put on the record that in the previous discussion of Bill C-13, officials from Public Safety Canada and the Department of Justice were here—their attendance is routine—but the inclusion of the RCMP and CSIS during this clause-by-clause is different. I want to make that point, because if we are going to say that agencies that have a view on or are affected by part 1 or part 2 of Bill C-22 should be here to provide their input.... I don't disagree with that. I think it's helpful to have the RCMP and CSIS here to answer questions on this. At the same time, on this amendment and my subamendment, it would be helpful to have the Privacy Commissioner or a representative of the Privacy Commissioner here.

That is how this line of questioning relates.

Is that satisfactory, Mr. Chair?

The Chair: That's a view you are entitled to have.

As you noted, these are the officials here now. They belong to the portfolios of Public Safety and Justice. Other organizations, stakeholders and witnesses—many of them—would be outside the portfolio of Public Safety, which explains why they're not here now.

Jacob Mantle: I don't know why they're present now but weren't in the past. That's my point.

May I continue?

The Chair: Again, my view doesn't matter that much, but I'll just mention that until now, I have observed the RCMP and CSIS providing helpful answers to a number of MPs around the room. My subjective assessment is that they've been helpful, which may justify the reasons they are here now.

Jacob Mantle: I agree with that.

My only point is that in the discussion of the amendments that we are currently considering under part 1 and my subamendment, I believe it would be helpful to also have the Privacy Commissioner, which is part of the reason we asked.

I want to make the point that we have a departure from previous practice, one that I agree with. Under the clause-by-clause review of Bill C-13—

• (1640)

Anthony Housefather: I have a point of order, Mr. Chair.

This is repetition. Mr. Mantle has now made the same argument three times, which, again, doesn't relate to his subamendment.

Jacob Mantle: I'm sorry, Mr. Chair. I disagree.

I've laid out exactly how it relates to the subamendment. Having experts here to provide....

If Mr. Housefather can't follow that logic, I can't help him.

The Chair: MP Housefather is apparently attempting to remind me, as the chair, of my responsibility to invite everyone to be as coherent as possible and to focus on the subamendment and amendment under consideration. There will be other amendments and subamendments later. We may want to avoid repeating arguments in ways that are not helpful and not supportive of the work of this committee.

I'll remind you that we have limited time and we want to be as efficient as possible.

Jacob Mantle: I agree with that.

I will simply remind members opposite that this discussion and the back-and-forth we are having are because they chose to interrupt my line of questioning and—

Some hon. members: Oh, oh!

The Chair: Let's try to focus on the subamendment.

Jacob Mantle: Everyone can laugh or not laugh if they want. I don't really care. I have a particular view that I'm trying to express on this bill, and I'm going to continue doing that until you tell me I can't. I'll leave it there.

I'm going to read the one paragraph I was trying to read from Mr. Geist's article, because it disagrees with Mr. Wong's memory of, frankly, more than 10 years ago. It's not fair, but....

Mr. Geist wrote the following this morning:

The departure on Bill C-22 is not the presence of departmental officials from Public Safety and Justice, whose attendance is routine, but the inclusion of the RCMP and CSIS, the operational agencies that sought the legislation in the first place. The contrast with how Parliament has handled comparable legislation is telling. When the Justice committee conducted clause-by-clause review of Bill C-13, the last lawful access bill to reach that stage, the officials at the table were

from the Department of Justice, and the police and intelligence agencies that would use the powers were not there to advise members on the amendments.

Therefore, as I said, it would be helpful to have the Privacy Commissioner here to discuss my subamendment, which I'm now going to talk about.

Ms. Gibner and Mr. Wong, we had a discussion about how to interpret the meaning of the definition of “subscriber information”. In reviewing the transcript of our back-and-forth, I was left with two different opinions that seemed to be expressed to me.

Mr. Wong, in response to some of my questioning, you made the point that proposed paragraphs (a), (b) and (c) are supposed to cover types of information that the police will use, and they're described that way with examples to try to make them future-proof in terms of what other types of information, like that information, may be used to identify the subject. When you say future-proof, that means the information we have there could include other stuff in the future. That's the definition of trying to future-proof.

In contrast, Ms. Gibner, you described the inclusion of the word “means” in the chapeau, and then the inclusion of the word “including” in the subparagraphs.

I made the subamendment, and I was left a bit confused, so as any good lawyer would, I went to the source. Don't worry. I'm not going to read the whole thing, but I will read a portion of it, because it's directly relevant to this.

Sima Acan (Oakville West, Lib.): It's only 305 pages.

Jacob Mantle: It's actually over 800 pages, but I won't read it.

I presume, Ms. Gibner, that you're familiar with Ruth Sullivan's *The Construction of Statutes*. She's the authority. Is that right?

Kimberly Gibner (Deputy Assistant Deputy Minister, Policy Sector, Department of Justice): I agree.

Jacob Mantle: I'll read a couple of sections on understanding exhaustive definitions and non-exhaustive definitions. She actually has—I was surprised by this—a specific section on when a statute has the words “means” and “including” in it, so we'll start there.

She wrote:

Exhaustive definitions declare the complete meaning of the defined term and completely displace whatever meanings the defined term might otherwise bear in ordinary or technical usage. An exhaustive definition is generally introduced by the verb “means”. For example, in Part 2 of the Canada Transportation Act, “tariff means a schedule of fares, rates, charges and terms and conditions of carriage applicable to the provision of an air service and other incidental services”. This definition resembles the ordinary meaning of “tariff” in the context of air transportation. Nonetheless, the statutory definition displaces any understanding of the term based on dictionary definitions or linguistic intuition.

That's the exhaustive definition. She continued:

Non-exhaustive definitions do not purport to displace the meaning that the defined term would have in ordinary usage; they simply add to, subtract from or exemplify that meaning. Non-exhaustive definitions are generally introduced by "includes" or "does not include" (or "excludes"), as in the following examples:

sell includes agree to sell, or offer, advertise, keep....

Non-exhaustive definitions are used to expand or narrow the ordinary meaning of terms, to deal with borderline applications of terms or to illustrate their range—

● (1645)

[Translation]

The Chair: Excuse me, Mr. Mantle. I'm not an interpreter, but given how quickly and intensely you're speaking, the interpreter must be having a hard time keeping up.

[English]

Jacob Mantle: That's a fair point, Mr. Chair.

The text continues:

Non-exhaustive definitions are used to expand or narrow the ordinary meaning of terms, to deal with borderline applications of terms or to illustrate their range of application by setting out examples.

That makes sense.

In the last section, Ms. Sullivan describes examples in our situation, where we have "means" and "includes" in the same clause. She said:

A statutory definition stating that a defined term "means and includes" something would be confusing since it would imply that the definition both displaced ordinary meaning (means) and relied on it (includes). However, a definition that first uses "means" to stipulate a definition that displaces ordinary meaning and then uses "includes" to enlarge, narrow or illustrate the stipulated definition makes sense and is a conventional drafting technique. In such a case, the defined term applies to anything that comes within the stipulated definition regardless of whether it also comes within the meaning of the words that follow "includes"....

This is where it gets a little tricky, because there seems to be some disagreement at the Supreme Court on this. I won't go through all of it, but she makes reference to the Entertainment Software Association case. She notes, "It is not always obvious whether a list that follows 'includes' is meant to expand the scope of the stipulated definition or merely illustrate it." She then quotes Justice Abella's majority in that case and Justice Rothstein's dissenting opinion. I won't read them, but they're there.

After reading that, I was still unsure, to be honest. Maybe if I had spent some more time considering it, I would have been more comfortable. What I have proposed solves this, in my mind at least, because we're simply going to say, in the current clause, "means" in the chapeau, and in each subclause, we'll remove "including" and use the word "namely" to denote an exhaustive list.

I would like your view on this, Ms. Gibner or Mr. Wong, or whoever else would like to comment. In my view, by doing so, we've made it doubly clear that the amendment's purpose is to say the classes of subscriber information that are listed in that clause are exhaustive.

Kimberly Gibner: I'll start.

I would take a step back and remind myself what the subscriber information provides to people who provide services to the public. It's not going to be one-size-fits-all, which means that the informa-

tion needs to not be an exhaustive list. It needs to be an exhaustive definition that could have varying components or examples of it.

Ms. Sullivan said it was a good drafting technique. That's a thumbs-up from Ms. Sullivan that we did a good job by putting in the chapeau. It must mean information used to identify the subscriber, and then they're giving examples of what that could look like. It has to be non-exhaustive, as it were, because service providers capture identifying information in different ways.

I am personally comfortable with that because it is a judicially authorized warrant where the police will have to go to a judge or a justice, identify the kind of information they want and set out how the reasonable grounds to suspect test is met in order to fall into those rubrics. That's how I would answer the question. Mr. Wong may have further things that might help you.

● (1650)

Normand Wong: Thank you.

I will just add that it is a convention that we use in the Criminal Code. The third thing that you read by Ruth Sullivan is exactly what this is. It's a class definition. The defined classes are proposed paragraphs (a), (b), and (c) before the "including", and all the "including" is supposed to do is give examples of what a class covers.

The issue with making it "namely" and adding an exhaustive list in the paragraph (b) category is that you leave out things like IP addresses that are assigned, so important bits of information would be lost. When I mentioned future-proofing last time, it wasn't about being vague; it was about not using terminology, as Ms. Gibner just said, that is inappropriate for all service providers and may be left out.

I also made the comment that if we were to do something like that and make it an exhaustive list, the definition would have to be rebuilt into something to make sure that we don't miss important bits of information the police need for doing their investigations.

Jacob Mantle: Okay. I think we're getting somewhere on understanding what the clause was intended to mean, which, in my view, reinforces why I wanted to move the subamendment. Whether you agree with it or not, that's fine. We can differ on that.

Just to clarify, though, Mr. Wong, the BQ-3 amendment does include IP addresses, so that's not accurate. That was also included in the Privacy Commissioner's recommendation. Narrowing it to a finite list of discrete identifiers does include IP addresses. It's just written out—Internet protocol address—in the clause. That's an important bit of information, but it would be included.

I just want to push back a bit on the idea that if we create an exhaustive list, we're going to hamstring ourselves in the future. From a philosophical position, my view would be that that's okay; that's the law-making process. Parliament passes law. Those who utilize it or implement it do so. Then the courts interpret it, and then it flows back to Parliament to say, "Does it need to be...?" If Parliament is not satisfied with the law or with how it's operating, then we can legislate again.

I think there can be good-faith disagreement on how the feedback loop—if I can describe it as a feedback loop—in the legislation-making process—the enforcement and then the interpretation—should work. Different laws take a different view on that, including whether there's regulation-making ability or whether agencies develop policies to interpret their own.... There's a whole spectrum of how that works.

I would say that it's a fine result. I think you need to make a more persuasive argument to me that says in this specific case, having the non-exhaustive list here, then requiring the police to give feedback to Public Safety and then requiring Public Safety to bring that to Parliament through the appropriate channels is not the best way to do that, for whatever reason. I haven't really heard that.

The evidence I will put to you for why I haven't heard that is that at our last meeting, I asked you, Ms. Wong and Ms. Gibner, if there was anything not included in this definition that you thought needed to be included, and you could not give me any examples. Then I asked Sergeant Gilkes, and your response was, "I think that the categories cover most of the identifiers that I would look for."

The evidence you have provided to the committee is that the list is actually pretty good. It covers what we understand to be what police, Public Safety and CSIS need right now. If in three or five years it changes, that's great. Come tell us, and Parliament can consider changes.

To me, that's a good balance, because right now without the amendment, as we've established, we're talking about it meaning subscriber information, but the subcategories are non-exhaustive, so more things could be included. I think that's why the Privacy Commissioner honed in on this—I think so, but I don't know, and this is why I'd like someone here so that I could ask them—and suggested that a lot of information could be required. It's not just that it's a lot of different types of information. It's that the different types of information that could be required attract different levels of privacy. The Privacy Commissioner makes this point by saying, "Depending on the nature of the services in question, such information could reasonably attract a heightened expectation of privacy."

Would you disagree with this, Ms. Gibner? Depending on the class of information and subscriber information, there may be different expectations of privacy attached to that. Is that fair?

• (1655)

Kimberly Gibner: No, I wouldn't agree with that statement. I want to take a step back to when you were asking about the Privacy Commissioner.

What we have done at the Department of Justice and at Public Safety is come up with legislation that has built-in privacy considerations. That's the Privacy Commissioner's mandate, as your col-

league pointed out. Law enforcement have a mandate. You will recall that *Hunter v. Southam* set out that section 8 protects a "reasonable expectation of privacy", not "all expectations of privacy". Law enforcement and privacy interests have to be balanced in the analysis.

We came up with this legislation after already thinking that through. It is now up to the committee to think through whether we got that calibration right.

What we did when we came up with that definition is think about subscriber information more broadly. It's not an exhaustive list because of the services provided to Canada. We can't possibly identify every single way services characterize subscriber-type information. The category of subscriber information itself, more generally, is calibrated in such a way to target information in a minimally intrusive way, one that provides law enforcement with basic information about services, like name, address and the things we can think about today. My friend calls it future-proofing. When the digital world becomes an AI world, that language might not be exactly the same, but it is basic identifier information.

Jacob Mantle: I'm having trouble with that. You're suggesting that all the classes of subscriber information in the definition attract the same level or expectation of privacy.

Kimberly Gibner: Yes, I would say that.

Jacob Mantle: How would you reconcile that with the Supreme Court saying that, for example, an ISP would attract a high level?

• (1700)

Kimberly Gibner: Again, if I take a step back, you will recall that before Spencer, before 2014, the Supreme Court of Canada said of subscriber information that there was no reasonable expectation for that kind of data. *Plant* is the case you might recall. In 2014, Spencer changed the world. Spencer said that subscriber information does have a reasonable expectation of privacy when it's attached to an IP address you can link to online activity.

You need to think that through as government in terms of judicial authorization. People can't do it voluntarily, which is what happened before that. That's what the legislation before you is about. It is about a judicially authorized warrant to obtain this subscriber information now.

Jacob Mantle: Regarding the definition of “subscriber information”, your view is that name, telephone number, email address, identifier assigned to a client, account numbers and types of services all attract the same expectation of privacy.

Kimberly Gibner: That would be my view.

I would refer you to the Criminal Code, where a similar provision already exists. To situate you, part of the balance we're talking about when we say “privacy rights” and “law enforcement” is built into a Criminal Code that already exists. I would refer you to section 487.018, which is about financial data. It might assist the committee to review that provision, because it's along the same lines, MP Mantle, of what you're asking me. What sort of reasonable expectation of privacy do these things have? They list all sorts of information related to your finances that is accessible with the standard of “reasonable grounds to suspect”. You need a court order. You need to get it judicially authorized. The police need to have reasonable grounds to get that. That is the type of information that I would call subscriber information.

Again, I'm suggesting this to you because it's going to be you who has to decide. Financial information seems a bit more.... If we're comparing, you're trying to ask, “Is there a gradation, Kim, on kinds of information?” I would suggest that this is your marker.

I just wanted to point that out, if it assists you.

Jacob Mantle: This is helpful. I feel a bit outgunned here, but I'm trying my best.

I'll put one case to you, Rodgers, in which the court said, “Since individuals have different expectations of privacy in different contexts and with regard to different kinds of information and documents, it follows that the standard of review of what is “reasonable” in a given context must be flexible”.

Putting that over the broader framework of different categories of privacy interests, the “biographical core”—I think that is one of the phrases the court has used—of personal information can reveal their choices, their habits and their lifestyles. Tell me if I'm wrong here, because I'm not—

Kimberly Gibner: That's correct.

Jacob Mantle: All right. Good.

I would think that some of the information in the definition of “subscriber information” could relate to that biographical core—for example, “the types of services provided”.

In my view, then, proposed subparagraph 487.011(c)(i) might actually attract a higher expectation of privacy than another part of that definition. That's why I'm having trouble with your perspective that everything in here attracts the same expectation of privacy.

Do you disagree with where I'm going on this, or are we just going to...?

Kimberly Gibner: I understand your question, and my responses are trying to assist you. I'm not sure what would assist you, but maybe talking to your RCMP witnesses here about the types of services.... You typically look at the types of services. We're thinking of the telco example: “Do you have cable? Do you have one phone or do you have two?”

Out of all of the different kinds of applications, nothing is coming to mind that would be able to answer your question any better, but maybe you have something you're thinking about that we can respond to.

• (1705)

The Chair: I would kindly and respectfully suggest that if you do have questions related to your subamendment, you may want to pose them. My subjective impression is that we are running a bit outside of the topic of the subamendment by looking at what are other important issues possibly, but not focusing on the subamendment.

Jacob Mantle: That's fair. Let me bring it back.

The reason this discussion is important is that by simply saying “the types of services provided”, as we are here, we elicit, as Ms. Gibner correctly stated, the common-sense reaction that those are services provided by the telco. However, it's not limited to that, because we know, as we just established, that these proposed subparagraphs are non-exhaustive illustrative lists.

It's not just about the information that the telco has on you. It could be, for example—and I'll put it to you—a service related to hotels or an escort service that someone might have engaged. I suspect that would be different from saying, “Telco, do you provide them services?”

I don't know whether the RCMP or CSIS has any colour they want to add to your point. My point is that this being non-exhaustive leaves it open such that some of the information may have a lower expectation of privacy and for some it may be higher, and when we get to the discussion of the standard, that will also play a role there.

Mr. Burchill or Mr. Gilkes, go ahead.

Richard Burchill: I'm sorry. Just to be clear, what's the question?

Voices: Oh, oh!

Jacob Mantle: It's about trying to understand what you think services provided....

I don't appreciate the laughter.

The Chair: I agree.

Jacob Mantle: Let me be very clear. If I wanted to just blow this up, I have 800 pages that I can work in. I'm not trying to do that.

The Chair: It's a balance that we are currently achieving well, so let me come back to you.

Jacob Mantle: Would information like, for example, services provided by hotels, Airbnb and escort services be useful in your investigation, yes or no?

Aaron Gilkes (Acting Officer-in-Charge, RCMP Lawful Access, Royal Canadian Mounted Police): I guess it depends on who is running the service. We cannot serve a judicial order or a court order to an entity that's currently under investigation. If we're going to be asking about details of their possible criminal enterprise, we cannot even serve them with something like that.

We have to take into account the information we're receiving. In the way our investigations flow, there's more than just evidence of the offence that we are trying to collect, and there's precedence in that. When we write the search warrants for a computer system, for example, we're searching for evidence of the offence—let's say photos, emails or something like that—but we're also searching for evidence of something like the use of a particular device or the use of an account.

In terms of what can be provided to us regarding services, a lot of the time we're trying to corroborate and establish who might actually be behind or in control of the unknown that we are trying to establish. This does happen. For example, when we write a production order for a home service and obtain information that a second security system service has been purchased, we do a follow-up production order to obtain the location of that. We identify other homes belonging to the individuals. We identify other operations or facilities they may have that they're obtaining services for.

For us, it's about the importance of being able to establish not only evidence of the offence but also other potential sources for evidence we could write about going forward.

Jacob Mantle: Is there anything you'd like to add, Mr. Burchill?

• (1710)

Richard Burchill: No. His example would illustrate what.... I hope it answers your question.

Jacob Mantle: Yes, it does. It confirms part of my discomfort with the current clause, which is that it's being left open-ended. The scope of subscriber information could potentially be quite broad; therefore, there could be different privacy interests at play. I don't think that's the best balance, I'll say, between providing law enforcement the right classes of information to identify what services we're providing and potentially going to the next step of getting the production order and protecting certain privacy interests that Canadians, in my view, reasonably have.

To summarize, that's why I think this subamendment to create an exhaustive list is necessary, and that's in keeping with the Privacy Commissioner's recommendation to narrow the list of subscriber information to a finite list.

Thank you, Ms. Gibner, Mr. Wong, Mr. Burchill, Mr. Gilkes and Mr. Nashef, for your comments.

I'll leave it there.

The Chair: Thank you.

Your points have been well expressed and well understood.

Next is Madame DeBellefeuille, to be followed by MP Au.

[Translation]

Claude DeBellefeuille: I actually want to comment on the amendment, Mr. Chair.

I thought my amendment was a reasonable compromise regarding clause 4 of the bill. By removing the word "including", I think the subamendment is too restrictive and is not consistent with the intent of what the commissioner had proposed. I will therefore be voting against the subamendment.

I'm eager for us to get back to my amendment, because I didn't get a satisfactory answer as to why you think it would be so terrible to adopt the amendment and, above all, restrict the services provided somewhat. That's really what's bothering me.

As soon as we're done discussing the subamendment, I would like the floor to discuss my amendment.

The Chair: Thank you.

We now go to Mr. Au.

[English]

Chak Au (Richmond Centre—Marpole, CPC): Thank you, Mr. Chair.

I will speak directly to the subamendment. I'm in support of the subamendment. However, before I go on, I have to share some of my observations, and I want to seek your guidance in the process.

I think we are going in circles. I wonder whether we can move fast enough to produce a workable, acceptable and balanced piece of legislation for the sake of public safety. My feeling is that right now we have opinions from only one side. We are talking about trying to get a balance. I know this is what we are supposed to do. We have a piece of legislation in front of us. We have different views. We have people who are in favour. Some people who are in a different group might say, no, this is going too far.

What I observe here is that even though our witnesses said they are not here to advocate for the passing of the legislation as is, actually they are, because they will be the users and consumers of this legislation if it passes. I can understand that from their perspective of what they should have, the more, the better in terms of authority, power and convenience. On the other hand, we have received lots of submissions from civil liberty groups and service providers, and they have a very different view. They have concerns. They have worries. They have also expressed some limitations of this bill if it is passed.

What we have here today, as we had last week, is that whenever we raise a question, we get almost a rebuttal that this is not working, this is not the right thing or this is not the right approach. That is not what I would like to have. That's why I support the idea that we should at least have the Privacy Commissioner present to answer some of our questions. Yes, he made a presentation before, and he was mentioned by other people in their submissions, but that's different from having him present. New questions, new perspectives and new insights have been raised.

We need to have a balance of opinions and need to have people here who can give us another perspective so that we can actually strike a balance.

• (1715)

Anthony Housefather: I have a point of order.

The Chair: Mr. Housefather.

Anthony Housefather: Mr. Chair, Mr. Au has been speaking for five minutes now and hasn't dealt with the subamendment at all. He's relitigating a motion that was defeated by the committee at the last meeting. Not once has he spoken to the subamendment in question. This is not within the scope of how we deal with clause-by-clause.

The Chair: That is well noted. Thank you.

MP Au.

Chak Au: My suggestion is to be a bit more patient. I'm coming to you—

Sima Acan: It's been 75 minutes.

Anthony Housefather: We've been here for an hour and 40 minutes, and we haven't gotten through one subamendment.

Chak Au: Let me tell you more about my background. I'm not a lawyer, so I'm not going to make long speeches. You don't have to worry about that. I'm a family therapist. I'm trained to listen to both sides. I'm used to it.

That's where I'm coming from. That's why I made the statements I did earlier.

Sima Acan: It's been 75 minutes of listening.

Chak Au: Well, the more you interrupt me, the more I have to explain myself. Is that not the case?

The Chair: Let's focus on the subamendment. Let's also respectfully listen to what the content of the input will be.

Chak Au: That's why I said at the beginning that I am in support of the subamendment. I said that last time. We need to have a clear definition of what we are seeking. This is also what civil liberties groups are asking for and what service providers are suggesting. I mentioned last time that we should limit and be clear about the information we are seeking and have a clear definition.

With that, I have expressed my opinion.

The Chair: Thank you, MP Au, for having done that.

[Translation]

Shall the subamendment to BQ-3 carry?

(Subamendment negatived: nays 7; yeas 4 [See *Proceedings of Minutes*])

The Chair: We are now back on BQ-3.

Go ahead, Mrs. DeBellefeuille.

Claude DeBellefeuille: I don't know if you've noticed, but I'm putting a hand over my ear. It's not because I'm hearing impaired. It's because, when Mr. Mantle speaks English, I hear him in my right ear and I hear the interpretation in my left ear. If I don't cover my ear, I think I might go crazy. I don't want to sound like I have a problem. I just want to explain why I'm doing this.

It's the same thing when witnesses are too loud, sometimes. It's not your fault, Mr. Mantle. You're sitting close to me and you have a strong voice. You're a good speaker.

All that said, I'd like someone to explain something to me.

Mr. Wong used a great expression at our last meeting: he talked about a fishing net, as opposed to a fishing rod. I like the image. He said it was as if Bill C-22 allowed for the use of a large net and, as a result, increased the odds of catching fish, that is to say criminals, compared to using a fishing rod, which is more complicated.

I don't know about you, but when I analyze things in life, I always draw a line where on the one side is what's unacceptable and, on the side, what's ideal. In my life, I always try to lean towards what's ideal, but I often settle for what's achievable.

Now, I'll tell you how I feel about the amendment that the Privacy Commissioner recommended. It's as if he's telling law enforcement he understands they've wanted legal access for 30 years and that, now that they might get it, they want the big net right away, without compromise. They should eat the elephant, or the whale, to stay with the fishery imaging, one bite at a time.

When I ask law enforcement what my amendment would change, they say it would make things more difficult, more complicated. The Privacy Commissioner's objective is surely to restrict things a bit. The wording he proposed is clearer on the type of services.

We talked a lot about aliases at the last meeting, but I'm much more interested in the information on the services provided. At some point, there's a limit to allowing access to an exhaustive list of services provided.

Regardless of how many times I ask law enforcement, I know they'll tell me the current wording of the bill is better than the amendment, because it would allow them to do more. However, if my amendment were adopted, the bill would still give law enforcement access to information to which they don't currently have. That would be a plus. Am I wrong, Mr. Burchill?

• (1720)

Richard Burchill: I'm sorry, can you repeat the last part of the question?

Claude DeBellefeuille: Would the amendment, as drafted, give you access to more information than you currently have access to? Would that be an improvement? It wouldn't give you as much access as the definition proposed in the current version of the bill, but would it be a plus compared to what you currently have? I don't know how the expression "*un plus*" is being interpreted or how it could be translated. Is that an advantage? I don't know how to summarize my question. I don't know how that was interpreted.

Richard Burchill: I'll ask my colleagues from the Department of Justice to help me answer.

As I understand it, under the proposed order in the bill, the information we have access to is more restricted. We only have access to a certain type of information at the moment.

My colleagues from the Department of Justice could help me explain the difference compared to what we have access to at the moment.

Claude DeBellefeuille: That's not the answer I was looking for. I don't really understand what you're trying to tell me.

I'll clarify my question. My proposed amendment is in line with the Privacy Commissioner's proposal. Even if it's a little more restrictive, isn't it a plus compared to what you have access to now?

Normand Wong: I'll answer in English.

[English]

It's not a plus because currently police use the general production order. In other motions that are coming up for discussion, you're also proposing to raise the level of judicial scrutiny, the test for it. It goes counter to the objective of the bill, which is to provide police with timely access to data. This would, in fact, give them less than they're currently getting under a general production order.

The idea of the more precise tool is to give them information that is consistent, as Ms. Gibner said, with other information that's available under "reasonable suspicion" already in the Criminal Code that relates to subscriber information. Your amendment would give them less than they're currently getting, and even with your other proposed amendments, if it were to stay the same, it would give them less than they're currently getting.

• (1725)

[Translation]

Claude DeBellefeuille: I don't know if I understood you correctly. I have no doubt the Privacy Commissioner's team is competent in this area. They have a legal department. In fact, Mr. Dufresne is himself a lawyer. However, you're telling me he and his team knowingly proposed amendments that would undermine the work of police officers. That's troubling. I have a great deal of respect for the commissioner, and I'm saddened that he's not here to make his case or share his point of view, or that he doesn't even have the opportunity to say he was wrong if that's the case.

What you just said is a big deal. I'm troubled by that. I don't know if you're familiar with this Quebec expression, but you're

telling me the commissioner is "*dans les patates*", which means he's completely out in left field. What you just said is pretty big. I don't know how the expression "*être dans les patates*" is rendered in English, but it's very colourful in French. It means being completely wrong. I think that's a very strong statement, Mr. Wong. I'm shaken to hear you say the amendment would undermine the work of the police. I'll have to take your word for it, but I still doubt that. If the commissioner was here, I could ask him questions and I'd be satisfied.

I'm going to stop asking questions, because I'll basically keep going in circles. You're going to keep repeating the same thing. Deep down, what I'd really like to hear is the commissioner's answer. This little legal battle would allow me to better understand what the commissioner had in mind when he proposed this. He proposed eight amendments. I can't believe his entire team got it wrong. His intent was not to undermine the bill or lawful access.

Thank you for your heartfelt answers to my questions.

Mr. Chair, I'm done with my remarks.

The Chair: Thank you, Mrs. DeBellefeuille.

Mr. Mantle, you have the floor.

[English]

Jacob Mantle: Thank you, Mr. Chair.

I want to follow up on a point from my colleague. I'm going to put this back to you because I want it on the record.

Mr. Wong, your view is that the Privacy Commissioner's recommendations are counter to your understanding of the purpose of this bill. In fact, it's worse than that. The Privacy Commissioner's amendments are redundant, because you would be back in the same situation of getting a general production order.

Normand Wong: Yes.

Jacob Mantle: I think that warrants a response from the Privacy Commissioner, who might want to respond to that.

I have another question for you, Mr. Wong. You mentioned briefly reasonable suspicion and that there are other provisions in the code where that is used. I'm not an expert, and I didn't practise criminal law. I had to take criminal law in law school, and that's the last time I touched it, thankfully.

Could you just explain a couple of examples in the Criminal Code where that standard is used? You mentioned in your response that otherwise we're just back to what you would get under the general production order, which is the higher standard. What are some specific examples in the code that use that?

• (1730)

Normand Wong: There is only one production order under reasonable grounds, I believe, and that's the general production order. There are, I believe, four production orders currently and maybe even specified dates—no, that's reasonable grounds to believe. For trace specified communications, that's a transmission data production order.

To go back to your earlier question about Bill C-13, these all came about in Bill C-13. That's section 487.015, and section 487.016 is the production order for transmission data. The production order for tracking data is section 487.017. The financial data production order, section 487.018, which Ms. Gibner talked about, has been in the Criminal Code since 2004. That includes not only banking information but the customer's name and address and the type of subscriber information that we're talking about currently in the subscriber information production order. All of those things are under the reasonable suspicion standard.

Jacob Mantle: Thank you. That's helpful.

I thought you might go to the transmission one, because that's the one I'm aware of. I suspect that we will return to that in our discussion and debate on the different standards, because I think we may take a different view on what transmission data is versus what is being proposed in subscriber information.

One of the other points the Privacy Commissioner made with this list needs to be dealt with in the list before we get to the standard. If the standard is not changed, the Privacy Commissioner makes the argument that the problems with the definition will be magnified because other portions of part 1 rely on that definition. The Privacy Commissioner makes the argument that because the production order for subscriber information after you get the confirmation of service, which relies on the same definition, can be served on any person who provides service, that means that in some of the cases, service providers are going to be required to provide all—it refers to all—the information in the chapeau.

What do you say to the critique that this definition compounds the problem because the subsequent production order for subscriber information would then rely on the same definition, which is very expansive?

Normand Wong: I will refer back to what Ms. Gibner previously answered on the balancing of privacy interests with what police need.

We're not on this clause yet, but in the way the subscriber information production order is constructed, it's based on the definition that we've already dealt with. We've tried to include the information that police need in an investigation, but the way the production order works is that the service provider would provide that information in relation to something else. That's in relation to the phone number or the IP address that the police have obtained because they're investigating a crime.

Jacob Mantle: Thank you for that. I don't think that answers the critique of the Privacy Commissioner, but I want to reiterate, and will continue to reiterate, that this is why I think we can come to a reasonable place on part 1. I clearly have some differences of opinion on some of the amendments, but as Mr. Caputo said, I think we can come to a reasonable position on part 1, which, as we've heard, would be helpful.

I will reiterate that our offer remains on the table for the members opposite to consider as we move through part 1, especially as we move through the current BQ-3 amendment and the other amendments. With some reasonable amendments, which we're debating, we could arrive at a place where we could pass part 1 and then continue the discussion that clearly needs to continue on part 2. I think that's a reasonable off-ramp. We've offered that and you could—

• (1735)

Jacques Ramsay: I have a point of order.

[Translation]

The Chair: Go ahead, Mr. Ramsay.

Jacques Ramsay: Are we still discussing the amendment, Mr. Chair?

[English]

The Chair: The point is—and, again, the chair needs to be careful—we've heard those arguments before.

MP Mantle.

Jacob Mantle: Thanks.

I would just remind members opposite that every time you do that, you're going to make this longer. You're operating against your own cause there.

I was just saying that these amendments are important. If we can read a reasonable position on them, we can pass part 1, which would be helpful, and then we can continue discussing part 2.

The Chair: Thank you very much for that.

[Translation]

Is it the will of the committee to adopt amendment BQ-3?

(Amendment negatived: nays 6; yeas 5)

(Clause 4 agreed to on division)

(On clause 5)

The Chair: Let's move to clause 5.

Amendment NDP-2 is deemed moved.

Ms. Kwan, you have the floor.

[English]

Jenny Kwan (Vancouver East, NDP): Thank you very much, Mr. Chair.

With regard to this amendment, I note the International Civil Liberties Monitoring Group and the Canadian Chamber of Commerce have raised concerns with respect to production order thresholds, saying that “reasonable grounds to suspect” is an unreasonably low standard, particularly given the Supreme Court of Canada’s findings regarding the high potential sensitivity of subscriber information, which has been described as “narrow in scope” but in fact is incredibly revealing about “personal aspects of an individual’s life”.

With respect to the standard, this amendment replaces the language “reasonable grounds to suspect” with “reasonable grounds to believe”. Doing so in all provisions regarding subscriber information, production orders and real-time device tracking authorizations will set a standard that requires the probability of a crime rather than a mere suspicion before they can map a citizen’s movement or demand identifying logs.

I hope committee members will support this amendment. I note that others have also advanced exactly the same amendment.

[Translation]

The Chair: Thank you, Ms. Kwan.

Mr. Caputo, you have the floor.

[English]

Frank Caputo: Thank you.

To the officials, on “reasonable grounds to suspect” versus “reasonable grounds to believe”, is there an analogy to be drawn with section 495 of the code as to the powers to arrest and the reasonable and probable grounds to make an arrest?

Jacob Mantle: On a point of order, I don’t mean to interrupt my own colleague. I just wanted to clarify something with the chair.

Ms. Kwan made the point that other amendments are similar, and I just want to get your view on how other similar amendments would be affected if this is passed or defeated.

The Chair: That’s a good question. There’s no impact on the subsequent amendments.

Jacob Mantle: Thanks.

Frank Caputo: Boy, I had a really good thought going there.

Section 495 of the code, as I recall, governs reasonable and probable grounds to make an arrest, and that is based on “reasonable grounds to believe”, as I understand it. Is there any connection between the powers of arrest versus the reasonable and probable grounds to believe? In other words, are they on the same standard?

Would section 495 operate on the same standard as “reasonable grounds to believe” if we were to adopt this amendment? I suppose that is a better way to put it.

● (1740)

Normand Wong: No. One is “reasonable suspicion” and one is “reasonable grounds to believe”.

The arrest without a warrant is a big power of the state to apprehend someone. What we’re talking about here in clause 5 is the confirmation of service demand.

We’ve provided information to committee members before to the effect that, in every other country, they don’t need this tool because service providers say “yes” or “no”, whether or not they have information. The issue in Canada is that we have service providers who require a court order any time they talk to the state.

The information is also “yes” or “no”, and this was changed from Bill C-2 to Bill C-22 after consultation. The impact on privacy and a person’s rights is far less. In fact, it impacts a service provider just to confirm whether or not they provide service to a telephone number or an IP address. The standards are different.

Frank Caputo: Well, I understand that. I’m not sure I articulated my question properly.

Right now, we’re debating the standard on which a production order should be granted or not. If I understand Ms. Kwan’s amendment, it is to take it from “reasonable grounds to suspect” to a “reasonable grounds to believe” threshold, unless I’m looking at the wrong threshold.

Normand Wong: Chair, may I intervene? I think we’re talking about clause 5—are we not? That’s on the confirmation of service demand.

The Chair: Yes, we are.

Normand Wong: Thank you.

Frank Caputo: Okay, I must be looking at the wrong thing on my chart. I’m going to consult the amendment directly for a moment.

The Chair: In the meantime, we have MP Lloyd.

Dane Lloyd (Parkland, CPC): I believe this is about clause 5.

I was wondering if the officials could tell us what the substantive difference in an investigation would be if it were changed from “reasonable grounds to suspect” to “reasonable grounds to believe”? What’s the practical reality for a law enforcement officer in terms of the time put into something that requires a threshold of grounds to believe as opposed to grounds to suspect?

Kimberly Gibner: I’m sorry. I’m not sure we know who you are directing the question to.

Dane Lloyd: It would probably be most appropriately directed to people who are in law enforcement, but if they don't have the answer, then perhaps some of the officials could answer.

The Chair: The question is about the difference between....

Dane Lloyd: In terms of getting a court order to get subscriber confirmation, what is the practical difference in terms of the time and effort thresholds that have to be hit by law enforcement when we're dealing with "reason to suspect" versus "reason to believe"?

Richard Burchill: I'll start, and then I may ask my colleague if there's an operational example that may reinforce what I'm going to say.

With the way the legislation is proposed now, "reasonable grounds to suspect" is for a constellation of facts that you have possession of, and it's at the very beginning of an investigation. You're still trying to link a criminal to a crime where there's a victim. The confirmation of service demand is simply about having enough facts, which you need to document and are disclosable in court, to say, "Do you service this person, yes or no?"

You get your answer, and then you build on that. There has to be investigative work done to support what you've already found out, in addition to any other investigative avenues you have, in order to get subscriber information to try to link somebody to the crime that you're investigating.

• (1745)

Dane Lloyd: I understand what the purpose of the confirmation of service demand is. What I think you're saying is that the evidentiary requirements would be higher for "reason to believe" versus "reason to suspect".

Richard Burchill: Yes, but reasonable grounds to suspect for the production order as the next step is.... In what you were asking, I think your point was about what the difference in time is. There are no new powers, per se. This relates to Madame DeBellefeuille's question as well. As proposed right now, the production order for subscriber information has a much narrower scope that you're looking to get at the beginning of an investigation, as opposed to going through the process of getting reasonable grounds to believe for a general production order, which gives a lot more information but also takes a lot more time. The purpose of these orders and the reasonable grounds to suspect is the timeliness and access to the information at the beginning of an investigation.

I hope that helps. If there's an operational example that could assist, maybe my colleague can help. I hope that answers your question.

Dane Lloyd: Thank you. That somewhat answers my question.

I know there are Canadians watching who might not understand this as much, and I'm learning myself, but to be clear, this is purely about "reason to suspect" versus "reason to believe". This is about the court authorization that is necessary to receive a yes-or-no answer from the telecom companies or the electronic service provider. That is the confirmation of service. Is that correct?

You're nodding your head, so I'll take that as being correct.

Richard Burchill: I'm not sure what the question is. You're talking about the confirmation of service demand and about reasonable grounds to suspect to ask that yes-or-no question.

Dane Lloyd: Yes.

Richard Burchill: That's my understanding of the legislation as proposed, yes.

Dane Lloyd: Does anyone else have a different understanding of that?

Normand Wong: I'm not going to disagree with that articulation except to say that there's no judge involved. It's in the mind of the police officer. He has to have reasonable grounds to suspect before he can ask this of a service provider.

Dane Lloyd: Is that something that's subject to judicial authorization?

Normand Wong: No, but all of these non-warranted tools, like the exercise of an unwarranted power in the Criminal Code, always receive extra scrutiny when it comes to the prosecution. Any time a police officer acts without judicial authority or exercises powers that usually come with judicial authority, there will be a heightened level of scrutiny in terms of bringing the evidence forward. As Chief Superintendent Burchill said last week, the last thing the police want to do is jeopardize a case. They make sure they have those grounds before they act.

Dane Lloyd: Thank you. I'm actually a bit more concerned now than I was when I began my line of questioning.

Voices: Oh, oh!

Dane Lloyd: What accountability mechanisms are in place? You're saying that law enforcement doesn't need to require any judicial authorization when they have a reason to suspect. What's stopping law enforcement from just spamming every ESP to ask whether this IP address or this person is a customer of theirs? What accountability mechanisms are in place for that?

Normand Wong: The framework for the confirmation of service demand is built as a back-and-forth between the service provider and the police officer in order to get the information the police need. The service provider has the ability to respond or say they're not going to respond, or change the timelines because they might not be reasonable, depending on what type of service is being asked to confirm. The scheme is built with that co-operative approach, as are all the production orders in the Criminal Code. They're meant to be served on co-operative third parties.

Dane Lloyd: Something that was said earlier, by either you or one of the other witnesses, was that the reason you needed to bring this forward was that there are stakeholders out there who require a court order in order to respond, but you've said that "reason to suspect" doesn't require a court order. To me, that sounds like it's conflicting.

Normand Wong: There are reasonable suspicion production orders that require court supervision. There's an existing preservation demand that uses reasonable suspicion in the Criminal Code that police officers use as well. That's been there for many years.

The preservation demand itself, or the confirmation of service demand, will not require a court order, so it doesn't have judicial oversight. As I was explaining before, in terms of the paper they want, it's basically for indemnity from liability. The service providers want to be compelled to do something. They don't want to be seen as being complicit with the state.

• (1750)

Dane Lloyd: Perhaps this will be my final question.

You said that as part of this back-and-forth, a company may decide not to respond to a request for confirmation of service. What would happen in that case? What would be the next step in that process?

Normand Wong: There is a scheme that allows them to either respond or object. If they simply do not respond, there is a penalty scheme built in as well.

Dane Lloyd: What if they object?

Normand Wong: If they object, the clock stops. Until the matter is resolved, they don't need to confirm or deny whether they provide the service.

Dane Lloyd: Thank you.

[Translation]

The Chair: Thank you, Mr. Lloyd.

Mr. Au, you have the floor.

[English]

Chak Au: Thank you.

My colleague asked my first question regarding whether or not there's a channel for service providers to dispute or to not provide. You answered the question.

Again, we are talking about keeping a balance here. I understand that law enforcers want more power and more convenience, but on the other hand, other groups, like civil liberty associations and service providers, have other concerns.

I want to ask a question about the duty to inform. If a service provider provides the information requested and, after the investigation, law enforcement feels the guy is not a suspect, is there a duty for the service provider to inform the person involved, or a duty for the police to inform?

Normand Wong: There is no positive duty for the police to inform, but there is an ability within the scheme to order non-disclosure if disclosure would impact the investigation.

Because they're under privacy legislation, there is a positive duty to inform a customer if anyone has asked for their information. To counter this, there is the ability to impose a disclosure restriction within the confirmation-of-service demand. This is valid for a year. If it needs to be extended, it would have to be extended by a court.

Chak Au: Are you saying that if a person is not informed, he could be kept in the dark forever?

Normand Wong: Yes, I think that may be a possibility. As we talked about, a lot of these tools are used to figure out who the suspects are, who the innocent people are and who the victims are. If someone is an uninterested person, the police would not follow up, and the person would probably not follow up on whether the police inquired.

Chak Au: When a company enters into a service agreement with a customer, what if there's a provision that says there's a duty to inform or get consent to release personal information as required? If there is such a service agreement between the company and the customer, it would put the company in a conflict, because you're compelling them to provide that information. Is that not the case?

Normand Wong: That is the case, but, again, the framework allows objection based on certain grounds. One of them is "otherwise not"—if you're prohibited from disclosing for some other reason, including by law. I'm not sure contract law would override the Criminal Code in this case, but they would have the ability to object on that basis.

• (1755)

Chak Au: If I understand you correctly, you seem to be implying that a company has the right to object to or withhold information, and there is no consequence for that company.

Normand Wong: If the company does not provide the information or respond to the demand, there are consequences. However, there are off-ramps for that company if they don't think the disclosure is consistent with their legal obligations, so they could object. That's when the scheme kicks in and the clock stops, and then a judge will hear whether or not their objection is reasonable.

Chak Au: In that case, would it not make your legislation useless? You keep telling us that it's because of urgency, the time and the need for a fast response that you need the information right now, immediately, before the guy is gone. Hypothetically, if a company chooses to delay by not responding, there may not be a consequence. What is the use of the legislation if you cannot compel? You want to ask for fast information, but if there's such leeway, if I can call it that, for a company to delay, what's the use?

Normand Wong: Going back to one of my previous responses, these schemes—the confirmation of service demand and the production orders—are to be used with co-operative third parties that police have long-standing relationships with. If a service provider is not co-operative, police have other tools they can get. They could get a production order that compels, or they can get a warrant that authorizes them to do the work themselves. There are other means of doing this.

Again, this is a tool to be used with co-operative third parties. It provides those third parties with a piece of paper that indemnifies them because they're responding to a state request. It satisfies their needs and hopefully satisfies the police's needs as well.

Chak Au: I have doubts about the effectiveness of the legislation as written.

I have two more questions.

In the case of a company that might be operating internationally, if there's a conflict of jurisdiction between countries and the company is bound by another jurisdiction not to release that kind of information, what will happen?

Normand Wong: It's the same response as when they have a conflict of laws for contractual reasons. If they have a jurisdictional conflict of laws, they could also object because they're not allowed to release the information for those purposes. It's the same process. The clock would stop, and a judge would hear whether the objection and the conflict of laws were reasonable.

Chak Au: The last question I have I raised last time.

There's temptation when you're given power: You have the tendency to use it more and more. What measures in the legislation or through other channels would forbid law enforcers from the overuse or abuse of that kind of authority?

Normand Wong: On the confirmation of service demand, I'm not sure of the exact figures. There is a large segment of the telecom sector that provides this information without any piece of paper, because they don't see it as being privacy-invasive and want to give assistance to police. The portion of the industry that requires a piece of paper instead of a production order—and the only one available for this type of information currently is a general production order, which is quite difficult to obtain—would be subject to this new confirmation of service demand. It's a new tool. We don't know how often it's going to be used. I think there are other amendments later on that are asking for some sort of review, so if those pass, the proof will be in the pudding, so to speak.

• (1800)

Chak Au: You reminded me of another question. Are you saying that you have no estimate for how many times this legislative power will be used? You have no idea how many times in the future this authority will be used.

Normand Wong: I don't, but perhaps the law enforcement officials here might have some idea.

Chak Au: Can anybody answer the question?

Richard Burchill: It's pretty hard to look into the future to see how much it would be used, but this investigative technique is already used in every investigation across the country as we speak.

The added piece to this particular confirmation of service demand that's different is that it documents our request and then that goes on the investigative file, which is disclosed in court. There will be more scrutiny to these requests than there currently is.

Chak Au: Based on your previous experience in law enforcement, what would be your estimate? Can you say, "From my experience, I can say that perhaps five times in the past, I could have applied these new measures in order to facilitate my investigation"? Just give me some general idea; that's good enough. I'm not asking for statistics per se.

Richard Burchill: I think it would be problematic to try to make a guess like that. I couldn't even come to a number for you that would be in the realm of reality at this point. That's trying to look into the future to say how often we would do a confirmation of service demand and document that for the file.

I wouldn't be able to respond to that for you today.

Richard Bilodeau: It's also hard for them to answer for all the different policing jurisdictions across the country. They wouldn't necessarily have line of sight on that.

Chak Au: I understand.

Thank you.

The Chair: Mr. Nashef, do you want to step in?

Ramzi Nashef: I was going to add a little point there, but my hand up to my colleagues didn't really work.

Maybe I'll give you, MP Au, a bit of colour from our perspective.

The intent is to continue to try to go voluntarily in this space, especially after the 2014 Spencer decision we talked about. I can speak for us in saying that the stickiness, so to speak, to use Norm's example of those who need a piece of paper, has largely been in the telecom sphere. What this does for us is give us a backstop so that if we can't get it voluntarily, we have the authority. It's hard to say the number because it would depend on whether that stickiness persists or whether, because it's legislated, we get less of that. It is the response that would dictate that.

The Chair: Thank you.

MP Caputo is next.

There's no pressure, MP Caputo, but when you're done, we'll stop and suspend for a few minutes for dinner.

Frank Caputo: I was actually going to suggest that we suspend now.

The Chair: It's not ready yet.

Frank Caputo: Oh, okay. Well, there's no pressure, then, at all.

May I ask, Mr. Chair, before I start, whether we have a cut-off time of 7:30?

The Chair: I'll check with the clerk whether we have resources after 7:30.

Frank Caputo: It would be helpful if we knew. I know the meeting started late. I think it would be helpful for all of us. I don't mind working, but I think it would be helpful for all of us to know when the meeting is expected to end.

I'm going to come back to what I was saying earlier.

I pulled out the provision I noted when I was speaking with Mr. Wong. The point I was trying to make is that right now proposed subsection 487.0121(2) says:

The peace officer or public officer may make the demand only if they have reasonable grounds to suspect that

(a) an offence has been or will be committed under this Act or any other Act of Parliament;

Ms. Kwan's NDP-2 would change it to "reasonable grounds to believe".

If we look at the Criminal Code, under section 495—this is the point I was trying to make—we see that it says:

A peace officer may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;

There's the parallel I'm trying to draw. Section 495 talks about arresting on reasonable grounds to believe. Ms. Kwan's amendment talks about making a demand on reasonable grounds to believe. I hope the parallel there is fairly clear. I'm drawing that parallel because "reasonable grounds to believe" has been defined in the case law—for arrest, anyway—as being below a prima facie case. It's been a few years, but my recollection is that a prima facie case is a fairly low threshold in law, certainly below a 50% threshold.

The point I'm trying to get to is this. Given all of that, is the "reasonable grounds to believe" threshold all that high? I get that it's higher than "reasonable grounds to suspect", but if in the context of arrest it's below a prima facie case, could it be said that in this context, given Ms. Kwan's amendment, it's actually not that high of a threshold?

Am I making any sense here?

• (1805)

Kimberly Gibner: Mr. Caputo, if I can answer the question, you're making complete sense. What I would say is that the standard to ask somebody if they have provided services to Kim Gibner, yes or no, should be a different standard than for somebody who's being arrested.

Frank Caputo: I understand that's different, but if we adopt Ms. Kwan's amendment, the threshold under, say, section 495 is "reasonable grounds to believe". The threshold under proposed section 487.0121 would also be "reasonable grounds to believe". Do you get what I'm saying here?

Kimberly Gibner: "Reasonable grounds to believe" is everywhere in the Criminal Code, if that's what you're—

Frank Caputo: Okay. Therein is my point. "Reasonable grounds to believe" in the context of section 495 is below a prima facie case. That's a fairly low threshold, in my view. It's above a hunch and above "reasonable grounds to suspect", but if we're articulating it as below a prima facie case under section 495, would it not be below a prima facie case under proposed section 487.0121?

I hope I'm not getting too technical, but that's my point. I'm trying to deduce exactly what the threshold of "reasonable grounds to believe" actually means.

Kimberly Gibner: Mr. Caputo, I apologize. I don't understand your question.

Is "reasonable grounds to believe" a high threshold? It is the Criminal Code threshold used for many things—as you pointed out, to arrest someone and to search your house. The standard has been described in many different ways. We can go over some of the language that describes what are reasonable grounds.

"Reasonable grounds to suspect" is a standard that is also above a hunch and has discernible facts that an officer would have to set out. "Reasonable grounds to suspect" is a standard that has been approved by the Supreme Court of Canada. It is in the Criminal Code. For the confirmation of service demand—"Do you provide services to Kim Gibner, yes or no?"—"reasonable and probable grounds" was determined to be too high. It's not the same thing as searching your home. It is less intrusive information, so "reasonable grounds to suspect" was put before you to be the right standard.

Frank Caputo: Perhaps I'm not articulating myself here correctly, Ms. Gibner, because what I'm getting at is what is in Ms. Kwan's amendment. Ms. Kwan's amendment was moved, and that is NDP-2.

Are we not on NDP-2 right now?

A voice: Yes.

Frank Caputo: Okay. That's where I think we're getting our wires crossed. I worry, because Ms. Kwan's amendment says—I have it right here—"demand only if they have reasonable grounds to believe". The parallel I am drawing is that "reasonable grounds to believe" is used throughout the code.

If we accept this amendment, "reasonable grounds to believe" will be in the subscriber demand section. "Reasonable grounds to believe" under the arrest provision has been interpreted to be below a prima facie case.

Are you with me so far here?

• (1810)

Kimberly Gibner: Yes.

Frank Caputo: Okay. If “reasonable grounds to believe” has been articulated as below a prima facie case when it comes to arrest, would it not be similarly interpreted to be below a prima facie case on “reasonable grounds to believe” when it comes to Ms. Kwan’s amendment?

Do you get what I’m saying?

Kimberly Gibner: Yes.

Frank Caputo: Is there an analogy to be drawn in the interpretation?

Kimberly Gibner: I’m not answering your question. I’m not being of assistance to you. Maybe Mr. Wong will take a run at that.

Normand Wong: I think I understand your question now.

The contexts are completely different. One deals with section 8 of the charter: invasions of privacy and whether or not they’re reasonable. The standard used there is “reasonable grounds to believe” or “reasonable grounds to suspect”. When you’re talking about section 495—and forgive me, but I’m not an expert in arrest powers—to me, it’s not about section 8. It’s about section 7 and other issues. It’s about your freedom. It’s about public safety and risk.

There are other factors to consider in those cases, and prima facie is not a standard that we use in terms of investigative tools. Maybe that’s why we were a little confused on that. The “reasonable grounds to believe” in section 495 would have to be read with the law around habeas corpus in section 7 and not with respect to section 8 and invasions of privacy.

Frank Caputo: That’s a fair comment. You’re right. Section 495 engages section 9, which is the right to be free from arbitrary detention.

The reason I’m going there is that I’m trying to determine what this threshold actually means. What does “reasonable grounds to suspect” mean versus “reasonable grounds to believe”? That’s what I’m getting at.

In the arrest context, it is a personal subjective belief that is below a prima facie case that is objectively reasonable. That’s my reading of what the Supreme Court of Canada has said.

Where does that leave us, then? What is “reasonable grounds to believe” in this context, in your view, versus “reasonable grounds to suspect”?

Normand Wong: This isn’t necessarily my view, but there’s lots of legal literature out there on this.

In earlier hearings, when we appeared here after the bill was introduced, I believe you mentioned that “reasonable grounds to believe” is below “a balance of probabilities”. There are a lot of legal scholars who talk about that threshold. The top of the pyramid would be “beyond a reasonable doubt”. The civil standard “balance of probabilities” is somewhere in the middle, and the highest standard in the Criminal Code, for investigative purposes, is “reasonable grounds to believe”. It’s somewhere below “a balance of probabilities”, but it’s above “reasonable suspicion”.

Frank Caputo: I see. That’s helpful, because I took earlier comments to state that “reasonable grounds to believe” was above “a balance of probabilities”. I think that’s very important. I know this

sounds very nuanced and like we’re just hammering at something, but the degree to which somebody must believe is very important for the purposes of this amendment; it really is. We’re talking about “I suspect an offence might have happened” versus “I believe it has”. If it goes from a hunch to “reasonable grounds to suspect”, “reasonable grounds to believe” and “a balance of probabilities”, to me, that’s a very important point.

When I consider that, and especially when I consider the higher threshold and the issue that was brought up by professors Geist and Diab, for instance, about being worried about section 8 being engaged here—especially if you’re looking at a section 1 analysis and thinking about whether we have crafted this as narrowly as possible on the proportionality test—I’m not as uncomfortable with a “reasonable grounds to believe” threshold. It’s not that much higher than “reasonable grounds to suspect”. It’s higher, but still below “a balance of probabilities”. To me, that’s very important.

Do either of you want to comment on that? Feel free. I hope I’m not talking you or myself into circles.

Is dinner ready yet?

Voices: Oh, oh!

• (1815)

The Chair: When you’re ready, we’re ready.

Frank Caputo: I’m ready. Let’s go.

The Chair: Are you ready?

Frank Caputo: Let’s pause there.

Thank you.

The Chair: We’ll suspend for five minutes.

• (1815)

(Pause)

• (1825)

[Translation]

The Chair: I call the meeting back to order. Welcome back.

We’ll continue the debate.

Mr. Caputo, you had more to say. You have the floor.

[English]

Frank Caputo: This is very interesting stuff. I find this stuff absolutely fascinating.

The one thing that was raised with me in the break, in fairness to the officials, is these are not easy questions. I'm not pretending they are easy, because they are tough, and that's why I'm asking them. We're establishing the threshold of grounds to believe something that you suspect versus something that is probable, as in it's more probable than not in your eyes that something happened or you believe that it happened, as opposed to you think it could have happened, which I think is above the 50% when it's framed that way.

One of the questions raised to me in the break that I hadn't considered is this: Is this analysis of "reasonable grounds to suspect" versus "reasonable grounds to believe" animated or informed by the stage at which you—"you" being a peace officer in law enforcement—are in your investigation? In other words, the service demand threshold happens right at the outset. How does that impact "grounds to believe" versus "grounds to suspect"? Does that make sense? Does it being at the outset of the investigation have any impact?

Kimberly Gibner: MP Caputo, thank you very much for the question. You've absolutely hit the nail on the head.

We've talked about the calibration between privacy interests and law enforcement, as well as the nature of the tool and when the tool is going to be used. Absolutely, both of these tools, the confirmation of service especially, are used at the very beginning of the investigation, when they have very little information. They can get over the "reasonable grounds to suspect"—they have enough information to get there—but what you've heard them say is that right now they're using a general production order to get that kind of information and the subscriber information, and "reasonable and probable grounds" is just too hard to meet at the very beginning of an investigation.

As you were deliberating it, I was looking at the March 10, 2026, Juristat statistics on crime. The report notes that in 2024, 16,905 incidents of online child sexual exploitation were reported by police, and that was 110% higher than in 2018. Of those, 94% of online child sexual exploitation cases were "not cleared by police", meaning that an accused had not been identified in connection to the incidents or there was insufficient evidence to get a tool.

That's exactly what you've highlighted, MP Caputo: What we've been calling one of the least-intrusive tools out there is calibrated for the very beginning of an investigation.

Frank Caputo: Could you see a scenario, hypothetically, in which the committee says, "Okay, this is a lower threshold"? I'm speaking hypothetically here; I'm not signalling which way I would vote on an amendment.

Could it be that simply identifying a subscriber is a much lower threshold of intrusion, as you had put it, and that's why you could justify "reasonable grounds to suspect", as in a crime has possibly been committed and we just want to know whether this person is a subscriber? Then once you get to an authorization to get more data about them—that is in the production order, which is judicially authorized—could you not say, "Well, now you're getting a lot more information and therefore it could be justified that it goes to a higher threshold?"

Kimberly Gibner: I think what I said stands for the subscriber information as well. Again, we know which service provider pro-

vides the service, so now I can go to court and ask a judge or JP to authorize the warrant. Then I'm going to set out the grounds that I have to get very minimal information—name, address—to conduct the very start of an investigation, and I'm going to be able to collect some basic information.

What I said—I'm trying to be helpful to you—is how I would think through that problem.

• (1830)

Frank Caputo: That's fair enough. I'm trying to work this through, and I get that once you have the subscriber demand and the subscriber information, you're only theoretically one step further ahead once you get that authorization for the subscriber information. If I'm taking your point correctly, we're actually not that much further ahead in terms of determining whether there are now "reasonable grounds to believe" versus "reasonable grounds to suspect".

Could you settle a debate between me and my colleague? I won't say who's on what side, but let's say proposed section 487.0121 is the section we're looking at. Let's say that a court says this offends section 8 of the charter—not the way it was carried out, but the legislation itself offends section 8. Would there then be a section 1 analysis of whether or not that is a reasonable limitation on the section 8 charter right to be free from unreasonable search and seizure? In other words, do you perform the Oakes test on the legislation if it's found to infringe section 8?

Normand Wong: I think we've stated this before. Every piece of legislation that is introduced by the Minister of Justice has to be charter-compliant. That's part of his mandate. We are not the charter experts where we work. There is a unit at the Department of Justice that examines all legislation and would do the analysis that's required to make sure it's charter-compliant.

Frank Caputo: I understand that. We were just debating whether section 1 would apply, as in whether it could be saved by section 1, but it sounds like that's not your area. That's fair enough.

I'll give the floor to MP Mantle.

Before I finish, do we know what time we're finishing up here, Mr. Chair?

The Chair: We have resources until between 8:10 and 8:25.

Frank Caputo: Thank you.

The Chair: MP Mantle is next, to be followed by MP Kirkland.

Jacob Mantle: Thank you, Mr. Chair.

This is the big issue in part 1, in my view, so I'm going to spend a bit of time on it. The threshold is a key part of both the confirmation of service demand and the production order.

Before I do that, I want to reiterate that, should we be able to deal with this particular issue, which is the standard to apply in part 1—I don't know how to describe it—that would take a lot of the problems that we see off the table with respect to part 1. What we have offered already and will continue to offer the government here is to work with us on this type of amendment to part 1. If we can deal with this type of amendment to part 1, I think we can get to a place where we could start discussing part 2, which I think everybody reasonably understands is the more contentious part.

With the hope that this will happen, I'd like to seek unanimous consent for the following, Mr. Chair.

The Chair: Do you want to move a motion?

Jacob Mantle: No, I just—

The Chair: Do you want to move a motion?

Jacob Mantle: I'm not moving a motion. I'm just asking for unanimous consent right now to ask that Windscribe be invited to provide testimony in relation—

The Chair: I'm sorry to interrupt. That's a motion, and you need to have unanimous consent to move a motion. If you have unanimous consent, you can then present your motion.

Is there unanimous consent to present the motion?

Some hon. members: No.

• (1835)

Jacob Mantle: Okay.

Mr. Chair, I'd like to put a motion on notice orally.

The Chair: That's fine.

Jacob Mantle: Here is the motion: "That Windscribe be invited to provide testimony in relation to part 2 of Bill C-22, an act respecting lawful access."

I'd like to put that on notice. I don't have it translated, but I can provide that in due course, as we are just putting it on notice.

Mr. Chair, I don't believe that I need unanimous consent to ask if the committee will unanimously consent to inviting somebody to provide testimony. That's not a motion. I'm not moving a motion. I'm just asking for unanimous consent.

The Chair: Well, you cannot ask unanimous consent for something that you're freely able to suggest. If you want a motion tabled and then moved, you need unanimous consent.

Jacob Mantle: I've put it on notice. That's fine. When that comes up, we can debate it.

The committee is the master of its own procedure. I would seek unanimous consent to invite Windscribe to attend.

The Chair: I'm sorry. You can express these views. You can have a notice of motion. That's all right, but we cannot have a motion moved if you don't have unanimous consent.

Jacob Mantle: It's not a motion.

The Chair: So what is it?

Jacob Mantle: I'm seeking unanimous consent from the committee to take an action.

The Chair: Well, that's a motion. If you would like the committee to do something, that's a motion. You need unanimous consent before you introduce a motion.

You can express a view, a general view, or you can have a notice of motion.

Jacob Mantle: That is completely not correct.

Sima Acan: We're in clause-by-clause.

Jacob Mantle: The committee can do whatever it likes in terms of its process, if it decides to do so, by unanimous consent.

The Chair: No. The way the committee works—and we don't need to and don't want to; we have other things to do—is to first agree on a set of procedures. If we want to not follow those procedures, we need to have unanimous consent.

If you want to move a motion now when we are in the process of studying a motion, you need unanimous consent to be able to move a motion.

Jacob Mantle: I mean, you're the chair; you'll make your decision, but I would just say for the record that we went through the routine motions last time. There's no routine motion that defines exactly what you've just said, which is that there's a set process for this meeting. It's open to the committee to govern its own proceeding, including by unanimous consent.

The Chair: Well, you can seek unanimous consent, but you already did that a moment ago. You didn't receive unanimous consent to—

Jacob Mantle: That's great—as long as that's clear. Respectfully, Chair, it's my understanding that it's not your role to deny unanimous consent. It's my ability as a member to ask if there is. It's your role to canvass members of the committee to see whether there is unanimous consent.

The Chair: That's entirely right. It's not my role to deny unanimous consent. It's my role to seek it. It obviously wasn't there.

Jacob Mantle: Okay. Great. Then I—

[Translation]

Claude DeBellefeuille: On a point of order, Mr. Chair.

The Chair: Mrs. DeBellefeuille, you have the floor.

Claude DeBellefeuille: I'm sorry to interrupt you, Mr. Mantle.

Mr. Chair, from what I understand, we'll be here until 8:30 tonight. We could ask the witnesses if they want to eat. You could invite them to do so.

The Chair: Yes. I hope that they did. Mrs. DeBellefeuille, you're quite warm and caring. We're fed and they aren't. We believe in justice. We're a committee based on fairness and equality.

Witnesses, I hope that there's still some food left for you, if you would like to have it.

Thank you, Mrs. DeBellefeuille.

[English]

MP Mantle, would you like to continue, or should we move to MP Kirkland?

Jacob Mantle: I'd like to continue, Mr. Chair, on this discussion of the standard to apply.

I want to start with our law enforcement colleagues. I want to understand their view of the process right now through the general production order.

Can you walk me through that process today?

Aaron Gilkes: I suppose the way we would walk through a general production order is that we would have to meet certain obligations before we could actually present it to a justice, who would decide it. One of the main obligations we have to establish is that the evidence likely exists, but it's in the possession of the person or entity to whom we're addressing the order to produce. Essentially, at the outset we're trying to establish who might be in possession of the information. We essentially ask questions to whoever might be a provider in the hope that they will respond in the affirmative that they were providing services at a certain date and at a certain time. If that fails, that can end at least that point of an investigation.

To start off an investigation, it could hamper or completely stop the progress if we were unable to confirm right away that an entity held the evidence we were looking for.

• (1840)

Jacob Mantle: That's just for the confirmation of service, the subscriber information, that you're talking about.

Aaron Gilkes: I'm sorry. I thought you were asking me about our current process.

Jacob Mantle: I think I've confused it in my mind.

Aaron Gilkes: I'm referring to our current process. In our current process, we have to establish that the evidence is likely in the possession of the person we're addressing it to. We typically start off by asking questions, which is why the confirmation of service is more of a codification of our existing practices, but as my colleagues mentioned before, not all service providers respond to this.

Jacob Mantle: My understanding is that you do that now. You ask, whether it's an ISP, a tech company or some other entity, if they're providing this service. Many of them respond to those presently. I'm thinking of the companies that produce transparency reports, for example. At whatever level information is requested of them by law enforcement, they produce a report, and it's online; you can see it. For example, the Googles and Apples of the world produce them.

Is that the kind of back-and-forth that's the initial step for you?

Aaron Gilkes: Depending on the investigation, that can start off our investigation. Where we run into some issues is in establishing who might be in possession of that information. It might be a chain of providers that has it.

What can hamper an investigation as well would be, for example, when you have a reseller of IP services, and this larger provider sells its services to another provider, which resells its services to a web host, for example. According to the information you have, it

belongs to the larger provider, but if you write a production order to the larger provider, by the time you receive a response, they might say that in this case, it is actually the smaller provider that has the information you're looking for, which would lead to another production order and so on.

Jacob Mantle: That's like if Rogers resells access to a more local provider, and they provide it in a local area. Then when you ask Rogers, they're just saying it's not them. Well, it is them, but they sell that wholesale onward.

Aaron Gilkes: That's correct. They wouldn't be in possession of the actual subscriber information, but they would be in control of the IP range.

Jacob Mantle: Keep going.

Aaron Gilkes: I'm sorry.

Once we have established who is in possession of the subscriber information, we write out our information to obtain a production order, which would lay out the grounds that allowed us to believe that an offence has been committed. This information provides evidence of that particular offence.

The grounds to believe would be based on our perceptions also. For example, if you receive information like Internet logs, you might not look at them the same way I would based on our previous experience and what we know about Internet logs. Then we have to show how we attempted to corroborate the information we received, and we spell it out in a way that would make potentially anyone—or in this case a justice or judge, based on their criteria—also believe that an offence was committed and that this information will provide evidence of the offence.

Jacob Mantle: I think you embedded the discussion of the standard in your response, but maybe you could hone in for me on where the current standard comes into play for you when you start thinking.... I mean, I assume that throughout, you understand the test you need to meet to get the production order, but you didn't say, "Now we're thinking about what the standard is and what we need to meet it." Maybe you could hone in on that for me, because I want to contrast it to what's being proposed. That's why I'm asking.

• (1845)

Aaron Gilkes: If I were to give an example, it would be that Bob says he's receiving calls in the middle of the night. They're harassing calls. They are from Alice. He is able to show me a phone number that he received the calls from. Now, I have no confirmation quite yet that a crime has been committed because I haven't heard the calls that have gone through, but I do have a phone number, so I suspect that an offence may have been committed.

I can reach out to a service provider and ask if they provide services to this particular phone number. If they respond yes, then I can move on, in this case, to a subscriber information production order because I'm still not quite sure that an offence has been committed, or it's not probable. It's possible, but it's not probable yet. If I receive a response that confirms that this account belongs to Alice, I start to increase my grounds, because Bob says that Alice was the one who did it, and this account happens to come back to Alice. I'd have to do some additional corroboration, but we're on our way to building grounds to believe. It's a step-by-step process.

Jacob Mantle: How does the proposed change change that process for you?

Aaron Gilkes: It would facilitate our process greatly.

In terms of the confirmation of service, we can ask the providers if they provide services. For example, as I mentioned before with resellers, I can confirm who provides services right away through a confirmation of service demand, which can be sent out to the service provider that would possibly have this information. If they confirm that, I can move on to the next step at a threshold of "reasonable grounds to suspect", and I can immediately write a subscriber information production order. From receiving a response that much faster, I can move on with my investigation.

It's not only that it's going to confirm what I think; it could be exculpatory in eliminating the possibility that this was the individual who committed the offence. I can either end the investigation more quickly or move on and carry on my investigation more quickly.

Jacob Mantle: That makes sense.

Is the CSIS process the same or different? Is there anything you want to add on that?

Ramzi Nashef: We have nothing to add on that.

Jacob Mantle: Does anyone from Public Safety want to add anything?

This again raises the standards issue. The example you've provided on the phone number and going from there—I'm only speaking for myself at this point—seems to make some sense.

The problem I see, especially with proposed paragraph 487.011(c) under the definition of "subscriber information", is that it's contemplating a whole lot more stuff, including information that would go to the biographical core that the Supreme Court noted.

That's why I thought that clarifying the definition was important. We didn't do that, fine, but now we're on the standard. I want to get the standard correct, because if we're going to touch things more expansively than just looking at whose telephone number it is for the first confirmation of service—"Do you provide service to this telephone number?"—and then for the production order, both of which will have the same suspicion standard....

Do I have that right, Ms. Gibner?

• (1850)

Kimberly Gibner: Yes, that's correct.

Jacob Mantle: In that case, I am a lot more concerned about having the higher threshold of grounds to believe.

Maybe this next question is more of a policy question for Public Safety.

Thank you, Mr. Gilkes, for outlining your process. That's helpful, because I wanted to compare, for my benefit, the current process versus how you see the proposed process.

Maybe I could put the question plainly to Public Safety. Why did you choose to select a lower standard? Was that a conscious choice? It's in black and white. I assume it was a choice.

Richard Bilodeau: This would be a question for my colleagues from Justice, but it was a conscious choice.

Jacob Mantle: This is, again, different from previous proposals for lawful access in the past, including in Bill C-13. That did not have the suspicion standard. It had the "grounds to believe" standard.

Am I incorrect there? Okay. I apologize.

Richard Bilodeau: The Spencer decision came out in the middle of 2014. That's why. I think there's a different context today than there was in 2014.

Jacob Mantle: Okay.

This raises another point I wanted to make in response to something Mr. Wong said. He made reference to the issue that in Canada, we don't have the same process other countries do. In fairness, I think you omitted mentioning the reason we have that difference, which is that we have the Constitution and the charter. These have been interpreted to establish privacy jurisprudence around section 8.

That's important context. I've heard again and again about Five Eyes, the G7 and the G20, but Australia doesn't have a charter. They don't have the same history of protection of privacy that we do. That's a fundamental difference. I would argue that common law would give you some of this too, but they haven't gone down that path.

I just want to make the point that I don't think I heard a fair apples-to-apples comparison. I'm not suggesting that I heard all of you make it, but to finish Mr. Wong's thought on the issue in Canada, I'll say there is a difference, and it's because we have the Constitution.

Ms. Gibner, I'll go back to my question.

It was a conscious choice. Why go for a lower standard?

Kimberly Gibner: I'm going to start the answer and then pass this to my colleague Mr. Wong, because he answered your question about 2011. They set up something more akin to the international community, where it was done administratively. It didn't require a warrant from the judiciary. That might be important for you, so I'll let him speak to it. Unlike Mr. Wong, I was not here in 2011 or 2013.

To start the answer, I want us to again step back and remind ourselves and the committee that this is exactly what policy development is in the criminal law space. We think about section 8 because, as you pointed out, we have a charter. We have to be charter-compliant when we're thinking about balancing privacy rights and the needs of law enforcement.

It was a policy choice based on what we've talked about tonight: What is law enforcement seeking? What is the goal or objective of the tool? What are they trying to achieve? As we talked about earlier, these have to be calibrated when the tool is used. It's all those different factors, like the type of information being sought, when the tool is used and the nature of the privacy being intruded upon. That's how we came up with that standard.

If it assists you at all, I always like to compare. When you're looking at financial data and it's "grounds to suspect", we think, "Well, this is a bit less than that." If it's about a warrant to search your home, we think, "Well, that's reasonable and probable grounds. We're not going in anybody's house. We're just asking if Kim Gibner is a client of yours, yes or no." It's those sorts of considerations we came up with for this policy.

Mr. Wong.

• (1855)

Normand Wong: Thank you, Kim.

I would add that when we were developing the policy on this.... To underline something Ms. Gibner said, these tools exist on a privacy spectrum. We try not to reinvent the wheel. We try to compare apples with apples, not with oranges. This tool is very similar to tools that already exist in the Criminal Code.

The objective of this bill is to provide police with tools that would give them timely access to data. They already have a tool—the general production order—that they use under reasonable grounds to believe. If this were raised to the level of reasonable grounds to believe, in my opinion, you would be undermining the objective of the bill.

Jacob Mantle: Thank you for that.

Again, I want to push back a bit.

Ms. Gibner, as I've suggested tonight and will continue to repeat, I think the subscriber information that could be required, either for the confirmation of service or in the production order, especially in proposed paragraph 487.011(c), could go far beyond simply asking, "Do you provide information to Ms. Gibner?" The privacy interest that attracts, in my view, is higher, which leads me to my belief....

I'm sorry. It sounded like you wanted to jump in.

Kimberly Gibner: Yes. I just want to make sure that we're talking about the same thing.

A confirmation of service demand is without a judicial warrant. For reasonable grounds to suspect, it's just asking, "Is Kim Gibner your client?" Just to be clear, that's that one. That's all I meant about that one.

I totally take your point that within subscriber information, you've identified that proposed paragraph 487.011(c) could possibly raise different considerations. That will be for the committee to decide.

I was trying to be helpful to you and explain that we looked at the tool more broadly in terms of setting out something that was about basic subscriber information. I take your point that you're looking at paragraph (c) and saying, "What about...?"

Jacob Mantle: Just for the record, I find everything you're saying very helpful. It's not my area of practice. As you often say, you know just enough to be dangerous. I'm trying not to get myself into any danger here.

We've been talking a lot about the confirmation of service and especially the ISPs. I would like to ask the chair to canvass the committee for unanimous consent to invite DuckDuckGo, a provider, to provide testimony in relation to part 2 of Bill C-22, an act respecting lawful access.

The Chair: Is there unanimous consent for that?

Some hon. members: No.

Jacob Mantle: I'm seeing that there was no unanimous consent. Therefore, I would like to orally put that on notice as well.

The Chair: Thank you. That's well noted.

Should we move on to MP Kirkland?

Jacob Mantle: No. I'm not finished.

Some hon. members: Oh, oh!

Jacob Mantle: We were talking about the two decisions earlier, Ms. Gibner: the Spencer decision and.... I don't think we talked about Bykovets, but Bykovets is the second important one. This goes to my question about what type of information is attracting what degree of privacy. Granted, there may be a bit of overlap here between the confirmation of service and the subscriber information. Bear with me there.

My understanding is that for Spencer, the Supreme Court said that subscriber information attracts a high degree of privacy because it connects a person's identity to their online activity. Is that a fair ratio for the judgment—at least one part of it?

• (1900)

Normand Wong: If I may, our interpretation is that the Supreme Court said there's a high degree of privacy when you connect your identification with your online activity. It's the combination of both, not subscriber information on its own.

Jacob Mantle: That's fair, but these two things are connected. You confirm the service at the suspicion standard. Then you use the information you got, with no judicial authorization. Then you get judicial authorization for the production order, in part based on that confirmation of service. Now I know the information. I know that Kim Gibner is being provided service, so now I can say, on the suspicion standard, that I think the evidence I need for this suspected crime is on Kim Gibner's phone.

Kimberly Gibner: I just want to add one thing, which is just for us to remind ourselves that we're at the start of an investigation, when we hear the officer say, "I can't start my investigation because the production order requires me to know who the service provider is and know that it will afford evidence of an offence."

The confirmation of service demand does not have that criteria. It simply says that an offence has likely been committed and that the information I get will assist my investigation. The tool is meant to be at the very beginning of an investigation, when all they want to do is to know where to start. Something you said made me think that might be helpful for you to know.

I think you wanted to address his point, Normand.

Normand Wong: If I may, I just wanted to add that the facts in Spencer were very specific as well. It was not only about the identity of the online activity. Mr. Spencer had been on a file-sharing platform, LimeWire, and police had been observing him for some time, so they had a body of evidence about the activities of this IP address, which was publicly broadcast and was downloading known files of child pornography. It's a very different context from subscriber information in isolation or even connected to a sole IP address that might be linked to an email address that sends harassing email messages. It's very specific.

Jacob Mantle: That's fair. Thank you.

The second decision, then, extended that reasoning to the IP address. You said it was at the start of your investigation, and in that case, the Supreme Court used the words "first digital breadcrumb". I get what you're saying. It's the start of the investigation, but the IP address, which we've been discussing as being basic information or not, is the first digital bread crumb you get in order to confirm the IP address is Kim Gibner's IP address.

I'm sorry to keep picking on you. I'll pick on someone else.

Kimberly Gibner: I started it. It works.

Jacob Mantle: Yes, it works.

The point I want to make here goes to the earlier question I asked you, Mr. Wong, about other places in the Criminal Code that use the suspicion standard. I would like you or Ms. Gibner to make the

argument for me that for transmission data, tracking data and financial data—those are the three you noted that I was able to take down in time, the three of the four that are on the suspicion standard—there's an apples-to-apples comparison to the information on the confirmation of service.

I don't want to put words in your mouth, but what I'm understanding as one of the arguments is that in other places in the code, there's a lower standard—suspicion. As one of those places, let's take transmission data as the example. Transmission data is similar to basic confirmation under the first step of our investigation. Is that the position? If so, persuade me that's apples to apples.

• (1905)

Normand Wong: I would not quite say it's apples to apples. If it were apples to apples, it would all be under a production order, because with the ones under a production order, we think there is a reasonable expectation of privacy. It's not as high as reasonable grounds to believe; it's at the lower threshold.

You brought up Bykovets. In Bykovets, the unfortunate fact was that police obtained the transmission data without availing themselves of a production order. That's where the investigation went awry and we ended up with the Bykovets decision. I don't think Bykovets would have happened had police actually used the tools that were in the Criminal Code and available to them.

In the confirmation of service demand, we have to give the police some threshold in doing their police business. In terms of privacy expectations, for the things that are on the lowest end of the privacy spectrum, we attribute the reasonable suspicion standard when we have to attribute a standard.

In terms of the confirmation of service demand, the police have done a certain amount of work, so they might come into possession of an IP address through the investigation of a complaint, as I said, of a harassing email. Behind that email address there's an IP address through which it was sent. They've obtained this information in a legal manner. All they need to do is connect the dots. As the first step in that, they have to find out which service provider actually provides service to this IP address, because without that, they won't be able to serve the production order for subscriber information.

They are not apples to apples in that respect. The reason it's a demand is that, really, there's no core biographical information, as you mentioned, in the service provider your phone number is served by. However, that is the first indication for police to get the production order, so they can get that first bit of real evidence towards investigating a crime.

Jacob Mantle: I think you've made the point for me that I am concerned about, which is that they're not the same. That's why they should have different standards, in my view. I think transmission data, based on my review, refers to the technical details of a communication being sent. It's not an identifying piece of information. The argument there, then, is that you can use suspicion.

I take the point that we're at the first part. We're not at the production order part, but we will get to the production order part, which I also think should be raised to "reason to believe" rather than suspicion. Even at the beginning, it's still something different than just the technical data of a point of communication going from A to B. It is saying, "Kim Gibner is connected to this IP address."

Based on my read of those two cases, the suggestion is that even that can attract a higher expectation of privacy.

Normand Wong: I'm not sure I understood you, but the confirmation of service demand does not connect Kim to an IP address. It connects Rogers to the address so they can find out that it's Kim's. It's one step to remove.

Jacob Mantle: I apologize. You are right. It's one step before what I suggested.

I'm just deciding if another point I want to raise is perhaps better raised in the discussion of the production order itself. Maybe I'll save that.

I want to raise my view on the idea of the standard within.... I'm sorry. I'm getting the standards confused. I'm going to say belief versus suspicion just for shorthand. Why is belief versus suspicion important under section 8? My understanding is that the belief standard means that you have to think not only that a crime has been committed but that there's objective evidence in the place you want to look. You have to have an objective basis from which to say that as well. I think that's important.

I want to go back to the genesis of this. Like Ms. Sullivan, I had to go back to some basics with *Hunter v. Southam*. To me, this is the starting point, and it's why I think the standard should be higher, because it encapsulates.... I'm not going to read the whole case, but there are two key paragraphs that I want to put on the record for my view on the importance of the higher standard, whether for the first step or the second step.

By way of background, if you remember, that case was about an anti-combines organization, as it was called, which is an olden times word for an antitrust, anti-competition organization. It was investigating a newspaper. The general details, as I recall them from my notes, are that they could give themselves their own power to enter and get information. In reviewing whether the warrant to go into Southam's office was an unreasonable search and seizure under section 8, which had just come in—it was one of the first cases—the court took some time to explain the objective portion of section 8.

I want to put on record the two important paragraphs for me, which talk about that objective criterion. The court said the following:

The purpose of an objective criterion for granting prior authorization to conduct a search or seizure is to provide a consistent standard for identifying the point at which the interests of the state in such intrusions come to prevail over the interests of the individual in resisting them. To associate it with an applicant's reasonable belief that relevant evidence may be uncovered by the search, would be to define the proper standard as the possibility of finding evidence. This is a very low standard which would validate intrusion on the basis of suspicion, and authorize fishing expeditions of considerable latitude. It would tip the balance strongly in favour of the state and limit the right of the individual to resist, to only the most egregious intrusions. I do not believe that this is a proper standard for securing the right to be free from unreasonable search and seizure.

Anglo-Canadian legal and political traditions point to a higher standard. The common law required evidence on oath which gave "strong reason to believe"—

That's a reference to *Entick v. Carrington*, which is based on entering someone's property.

—that stolen goods were concealed in the place to be searched before a warrant would issue. Section 443 of the Criminal Code authorizes a warrant only where there has been information upon oath that there is "reasonable ground to believe" that there is evidence of an offence in the place to be searched. The American Bill of Rights provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation..." The phrasing is slightly different but the standard in each of these formulations is identical. The state's interest in detecting and preventing crime begins to prevail over the individual's interest in being left alone at the point where credibly-based probability replaces suspicion.

• (1910)

For me, that encapsulates in summary why I fall on that side of the spectrum. Whether it's the first step of the investigation or the second, we have to have a credibly based probability over just suspicion. Suspicion is just a hunch.

Go ahead.

Kimberly Gibner: My reflections are that he was talking about the law office that was being searched—so like your home. I think that language was about those sorts of things. You need to be doing those intrusive searches with that logic model. *R v. Chehil* is a more recent Supreme Court of Canada case that talks about suspicion.

You have it right. It is the debate around probability versus possibility. Again, if it assists you in any way, it's about the nature of the intrusion. You really want that higher standard—everything you read—when somebody is in your home.

However, a lower standard does exist in the Criminal Code for all sorts of different investigative techniques. In *Chehil*, it was a search using a sniffer dog on bags. Again, no warrant was required, but they're allowed to use that when they reach "reasonable grounds to suspect". It is a concept in the criminal law, and it's to be used in less intrusive types of situations.

I don't know if you have any reflections.

• (1915)

Normand Wong: Mr. Mantle, I think you've talked about how the common law grows, and it has. The reasonable suspicion standard has existed in the Criminal Code since 1993, after another Supreme Court of Canada case, *R v. Wise*. There is a lot of discourse in that case around how it doesn't necessarily need to be the *Hunter v. Southam* test for certain types of police—

[*Translation*]

The Chair: Sorry to interrupt you. I believe that Ms. Gibner has something to add.

[*English*]

Kimberly Gibner: For the *Chehil* case, if it helps in any way, here's some of the language. The police officer had to have objectively discernible facts before a judge, setting out the connection to the criminal activity, with more than a mere hunch or an intuition, but less than a probability, and there had to be a logical connection between the facts and the offence, assessed through the totality of the circumstances.

Here is something that is really important. I want to underscore what the officer said, which is that a police officer may draw on their training and experience—they do that—when they're setting out these warrants. Again, what we're talking about as it relates to subscriber information is still a warrant before a judge. Based on their training and experience, those facts may mean different things. Something that the Supreme Court of Canada specifically said was that they rely on that training and experience in that threshold.

Jacob Mantle: That is helpful, and I agree. I started at the genesis with the first case, and of course it's evolved, as common law does. I take the point that it's not that test anymore but a version of it. Even in those cases, it's still cited approvingly as the start. I like to start at the beginning and then go to the top to see how it's most recently been considered. I appreciate your comments there.

Maybe we interpret the facts a bit differently. You were making the distinction in the *Southam* case that you're investigating a place of business or a home. That obviously attracts a higher threshold. Of course, I agree with that. If you're going into someone's home, that probably has the highest threshold we could establish, but with our activities online, in all of their various ways, online has increasingly become our digital home. People are participating in society online in a way that they never have before. We as parliamentarians should recognize that and seek to protect the privacy of Canadians online in a similar manner sometimes, not at all times. I agree that some stuff attracts a lower expectation and some attracts a higher expectation, but where I disagree with the government on this is in some of the stuff they're suggesting, like that basic information should attract lower expectation. I'm not sure that it should.

Over time, more activities will be done by Canadians online and more of their life will be online. The common law needs to grapple with that and I hope protect it under charter jurisprudence and common law jurisprudence.

I have another point I want to make, but I think I'll make it in our discussion of the production order.

I want to ask for unanimous consent one more time, Mr. Chair, and then I will be done my comments. As in my other comments,

we've been talking a lot about the first step here, which is about the ISPs and providers. I would like you to canvass the committee, if you could, to see if there would be unanimous consent to invite NordVPN to provide testimony on part 2 of Bill C-22.

• (1920)

The Chair: Is there unanimous consent?

Some hon. members: No.

The Chair: Thank you, MP Mantle.

Jacques Ramsay: You have to earn unanimous consent. You have to work harder.

Some hon. members: Oh, oh!

The Chair: Is it fine to go to MP Kirkland?

Jacob Mantle: Wait one moment.

I think the strength of the request should do the work for us, Mr. Ramsay, despite your denial of unanimous consent.

I would like to put that on notice as a motion, Mr. Chair.

The Chair: MP Mantle, just to be sure that the clerks do the job they need to do in the manner that you are rightly expecting them to do it, if you can provide that in writing, it would be very helpful.

Jacob Mantle: Yes. I've tried three times, so I will send three emails.

The Chair: Thank you so much.

Go ahead, Madame Kirkland.

Rhonda Kirkland (Oshawa, CPC): Thank you, Chair.

If you will indulge me, Chair, I am absolutely going to mention this amendment, but I've received news, and I think the public safety committee is the appropriate place to mention it.

Durham regional police, in my region, just put out a notice about an hour ago. We're devastated to hear about the line-of-duty death of an OPP officer near Hearst, Ontario. I want to officially extend my condolences to the OPP on the loss of Constable Tarun Bali. My thoughts and prayers go out to his family, friends, colleagues and all those affected by the tragic loss.

He was a young man who had been serving for only a couple of years. I felt that the public safety committee was a good place for us to remember that we stand with our officers and that when we lose one who's running towards danger when the rest of us are running away from it, it deserves mention.

Jacques Ramsay: May I suggest a minute of silence?

Rhonda Kirkland: I'm fine with that, yes. That would be fine.

The Chair: Thank you.

Rhonda Kirkland: Thank you.

[A moment of silence observed]

The Chair: As you will note, everyone in this room appreciates your heartfelt condolences, which we would like to share with your community as well.

Rhonda Kirkland: Thank you. I think it's important for Canadians to see parliamentarians standing together when it comes to that sort of thing. Excuse my emotions.

To go back to the matter at hand and this amendment, can I just say how deeply thankful I am for all of you here? I know it's been a long time. We're asking very in-depth, very crucial questions. I'm really thankful for how much attention you've paid to this. You've been actively listening to all our questions and concerns. That means a lot to me personally as we delve through this.

It feels like some members come to the committee with decisions already made. I feel somewhat disappointed that the questions being posed and answered aren't being closely listened to, or not as well as you all are listening to our questions, so we can make informed decisions about these amendments. It's important to me that we make informed decisions on the amendments.

Ms. Gibner, I appreciate your help in all this. You've helped clarify a lot of things for me. You mentioned that when something is less intrusive, the threshold of suspect versus believe is acceptable. I'm with you on that to a point.

If I didn't feel like all of the amendments we're putting forward for part 1 and part 2 to qualify language, which are upcoming and have already passed, quite frankly.... When we want to qualify and clarify language to be “namely” versus “including”, for instance, as in the last amendment we looked at, being very careful to limit what you mean by “subscriber information”.... It seems that, in general, at least the Liberal members on our committee aren't willing to specifically name and qualify so that we can get more specific. We might have been more willing to accept the threshold of “suspect” if we understood what exactly it was.

I understand with this one that it's specifically in terms of.... It's not subscriber information. What's the wording? I'm sorry. I'm losing my train of thought. It's to find out whether or not they're a subscriber, yes or no.

A voice: It's the confirmation of service.

Rhonda Kirkland: Yes. It's the confirmation of service. Thank you. It's been a long day. I realize that I'm going until midnight tonight, so it will be a lot longer.

I'd like to hear from all of you on this question, if I can. It would be all four organizations—CSIS, the Department of Justice, Public Safety and obviously the RCMP. If the committee were to adopt this amendment and make it “believe” versus “suspect”, would there be a problem with that, and if so, what would it be?

• (1925)

Kimberly Gibner: I'll start, if I may.

The tool would not assist police the way it was designed, because what you heard the officer say was, “I have no idea who the service provider is. I don't know. I'm at the start of my investigation, and I need to know where to start.” That's the point. What I heard him say is that it's impossible to reach that threshold, so it doesn't go anywhere.

That's why I would say that the tool wouldn't be.... I think you heard my friend say that they would just be back to the drawing board. They would be in the same general production order world, where they already have to meet reasonable and probable grounds.

Rhonda Kirkland: I'll go to everyone else, but you've made me wonder about another question. Essentially, you're saying that you don't know whether to go further in an investigation. You have a suspicion. You're not sure whether to move forward—perhaps RCMP and CSIS should get in on this too—or whether you should proceed with an investigation until you know...the confirmation of service. Would that even make a difference? You know already whether or not you want to proceed with an investigation.

Kimberly Gibner: The IP address was one of the examples used. They said, “I have an IP address, but I don't have reasonable and probable grounds that it's Rogers who holds it. I don't actually know who it is associated with.”

• (1930)

Rhonda Kirkland: What does finding out that it's Rogers, then, do? Then you get the production order—

Kimberly Gibner: That allows them to go to court, because, of course, the court order says that they need to know who holds the information to get in the door—

Rhonda Kirkland: That's rather than ask everyone.

Kimberly Gibner: Yes.

Rhonda Kirkland: Okay. That is making sense to me. Thank you. I appreciate your thoughts on that.

Who would like to go next?

Thank you, Ms. Hiegel.

Shannon Hiegel (Director General, National Security Policy Directorate, Department of Public Safety and Emergency Preparedness): I'm happy to chime in here, just because we've been working with the RCMP and CSIS on challenge functioning and trying to pressure test the concepts that we're talking about today that are in the bill.

We really saw this as a building block. It is the first block, and my colleague has done a great job of explaining how we saw this very much as a yes or no. With the ground of suspicion, that makes sense. If, say, we get.... I mean the royal “we”. I suppose it could be from any side, but certainly with law enforcement. When the U.S. child sexual exploitation centre, which has greater flexibility within the investigative space, provides the RCMP's unit with an IP address, it's literally put on the shelf right now.

To go back to the numbers and stats that Ms. Gibner gave, this would at least allow us that first crumb in order to figure out who in fact the IP address belongs to. The building block of that investigation, in its totality, has to be presented in a court in order to have somebody charged and prosecuted. All of that information would be put bare for all of the public to see.

For us, the collection of all of that information and all of the steps that both of my colleagues have spoken eloquently to certainly gave us pause and gave enough of a rationale to encourage that it be put forward to the table for consideration.

Rhonda Kirkland: Is there anything to add? Does it make sense? Are you good?

Ramzi Nashef: Just quickly, our bread-and-butter investigative authority is section 12 of the CSIS Act, which is at RGS—reasonable grounds to suspect. For a section 12 investigation, obviously we have to have RGS that there's a threat to the security of Canada. Not to get too technical, but section 2 of the CSIS Act lays that out broadly: espionage and sabotage; foreign influence; terrorism, essentially; and subversion. Those are the four broad definitions that we would be looking at.

On our side, there's an additional safeguard, let's call it, which is “strictly necessary”. That's to avoid what's been deemed here as fishing expeditions. Not just as a resource question but from an authorities perspective, we can only collect and retain information that is strictly necessary to advance an investigation for us at the RGS level, pinned to section 2 of our act.

Hopefully, that helps.

This is an additional tool, at the same standard, that would allow us, as we've talked about, to get one of the very first steps. Let's say there's a phone number that we think is involved in a terrorism case, for example. We need to determine which provider owns that phone number, whether that's Rogers, Telus, Bell or somebody else, so that we can then come back with the higher level of authorization, which, again, is coming from judicial authorization.

Rhonda Kirkland: To clarify confirmation of service, let's say that in that example, you have a phone number but don't have a name attached to that phone number. When you're getting confirmation of service, you go to Rogers, let's say, and ask, “Is this phone number...?” You said it was a yes-or-no question, but are they also providing the name of that person?

Ramzi Nashef: No. We come back with judicial authorization to get the name and address—that more invasive set of information, let's say.

Rhonda Kirkland: Gosh, I feel like that's the clearest thing I've heard all night. That's great. It's not because you all haven't been clear. It's that people are having a hard time understanding it. My

background is in education—I've said that before—so I like to bring things down to a level where everyone can really grasp what's going on.

I honestly have less of a problem in this one particular spot with having “suspicion” versus “belief”. I think it's a problem in other places, but if it's literally a yes or no and then a production order to find out a name and that sort of thing, I can get behind it.

As I said, my reticence and hesitation come with all of the rest of the amendments. If we're not willing to qualify, name and clearly define some of the terms we're using in this bill, and if government members aren't willing to help us get amendments through to clearly qualify that.... That's when I'd be more supportive of this type of amendment. I'm not saying whether I would or wouldn't, but I'd have to hear a bit more from other colleagues who know much more about these particular things than I do, like Mr. Mantle. He's the one with the book beside him. He knows some more of that information.

However, that is very helpful to me, and I appreciate it very much.

The only other thing I'll comment on is what someone on the other side said to Mr. Mantle: “You have to earn unanimous consent.” I would argue that it honestly wouldn't matter whether we earned it or not or whether the argument was made or not. I am convinced that members on the other side would block and deny all of our wishes for consent, as they did with mine about the Privacy Commissioner.

I would like to reiterate, as I close, that Conservatives are committed to helping law enforcement. We are committed to getting through.... I've said this before. I personally would like us—I put in a notice of motion, but don't know whether we'll be able to get there—to split this bill, because I truly believe that if we can move along and get part 1 passed, then....

I'm sorry. I'm having a hard time concentrating because there's so much talking on the other side.

If we can move along on getting part 1 passed, then we can all get.... We're on the same page there, with some minor amendments, but I'm not feeling like there's any willingness to move on it, which makes me nervous as a member of the opposition, as I try to do my due diligence and my job as not only my constituents but Canadians expect me to. I'll end with that.

I thank everyone on this committee for the moment of time they spent in remembering the officer who passed away today in the line of duty. I will leave it there.

Thank you, Chair.

• (1935)

The Chair: Thank you, Madam Kirkland.

MP Au, go ahead.

Chak Au: Early on, I asked questions about the estimate of the number of times you will use this new measure if it's adopted. I also asked about the impact of not having this measure or tool in your hands in the past. I was told that there's no concrete information.

However, I want to draw your attention to a piece of information, a report completed by the National Security and Intelligence Committee of Parliamentarians in 2025. The name of the report is "Special Report on the Lawful Access to Communications by Security and Intelligence Organizations".

As I mentioned, this report is as recent as 2025. On page 54 of the report, there is some very interesting information. I would say it's relevant to what we are talking about. I will read it out for you. Note that by "committee" I mean the National Security and Intelligence Committee of Parliamentarians:

The Committee did not see any clear, empirical data to substantiate claims by Canada's security and intelligence organizations that they face serious lawful access challenges because of rapidly evolving technology. CSIS and the RCMP do not systematically track how often they encounter various technological challenges in their national security investigations....

Further on, it reads:

As a result, they do not know in quantifiable terms the degree of impact and overall significance of these challenges.

Further down, it has:

This is an important omission because as these organizations advise the government and attempt to convince Canadians—particularly those concerned about the potential erosion of their privacy—that new legislation and resources are required to keep pace with evolving technology....

I would ask for comments and feedback on that. Is there any response to that piece of information?

• (1940)

Richard Bilodeau: The NSICOP report you referenced—what we refer to as the "going dark" report—has a number of findings on lawful access and the need for lawful access. As you heard today from some of the witnesses, it is difficult to track because the RCMP and the police of jurisdiction have some of these requests.

I think it goes without saying that if we were able to track every single instance when our law enforcement tried to get information, it would be helpful. Obviously, NSICOP found that law enforcement and CSIS didn't do that.

I'm not sure what else we can say. We can rely, however, on the experience that CSIS and the RCMP have had over the years, what they've shared with us and what they shared with NSICOP. The information that was shared with NSICOP still led NSICOP to conclude that lawful access reform was necessary.

Chak Au: Are there any other comments?

Kimberly Gibner: I'll add just one other comment. One reason I got that data for you was to highlight some stats that I was able to get at my fingertips, if it assisted you, on the thousands of investigations that were not closed as a result of not having these basic tools.

Chak Au: I just want to go back to the point I made earlier today. I'm trying—we all are—to find a balance, and that's why we have to listen to both sides.

You come here to advocate for additional tools that you can use. I appreciate that. I understand that. On the other hand, we also have a duty to try to strike a balance to protect the privacy of Canadians.

This report came to the conclusion that there's no substantial evidence to back up the claim that there's a serious lawful access challenge, so that's something we have to bear in mind. I'm not saying that you do not require further measures. However, going back to how we can strike a balance, as I said before, I think that with the loosely defined meaning of "reasonable grounds to suspect" and asking for the power to use it, the net is too wide and the risk is too big. Also, the temptation to abuse it is big.

I still have some hesitation in supporting the draft as it is right now.

Jacques Ramsay: What's happening?

Chak Au: That's it.

Jacob Mantle: Don't worry. I'm back.

The Chair: Oh, okay—surprise, surprise.

Jacob Mantle: I didn't want to disappoint Mr. Ramsay.

Jacques Ramsay: It takes a lot more than that.

• (1945)

Jacob Mantle: I wanted to return to one question. In my view, you've been making your case for why you want to change the threshold for the standard.

I'm sorry. Did you want to put your hand up and go on record?

Marianne Dandurand (Compton—Stanstead, Lib.): I'm not the one speaking.

Jacob Mantle: You are, though, because I can hear you.

Marianne Dandurand: No. It wasn't me.

Jacob Mantle: Okay.

Well, would you like to put that on the record?

Caroline Desrochers (Trois-Rivières, Lib.): No. We're listening to you. It's very interesting.

Jacob Mantle: Good. I'm glad it is.

[Translation]

Jacques Ramsay: You have the floor, so go ahead.

[English]

Caroline Desrochers: [Inaudible—Editor]

Jacob Mantle: I disagree with that characterization entirely. I'm sorry—not entirely. "In part" is what I meant.

In my view, you made a conscious choice to lower the threshold, and you've been establishing why you think that will give you more tools.

I'll start with Public Safety. Did you turn your mind to or analyze the potential deleterious effects of lowering the standard?

Richard Bilodeau: By "deleterious"—

Jacob Mantle: You've suggested what you think the benefit will be, which is quicker access to this information. Did you consider the downside risks to lowering the standard? This is with respect to the confirmation of service, which is what we're discussing now.

Shannon Hiegel: For this particular element, it's a consult that we obviously work very closely with our Justice colleagues on, but I would argue that, yes oh yes, absolutely, the pros and cons are always weighed in these considerations. We even think of it from a resourcing perspective for law enforcement. They're not just going to be in the position to start firing out a yes or no. It has to be led by something of suspicion—getting a tidbit of information.

When we weigh out everything, that's what we end up with as our recommendation. That may be a little more for our Justice colleagues, as it's around the negative impact of that from a court process perspective.

Normand Wong: I would go back to what Chief Superintendent Burchill said in terms of investigations. This information, in probably close to the majority of situations, is given voluntarily currently. The confirmation of service demand is a stopgap for service providers that require the piece of paper so they have something to respond to in order to protect them from liability.

In terms of the deleterious effects, this is already being done. This is part of routine police work. As I think Sergeant Gilkes said, it's a requirement to know who the service provider is before you go to court to get a production order against that service provider.

Kimberly Gibner: Perhaps I could add to that, because what I'm hearing you say is that it's more about the safeguards. If it helps you think through the calibration, the safeguards and the tool, I'll just remind you that the telcos have the ability not to respond. There's that safeguard. Of course, they can judicially review the decision on the confirmation of service demand or any of the warrant provisions, including the new production warrant. There's judicial oversight for everything that's provided for in the code.

Jacob Mantle: Thank you for that.

I think my question might be a bit more germane to the production order, when we get to that, and the implications of lowering the standard in the production order and how that might interplay with the admissibility of evidence obtained through a lower standard. I think we'll have another discussion about judicial oversight, up to and including judicial review, because that's the very last step in some of this. There are other provisions that I'm sure we'll explore in different parts of the bill.

[Translation]

The Chair: Good. Thank you.

Is it the will of the committee to adopt amendment NDP-2?

[English]

Rhonda Kirkland: On a point of order, could you repeat that? It took me a moment to get my—

[Translation]

The Chair: I'm happy to repeat the question.

Is it the will of the committee to adopt amendment NDP-2?

(Amendment negated: nays 7; yeas 4)

(Clause 5 agreed to: yeas 10; nays 1)

(On clause 6)

• (1950)

The Chair: We'll now move on to clause 6 and amendment NDP-3, which is deemed to have been moved.

Please note that, if amendment NDP-3 is adopted, amendment BQ-4 can't be moved owing to a line conflict.

[English]

Ms. Kwan, do you want to present your amendment?

Jenny Kwan: Thank you very much, Mr. Chair.

This is NDP-3. With respect to this amendment, the NDP has received comments from prominent lawyers, legal professors and so on who are concerned about the impact of this bill on privacy and constitutional rights in Canada. They say:

As affirmed by the Supreme Court of Canada's decision in *R v Spencer*, Canadians have had a strong privacy interest in anonymity online. The existing general production order—available since 2004 and readily obtained by telewarrant—already gives police an effective tool to link an IP address or phone number to a named subscriber, and requires them to establish reasonable grounds to believe that an offence has been committed. Bill C-22 creates a new, dedicated subscriber information order that reduces that standard to reasonable grounds to suspect. The courts have held that this distinction is not semantic: in *R v West*, the Ontario Court of Appeal excluded evidence obtained through a production order precisely because the officer had established only grounds to suspect rather than grounds to believe.

The scope of disclosure under the new order is a further concern. Although the definition of subscriber information has been narrowed compared to Bill C-2, the order still allows for production of a broad scope of information, including the types of services provided—

[Translation]

The Chair: Sorry to interrupt you, Ms. Kwan, but Mrs. DeBellefeuille would like to say something. I assume that it concerns how fast you're speaking.

Mrs. DeBellefeuille, you have the floor.

Claude DeBellefeuille: That's right. Since Ms. Kwan is reading quickly, we were wondering whether the text was available to give to the interpreters. The interpreter is saying that she doesn't have the text. It's difficult to interpret a text read so quickly.

[English]

The Chair: The question is whether the text was shared with the interpreters. If not, it may be a good idea to slow down the pace a bit so the interpreters can follow you, Ms. Kwan.

Jenny Kwan: Sure. My apologies. I will slow it down. I think my staff have gone home for the day, so I won't be able to get them to send it to the interpreters. I will start at the beginning of the first sentence and go more slowly.

The scope of disclosure under the new order is a further concern. Although the definition of subscriber information has been narrowed compared to Bill C-2, the order still allows for production of a broad scope of information, including the types of services provided and the identifiers of every device associated with the account. This goes well beyond what is needed to connect a name to an IP address. It can be directed to a physician, a cable company, or a platform like iCloud, requiring disclosure of what cable packages a person subscribes to, what medical services they receive, or what devices they use. Much of this information carries a high privacy interest and calls for a higher legal standard. If Parliament seeks to create a subscriber information order that can withstand scrutiny under section 8 of the Charter, it should narrow the scope to basic identifying information—name, address, and the specific account identifier in question—and raise the threshold to reasonable grounds to believe.

To that end, they also note:

Including analogous powers in the Canadian Security Intelligence Service Act (CSIS Act) raises even greater issues. Unlike criminal defendants, “persons of interest” to CSIS are never given an opportunity in court to challenge the intrusion of state power into their private lives. The Charter concerns are more acute with CSIS, and the Service should have to satisfy a “reasonable grounds to believe” threshold for all of these authorities.

This amendment would narrow the scope to basic identifying information—name, address and the specific account identifier in question—and would raise the threshold to “reasonable grounds to believe” to withstand scrutiny under section 8 of the charter.

• (1955)

The Chair: Thank you, Madam Kwan.

[Translation]

Mr. Ramsay, you have the floor.

Jacques Ramsay: I would like to thank my colleague for moving her amendments.

However, we intend to vote against this amendment, simply because the production order requires judicial authorization. We believe that the judge is the most appropriate person to determine what information should be released, in this instance, according to the specifics of the case in question.

The Chair: Thank you.

Mr. Caputo, you have the floor.

[English]

Frank Caputo: Thank you.

Could I hear from the officials on this one? In your eyes, what is the practical implication or impact of this amendment, please?

Normand Wong: The practical implication of this amendment is that it would create a conflict between the definition that was just passed in the definition section in clause 2 or 3 and this provision. The production order for subscriber information as drafted in the NDP motion would disregard the subscriber information definition.

Frank Caputo: I'm sorry. I have to look at the bill to get that.

When you say that it creates a discrepancy, what precisely is the discrepancy? We may wish to move a subamendment to ameliorate that discrepancy. Is that possible?

Normand Wong: I don't know if it's possible for me. I don't know if I have the technology. I'm looking at the same thing you are, which is the motion. You have to look at the motion in concert with the bill to see how it works.

Another thing the motion does is that it includes transmission data, which is not supposed to be included in the subscriber information production order. It removes the give-and-take. It's supposed to relate to information that's been provided by the police or that's been stipulated in the affidavit that will form part of the order to be served on the service provider.

Frank Caputo: Okay. I missed that. Can you take me through that a bit more, Mr. Wong? You said there's a give-and-take and that it has something in here that shouldn't be in here. When you say that it shouldn't be in here, do you mean that it's introducing a novel concept or novel wording? If there's something that inadvertently isn't in here, the committee can amend it in order to make it appropriate. I guess the question is whether it is a drafting error.

• (2000)

Normand Wong: If we look at the original wording of the provision where this is supposed to take place, we see that it says, “produce a document containing all the subscriber information that relates to any information”. What's been removed is “that relates to any information”. This is what the police have provided in their affidavit that will be spelled out in the order. That omission means that the service provider isn't responding to specific information that's been provided through the affidavit. It's dismantling how the production order works.

Frank Caputo: Is it workable? I get that it's dismantling and changing how it's drafted, but is it not still workable in the way that Ms. Kwan's amendment—and, frankly, CPC-3 is the same amendment—is drafted?

Normand Wong: CPC-3 varies slightly because it refers to subscriber information, whereas NDP-3 does not refer to subscriber information. It says, “that relates to a subscriber”. NDP-3 completely avoids the definition of “subscriber information”, whereas CPC-3 and BQ-4 refer to subscriber information. It's the tail end, and from a practical perspective, arguments can be made that it would still work out in the way it was designed to work out, but it is less clear.

The way it's spelled out in the bill is that it does provide the service provider with something to respond to, and that is the information that has been provided in the affidavit.

Frank Caputo: Okay. In your view, CPC-3 and BQ-4 are actually workable, but NDP-3 at this point is not workable. Is that accurate?

Normand Wong: I don't know how to respond to that. I would say that both have issues, but from a practical perspective, as you said, CPC-3 and BQ-4 might still work, just perhaps not in the way that is intended, because there's a lack of clarity there now.

Frank Caputo: The appropriate thing, then, would be to move on to BQ-4 and let us ask our questions on BQ-4, if that's the case.

I don't have any further interventions, but my colleagues may.

[Translation]

The Chair: Thank you.

Mr. Mantle, you have the floor.

[English]

Jacob Mantle: This is just to say that I note how BQ-4 and CPC-3 differ from NDP-3, and I see what you're saying. I would agree that maybe BQ-4 or our amendment is a better place to have this discussion.

The Chair: Thank you.

[Translation]

Is it the will of the committee to adopt amendment NDP-3?

(Amendment negated [See Minutes of Proceedings])

The Chair: We'll move on to amendment BQ-4.

Would you like to move amendment BQ-4, Mrs. DeBellefeuille?

Claude DeBellefeuille: Yes. Thank you, Mr. Chair.

This amendment is also a recommendation from the Privacy Commissioner. He wants to prevent service providers from being forced to disclose much more subscriber information than is necessary for investigative purposes.

Here again, the goal is to allow for the collection of a certain amount of information, while maintaining a certain level of restriction. I think that this amendment is reasonable. I hope that my colleagues will support it.

● (2005)

The Chair: Thank you, Mrs. DeBellefeuille.

Before giving the floor to Mr. Housefather, I would like to point out that, since amendment BQ-4 was moved, amendment CPC-3 can't be moved because the two amendments are identical.

Mr. Housefather, you have the floor.

Anthony Housefather: Thank you, Mr. Chair.

I would like to thank Mrs. DeBellefeuille.

I would like to move a subamendment to amendment BQ-4. It should be in everyone's inbox. I'll read it.

First, I move that amendment BQ-4 proposing to amend clause 6 of Bill C-22 be amended by substituting, for the reference "replacing lines 21 to 23" in the opening portion, the reference "replacing lines 21 to 24";

I also move that amendment BQ-4 be amended by substituting the following for the text proposed by the motion:

produce a document containing the subscriber information referred to in any of paragraphs (a) to (c) of the definition *subscriber information* in section 487.011

(a) that is specified by the justice or judge in the order;

(b) that relates to any information, including transmission data, that is specified in the order; and

(c) that is in the person's possession or control when they receive the order.

Mr. Chair, I just want to make sure that all my colleagues have a copy of the subamendment before I start explaining it.

The Chair: Has everyone been able to access Mr. Housefather's proposed subamendment, which was reportedly sent by the clerk five or six minutes ago?

If you have access to your emails, you should be able to see it.

Mr. Mantle, you have the floor.

[English]

Jacob Mantle: I've just received it in my inbox. Can we have two minutes to read it in English?

The Chair: MP Housefather.

[Translation]

Anthony Housefather: Mr. Mantle asked for a few minutes.

A voice: It would be five minutes for me.

[English]

The Chair: Okay. We can do that.

[Translation]

We can give you five minutes.

[English]

While we do that, MP Housefather, would you like to expand further on the subamendment?

[Translation]

Anthony Housefather: I could do that, Mr. Chair. However, I think that the members would like to read the subamendment quietly. So, if this works for you, we could give them two minutes, then I can explain it.

The Chair: We'll suspend the meeting for two minutes to give everyone time to read the subamendment carefully.

● (2005)

(Pause)

● (2010)

The Chair: We'll resume the meeting, but only for a few moments.

Given the time, the limited resources, the complexity of the proposed subamendment and the fact that some people need more time to fully understand it, we'll adjourn the meeting. We'll meet again on Thursday to discuss the subamendment.

Thank you. Good evening.

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