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Chair

Mr. Ed Fast

Standing Committee on Justice and Human Rights

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● (1535)

[*English*]

The Chair (Mr. Ed Fast (Abbotsford, CPC)): I call to order meeting 37 of the Standing Committee on Justice and Human Rights. You have before you the agenda for today. We have a number of matters to deal with.

First, we have one last organization as a witness in our review of Bill S-4, an act to amend the Criminal Code in regard to identity theft and related misconduct. After hearing our witnesses, we'll move to clause-by-clause consideration of the bill.

Once we've completed clause-by-clause, we'll deal with Monsieur Ménard's motion, if he wishes to, on the Cinar case.

Once we've completed that discussion, we'll move to an in camera meeting where we'll consider a draft report on declaring certain groups criminal organizations. That was Monsieur Ménard's former motion, and we've completed that study now.

So let's move forward with our last witnesses on Bill S-4. We have with us the Canadian Internet Policy and Public Interest Clinic, represented by David Fewer and Tamir Israel.

Welcome to you both. I think you understand the process here. One of you has 10 minutes to present, and then we'll open the floor to questions from our members.

Mr. Fewer or Mr. Israel, do you want to start?

Mr. Tamir Israel (Staff Lawyer, Canadian Internet Policy and Public Interest Clinic): We would like to thank you, Chair and honourable members, for inviting us to speak before you today on this important issue.

My name is Tamir Israel. I am staff counsel with CIPPIC. With me is David Fewer, our acting director. We apologize for not providing you with a brief of our position today.

CIPPIC is a legal clinic based in the University of Ottawa's Faculty of Law. Much of our mandate involves addressing the legal and policy concerns that arise from new technologies and specifically from the ever-increasing availability of private and personal information in electronic formats.

For a long time, we have been concerned with the many facets of identity theft and have researched legal and policy approaches to that problem. This work has resulted in, among other things, a public-private multidisciplinary project funded by the Ontario Research Network for Electronic Commerce, ORNEC, and a series of six working papers available on our website at www.cippic.ca. These cover most aspects of the issue.

We will be releasing a final white paper later this year, updating and summarizing our work on this issue and making specific recommendations for law and policy reform needed to address identity theft in a comprehensive manner.

We would like to point out that identity theft is a very serious phenomenon with specific impacts on individuals and society at large. You've heard that ID theft costs our economy $2 billion annually and that this is a conservative number.

There is an associated loss of confidence that is much more difficult to quantify, but equally serious. We have seen figures estimating that individual victims in Canada spend approximately $164 million of their own money and over 18 million hours annually just addressing the fallout from having their identities stolen, just to re-establish their identities.

In addition to this social and individual financial cost, there is also the invasiveness of such offences. People who have their personal information or identities taken from them for such fraudulent purposes often feel violated. People have told us that victims of ID theft often exhibit feelings similar to those seen in victims of home burglaries. There is serious psychological harm here, as well as the financial costs.

We feel that the magnitude and nature of these harms calls for a criminal component as part of any response to the problem of ID theft.

Our study of Bill S-4 has convinced us that it is well-tailored to address the specific and fairly well-documented problems raised by identity theft in the criminal sphere. It manages to provide police with the tools they need in this sphere to address these problems, while avoiding the problems of overbreadth. It does so while managing to maintain flexibility and technical neutrality. The reason it is able to do this is that it directly addresses the specific issues posed by identity theft and does not overreach in that respect.

We're here today to say that we support this bill and would gladly try to answer any outstanding questions or concerns you might have on it. We've been paying attention to your committee hearings and we've noticed that some have been raised.

But we'd also like to remind the government, in brief, that its job with respect to identity theft is not done. ID theft requires a comprehensive response. This bill largely and effectively addresses the criminal portion of this response. In addition, the government's Bill C-27, which is also currently in committee, takes important regulatory steps that will deter a great deal of ID theft activity.

But more reforms are essential to address prevention and to help individual victims deal with the problems that identity theft raises for them. Many of these additional reforms are beyond the scope of a criminal bill such as this one, and we would not want to delay the implementation of Bill S-4. However, we have your attention, so we would like to point out to you the ways in which the Criminal Code can be improved to better accommodate the needs of victims. The victim restitution provisions in clause 11 of this bill will go some way to doing that, but we feel that more can be done.

We have suggested in the past and do so here again that it would be helpful to add provisions to the Criminal Code giving victims the right to local police reports. We have found from our research that this helps victims address jurisdictional issues.

What often happens is that a resident of one city, let's say Ottawa, will have their identity stolen or the ID fraud will manifest in another city, let's say Edmonton. The victim will be directed to Edmonton police, who will have jurisdiction. The local police force will generally refuse to open an additional file because they don't like to investigate claims committed in other jurisdictions. Although I note in defence of Ottawa that we were told the OPS in particular is willing to do this, most other police forces will not.

This is a serious problem. ID theft often requires immediate action, and for an Ottawa denizen to have to contact Edmonton before a file is opened, that takes a lot of time. In the meantime, they are having credit problems.

On the other hand, ID theft also has long-term, recurring ramifications, and it simplifies matters a great deal for victims to have local police as their point of contact for any investigation. The police can then forward the investigation to a more appropriate jurisdiction, but they should remain the point of contact. It should be clarified that this applies to victims, even if the financial institution in question absorbed all the financial harm in a particular instance.

In addition, we have heard that police reports often don't contain a great deal of information. They do not even state that the offence being investigated is fraud. This means they're not very helpful to victims, in and of themselves, if they're trying to vindicate themselves with persistent creditors or with Equifax or anybody else.

To remedy this, other jurisdictions have provided, within their criminal statutes, a right to a judicial determination of factual innocence from a court of law, once an investigation is successfully completed. We point you to section 530.6 of California's Penal Code, if you would like guidance on provisions of this nature either now or in the future. There are other examples from other jurisdictions that can be found in our working papers on our website. A broader range of suggestions is available in our working papers as well and will be collected and updated in the white paper we intend to release shortly.

We invite any questions on the issues we've raised here, on any outstanding concerns you may have with respect to the current bill that have been raised in the past hearings before you, or on any other steps that can be taken to alleviate identity theft.

Thank you.

● (1540)

The Chair: Thank you very much.

I'm going to use my discretion to limit questions to five minutes per person per round.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): I'll speak very quickly.

I listened to what you said. You said you are in support of the bill. You don't have a brief, so I'm a little at a loss, and I didn't go on your website to see what your white papers and such say, and maybe I got a little lost. I got some reference to some California law.

What I'm getting at is this. You don't think there's anything that can be added to this bill that wouldn't be beyond its scope. So you're not suggesting that. You support the bill.

You do, however, want further amendments to the Criminal Code, insertions to the Criminal Code, in the future perhaps. In the simplest three-minute fashion that you can, what precisely are those, so we're covered here?

Ms. Tamir Israel: Absolutely. It's open for you to add them into this bill if you feel you would like to do that. The two Criminal Code provisions we've seen in other penal statutes in other jurisdictions that have done a great deal to help victim problems are a right to a local police report or a local police investigation and a process for a judicial finding of innocence after a police investigation is completed. This gives victims a point of reference locally, and it also gives them something to show creditors that come after them for years, often, to show that they're—

Mr. Brian Murphy: On that judicial finding of innocence—I don't think there's such a thing in our jurisprudence—you can get a record of dismissal, or a record of acquittal rather, and you can get a letter about a dismissal of a charge. I've had some experience in that, where people want to say, look, I was charged but I was not convicted. You're saying these exist in other jurisdictions, these judicial findings of innocence?

Ms. Tamir Israel: Right. We're not worried about individuals being charged with an offence here. We're worried about creditors—

Mr. Brian Murphy: Innocent third parties.

Ms. Tamir Israel: Innocent third parties who are victims of identity theft. Just something they can show to their creditors to say they've been a victim of identity theft, so here are—

Mr. Brian Murphy: Do you think that would be best dealt with by sort of an administrative body or office—consumer affairs, for instance?

Ms. Tamir Israel: In other jurisdictions they have done it through the court system. Certainly if there was a standardized regulatory body that could issue something official that was legally recognized —

Mr. Brian Murphy: It does exist? Where?

Ms. Tamir Israel: No, no. I'm saying that would be another—

Mr. Brian Murphy: Now we're just relegated to Equifax as mercy for clients who were wrongfully accused of credit fraud. Okay.

Ms. Tamir Israel: Equifax doesn't accept anything. They have a pretty high standard. They like to conduct their own investigations. In other jurisdictions they've found that this is something they can do through the penal codes, and that was an effective way of addressing it.

The Chair: Thank you.

We'll move on to Monsieur Lemay for five minutes.

[*Translation*]

Mr. Marc Lemay (Abitibi—Témiscamingue, BQ): I am going to pursue Mr. Murphy's line of questioning.

In the Criminal Code, there is a specific section—I didn't have time to look for it because I was listening—that says that if you are a victim, the Crown prosecutor must inform you of the results of your complaint or the court's decision regarding your complaint.

For example, someone steals Marc Lemay's identity and is convicted of that charge. As a victim, I am automatically informed. I do not understand why you would want to include this provision in the bill, because that is already being done now, and it is a requirement. When that section was added to the Criminal Code, it related primarily to victims of criminal acts. And, of course, victims of assault—many of whom were women—were not being made aware of what had happened in court.

Did I misunderstand, or are you asking for that to be added?

● (1545)

[*English*]

Ms. Tamir Israel: Certainly, it's a good point.

We're not asking for a finding of innocence. This is not a response to an individual being charged with an offence. Maybe there are other venues that could address this, not through the criminal system. It's just an official statement from the court saying that an investigation has been carried out and the police have found, and there is a result, that this individual has been a victim of identity theft. The individual is not being accused of an offence. It's just a statement—in other jurisdictions they've chosen to do it through their penal code and through the courts—so the victim has something to show that there's been an investigation and that there is an official finding that they have been the victim of identity theft, which they can take to creditors to stop them from harassing them.

It is something that we think can reasonably be addressed through the Criminal Code. It's been done this way in other jurisdictions. It's a result of a criminal investigation that's getting judicial sanction.

[*Translation*]

Mr. Marc Lemay: Thank you, I'm done.

[*English*]

The Chair: Thank you, Monsieur Lemay.

Mr. Comartin, five minutes.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you, Mr. Chair.

Thank you for being here, gentlemen. I have no questions.

Thank you.

The Chair: Thank you.

We'll move on to the government side.

Do we have any questions? None?

Anybody else?

Thank you so much for your testimony. We'll let you go.

In the meantime, the committee will now move to clause-by-clause on this bill. We'll just take a moment.

We also welcome back to our committee Joanne Klineberg and Marke Kilkie. Welcome back. They're here to assist us.

You have a number of amendments submitted by the NDP, by Mr. Comartin, and we'll walk through those.

We'll start off with clause 1. Are there any amendments to clause 1?

Seeing none, I'll ask the question.

(Clause 1 agreed to)

● (1550)

The Chair: We'll move on to clause 2. Are there any amendments to clause 2?

Seeing none, I'll ask the question.

(Clause 2 agreed to)

The Chair: We'll move on to clause 3. Are there any amendments to clause 3?

Seeing none, shall clause 3 carry?

(Clause 3 agreed to)

The Chair: Moving on to clause 4, are there any amendments?

Shall clause 4 carry?

(Clause 4 agreed to)

The Chair: On clause 5, are there any amendments?

Seeing none, shall clause 5 carry?

The Chair: Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Since there do not appear to be any proposed amendments to all these clauses, why not pass clauses 5 to 13 at the same time?

[*English*]

The Chair: Monsieur Petit, there are four amendments touching on different clauses. You are correct that we could have done the first six clauses in an omnibus motion, but since we've done the first five already, we'll just do them one at a time.

(Clause 5 agreed to)

The Chair: Moving on to clause 6, are there any amendments?

Seeing none, shall clause 6 carry?

(Clause 6 agreed to)

(On clause 7)

The Chair: Moving on to clause 7, there is one amendment. If you look at the reference number at the top of your amendments, this is amendment 4126584. I am advised, and I rule, that it is in order.

Perhaps, Mr. Comartin, you could present the amendment.

Mr. Joe Comartin: Thank you, Mr. Chair.

I'll start off by saying that I need to move an amendment. I caught the drafting just before I came into the committee today and there was an error in it. Perhaps I'll give an overview.

I'm attempting to limit the use of this section to two categories of people. One is a police force. That's what is not in here. That should have stayed in, that any police force can ask for a document to be created, presumably to create a false person for investigative purposes. Clearly a police force should have that authority, so that should remain in there. The second category is the two ministers: the Minister of Justice and the Minister of Public Safety and Emergency Preparedness.

I have to admit that I didn't pick this up until fairly late in the process of our review of Bill S-4, but I cannot understand why we would be extending immunity to such a large category of people. As clause 7 stands now, as proposed, it's all police forces, and I don't have a problem with that as it's obviously necessary, but then it goes on to include the Canadian Forces, with no limit.

You can understand that within the Canadian Forces certainly their intelligence units and their military police, quite frankly, might need it, but it's not limited to that. It's all Canadian Forces. The way I read it, and I don't think there's any way of reading it but this way, the average soldier, a private, could go into the office in Thunder Bay where we register our birth certificates and ask to have a birth certificate created and they would have to comply.

It then goes beyond that and includes all federal government agencies and all provincial government agencies. I cannot understand why we would extend that kind of authority. It's just so ripe for abuse.

This clause is needed for the purposes of allowing our police forces, our intelligence services, to create false identities in order for those individuals operating in those fields to be able to conduct their normal investigative role. Why would we extend this?

I was thinking yesterday that the Children's Aid Society could walk in and ask for that kind of documentation to be prepared, and the department that creates those documents would have to prepare them.

Similarly, if you were to go to one of the credit card companies and say that you needed to have this document created and ask them to give you a credit card in a person's name, the private sector would have to do that. Municipalities would have to change identification of ownership of buildings if that were asked for, and it could be asked for by a huge number of people the way the clause is written.

As I said earlier, with this amendment I've tried to keep the police forces involved, obviously, but then move that authority to the two ministers at the federal level, who would obviously be able to delegate that authority to the appropriate people within their departments.

● (1555)

The Chair: Just for clarity, we are dealing right now with the amendment that has reference number 4126584.

Mr. Comartin, you said you wanted to make a change to that amendment.

Mr. Joe Comartin: Yes, I would if it were permitted, Mr. Chair. The amendment reads now, "document at the request of", and then says "the Minister". After the "of" there should be inserted "a police force or", and then it would go on: "the Minister of Justice or the Minister of Public Safety and Emergency Preparedness".

The Chair: All right. The amendment would read as follows: that Bill S-4, in clause 7, be amended by replacing lines 24 to 27 on page 5 with the following:

> document at the request of a police force or the Minister of Justice or the Minister of Public Safety and Emergency Preparedness

Is that correct?

Mr. Joe Comartin: That is correct.

The Chair: All right. That is the amendment that is on the table.

Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ): I think I heard you say lines 24 to 27, when I thought it was lines 34 to 37.

Mr. Marc Lemay: It is not the same in English.

Mr. Serge Ménard: All right; I understand. Lines 34 to 37 have to be translated.

I fully understand the argument made by our colleague, Mr. Comartin. I agree with him that far too many people are able to authorize the production of a false document. However, in similar situations, under other legislation, someone could apply for authorization, not only to the federal Department of Justice or Public Safety, but also to provincial ministers or Attorneys General.

That is why I am proposing the following subamendment: that we add, after "the Minister of Justice or the Minister of Public Safety and Emergency Preparedness", the following: "or the Attorney General of a province or territory". That way, there would be some control.

[*English*]

The Chair: Thank you.

Is there anybody else?

Mr. Rathgeber.

Mr. Brent Rathgeber (Edmonton—St. Albert, CPC): I think the translation is correct the way it is written.

I appreciate Mr. Comartin's concern, but on a proper construction, the words "in good faith" provide a defence to individuals working for those government agencies who are acting in good faith. But if they are doing it for some personal or for some nefarious purpose, then presumably they will be charged.

Mr. Comartin is shaking his head, so perhaps he might explain to me why my interpretation of this is incorrect. But failing his being able to convince me, Mr. Chair, I will be voting against his amendment.

The Chair: Mr. Murphy.

Mr. Brian Murphy: Could we hear from somebody—I don't know whether it would be Department of Justice people or the parliamentary secretary or who.... We are all trying to struggle with this. We think we know what the intention was, but was there some thought that went into the breadth of permission? We all get the good faith thing, with all due respect. It is a defence if it isn't in good faith—or not a defence; it's prohibited if it's not in good faith. But why would it be police forces, Canadian Forces, and a department or agency of a federal or provincial government? Why is it so broad? Maybe we need to know a little more about law enforcement to answer that question.

● (1600)

The Chair: Mr. Kilkie.

Mr. Marke Kilkie (Counsel, Criminal Law Policy Section, Department of Justice): Yes, I can answer that, because we did give consideration to it.

I'll point out this: the provision is a defence for the person who makes the document. As for the entities listed, it's not a "member of" one of these entities; it is the entity itself. So it's not every member of a police force. It's a request made on behalf of and in the capacity of the organization.

The reason it is so broad, including, for example, provincial government departments, is that we are also talking, in terms of the use of covert ID, about such officers as wildlife officers, who also do undercover work and who aren't in police forces typically but are employed by a government department, so that it would be their department, the entity to which they report, that is making the request—on their behalf, if that helps.

The Chair: Yes, it does. Thank you.

We'll go to Mr. Woodworth.

Mr. Stephen Woodworth (Kitchener Centre, CPC): Thank you very much.

I guess I'm coming at this from the point of view that up until the time this legislation is passed, all these agencies have been able to access false identities, if I can put it that way, for the purpose of their undertakings. What we're going to be doing is slapping on a general prohibition against false identities. I would be reluctant to freeze out any existing investigative agency that may be employing these measures.

I think our people from the department have given us the example of wildlife officers who might require this kind of exercise, but there may be others out there we don't know about. I would proceed cautiously before I would issue a blanket prohibition against government agencies being able to do such things.

Thank you.

The Chair: Thank you.

Go ahead, Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: I do not understand why a parallel has been drawn between the amendment proposed by Mr. Comartin and the issue of good faith. As I see it, good faith is always involved when someone assumes a false name, in order for that action to be legal. The goal pursued must be in the public interest; for example, when a person has to use a false name to trap someone breaking the law, so that the investigation can move forward.

Before the Criminal Code was amended, such cases were dealt with through the case law. They were essentially resolved by applying the good faith principle. I do not recall the name, but I know that was done in the wake of a Supreme Court ruling dealing specifically with the use of a false identity for the purposes of a police investigation, as well as the fact that police officers had to break the law.

Let's take an obvious offence—for example, buying drugs; police officers had no choice but to break the law. With respect to assault, they were protected by something else. It was an obvious case, but there have been even more serious cases, where police officers had to act illegally. The judgment there was based on good faith and the fact that the police were pursuing a public interest goal.

However, because the definitions were too vague, the Supreme Court invited Parliament to legislate. It did bring in other provisions on this. I believe the provisions here—perhaps the witness could tell us—are intended to mirror those made to the Criminal Code in the wake of that Supreme Court decision, and are along the same lines.

The requirement for the good faith principle to be engaged is a necessary one. And, in fact, the good faith requirement is not the only one. The action must also be in the public interest or be necessary as part of a criminal investigation. When the decision was made to go the legislative route, as opposed to relying solely on the case law, in order to allow police officers to break the law or use a false identity—and here we are talking only about a false identity—some control mechanism had to be included.

I support Mr. Comartin's argument, because it seems to me that the control mechanism here is extremely week; there are too many people able to exercise that control. It should be given to the Department of Justice or the Department of Public Safety. However, because the administration of the criminal justice system is a provincial responsibility, it should, in fact, be given to the provincial Minister of Justice, or the federal Minister of Justice, who also has a role to play in the administration of justice.

I am not going to draw a parallel between Mr. Rathgeber's remarks and Mr. Comartin's amendment, but I do think it would be advisable to retain the words "in good faith". As Mr. Murphy pointed out, it is almost pointless to have it in there, because it is obvious that the individuals involved must be acting in good faith. That is part and parcel of the activity we are seeking to protect.

● (1605)

[*English*]

The Chair: Thank you.

Ms. Jennings, did you want to speak?

By the way, welcome to the committee. I understand the report has been adopted, so you're officially part of the committee.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you. I'm ba-a-ck.

I actually like clause 7 as it reads now in Bill S-4. I think our colleague, Maître Serge Ménard, dealt very well with the issue of the Supreme Court of Canada's decision about illegal acts committed by, for instance, members of police forces in the course of their duties while working, for instance, undercover. It actually does cover also the use of force, not in defence of themselves but, for instance, when they're undercover in a criminalized biker gang and have to take part in beating someone.

An hon. member: [*Inaudible—Editor*]

Hon. Marlene Jennings: Yes, it was covered.

I think the issue here is whether or not the person made the false document—at the request of any of the different agencies that are mentioned here—in good faith. And if the agency is acting illegally, we have provisions in the Criminal Code to deal with that. I can in fact see, at times and given certain investigations, the requirement that one would want to have, for instance, a provincially issued ID. You would have the police force requesting la Société de l'assurance automobile du Québec, for instance, to issue a driver's permit. It would in fact be a real driver's permit issued in the course of an investigation, and this provision would protect the employee who issued it from criminal charges. Right now, the police officer is protected, but not the person who actually produces the false document.

So I like it as it is; I don't like the amendment. I think the amendment is much too restrictive. If we were to go with the amendment, then it would have to be amended seriously to add the Minister of National Defence, the provincial ministers of public safety or solicitors general, and all of the different levels at which you could have official documents produced that are false documents but actually authentic documents.

So I like it the way it is and I will not support the amendment, but I will support clause 7.

● (1610)

The Chair: All right.

Mr. Comartin, do you want to have the final word?

Mr. Joe Comartin: Thank you, Mr. Chair.

First, with regard to good faith, I think this is clear, but I'm going to repeat it just to be clear about why I was shaking my head. I think the officials have confirmed this: the good faith defence as an immunity only applies to the person who's creating the document. It does not require the police force as it stands now, or the Canadian Forces or any of those departments, to be acting in good faith in requesting the document. I suppose if we had that in there, it might be some additional thing.

With regard to the point about interfering with current practices, it's hard to say. Some of the current practices in creating false identity may in fact be illegal under existing law, and I don't think this should in any way be a guideline as to whether we should be interfering with that. What we're doing in the rest of the bill, assuming it becomes law, is creating a new legal authority to create that. It may in fact in some cases be confirming what our existing practice is, which may or may not be illegal, but I don't think that should be our consideration for this.

As far as the subamendment is concerned, I agree. Mr. Ménard is correct that we should be extending the authority to the attorneys general and the solicitors general right across the country. I probably should have put that in myself. I certainly would be supporting his subamendment. I think it's appropriate that we do that. They would then have the authority at both the provincial and territorial levels and at the federal level to be able to designate officials who would have the authority to make the request for these types of documents.

You don't need to add, as Ms. Jennings has suggested, all of the federal departments. That is not required. They can take care of that at the federal level by delegating that authority.

That's my summation, Mr. Chair. Thank you.

The Chair: All right. Right now we have three more people wanting to speak on this.

Mr. Rathgeber, you're next. No? All right.

We move on to Mr. Petit. No?

Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Call the vote please, Mr. Chair.

The Chair: Okay. We have an amendment on the table. It's Mr. Comartin's amendment as he has amended it. So it's as I read it earlier.

All those in favour?

Mr. Joe Comartin: Mr. Chair, you'd have to vote on the subamendment first.

The Chair: I didn't see a formal subamendment. It wasn't formally made, was it?

[*Translation*]

Mr. Serge Ménard: Could you not see that before we were made aware of the amendment? I made that point in my argument.

[*English*]

The Chair: I would appreciate it if you would write it down and then submit it.

We'll just take a break while he does that.

All right. I'm going to ask the clerk to read the subamendment into the record, if you could listen closely, those of you who don't understand French.

● (1615)

[*Translation*]

The Clerk of the Committee (Ms. Miriam Burke): The proposed subamendment would be inserted directly after the words "Emergency Preparedness" and would read as follows: "of Canada or the Minister of Justice or the Minister of Public Safety or the Solicitor General of a province or territory".

[*English*]

The Chair: Does everybody understand that subamendment?

Is there any further debate on the subamendment?

(Subamendment negatived)

The Chair: We move now to the amendment, Mr. Comartin's original amendment.

(Amendment negatived)

The Chair: We move now to the main motion.

(Clause 7 agreed to on division)

(Clause 8 agreed to)

(On clause 9)

The Chair: The NDP has an amendment, and the reference number is 4126771. Take that amendment out, please, and Mr. Comartin will want to present it.

Mr. Joe Comartin: Thank you, Mr. Chair.

It's along the same lines as the previous amendment, in that I think the proposed change is simply too broad. As I indicated in some of the questions I asked when this issue was raised—I think two meetings back—there is a requirement for this section to be in here in order to get around the provisions of the Criminal Code's section 25, and more specifically section 25.1.

What those sections are about, and Mr. Ménard and Ms. Jennings have already referred to it, is that we passed those amendments in order to provide protection for police officers when in the course of their employment they were compelled—usually when they were undercover—to commit criminal acts. They were particularly concerned about acts that entailed violence or force. But the sections certainly go far beyond that, including, I believe, to catching this type of conduct of creating a false identity, now that we passed these amendments, for the rest of the act. This section is necessary, in effect, to extricate police officers from the provisions of section 25.1.

I don't think that is what is desirable in a democratic society; it extends too much authority, really, to individual police officers. What I have proposed with this amendment to proposed section 368.2, if I have the same version as everybody else—it's part of clause 9 of the bill—is to add to the end of it. What we're saying up to this point, in the amendment the government has proposed, is that if the police officer is doing this for the "purpose of establishing or maintaining a covert identity for use in the course of the public officer's duties or employment".... This would add to that: "and if a competent authority, as defined in subsection 25.1(1), authorized the public officer to do so".

What subsection 25.1(1) does is create really three categories of authority. One is a member who's a "public officer" or "senior official", and then they go on to say in paragraph 25.1(a) that "in the case of a member of the Royal Canadian Mounted Police", it would be "the Minister of Public Safety and Emergency Preparedness" who would authorize this type of activity to go on. Paragraph 25.1(b) goes on: if it's a police service at the provincial level, it's "the Minister responsible for policing in the province". Then there's a third category in paragraph 25.1(c): "in the case of any other public officer or senior official, the Minister who has responsibility for the Act of Parliament that the officer or official has the power to enforce". That would cover the mention we've already had from the officials of people acting at border service agencies or the Department of National Defence, and then you go down through the list of people operating in the field under the ministers of the environment or of natural resources.

It then goes on in that section to define "public officer" and "senior official".

What we would be incorporating by this amendment is moving away from a police officer as an individual being able to make the decision as to whether to have a covert identity, to having that person make the decision but also having the authority from those senior members of the department. In fact, the way this has worked is that the authority is delegated down through the police forces and other agencies to the local level.

Those are my comments.

● (1620)

The Chair: Thank you very much.

We'll move on to Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: I would like to make you aware of a difference between the English and French wording, even though the end result is exactly the same. However, for the sake of those who will be called on to interpret it in the future, it might be preferable to say the same thing in exactly the same way, in French and English, in order not to confuse people trying to understand provisions which are already fairly obscure.

The fact is that comparisons are very often made of the wording in one language and the other. In this case, the French wording of the amendment does not refer to subsection 25.1(1), but only to "this subsection".

The French wording of this clause begins as follows: "*Le fonctionnaire public, au sens du paragraphe 25.1(1)*", whereas the English wording of the same clause begins with the words: "No public officer, as defined in subsection 25.1(1)". So, it is clear that, if it is within the meaning of that subsection, it is also within the meaning of that section. However, I do not understand why the same formulation was not used in French. Personally, I prefer the French wording, although people trying to understand what this is all about will find the English wording clearer, since it specifically refers to subsection 25.1(1).

[*English*]

The Chair: We'll move on to Mr. Woodworth.

Mr. Stephen Woodworth: Thank you very much—

[*Translation*]

Mr. Serge Ménard: I have other comments to make in other areas, but I will save them for later.

[*English*]

The Chair: Are you referring to this particular clause, which is clause 9, or are you referring to a different clause?

[*Translation*]

Mr. Serge Ménard: I am still talking about the amendment.

[*English*]

The Chair: Do you want to speak on this amendment after Mr. Woodworth is finished?

[*Translation*]

Mr. Serge Ménard: Yes, that's correct.

[*English*]

The Chair: Mr. Woodworth.

● (1625)

Mr. Stephen Woodworth: Thank you very much.

First I want to commend Mr. Comartin. I find his amendments today to be lucid and very astute, even though I don't necessarily agree with them. I just want to make it clear that I respect his expertise in these matters.

In a way I'm sorry that this proposal in clause 9 regarding an exemption for public officers doesn't follow somewhat the same wording as in clause 7. Be that as it may, I don't think I can accept Mr. Comartin's solution, because subsection 25.1(1), in referring to the Minister of Public Safety and other ministers responsible, uses the word "personally".

Although I stand to be corrected, because I may be outside my sphere of experience on this one, I don't know how that could be interpreted as to permit the delegation of that authority, as Mr. Comartin is suggesting might be the case. If I'm correct that personally means personally and not through a delegated act, then it would be far too restrictive to reference that section in this particular proposed amendment.

The Chair: Thank you.

Monsieur Ménard, do you have any other comments?

[*Translation*]

Mr. Serge Ménard: I agree with the amendment, which reinforces the certainty that it cannot simply be in the course of a person's duties or employment—in other words, that it also must have been authorized. If we can choose either the English or French wording, and if this can be expressed the same way in both languages, I will support the proposed amendment.

[*English*]

The Chair: Thank you.

Ms. Jennings.

[*Translation*]

Hon. Marlene Jennings: I would like to ask officials from the Justice Department to give us the benefit of their opinion on the wording, in both English and French. The last sentence reads as follows, and I quote: "[...] for use in the course of the public officer's duties or employment."

[*English*]

In English, it is "for use in the course of the public officer's duties or employment". Under law, jurisprudence, would this automatically assume that it was authorized if it's in the course of their duties? Do we have case law on that?

Mr. Marke Kilkie: We have extensive case law on officers being held to a standard in the lawful execution of their duties, and it's that kind of concept.

I'll clarify how some of section 25.1 would operate because I think it would be helpful. The competent authority under section 25.1 is designed to be the minister personally, because that is to designate an officer to make use of the scheme. It's not to authorize individual acts operationally within the scheme. That is done by the senior officer, a different concept, and only in very limited circumstances. It's only where there's anticipated serious loss or damage to property.

An officer designated under section 25.1 and using the scheme has discretion as to acts that are committed if they are properly acting under the proportionality test built into the scheme. They are not being directed to do each act, for the vast majority of acts. That is not actually how section 25.1 would operate. So to have the competent authority as the minister authorizing the use of a covert identification would not even line up with section 25.1 if it were the vehicle of choice to be used. I just wanted to clarify that as well.

Hon. Marlene Jennings: So if I understand the explanation you've just given.... Let's say there's a police operation investigation that's ongoing. Sometimes they take several years. In the course of that lawful investigation you have one or more officers who are authorized and in fact ordered to go undercover. In order to maintain the secrecy of their identity, there are false documents prepared to provide them with an identity.

In the course of being undercover, they may commit illegal acts. There are already laws that have been made to protect them, such as proportionality, etc. If this amendment went through, that particular officer would have to get authority every single time. Is that what I'm to understand?

● (1630)

Mr. Marke Kilkie: That is the way I would read the amendment.

Hon. Marlene Jennings: That is not feasible.

Mr. Marke Kilkie: Exactly. As well, I would add to your description of multi-year operations the point that the same covert identity, I'm told, is used by the same officer from investigation to investigation. A great deal of effort has gone into nurturing a covert identity for an individual officer, and that may be transported to different investigations.

Hon. Marlene Jennings: Thank you.

The Chair: Thank you.

We'll go to Monsieur Ménard and then Monsieur Petit.

[*Translation*]

Mr. Serge Ménard: I just wanted to say that the arguments made by Mr. Kilkie have convinced me that I should not support this amendment.

[*English*]

The Chair: Thank you.

We have a point of order from Mr. Comartin.

Mr. Joe Comartin: Based on that explanation, I'll withdraw the amendment, with unanimous consent.

The Chair: Do we have the consent of the committee?

Some hon. members: Agreed.

The Chair: The amendment is withdrawn.

We'll move on to the third NDP amendment, which is reference number 4127692.

Mr. Comartin, do you want to state the amendment?

We have a point of order.

Mr. Brent Rathgeber: I don't believe we've passed the clause, Mr. Chairman.

The Chair: You're absolutely correct.

We're dealing with clause 9. We have no amendment to that clause. Shall clause 9 carry?

(Clause 9 agreed to)

(On clause 10)

The Chair: On clause 10, that was the reference number I quoted, with the last three numbers being 692.

Mr. Comartin.

Mr. Joe Comartin: Mr. Chair, I've had some indication that there's some concern as to whether this is admissible. Could I have a ruling on it before I go into the explanation?

The Chair: I'll gladly give you a ruling on that.

Again, just to clarify, we're dealing with amendment 4127692. The amendment seeks to amend section 380 of the Criminal Code.

Marleau and Montpetit state on page 654 that "an amendment is inadmissible if it amends a statute that is not before the committee or a section of the parent Act unless it is specifically being amended by a clause of the bill".

Since section 380 of the Criminal Code is not being amended by Bill S-4, it would be out of order to consider such an amendment. That would be my ruling. The ruling is not debatable, but it can be challenged. I'm in your hands.

Mr. Joe Comartin: I'm not challenging it.

The Chair: Seeing no challenge, we'll move to clause 10, reference 4127576.

Mr. Comartin.

Mr. Joe Comartin: There's a correction here as well. It should read "replacing lines 38 through 41", not "replacing lines 38 and 39".

The Chair: So with that change the amendment would read that Bill S-4 in clause 10 be amended by replacing lines 38 through 41 on page 7 with the following. The rest would remain the same.

Mr. Joe Comartin: That's correct. There would have to be a corresponding change in the line numbers for the French version.

● (1635)

The Chair: Mr. Comartin, why don't you start.

Mr. Joe Comartin: This amendment was proposed by the Canadian Bar Association delegation when they came. It replaces the word "reckless" because it's not clear enough. There was a decision in R. v. Hamilton by the Supreme Court where they were critical of the term "reckless", which appears someplace else in the Criminal Code. I don't know what the fact situation was in that case. They equated "reckless" with a substantial and unjustified risk. That's the wording I've put into the amendment I'm proposing.

The risk is that if we don't put in the clarifying wording, which is the Supreme Court's wording, at some point somebody will challenge this section and have it struck down as being too vague. Given that we have the opportunity to do that and directions from the Supreme Court of Canada that it's the type of wording they want used, it seems to me it's appropriate we do this.

Thank you.

The Chair: Thank you.

Is there any further discussion on the amendment?

Monsieur Ménard.

[*Translation*]

Mr. Serge Ménard: There again, I am having trouble understanding how the two lines, plus a word, in the French version of the proposed amendment can possibly correspond to the six lines of the English version of that amendment. As a general rule, the French is longer than the English. I am still trying to understand what the amendment is.

[*English*]

The Chair: Monsieur Ménard, are you clear on the amendment?

[*Translation*]

Mr. Serge Ménard: No.

[*English*]

The Chair: Perhaps we could ask the justice officials.

Do you have an explanation on exactly where the French would be uncertain?

Ms. Joanne Klineberg (Counsel, Criminal Law Policy Section, Department of Justice): Do you mean the French version of the amendment?

The Chair: I think they're a little confused about exactly where the amendment is being inserted.

[*Translation*]

Mr. Marc Lemay: Mr. Chairman—

[*English*]

The Chair: Yes, Mr. Lemay.

[*Translation*]

Mr. Marc Lemay: No that is not the issue. We know where it goes. There is no problem in that regard. However, the English wording of the proposed amendment does not seem to have been properly translated into French. The wording of the amendment in English is not very clear, whereas in French, it is clearer. That's all.

[*English*]

The Chair: Do you have a response, Ms. Klineberg?

Ms. Joanne Klineberg: I can certainly understand what the English motion to amend means. I think it is just one of those cases where the French is shorter than the English. It is unusual, but there are some expressions that are easier to translate or that come out shorter in French than in English. The English is clear to me.

The Chair: Thank you.

Mr. Woodworth.

[*Translation*]

Mr. Stephen Woodworth: Thank you very much. I believe the word “reckless” appear in the English wording.

[*English*]

The amendment proposes that part of the English paragraph be repeated without the reference to the word “reckless”. I am assuming there is an equivalent part of the paragraph *en français* that contains that word “reckless” or its French equivalent, and that this portion of the paragraph has been perhaps inadvertently omitted from the French version of the amendment.

I hope I am getting it right.

● (1640)

The Chair: Monsieur Lemay.

[*Translation*]

Mr. Marc Lemay: With all due respect for Mr. Comartin, it seems to me the proposed amendment is problematic. Please correct me if I am wrong, but it seems to me that the clause, as currently worded, is more comprehensive than the proposed amendment. The part where it says: “[...] knowing that or being reckless as to whether the information will be used to commit an indictable offence that includes fraud, deceit or falsehood” seems to me to be clearer than “or false [...] or knowing that there is a substantial or unjustified risk that the information will be used to do so.” The word “substantial”, in relation to risk is vague, and the word “unjustified” is even more vague.

In my opinion, the proposed amendment is more vague than what currently appears in the French version of the bill under this clause.

[*English*]

The Chair: Thank you.

We'll go next to Mr. Norlock.

Mr. Rick Norlock: The justice officials are now supposed to be telling us what amendments mean instead of the person who has moved it.

Mr. Chair, I think we have explored this enough, and I would like to call for the vote.

The Chair: I was going to recognize the other people who have been waiting a long time to speak.

Monsieur Petit, then Ms. Jennings, and then Mr. Comartin. Then we will wind it up.

[*Translation*]

Mr. Daniel Petit: Thank you very much.

In the French version of the initial proposed wording, at the end of subsection 402.2(1), it says “ou le mensonge ou sachant qu'il existe un risque sérieux [...]”. In the English version, it is the same thing, although it includes all the other indictable offences that could be involved, such as fraud, deceit, and so on. The French wording that makes reference to that appears further on in the paragraph, whereas it appears right at the beginning in the English version. That is the reason why there are more lines and more words; but, in actual fact, Mr. Comartin's proposed amendment should have included a reference to the words fraud, deceit, and so on.

I would like Mr. Comartin to tell us if he only intends to affect the French wording, where he says “or falsehood [...] or knowing that there is a substantial or unjustified risk that the information will be used to do so”. In the English version, it says:

[*English*]

> purposes, knowing that the information will be used to commit an indictable offence that includes fraud, deceit or falsehood

[*Translation*]

The English version is therefore much longer than the French version. Am I right?

[*English*]

The Chair: Thank you.

[*Translation*]

Mr. Joe Comartin: Yes, you are; the English wording is much longer than the French wording. As I see it, the real problem is that the amendment originally proposed by the government does not have the same meaning.

[*English*]

that have in English of the word “reckless”.

[*Translation*]

I do not think the word “souciant” is an accurate translation.

[*English*]

The point I'm making is that I don't see the concept of "reckless" in the English version. I have to apologize to the committee that I didn't look at the French version at all when I did this drafting; I just looked at the English.

But I don't see the French concepts that use the word *"souciant"* are anywhere near as clear a translation of the concept of "reckless". In fact the French version may be satisfactory in terms of what I'm trying to accomplish, which is a clear recognition that the person who is committing the offence is how we're going to define recklessness. *"Souciant "*, in French, may catch that concept fairly accurately.

The bottom line is that I'm not sure we need the French amendment; we do need the English one in order for "reckless" to be more clearly defined.

● (1645)

The Chair: Perhaps we could have a comment from Ms. Klineberg, briefly.

Ms. Joanne Klineberg: We frequently encounter this question about the translation of "reckless" into *"ne se souciant pas"* in French. It happens in the drafting room, and then it happens repeatedly afterwards. The best answer we can give is that "recklessness" is a concept that has a long and rich jurisprudential history, as I am sure you are aware. When you look at the translation of the jurisprudence of "reckless", the French term is *"ne se souciant pas"*. There are about half a dozen uses of the term in the Criminal Code, and in each of those instances *"ne se souciant pas"* is how "reckless" is translated in the Criminal Code.

Unfortunately my French is not quite good enough to feel the subtle differences. I have been made aware that they don't necessarily line up perfectly in common usage, but from a criminal law perspective, those are the precise terms used in translation of each other through the Criminal Code and the jurisprudence.

The Chair: Thank you.

We'll go to Ms. Jennings.

Hon. Marlene Jennings: I'm actually fine with the section in the draft bill on the French side. If Mr. Comartin has concerns about the English version of this section, I'm not sure the amendment he is proposing captures that. Unless he is actually in a position to provide this committee with the jurisprudence, and I'm not doubting that it does in fact create—

Mr. Joe Comartin: If you take a look at the bar association's brief, it's there, and it's a Supreme Court of Canada decision in Regina v. Hamilton.

Hon. Marlene Jennings: Thank you. I will do that. It will be too late for this committee, because the bill is already in clause-by-clause.

I was just added to this committee today. You know me very well, and you know that I'm normally very well prepared. I appreciate your underscoring that it was brought to the attention of the committee.

The Chair: Thank you very much.

Let's close with Mr. Comartin, unless there's something urgent to add.

Mr. Comartin.

Mr. Joe Comartin: I hadn't finished; you cut me off. I'd asked the question of the officials and I wanted a further response.

The Chair: That's fine, go ahead.

Mr. Joe Comartin: With respect to the use of *"ne se souciant pas"*, when the Supreme Court got on to the "reckless" definition in the Hamilton decision, did they make any comments about the French? I haven't read the whole decision.

Ms. Joanne Klineberg: If I could make just one slight clarification about the Hamilton case, there isn't really a criticism of the definition of "reckless" in the Hamilton case. In fact, the Hamilton case was interpreting the offence under section 464 of the Criminal Code. The offence under that section is counselling an offence that is not committed, and the word "reckless" does not even appear in section 464 of the Criminal Code.

In fact, in the Hamilton case, what the court was required to do was to develop some common law surrounding what the necessary mental state was for that offence in the absence of there being an explicit mental state in that offence, so they determined that the mental state for counselling an offence that another person doesn't actually commit.... In this particular case, the factual scenario may help elucidate the discussion.

It was a case where someone had sent out hundreds of spam e-mails to all kinds of people who this person didn't even know. They were advertising a variety of things. Sandwiched in the hundreds and hundreds of documents included in the spam were documents on how to make a bomb and how to commit credit card fraud. That person was tracked down. There was no evidence that any of the people who had received the spam had gone on to commit those offences. The question was whether that person who sent out those e-mails could be charged and convicted of the offence of counselling another person to commit an offence that was not actually committed.

As I mentioned, there is no explicit mental state in section 464, so the court had to essentially read in what the necessary mental state could be. They determined that in the Internet age, which is apropos of the discussion surrounding identity theft as well, it would be too high a threshold to say that a person would have to know that another person would commit an offence. They said that in the Internet age it should also be permissible to get a conviction if the person is reckless, and in this particular case they set the threshold for recklessness at a fairly high level, because no offence is actually committed and a person is really convicted simply for counselling another person, sending out an e-mail.

So in this offence they read in the *mens rea* of recklessness and set it at a fairly high threshold of a substantial and unjustified risk. But they didn't actually critique the definition of recklessness, although there may have been some commentary that the notion of recklessness has been in the criminal law for probably hundreds of years at this stage, going back to English common law, and there is no definition in the Criminal Code. So what we have are a few instances of "reckless", including the fact that reckless is used in the murder provisions. It's an offence if you intentionally cause grievous bodily harm and you're "reckless whether death ensues". Those are the words in the Criminal Code.

So the question really is this: is this threshold of recklessness satisfactory for this particular offence, and if you were to incorporate it into this bill, will you be setting a precedent for the interpretation of recklessness in other offences without having considered what those other thresholds should be?

That's slightly broader than what your particular question was directed at, Mr. Comartin, but I find the background on Hamilton helpful to understanding the situation.

● (1650)

Mr. Joe Comartin: Thank you.

The Chair: Does anybody else wish to comment? Seeing nobody, we'll then move to a vote on the amendment.

(Amendment negatived)

(Clause 10 agreed to on division)

(Clauses 11 to 13 inclusive agreed to)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

Some hon. members: Agreed.

An hon. member: On division.

The Chair: Shall I report the bill to the House?

Some hon. members: Agreed.

The Chair: Thank you very much.

The next item on our agenda is consideration of Monsieur Ménard's motion in the Cinar case.

Monsieur Ménard, did you wish to move the motion at this time?

[*Translation*]

Mr. Serge Ménard: Yes, Mr. Chairman.

[*English*]

The Chair: All right, it's as submitted.

You have the motion before you.

Monsieur Ménard, do you want to open discussion on it?

[*Translation*]

Mr. Serge Ménard: I am not sure that this case was as widely reported in English Canada as it was in French Canada, but it certainly raises a great many troubling questions. First of all, it took one individual, with the occasional assistance of a few lawyers, 14 years to prove the validity of a complaint lodged with the RCMP in 1995, to the effect that a piece of work he had submitted to Cinar several years prior to that had clearly been plagiarized. In addition to that, it was plagiarized by a company that had committed other irregularities, to put it mildly, in the process of obtaining funding from Telefilm Canada—in other words, public funds—to produce a program that had been plagiarized. We are talking about considerable amounts of money here.

To begin with, complaints were lodged by the person who had been robbed, not only of his idea but also his work. The RCMP undertook an investigation and, just when the investigation was almost completed, instructions were received from the Department of Justice to close the file.

Here we have the example of a citizen who was the victim of a huge fraud. However, the judge did award him an amount of $5 million in damages for infringement of his copyright. So, this is not a minor affair.

In addition to that, the amounts obtained from Telefilm Canada, based on two kinds of misrepresentations, amount to millions of dollars. That money had been earmarked by Telefilm Canada to encourage Canadian television production, by Canadians. So, there was a first misrepresentation by individuals who copied the original version prepared by Mr. Robinson. At the same time, these individuals were foreign nationals—of either American or French nationality—and thus, the company would not have been in a position to receive the large grants of money that were paid. Furthermore, because this was public money intended to help Canadian business or a specific type of Canadian business, one of the conditions was that there be a minimal investment by a Canadian company with support in the form of U.S. or foreign capital. In fact, the Canadian company was required to invest 25% of its own capital in the business in order to receive federal funding.

It turns out—and that is now being alleged in the appeal—that even though they had submitted a letter to the government stating that they were in fact putting up 25% of the capital, in the case on appeal, they are now claiming that they were only providing 10% of the capital and that, consequently, they should only be ordered to pay 10% of the total amount of $5 million to the author—not 25%—even though they said at the outset that they were investing 25% of the capital. They were therefore responsible for 25%.

So, there are three substantial issues involved here.

● (1655)

What is worse, and why I believe there is a need for action on the part of the lawmakers, is that, at the present time, despite everything that has been done, people still do not understand why, when the RCMP had gathered considerable evidence—enough to convince a superior court judge—the RCMP was then instructed to set aside this file and not lay charges.

If Mr. Robinson wins on appeal, he will be compensated, although no one knows how long that will take. However, if the judgment is upheld, he will receive $5 million, plus interest. The fact remains, however, that throughout this period, the government—the public—was subsidizing a company which was supposedly 25% Canadian, when in actual fact, it is now very clear in these proceedings that the company in question was only putting up 10% of the capital. And, I might just mention in passing that 90% of the profits made by stealing Mr. Robinson's copyrighted material were paid offshore, when in fact the purpose of the funding program was to encourage Canadian craftspeople.

This case began in November of 1995; that's why we are still talking about 14 years. An initial complaint was lodged by Mr. Robinson with the RCMP for infringement of copyright. I would just like to remind you that copyright is something we have talked about a great deal in this committee, I believe, as well as in others. Essentially, we provide poor protection for copyright here in Canada, even though, as lawmakers, we all realize, when dealing with copyright legislation, the incredible asset that proper protection of copyright really is, since it is a tool for protecting innovation, and so on.

I don't really need to say much more about this. I only mention it to bring home to you that this is a matter of the utmost importance. It is possible that it did not receive the same media attention in English Canada as it did in French Canada, but in my opinion, it is similar in importance to the sponsorship scandal, even though it involves a different area; basically we are talking about public money obtained fraudulently.

As I say, the whole affair began in 1995. In March of 1997, after searches were conducted at the offices of Telefilm Canada and Cinar —the company in question—the RCMP completed its investigation and a request to institute proceedings against Cinar was filed with the Crown. The Crown sought the advice of a copyright expert and decided not to lay charges.

In June of 2000, Radio-Canada revealed that the expert in question was the sister-in-law of the president of the company. As a result, a second request to resume the investigation was brought forward in October of 1999. At that time, the front men scandal was exposed—in other words, the fact that American or French authors were copying or adapting Mr. Robinson's original work and that copies were being signed by Canadians who had had no involvement whatsoever in that work. Once again, funding intended for Canadian craftspeople had been directed to American or French nationals. So, the whole front men scandal was exposed in October of 1999.

Following fresh allegations of tax irregularities, and at the request of the Minister of Canadian Heritage—Sheila Copps, at the time—the RCMP reactivated its investigation of Cinar, in two parts: the tax irregularities and the copyright infringement.

In May of 2000, the RCMP made it known that the investigation had hit a brick wall because of a lack of cooperation from the federal Department of Revenue.

In February of 2001, the RCMP's investigation into tax irregularities was completed and it recommended that criminal charges of tax fraud be laid against four executives and former ex-executives of the company Cinar.

● (1700)

On January 22, 2002, after consulting an expert with Justice Canada, the Crown announced its intention not to lay criminal charges against Cinar for tax fraud, but the criminal investigation into the copyright complaint continued.

In December of 2003, the Crown decided, for a second time, not to lay charges of copyright infringement against Cinar. It claimed there was insufficient evidence, even though important witnesses had not yet been heard. That marked the end of all RCMP investigations.

For its part, the Ontario Securities Commission decided to open an investigation into Cinar's activities, but thus far, no information has been made available as to the results of that investigation. The Quebec Securities Commission also has an investigation underway.

Finally, Mr. Robinson went before the Superior Court to defend his copyright. When proceedings were first initiated against Cinar with respect to infringement of copyright, Claude Robinson was at the very centre of the front men scandal, because he is the one who realized who had actually written the copy of what he had submitted. So, even though the defendants engaged in multiple delaying tactics —changes of lawyers, repeated requests for additional details regarding the application, and so on—$2.4 million in lawyer fees and 14 years later, Claude Robinson won his case before the Superior Court on August 26, 2009.

In a 240-page judgment, Justice Claude Auclair of the Quebec Superior Court awarded $5.2 million to Mr. Robinson, the author of *Robinson Curiosité*, which was the name he had given the work he had submitted to Cinar. The judge was highly critical of the defendants, saying that their behaviour was, and I quote “scandalous, despicable and immoral” and that the conduct of their business was “based on cheating, lies and dishonesty.” The judge went on to add this: “The conduct of the defendants is abusive, premeditated and deliberate. Even during the trial, they continued to hide their wrongdoing.”

I have skipped over many parts of the judgment, quoting only those passages that are the most salient, in order for you to understand just how important this whole affair was.

In 1997, to terminate the RCMP's investigation, the Department of Justice relied on the expertise of Danielle Aubry, sister-in-law of a Cinar vice-president. It took her only two days to review 26 episodes and hundreds of pages. The investigation was subsequently reopened, and two subsequent assessments concluded that Cinar had used most of Robinson's project.

Bertrand Gagnon, a former RCMP investigator on the file said: “Yes, if our bosses had not believed in this, I would not have worked on this investigation for three years. The evidence speaks for itself—what we had, what we were receiving; it was always positive, and yes, we kept on going. We had to discover the other side of the coin.” That was confirmed in 2001 in a passage from an interim report on the second RCMP investigation. It says, and I quote: “It seems increasingly clear that the work entitled *Robinson Curiosité* was plagiarized.”

Again, I remind you that the Department of Justice stepped in to prevent the RCMP from initiating proceedings on the basis of the complaints that had been lodged.

Bertrand Gagnon, the former RCMP investigator, went on to say: "Could someone please explain how an investigation ordered by a federal minister [Sheila Copps] could not be considered in the public interest… I just don't get it."

It is also important to remember, in terms of the public interest, that foreigners claiming to be Canadians had acted as a front, in order to receive federal funding.

● (1705)

[*English*]

The Chair: Monsieur Ménard, our interpreters are having difficulty following you because you're reading from a prepared text. Perhaps you could slow down a little.

Thank you.

[*Translation*]

Mr. Serge Ménard: In December of 2003, the Department of Justice, claiming that there was a lack of evidence, terminated the investigation before the RCMP had questioned the BBC, France Animation or Ravensburger, the companies that broadcast the television series. Cheryl Blackeney, Weinberg's former secretary—Weinberg was one of the main shareholders in Cinar, with his wife, Micheline Charest—received a call from the RCMP telling him that the investigation had been terminated without charges being laid. When asked why, the RCMP replied:

[*English*]

"It's not our call."

[*Translation*]

Bertrand Gagnon, a former RCMP investigator, said this: "How is it that someone in Ottawa got involved in this and had access to our inquiry… that is unclear."

I have skipped over a lot of paragraphs, which now brings me to this one:

> One can only conclude that the comments of Justice Claude Auclair are, at the very least, incisive, extremely critical and harsh. He writes in his judgment that the way of conducting business of the accused—Ronald A. Weinberg and the late Micheline Charest, Christophe Izard and Christian Davin—was "based on cheating, lies and dishonesty." He goes on to say that the latter "did not hesitate to tamper with contracts in order to inflate production costs with a view to receiving federal funding and to alter their equity percentage in order to qualify under the bilateral France-Quebec agreement."
>
> He goes on to say: "[…] the conduct of the defendants was abusive, premeditated and deliberate. Even during the trial, they continued to hide their wrongdoing." He points out that they had no compunction about "making false statements as to Canadian content and Canadian authors", adding in the same breath that "a clear message has to be sent to copyright violators that their greed will be punished and that they can expect to receive more than just a simple order to pay damages with no penalty, if they are found out."

No action was taken in the wake of the ruling handed down by the judge, who was of the view that the damages awarded were inadequate. So, this is truly a matter of public interest.

> He points out, once again, that the judgment and the award of punitive damages are intended to "prevent similar cases from occurring and to punish these white-collar criminals, in order to discourage them from concocting such schemes in the future, and to sanction their scandalous, despicable and immoral behaviour".

I am still quoting from the judge's ruling. Here is a final quote:

> The defendants should have known that their game would be exposed, and yet, they persisted in their deceit and did all they could to break the plaintiff, both morally and financially. Only the plaintiff's perseverance and the support he received from his counsel allowed him to remain firm and to stay with this legal saga to the bitter end.

Those are the reasons why we have tabled this motion. We clearly do not have the same tools as the RCMP. In any case, the latter would only be too happy to present the results of its investigation. The charge-laying process was interrupted. Why? We know who made the decision, but we do not know why. You must admit that, given the context that I have just described to you, this is an absolutely awful case. Here in Canada, we are shooting ourselves in the foot by not providing better protection of copyright. We are talking about millions of dollars of federal money obtained on the basis of misrepresentations. I can only support the views of the judge in this case. The damages awarded to the individual—

● (1710)

[*English*]

The Chair: I have a point of order.

Mr. Stephen Woodworth: I'm not sure why, but my translation cut off a moment ago and I missed the last 40 seconds or so.

The Chair: Monsieur Ménard, perhaps you could repeat what you said in the last 40 seconds.

[*Translation*]

Mr. Serge Ménard: Your comments were probably translated. At the same time, I think it is of the utmost importance for Canada to protect the copyright of its citizens—this is a matter of public interest, particularly since millions of dollars of public funds have been given out on the basis of misrepresentations. Even though that evidence was not only presented publicly, but sanctioned as well by a justice of the Superior Court, and even though complaints were lodged with the RCMP in the past, no action has yet been taken to punish these individuals, whose conduct was despicable, as the judge pointed out, and who broke the law. No action has been taken to file charges relating to the fraudulent actions of the people involved in terms of obtaining public funding. No action has yet been taken by the government to present a claim for repayment of the money granted on the basis of misrepresentations.

This is where we can play a role, by putting some critical questions to a certain number of witnesses: the RCMP investigators, the Crown attorneys who contacted RCMP investigators to terminate the proceedings that had been initiated, in order to shed some light on the decisions that were made and ensure that there is some follow-up, now that the evidence has been clearly laid out and sanctioned by a court of law which, I believe, we all respect.

We are not asking for revenge for Mr. Robinson, but at the same time, laws were broken and monies were obtained fraudulently that should be paid back. That is why I am moving the following:

> That the committee conduct a thorough study of the Cinar affair, and particularly allegations of political interference, with a view to determining the reasons for the decision not to press criminal charges against the persons responsible, and that the committee report its findings and recommendations to the House.

● (1715)

[*English*]

The Chair: Thank you, Mr. Ménard.

Does anybody else want to speak to the motion?

Mr. Murphy.

[*Translation*]

Mr. Brian Murphy: First of all, I would like to say to Mr. Ménard that, in the province of New Brunswick, there are more than 200,000 people who speak French, who are part of this country, and who are French Canadian. French Canadians living in Quebec are not the only ones that have concerns with respect to our justice system.

[*English*]

I would say, though, that we've all followed this case, and we know that it's a court case. I've only been here for close to four years; I wonder if we're going to get involved now in all court cases.

In rebuttal to your motion—I'm not really sure where I'm going to land on the motion, so I'm just saying this by way of commentary—we have in the past looked at allegations that touched upon members of Parliament and their role as public office holders. The Cadman case comes to mind. We didn't actually get to deal with that. The Mulroney-Schreiber matter certainly comes to mind.

I was involved in both of those discussions. The commonality, I suppose, was that they touched upon public office holders of *a* sort or another, past or present. You can see the nexus between our work as a committee, although not everybody agreed on each of these cases, and investigating issues regarding public office holders—or, as they were, members of the Commons.

This case, as far as I can see, emanates from a recent finding of a judgment, in effect. We have many judgments in this country that speak to large sums of money and very bad people on the defence who cause large sums of money to be awarded by judges. I just wonder....

Maybe I'll ask these questions to close with, because I'm not sure where we're going to land on this or where I'm going to vote on this.

I would like you to answer these simple questions—first, how this might be the Pandora's box where we look into almost any judgment where there has been sort of fraud found, in a civil matter, that hasn't been adequately investigated by the police.

Secondly, as you would well know, probably more than anyone here, there is no statute of limitations on the kinds of crimes that are talked about in this judgment. How do we know that there isn't an ongoing investigation that we might inadvertently muddle by our investigation?

Finally, and you might as well say it, are you talking about specific members? I think there are allegations of political interference. I mean, your statement was long enough; I'm surprised it didn't actually make the allegations as to the specific political interference. You might as well say it.

If Mr. Ménard has an opportunity to respond to those questions, I might be better informed to make my decision on his motion.

Thank you.

● (1720)

The Chair: Anybody else on this?

Ms. Jennings, and then Mr. Moore.

Hon. Marlene Jennings: Thank you, Chair.

[*Translation*]

I have to say I am curious as to where the reference to allegations of political interference is coming from. I, too, would like to be given a little more information from our colleague, Mr. Serge Ménard.

To be perfectly honest, I think the Bloc, and possibly other parties, already have a target in mind. I am quite concerned about the fact that we do not know whether a police investigation is currently underway. I would like the government to tell us whether such an investigation is ongoing. I can understand the Bloc's frustration. Their leader has asked questions regarding this affair on a number of occasions during the Oral Question Period, and the government is refusing to provide clear answers.

So, first of all, I am curious to know whether a police investigation is in fact underway at this time. Only the government can answer that question. It does not hesitate to tell us—in other cases, for example—that it cannot comment because of a complaint, because a police investigation is underway or because the case is before the courts and that, for this very reason, the government must avoid commenting. In this case, it seems to me that the government should be in a position to tell us whether, yes or no, a police investigation is underway regarding this whole question of allegations of criminal fraud, and so on.

Secondly, I would like to receive additional information from our colleague who states, in his motion, that there have been allegations of political interference. Could he please tell us more about that? In the presentation he just made, he referred to the Department of Justice, and to officials working for that department who terminated the charge-laying process. However, the only actual politician he has made reference to is the former Minister of Canadian Heritage, the Hon. Sheila Copps, and he repeated a number of times that she herself had requested that there be a police investigation, without ever alleging that this particular minister or her successors may have tried to interfere in that police investigation. So, I would like to know who those allegations refer to, in order to make an informed decision on the motion.

I would also like to know whether the parliamentary secretary to the Minister of Justice is in a position to tell us whether a police investigation is, in fact, underway on this specific case.

This is necessary, because this is a serious case. If the motion is passed by the committee, that will mean that bills that are waiting to be studied by this Committee will have to be set aside, based on what I heard earlier. So, we have to have an answer to those two questions. At the very least, I need an answer from the government, through the parliamentary secretary to the Minister of Justice. The other question is for my colleague, Mr. Serge Ménard.

That's it. Thank you.

● (1725)

[*English*]

The Chair: Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thanks, Mr. Chair.

Mr. Ménard's predecessor, Réal Ménard, in the past has also brought a number of different studies before this committee. Obviously my number one concern on this side of the House is that government legislation that we're vested with at committee has hearings in due course, and I'm certainly not interested in clogging things up at all. I would like to know Mr. Ménard's thoughts, because I want to make sure—and I would also ask this before Réal Ménard—that we have some assurance that this is not going to get in the way of studies of government legislation. That to me is paramount, that we deal with the government bills that are put before the committee as expeditiously as possible. That's my only question on this.

The Chair: Monsieur Ménard, do you want to respond? There were questions from both Mr. Moore and Ms. Jennings.

[*Translation*]

Mr. Serge Ménard: I will start with the easiest one. I don't know why Mr. Murphy made the remarks he did with respect to the fact that there are Francophones in New Brunswick. It seems to me that I was careful to refer to Canadian Francophones and Canadian Anglophones. Of course, this whole affair involved something that was done in French. Indeed, I believe the plagiarized show was broadcast in New Brunswick as well. So, that argument is neither here nor there.

Why? Well, this is probably the biggest copyright case ever to have arisen in Canada. We encouraged the RCMP, we prompted it to investigate possible plagiarism and to defend patents. The investigators assigned to this case are convinced that they had causes of action. They filed charges and were subsequently told to withdraw them. Who told them to withdraw those charges? Obviously, they were told that by officials, but we would like to know, in light of what is clearly stated in the judge's decision, who asked them to do that.

I am not one to bandy about accusations, but looking at this whole affair, one cannot help but think that the instructions given the police to withdraw the charges had to have come from very high up. It is absolutely unthinkable, when you read the judgment, that a lawyer could have expressed that opinion. So, there must be another explanation, and that is exactly what we are seeking.

This is not about interfering in the work of police officers—quite the opposite; it is about understanding why the work done by the police, which resulted in charges being laid with respect to considerable amounts of public funds and very serious violations of the rights of an individual, was terminated.

It is my conviction that many people will tend to identify with Mr. Robinson, even if they recognize that they do not have his talent. It's the chicken or the egg. We are talking about a judgment which makes it clear that there was fraud, that offences were committed, that the police were aware of that and were convinced that they had the necessary evidence. Yet the work of the police was terminated as a result of instructions given from higher up. We want to know where those instructions came from. You are asking me where I am going with this; I want to go right to the top. I believe that most citizens who are aware of this affair want the same. As far as I am concerned, this is just as important as the sponsorship scandal or an investigation into monies collected by a former prime minister while in office. I am sure you realize that this is just about the most serious thing that could happen.

And other information has become available. There are documents and a letter that was produced where it is stated that Cinar was contributing 25%. That letter was essential in order for the company to receive the federal funding it was granted. And, there is another letter stating that, despite what is written in the first letter, that contribution was actually only 10%. I think someone has to take a close look at all of this. Since no one else appears to be doing that, I am appealing to our committee.

● (1730)

[*English*]

The Chair: Monsieur Ménard, unfortunately the bells are ringing, so I'm going to adjourn so we can go to the vote.

I adjourn the meeting.

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