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Chair: The Honourable Hedy Fry



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• (1305)

[*Translation*]

The Chair (Hon. Hedy Fry (Vancouver Centre, Lib.)): I call this meeting to order.

Welcome to the 54th meeting of the Standing Committee on Canadian Heritage.

I would like to acknowledge that this meeting is taking place on the unceded traditional territory of the Algonquin Anishinabe people.

[*English*]

Pursuant to the order of reference adopted by this House on Tuesday, May 31, 2022, the committee is resuming consideration of Bill C-18, an act respecting online communications platforms that make news content available to persons in Canada, and is commencing clause-by-clause consideration of this bill today.

I just wanted to give everybody a bit of a heads-up on some of the things that we need to be careful about.

Today's meeting is taking place in a hybrid format. Those of you who are on Zoom, please check the bottom of your screen and you will see a globe, which is an interpretation bar. You know that you can press it to get English or French as you choose. Those of you in the room are already familiar with what to do to be able to get your translation going.

Please wait until I recognize you by name before speaking. Please mute yourselves when you're not speaking. When you want to speak, the clerk will recognize you for me if you're on the floor. I will see your hand up in the bar, if you're not. I want to remind you that all comments should be addressed through the chair.

I also wanted to ask the clerk one question. Has everybody been using the approved headsets?

The Clerk of the Committee (Ms. Aimée Belmore): There are no witnesses today with headsets, so no tests were required in order to do the meeting today.

The Chair: Obviously, the MPs have the correct headsets. I need to ask that because it is part of what we're trying to do now to protect our interpreters.

I would also like to make a point that there should be no photographs or recordings taken of the proceedings.

Now, in accordance with our routine motion, I want to welcome the witnesses who are present to answer any technical questions about Bill C-18 that the members of the committee might have.

We shall proceed to our clause-by-clause consideration. Pursuant to Standing Order 75(1), consideration of clause 1, which is the short title, is going to be postponed until the end of the clause-by-clause.

Clause 2 has the Conservative amendment CPC-01.

[*Translation*]

Mr. Peter Julian (New Westminster—Burnaby, NDP): Madam Chair, I believe Mr. Waugh is rising on a point of order.

[*English*]

The Chair: Go ahead, Kevin.

Mr. Kevin Waugh (Saskatoon—Grasswood, CPC): Thank you, Madam Chair.

I just served a notice of motion that I think everybody around the table has. I wanted to deal with it very quickly before we go to clause-by-clause, if that's okay with you.

The Chair: I do not have a notice of motion, Mr. Waugh.

Mr. Kevin Waugh: It was given to the clerk a couple of days ago, so it should be there.

Aimée, I think it's there. Is that right?

The Clerk: It was distributed.

I can redistribute it if you'd like, sir.

Mr. Kevin Waugh: Yes, please.

The Chair: I'll ask the committee. Does everyone have that motion? Do you know which motion we're speaking of?

I'm seeing Mr. Housefather shaking his head. I'm hoping that this notice of motion is something that we can dispense with, because we are trying to get clause-by-clause going and we all agreed that this would be so.

I'm going to ask the clerk to read the motion, please, in English and French, because I do not have it.

The Clerk: Absolutely, Dr. Fry.

The motion is this:

That former Supreme Court Justice, the Honourable Thomas Cromwell, be invited to appear before the committee pursuant to its study on safe sport in Canada, regarding his final independent governance review of Hockey Canada; and that the committee hear from Justice Cromwell prior to Hockey Canada's announcement of its new board and chief executive officer (CEO).

[Translation]

The motion reads as follows:

That...

[English]

The Chair: Thank you.

I apologize, Kevin. I have seen that motion. I didn't know what you were referring to.

• (1310)

[Translation]

Mr. Martin Champoux (Drummond, BQ): On a point of order, Madam Chair.

The clerk was about to—

[English]

The Chair: I'm sorry. There is noise in the room.

[Translation]

Mr. Martin Champoux: The clerk was about to read the motion. Could you please let her finish?

Thank you.

[English]

The Chair: Thank you. I didn't realize that she had still to do that.

Go ahead, Madam Clerk.

[Translation]

The Clerk: The motion reads as follows:

That former Supreme Court Justice, the Honourable Thomas Cromwell, be invited to appear before the committee pursuant to its study on safe sport in Canada, regarding his final independent governance review of Hockey Canada; and that the committee hears Justice Cromwell prior to Hockey Canada's announcement of its new board and chief executive officer (CEO).

[English]

The Chair: Thank you, Madam Clerk.

Members of the committee, you have a motion before you. Does anyone wish to oppose the motion and speak against it?

Obviously, Mr. Waugh, it's a compelling motion on its own.

How does the committee want to go ahead? Do you want to speak for or against, or do you just want to vote on the motion?

The Clerk: Mr. Bittle has his hand up.

The Chair: Go ahead, Mr. Bittle.

Mr. Chris Bittle (St. Catharines, Lib.): Thank you so much, Madam Chair.

The motion is imprecise in terms of a date. It's unanimous that we wish to call Justice Cromwell, but we're eating into clause-by-clause. Maybe this is a better time to adjourn it.

We all agree to it. I know that a lot of members have said that we want to expand the study and hear from other sports organizations, from experts, and really start getting into a further discussion of the

issues involving national sports organizations, not just Hockey Canada.

I think this requires an amendment, because it's a date before the—

The Chair: Would you like to make an amendment, Mr. Bittle?

Mr. Chris Bittle: No, I really don't want to make an amendment because this is now eating into too much time. I really think this is something to come back to.

I move that we adjourn debate on this so we can come back to it in the future.

The Chair: Thank you.

Mrs. Thomas, your hand is up.

Mrs. Rachael Thomas (Lethbridge, CPC): Thank you, Madam Chair.

I do wish to speak, but my colleague Kevin Waugh has had his hand up from the beginning, so I wonder if you might call on him.

Mr. Chris Bittle: I have a point of order.

The Chair: Yes, Mr. Bittle, I know that you have spoken, and some people may wish to agree with you and some people may not agree with you.

Mr. Chris Bittle: No, Madam Chair. On a point of order, I moved a motion to adjourn debate, and there's no more debate on that.

The Chair: Did you move a motion to adjourn debate? I didn't get that you had moved the motion.

There is obviously no discussion.

Yes, Mr. Waugh.

Mr. Kevin Waugh: I have a point of order.

I moved the motion. I haven't even talked about the motion. I think, Madam Chair, that you should at least give me that before we move to closure here.

I did it in advance and gave everybody the notice of motion. I'm sorry that maybe you didn't get it in time, but I would like to speak to it, if that's okay.

The Chair: Mr. Waugh, your motion is in order. Go ahead and say what you need to say.

There was a motion to adjourn, which should be considered.

Mr. Kevin Waugh: I also think the notice of motion should be considered.

It says that the committee hear from Justice Cromwell prior to Hockey Canada's announcement of its new board and chief executive officer.

Madam Chair, the only amendment I would make to this is that it has to be done before December 17, when the new board will be sworn in for Hockey Canada.

We've heard four meetings already from Hockey Canada. Let's hear from the person who did this study on safe sport and who did the final independent governance review before the new board is sworn in with Hockey Canada on Saturday, December 17. I think that would be appropriate.

The Chair: Thank you, Kevin.

Mr. Chris Bittle: I have a point of order, Madam Chair.

The Chair: Go ahead, Chris.

• (1315)

Mr. Chris Bittle: Just to clarify things, even though we should probably proceed to the vote and have no more debate, I'd like to withdraw my motion. We can just proceed to a vote if we can take the Conservatives at their word that they don't wish to filibuster this anymore.

The Chair: Thank you.

I think Mrs. Thomas, however, has the floor.

Mrs. Rachael Thomas: Thank you, Madam Chair.

We truly do wish just for this to come to a vote. I'm fine with that.

The Chair: Thank you very much.

I will ask the clerk to call the vote, please.

It's amended to say before December 17.

Mr. Tolmie, we are going to the vote now, unless you feel you want to say something important and different.

Mr. Fraser Tolmie (Moose Jaw—Lake Centre—Lanigan, CPC): Madam Chair, how are you taking that vote from people virtually?

I put my hand up just to say that I'm in favour of this motion.

The Chair: Yes, but we haven't called the vote yet, Mr. Tolmie. We're calling it now.

The clerk will, obviously, recognize the people who should be voting on the motion.

Mr. Fraser Tolmie: Thank you for making that clear.

The Chair: We'll go ahead with the vote.

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

The Chair: Thank you. It's unanimously passed.

Thank you, Mr. Waugh, for that motion.

We will now proceed to clause-by-clause consideration of Bill C-18.

Mr. Peter Julian: I have a point of order.

The Chair: Go ahead, Peter.

Mr. Peter Julian: I'll be very quick, Madam Chair, as I'm very excited about getting on to clause-by-clause.

I note that the intention of the order would be to have each of the clauses carry once we've considered amendments.

I would suggest—I hope my colleagues would agree—that we go through the amendments and then we go back to approving clause-by-clause. An amendment approved in one clause does have an influence on how we may treat another clause.

The Chair: Yes.

Mr. Peter Julian: I'm always uncomfortable with doing it simultaneously. I'd prefer a full pass on the amendments and then a full pass on adoption of the clauses.

The Chair: Thank you very much, Peter.

Does anyone disagree with that? Is everyone in favour of that process?

Mr. Philippe Méla (Legislative Clerk): Madam Chair, can I just—

The Chair: Seeing no hands coming up, I think everyone is in agreement.

Mr. Méla, go ahead.

Mr. Philippe Méla: I'm not sure I understood what Mr. Julian wants to do, but I think it would require unanimous consent to do that. It would—

The Chair: I just asked if anyone opposed it and no one did. It sounds like we have unanimous consent, unless somebody—

[*Translation*]

Mr. Martin Champoux: Madam Chair, on a point of order.

There is no interpretation into French.

[*English*]

The Chair: Thank you, Mr. Champoux.

Do you want us to suspend until we fix that interpretation problem?

[*Translation*]

Mr. Martin Champoux: The French channel is not working, Madam Chair.

Can someone please say something so that the interpreters can check if they are on the right channel?

[*English*]

Mr. Chris Bittle: In an effort to assist Mr. Champoux to see if there is translation, it's Chris Bittle here.

[*Translation*]

Mr. Martin Champoux: Thank you for that, Mr. Bittle.

[*English*]

The Chair: Is interpretation in order, Martin?

[*Translation*]

Mr. Martin Champoux: Yes, Madam Chair, it's working again. Thank you.

[*English*]

The Chair: Thank you.

We can move ahead. I had heard no objection to Mr. Julian's suggestion. Mr. Julian wants us to read out the amendments, or look at the amendments as they come through, to see if we all agree with them before we vote on them.

Is that what you're suggesting, Peter?

• (1320)

Mr. Peter Julian: I'm sorry, Madam Chair. It was to go through the amendments rather than adopting clause by clause as set out in the agenda, where you read through clause 2, you do the amendments, and then you ask if clause 2 should carry.

I would ask that we set aside "Shall the clause carry?" until after we've completed consideration of all the amendments.

The Chair: All right. That may be so, Mr. Julian, but you know that if a certain amendment is accepted, it may negate another clause. In other words, if we accept a particular amendment, it means that the other amendments pertaining to that thing may be moot or inadmissible. Those are some of the things we need to consider.

Yes, Madam Clerk.

The Clerk: Mr. Shields has his hand up in the room.

The Chair: Mr. Shields, go ahead.

Mr. Martin Shields (Bow River, CPC): Thank you, Madam Chair.

In my understanding of procedure, and we've been through this before, when we do exactly what you said—we find a clause, adopt it, and it has consequences on other clauses—those clauses are then removed from further debate. Then you approve them, because they have been dealt with, and we're not going back afterwards and doing that.

When we go through this process, we do exactly what my colleague from the NDP is suggesting. When we go through this process, it does that, as we normally would.

The Chair: I understand that. I just wanted everyone to know that this happens and that this would be part of the process. There may be new people in the room who've never gone through a clause-by-clause before.

Mr. Martin Shields: Well, my colleague from the NDP has done this many times.

I would respect the legislative clerk saying that's what we do when we go through it, as we have done, rather than what my colleague from the NDP is suggesting.

The Chair: I think the legislative clerk only responded to say that I needed unanimous consent, which I had, for Mr. Julian's suggestion.

Moving forward, starting with clause 2, we have amendment CPC-01.

Does anyone feel they have a problem with that?

I'll put it this way: It would be more efficient for us to say "Shall it carry?", because if no one has an objection, it carries. To do this in two separate stages makes it very difficult—

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

The Chair: Yes, Anthony. I'll recognize you. I'll just finish my sentence.

It would seem to me that to do this without saying "Shall it carry?", if everybody is in agreement, would mean that we would be going back and reinventing that wheel.

You wanted to say something, Anthony.

Mr. Anthony Housefather: Yes, Madam Chair.

I think perhaps you're misinterpreting what Mr. Julian proposed. He's proposing that we debate and vote on each amendment. What he's saying, though, is that when we finish all the amendments on clause 1, for example, we don't vote on clause 1. We move to the amendments on clause 2. Then we come back and vote on the clauses.

The Chair: Thank you.

That was not clear. Thank you for clarifying it for Mr. Julian, Anthony.

Mr. Martin Shields: I have a point of order, Madam Chair.

The Chair: Yes, Mr. Shields.

Mr. Martin Shields: I prefer to do it as we have done it in the past, so I'm objecting to the change.

The Chair: Mr. Shields, when I asked if anyone opposed Mr. Julian's suggestion, no one raised their hand, so we were moving on with this unanimous motion from Peter; everybody has agreed that we move this way.

As Mr. Housefather so kindly explained, we're going to go with all of the pieces, but we won't say at the end of it, "Shall clause x carry?" That's all we're doing. We're not changing anything else.

[*Translation*]

Mr. Martin Champoux: On a point of order, Madam Chair.

I don't recall you asking for everyone's consent to proceed in this way. The legislative clerk, Mr. Méla, stated that all committee members would have to agree if we wanted to change the way we proceed when doing a clause-by-clause consideration, but you did not ask us the question directly.

Perhaps we need a bit more clarity.

[*English*]

The Chair: All right. I had asked for opposition. Hearing none, I thought that meant it was unanimous. I'm sorry. We will go through it again, then, Martin.

Is there unanimous consent to proceed with Mr. Julian's suggestion?

• (1325)

Mrs. Rachael Thomas: I have a point of order.

I'm sorry. My hand has been up, and I haven't been acknowledged. I wish to be acknowledged before we go to a vote, whenever you have a moment.

The Chair: I am sorry, Mrs. Thomas. I didn't know if your hand was up from the last time or not.

Go ahead.

Mrs. Rachael Thomas: Thank you.

Madam Chair, I would just ask that the clerk perhaps clarify what Mr. Julian has proposed. Given your own misunderstanding or confusion around his proposal, of course, I would hope that you would sympathize with the rest of us. It's not clear.

The Chair: Certainly.

Mrs. Rachael Thomas: There does need to be greater clarity before we call a vote on this.

Thank you.

The Chair: Thank you very much.

Mr. Méla, can you comment on this suggestion by Mr. Julian, please?

Mr. Philippe Méla: Thank you, Madam Chair.

I'm not quite sure myself, so would Mr. Julian like to reiterate? I'm not sure if you want to go through all the amendments that are in the package one at a time and then come back to each clause. Is that it?

Mr. Peter Julian: The legislative clerk is absolutely right. What I'm proposing is that we go through the amendments. There are amendments that will be dropped and withdrawn, of course, so as we go through the amendments, we then complete consideration of the amendments.

The reality of clause-by-clause is that we always have the possibility of regrouping the adoption of clauses. My experience has been—because I've done it both ways—that this actually speeds up consideration because you can have adoption of clauses in groups if there is unanimous consent to do so—but after we've considered

the amendments. After we've seen the overall composition of the bill, we then go back and adopt the clauses as amended.

The Chair: Mr. Méla, would you comment, please?

Mr. Philippe Méla: I'm just thinking about the possible consequences once we go through all the amendments and adopt the clauses, I suppose, one after the other. Let's say we go through the whole package of amendments and go back to clause 1. Is that to simply adopt clause 1, possibly as amended, or to reopen...?

Mr. Peter Julian: As I said, I've done dozens of bills this way. I've done some bills in the way that is currently laid out. I just find it helps to facilitate.... We do the amendments. Then we do clause-by-clause adoption. As I said, with unanimous consent, we can adopt a series of clauses, which helps to facilitate the completion of the bill.

However, I didn't want to spend a lot of time on this, Madam Chair. I just hoped we could get this through quickly. If there's objection, we can go the other way. I just felt that this would be a way of facilitating consideration, but I didn't think we would be spending this much time on it.

The Chair: All right.

Now that it is very clear.... I think I misunderstood what Mr. Julian was asking for, as well, so now he has clarified it. He is suggesting that we could do it either the way we did Bill C-11—and the way I have done clause-by-clause for bills in the past—or we could go with his suggestion.

Is there unanimous consent to follow Peter's suggestion?

Mr. Martin Shields: No.

The Chair: Okay, so we do not have people wanting to do this. We do not have unanimous consent, so let's go to the other way that we have always done it before.

Thank you very much, Peter, for your suggestion on efficiency.

We will begin.

(On clause 2)

The Chair: As I said before, we will postpone the title and we will begin with clause 2, which is Conservative amendment 01.

The Clerk: Mr. Bittle has his hand up, followed by Mrs. Thomas.

The Chair: Mr. Bittle, go ahead.

Mr. Chris Bittle: Thank you so much.

I'd like to turn to Mr. Ripley and ask him if there are any issues with this particular amendment.

Mr. Thomas Owen Ripley (Associate Assistant Deputy Minister, Cultural Affairs, Department of Canadian Heritage): If I've understood the amendment correctly, it would modify the definition of digital news intermediary by removing the reference to the legislative authority of Parliament, if I've understood that correctly. I would defer to the mover in terms of what the motivation is behind that amendment.

The way the definition of digital news intermediary is currently structured, it recognizes that activity on the Internet is an area of shared jurisdiction between the federal government and provincial governments. So the key definitional concept there is online communications platform, including search engines and social media services, and it just puts down a marker that what the government is seeking to subject to this framework are those online communications platforms under the legislative authority of Parliament.

It's a question of jurisdiction.

• (1330)

Mr. Chris Bittle: Thank you so much, Mr. Ripley.

As there is a jurisdictional issue, we'll be opposed to this.

The Chair: Thank you.

Shall CPC-01 carry?

Mrs. Rachael Thomas: I have a point of order, Madam Chair.

The Chair: Mrs. Thomas, please speak.

We're in the middle of voting on a clause, but go ahead.

Mrs. Rachael Thomas: Madam Chair, my hand has been up since the moment this amendment was brought forward, and I believe, if I'm not mistaken—perhaps you could check with the clerk—that each of us has an opportunity to speak, and until we've all spoken it's not your call for a vote.

The Chair: Mrs. Thomas, I understand that. I don't know if your hand ever went down. That's my problem. If your hand is up fresh, then I will allow you to speak.

Go ahead.

Mrs. Rachael Thomas: Madam Chair, can I make a kind request? If my hand is up, perhaps you can consider calling on me and I could clarify whether or not it's a legacy hand or a new hand.

The Chair: Yes, Mrs. Thomas.

Go ahead, please.

Mrs. Rachael Thomas: Thank you, Madam Chair.

I wish to ask a few clarifying questions with regard to this.

My first question for the officials would be... I'm curious to know whether Parliament has jurisdiction over the Internet and if so, which legislation would offer this jurisdiction.

Mr. Thomas Owen Ripley: Madam Chair, may I respond?

The Chair: Yes, indeed. Go ahead.

Mr. Thomas Owen Ripley: As I responded to Mr. Bittle, activity on the Internet, depending on the nature of the activity, would fall either under federal jurisdiction or provincial jurisdiction.

The basis for this piece of legislation is regulating... Again, the key definitional concept here is online communications platforms, which would be platforms that are integral to the functioning of the Internet or permit person-to-person communication, and those are under federal jurisdiction, so the definition here is clarifying the scope of what digital platforms would be subject to this piece of legislation.

The Chair: Yes, Mrs. Thomas.

Mrs. Rachael Thomas: My clarifying question, then, for the officials is this. It has been brought to our attention by a number of legal experts that perhaps this is setting Bill C-18 up for a constitutional challenge. I'm wondering if you can comment on the constitutionality of this bill and whether or not that has been weighed, and what that process of evaluation looked like if it did in fact happen.

Mr. Thomas Owen Ripley: Thank you, Mrs. Thomas.

Indeed, the constitutionality of the bill was weighed before it was tabled. That is part of our normal assessment to make sure that any bill that's being brought forward by the government does fall under the federal government's jurisdiction.

Again, the way that this bill has been crafted focuses on those entities subject to federal government jurisdiction in a way that respects provincial jurisdiction in terms of activities that may fall under their sphere of jurisdiction.

The Chair: Thank you, Mrs. Thomas.

Is your hand still up? Are you still wanting to speak?

Go ahead, Mrs. Thomas.

Mrs. Rachael Thomas: Thank you.

I'm just curious, then, as to why the decision was reached that this does, in fact, fall under constitutionality.

• (1335)

Mr. Thomas Owen Ripley: Thank you, Mrs. Thomas, for the question.

At the end of the day, the assessment was that this is an appropriate extension of the constitutional heads of power that fall to the federal government and that a bargaining framework targeting online communications services, including search engines and social media services, is within the federal government's heads of power under the Constitution Act.

The Chair: Mrs. Thomas.

Mrs. Rachael Thomas: My next question is just for further clarification around this definition of “digital news intermediary”. It's defined as an “online communications platform”, but it doesn't define what an online communications platform is.

It would seem to me that in order to have jurisdiction over something, it would need to be clearly defined. I am just curious as to how you might describe an online communications platform. What would that definition be?

Mr. Thomas Owen Ripley: Thank you, Mrs. Thomas.

In short, it would be a communications platform that facilitates communication between individual Canadians—that point-to-point communication—or is integral to the functioning of the Internet.

We have sought to provide greater clarity in terms of what it applies to by making the reference to “a search engine or social media service” as part of that definition of digital news intermediary.

The Chair: Mrs. Thomas.

Mrs. Rachael Thomas: You said a “point-to-point communication”, so I have a few questions.

First off, does that include text messaging?

Mr. Thomas Owen Ripley: Thank you, Mrs. Thomas.

The definition of “digital news intermediary” specifies that it does not include an online communications platform that is a messaging service, the primary purpose of which is to allow persons to communicate with each other privately. Text messaging, for example, is excluded from the definition of “digital news intermediary”.

Perhaps a different way to understand what I am trying to communicate is that an online communications platform is a recognition of interprovincial communication undertakings, but in a digital context.

The Chair: Mrs. Thomas.

Mrs. Rachael Thomas: I'm curious, then, as to whether or not Twitter would be defined as a digital intermediary.

Mr. Thomas Owen Ripley: Thank you for the question, Mrs. Thomas.

For the purposes of this framework, our view would be that a platform like Twitter would be potentially a digital news intermediary and subject to the legislation if, as you likely know, it met the thresholds outlined in clause 6, which are to be set out in Governor in Council regulations.

The Chair: Mrs. Thomas.

Mrs. Rachael Thomas: I notice that you used the word “potentially”, so it doesn't seem like there is a clear definition there.

As you can imagine, I think everybody who may or may not be included in this legislation is eager to know, because this legislation mandates that they report themselves to the CRTC as a DNI. If they fail to do so, they can face a penalty.

The fact that this is unclear today is very concerning. Are you able to give a clear definition? Is Twitter captured or is Twitter not captured?

Mr. Thomas Owen Ripley: Thank you for the follow-up question, Mrs. Thomas.

Let me be clear. My assessment would be that Twitter is a social media service and thus, yes, meets the definition of a digital news intermediary for the purposes of this framework.

Again, whether it's subject to the framework—and that is why I caveated my answer previously—would depend on whether it meets the threshold set out in clause 6 and whether it then becomes a designated platform.

• (1340)

The Chair: Mrs. Thomas.

Mrs. Rachael Thomas: I'm wondering if there is other legislation where the term “digital news intermediary” is used, or if this is the first piece of legislation where we see the introduction of a new term.

Mr. Thomas Owen Ripley: Thank you, Mrs. Thomas.

I believe this is the first piece of legislation that uses this term. It's a concept being created for the purposes of the bargaining framework that recognizes that you can have platforms that have multiple types of services.

The way the bill is structured recognizes that you have a parent company, such as Meta or Alphabet. They operate multiple different kinds of services. One of these services could be a digital news intermediary, such as Google Search or Facebook, for example. The legislation is designed in a way to reflect that corporate structure that is part of the digital environment.

The Chair: Mrs. Thomas.

Mrs. Rachael Thomas: I'm curious, then, whether Facebook Messenger would be captured within this legislation. It would appear to me that it is both a social media platform and simultaneously a private messaging system.

Given the lack of clarity within the definition you're offering today, I'm wondering if you could, perhaps, provide greater certainty.

Mr. Thomas Owen Ripley: Thank you, Mrs. Thomas.

My assessment of Facebook Messenger is, again, that it is primarily a messaging service. Therefore, that type of service, a service like WhatsApp.... Those, again, are excluded from this definition of “digital news intermediary” in light of that last sentence, which clarifies that private messaging services are excluded.

The Chair: Mrs. Thomas, your hand is going to remain up for quite a while, so I suggest you go ahead and ask your question.

Mrs. Rachael Thomas: Thank you, Madam Chair. I will continue to raise my hand. In the event that somebody else wishes to interject, of course I'm happy to share the floor.

I'm curious, as well, about TikTok. Would that be considered a DNI?

Mr. Thomas Owen Ripley: Thank you, Mrs. Thomas.

My assessment is that a service such as TikTok would qualify as a social media service and thus, yes, potentially be subject to the framework.

Before it is designated, though, any service would have to respond to the criteria set out in clause 6, and those specific thresholds would be set through Governor in Council regulations. To be absolutely clear, no digital news intermediary would be subject to the framework until those Governor in Council regulations were done and those thresholds established. Those are really the things that would, then, make a platform designated for the purposes of the act.

The Chair: Mrs. Thomas.

Mrs. Rachael Thomas: Thank you.

I guess I'm curious, then. It seems as if there's an awful lot being left up to the Governor in Council to determine, as well as the CRTC. For the sake of clarity, for the benefit of those of us around the table, could you define what is meant by Governor in Council? What entity is that? Who's making that decision?

Mr. Thomas Owen Ripley: Thank you, Mrs. Thomas, for the question.

The Governor in Council is the typical process used for regulation-making in many instances when it's not the regulatory body making those regulations but rather the government. The way that is typically done is that a government department would pre-publish proposed regulations in part I of the Canada Gazette for consultation, and stakeholders would have an opportunity to consult on those proposed regulations.

The sponsoring government department would then seek to finalize those regulations, and the responsible minister would bring a regulatory package forward to the Treasury Board. It is the cabinet committee that is responsible, generally, for making Governor in Council regulations, and that regulatory package would be reviewed and approved by the Treasury Board.

The final regulations are published in Canada Gazette part II.

• (1345)

The Chair: Go ahead, Mrs. Thomas.

Mrs. Rachael Thomas: I'm curious, then. As of right now, which political party is the cabinet composed of?

I'm also curious to know if, in Canada's history, anyone other than the governing party has composed the cabinet.

Mr. Thomas Owen Ripley: In terms of the first part of your question, Mrs. Thomas, it's currently the Liberal Party of Canada that is the governing party.

In terms of your second question, I'm afraid I'm not in a position to know whether every cabinet has consisted of solely the governing party in Canada.

Mr. Peter Julian: I have a point of order, Madam Chair.

The Chair: Yes, Mr. Julian.

Mr. Peter Julian: I find the line of questioning like "Which party is forming the Government of Canada?" to obviously be wasting the time of this committee.

We've heard from so many witnesses who want to see this bill improved, but who also want to see this bill passed. If Mrs. Thomas simply does not want to pass the bill, then I think she should be straightforward and say that, rather than ask questions such as "Which party is forming the Government of Canada?"

I think that type of simplistic questioning is something that does a disservice to all of the money that Canadians are investing in this committee hearing. This is something, with the translators and all of the staff, that means there's a tremendous cost to Canadians.

We have work to do, and I would certainly hope that Mrs. Thomas would allow us to do it.

The Chair: Mrs. Thomas, go ahead.

Mrs. Rachael Thomas: I'm curious to hear from the officials if the Governor in Council really means that the cabinet is making the decision. If the cabinet is traditionally composed of, I believe.... You're not saying it. You're saying right now that it's composed of Liberal members, which, of course, is the governing party. My recollection or recall of history would say it's always been the case that the governing party has made up the cabinet.

I'm curious, then. Do you think that it's in any way possible that these types of decisions, such as determining the definition of a "digital news intermediary" in that framework in clause 6...? Could there be any potential of that being politically motivated?

Mr. Thomas Owen Ripley: Thank you for the question, Mrs. Thomas.

I will refrain from offering an opinion on that question.

What I would say is that when we bring forward a bill like this, there is careful consideration given within the department but also in consultation with our colleagues in the machinery of government about how to structure the regulatory powers that are laid out in any piece of legislation.

You know that there are legislative questions and policy decisions that the government is asking Parliament to consider. In terms of the calibration of the regime and to make sure that the regime can evolve as technology evolves and as these companies evolve, there are certain calibrations that are given to the Governor in Council.

As you likely know, there are certain regulatory decisions that are being left up to the CRTC in terms of the fine tooth. It's always a question of the proximity to the fine details on the ground—they are something that we consider—and who is the most appropriate to make that decision. It is a common occurrence to have the Governor in Council set certain broad regulatory decisions, such as those being proposed in this bill.

• (1350)

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

Mrs. Rachael Thomas: Thank you.

Mr. Ripley, you raised a good point here. With regard to the regulatory framework, clause 2 talks about the commission and the commission's involvement in terms of the digital news intermediaries and how this bill will be applied.

For further clarification, I'm curious, because there have been some concerns raised by various witnesses with regard to the expansion of power that is being granted to the CRTC. A number of criticisms have been raised with regard to that expansion of power. One of them has been that the CRTC, based on this legislation, is going to be able to demand any information. There is no scope to that; it's any information that it wishes from an online platform or a DNI in order to decide whether or not the platform is within scope.

Can you help me understand why the department granted oversight of this regime to the CRTC? What was the motivation behind that?

Mr. Thomas Owen Ripley: In identifying a regulator for the purposes of this act, we considered what regulators out there are best suited to oversee and administer this kind of regime. The assessment was that the CRTC was best placed to do so, in part because it is an independent regulator, at arm's length from the government, that has expertise and experience in dealing with, overseeing and interacting with the media sector. Obviously, there is a desire to have a degree of independence and an arm's-length relationship in that instance.

They also have experience in overseeing bargaining frameworks and final offer arbitration. That is something they do under the existing Broadcasting Act. They're a regulator that already has expertise in that area.

The Chair: Mrs. Thomas.

Mrs. Rachael Thomas: I'll let this be my final question for now. I do have more with regard to this clause, but I recognize that there may be others with their hands up, so I'll let you go to them next.

My follow-up question to that one with regard to the CRTC is this. Given that they have minimal experience or expertise with regard to the news sector... Certainly, concerning print media, I don't know that they've really regulated print media in the past in any way. Perhaps you could comment on that and correct the record if I'm wrong. My question is, are they equipped to play this role, and, if so, what equips them?

Mr. Thomas Owen Ripley: The CRTC has experience and expertise in interacting with and overseeing media companies. You are right that they do not oversee the print sector. Broadcasters, however, are in the business of news, and that is not something that is foreign to the CRTC. In fact, the question of local news and the question of supporting smaller, independent broadcasters through interventions like the independent local news fund are things that the CRTC has experience with.

I would clarify, though, that the framework is one that is focused on the online communications platforms that we talked about earlier, the digital news intermediaries. This is not a framework that seeks to regulate the news sector. This is a framework that imposes an obligation on large, dominant platforms to bargain with news businesses. It is not a question of subjecting news businesses to regulation under this framework.

• (1355)

The Chair: Thank you.

Mr. Tolmie, go ahead.

Mr. Fraser Tolmie: Thank you, Madam Chair.

I'm just asking for a bit of grace because obviously I am filling in for someone, and so far I've found this conversation fascinating because of the potential issues that could surround it.

Mr. Ripley, I'm looking for a couple of answers to two questions that I have. Number one is based on clarity. When Mrs. Thomas asked about Facebook, you said that in your opinion Facebook was exempt from this. Is that correct?

Mr. Thomas Owen Ripley: No, Mr. Tolmie. I believe Mrs. Thomas asked about Facebook Messenger, which is one of the messaging services that Meta offers that permits communication be-

tween individuals. I believe the answer I gave her was to specify that the private messaging services—again, WhatsApp and Facebook Messenger come to mind—are excluded from the concept of digital news intermediary.

Mr. Fraser Tolmie: Okay, so for clarity, a conversation between two individuals that is considered a private message is exempt, but something like Facebook and Twitter, something that's public, would fall under—

[*Translation*]

Mr. Martin Champoux: On a point of order, Madam Chair.

[*English*]

The Chair: Yes.

[*Translation*]

Mr. Martin Champoux: This question has already been asked and an answer was given earlier. We are going around in circles here. If the Conservatives only take the floor to hamper our work, and this is one of their known tactics, they may as well say so right away so that we know what to expect. Otherwise, perhaps they could ask new and more constructive questions. Thank you.

[*English*]

The Chair: It's my understanding that at the beginning of this meeting we were told there would not be a filibuster, Mr. Champoux, and I take people at their word.

Mr. Fraser Tolmie: Sorry, Madam Speaker, the first question was for clarity. I just wanted to make sure that I understand this. As I said, I am new and I do apologize.

The second question I have for Mr. Ripley is on the matrix in which this will be going forward. Basically, you've answered my first question, which is that it's a messenger to messenger, a communication between two individuals, but something that is public.... Would I be correct in assuming that, sir?

Mr. Thomas Owen Ripley: Yes, that's correct. A public social media service like Facebook and Twitter, again, would fall within the definition of digital news intermediary and could be subject to the framework if it meets the designation criteria set out in clause 6.

Mr. Fraser Tolmie: Okay, there's just one thing I want to make sure of before I hand the floor over. Is a group chat...? So it's not going to be based on numbers, because you could have five or six people on your Facebook page. If you have a group chat where there are five or six, is that exempt?

Mr. Thomas Owen Ripley: Thank you, Mr. Tolmie.

If I come back to what is the core objective of the bill, it is to require dominant digital platforms that exercise a strategic market advantage over news businesses to bargain with those news businesses. For the most part, right now in 2022, where we see that strategic market advantage is in the advertising market. That's why, at the end of the day, what we're talking about here is, again, large search engines and large social media services, which exercise that strategic market advantage over news businesses.

That's a long way of saying to you that we're not in the space of.... This isn't a question about whether having six or eight individuals talking to each other suddenly subjects that service to the framework. The answer is no, because, again, it hinges on the question of whether there is a strategic market advantage over news businesses.

• (1400)

Mr. Fraser Tolmie: Mr. Ripley, thank you very much for clarifying that for me.

For those in the room, obviously, as I said, I'm filling in for someone, so if we're going to be doing this here, in this room, because it's going to be a public document, then everybody should have a little bit of grace to allow for someone like myself to have the time to understand.

Thank you very much.

Mr. Chris Bittle: I have a point of order, Madam Chair.

The Chair: Yes, Mr. Bittle.

Mr. Chris Bittle: I respect Mr. Tolmie lecturing us on how the committee is run. He hasn't been here. It's clear that we're into a filibuster, which the Conservatives promised they wouldn't do.

They claimed at the last meeting that they respected journalists. I guess that was transitory in their belief after receiving some bad press in Postmedia. However, it seems they've forgotten about that after the week.

I'm hoping and pleading with them that perhaps we can move on. We've spent 40 minutes on this one point, including providing questions to an individual who hasn't been to any of our meetings, who's asking us for a grace period, who hasn't done his homework, and who is coming and just delaying the whole process.

I hope they stick to their word. I took Mr. Waugh at his word when he said they weren't going to filibuster. He hasn't engaged in it, but maybe the rest of the Conservatives didn't get the memo from Mr. Waugh.

The Chair: Thank you, Mr. Bittle.

That was actually not a point of order. I shall go back to the question now.

Shall CPC-01 carry?

Mr. Fraser Tolmie: Madam Speaker, am I allowed to—

The Chair: Mrs. Thomas, your hand is up again.

The Clerk: Madam Chair, Mr. Shields has had his hand up for quite some time now.

The Chair: I'm sorry, Madam Clerk. I am not on the floor. I cannot see whose hand is up on the floor. Thank you.

Mr. Shields, go ahead.

Mr. Martin Shields: Thank you, Madam Chair.

The clerk recognized me 15 minutes ago with my hand up. It's difficult when we're in a hybrid situation. I understand that. However, it's problematic for me when we're in a hybrid situation, and I hate this. When we're all in the same room, it works better.

Thank you to Mr. Julian, who's concerned about taxpayers' dollars. That's great.

Thank you to Mr. Champoux, who wants us to be more efficient.

However, when I hear words—and this is me, not Conservatives or Conservatives notes—about how we're moving into new territory constitutionally and we're expanding powers, in a sense, in what this document is doing, this is new and I get very concerned.

You may disagree with me, sitting around the table. I have my opinion, and it's my opinion to express. You have yours; you can express them. However, when you're saying that this is new and that this is new territory.... You've been talking about how this is new, how we're expanding into this, so I get very concerned when you say how we're moving into new powers and what they can be.

You say there are federal and provincial powers with this. Where are they? Where is the basis for them? I think this will be challenged in court because it is new, and it should be challenged in court.

When I look at social media as a regular person out there—and Twitter might disappear tomorrow, as half the employees have gone today—it'll be something new that's out there. When I look at Twitter and Facebook and at all these.... When people use the private messaging in it, people don't differentiate that from news. It's Facebook that they're using. They use the private part; they use the other parts. They're not distinguishing it like you are here and like you're attempting to do in this legislation. That's not how the public users see those formats that they use.

I know you're an expert. I've listened to you before, and I appreciate the expertise you bring to it. However, average consumers don't differentiate that usage. When they go on private messaging on Twitter, that's just part of Twitter. That's what they're using. They don't see the difference.

So, when you're saying this.... The power you want to use over social media really causes me concern. This is new. This is expanding it, to me. It's not in the Constitution; 1867 didn't think of this at that time. Now you're developing legislation to deal with a common practice that most people in this country use—or a lot of them use. So—

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

I really apologize to my friend—

The Chair: Excuse me. When someone is speaking, can people please mute their mikes so that we can hear them?

Mr. Housefather.

Mr. Anthony Housefather: Thank you, Madam Chair.

I really apologize to my friend Mr. Shields, who has not been the one taking up most of the time at the meeting. However, Madam Chair, there is an amendment on the floor. It's CPC-01. Nothing that Mr. Shields has said relates to amendment CPC-01. The constitutionality of the bill or the bill as a whole does not relate to the change that is proposed in CPC-01.

From now on, I am going to be calling points of order every single time a speaker diverges from the amendment on the floor because this is clearly and simply a filibuster.

Thank you, Madam Chair.

• (1405)

The Chair: Thank you, Mr. Housefather.

Mr. Peter Julian: I have a point of order.

The Chair: Peter, go ahead.

Mr. Peter Julian: I think Mr. Housefather's point is absolutely warranted. So much more.... We have the Alberta community newspapers and the Saskatchewan community newspapers all saying this bill needs to be adopted. It needs to be improved, and it surprises me that the Conservatives are utterly blocking any of the direction that we've received from community newspapers in their ridings.

If Conservatives aren't even willing to listen to their own constituents and are blocking the passage of this bill, who are they listening to?

The Chair: Thank you, Mr. Julian. That was not a point of order, but there you go.

I note that Mrs. Thomas, who said she had finished her line of questioning, is now back up.

Mrs. Thomas, go ahead.

Mr. Martin Shields: Madam Chair, I didn't give up the floor. There were points of order.

The Chair: Mr. Shields, go right ahead. I'm sorry.

Mr. Martin Shields: Thank you.

When I see in this particular piece "legislative authority of Parliament", I am very concerned—

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

Madam Chair, you didn't rule on my objection. I believe Mr. Shields—

The Chair: I'm sorry, Mr. Housefather.

I will rule that you are correct. This has nothing to do with the amendment that we are discussing right now.

Mr. Martin Shields: I'm reading the amendment.

The Chair: If Mr. Shields has something to say on the amendment, he may go right ahead, but he must be on topic.

Thank you.

Mr. Martin Shields: I was reading the amendment that he objected to. The bill says "that is subject to the legislative authority of Parliament". The amendment we want to make is to take that out.

Mr. Housefather is objecting to me reading the amendment. I'm not sure why. That's exactly what this debate is about.

The Chair: Mr. Shields, let us not debate this. You were not speaking to that issue earlier on, but you are speaking to it now, so you are in order.

Go ahead.

Mr. Martin Shields: Thank you.

To Mr. Ripley, in the sense of the history, do you believe this is new, a broadening of powers that is not in the Constitution, and that this legislation is breaking new ground?

Mr. Thomas Owen Ripley: Thank you for the question, Mr. Shields.

I believe when I used the term "new" earlier, it was in response to MP Thomas, who asked me whether the definition of "digital news intermediary" had been used elsewhere. I said no. That's a new concept that was developed for this legislation.

In terms of the constitutionality of it, as you know, the heads of power under the Constitution Act have evolved through case law and through interpretation so that they can continue to apply in the modern context. Our assessment, again, for this bill, is that it is an appropriate piece of legislation that falls under the federal government's jurisdiction in this space under the Constitution Act.

It is, indeed, a new piece of legislation. It's a new framework, but it is grounded in the Constitution Act and those powers that fall to the federal government and not other levels of government.

Mr. Martin Shields: Thank you.

That was my concern, in the sense that this is very important and it's important to debate those things that are new. This is new in the sense of what you said, but you believe the power existed previously. This hasn't been tested in the sense of whether it will withstand that in a judiciary...and it probably will be.

Mr. Thomas Owen Ripley: Thank you for the question.

We conduct an assessment before we table a piece of legislation. We would not bring it forward if we did not believe that there was federal jurisdiction.

I won't speculate on whether folks will seek to challenge it in court or not.

Mr. Martin Shields: Thank you, Mr. Ripley.

Thank you, Madam Chair.

The Chair: Thank you.

Go ahead, Mrs. Thomas.

• (1410)

Mrs. Rachael Thomas: Thank you, Madam Chair.

I want to clarify something very quickly for the benefit of the public.

Right now, we're going through clause-by-clause. If this isn't the appropriate time to ask legal questions around clause 2, which is currently the clause that we are speaking about and want to amend, I'm not sure when that appropriate time would be.

To be accused of other motivations is very incorrect. Madam Chair, I would ask that you not entertain those as points of order, because they are not.

The Chair: Mrs. Thomas, I am sorry. While I am chair, I will decide what is or is not a point of order.

Mrs. Rachael Thomas: I recognize that.

The Chair: Thank you very much.

Mrs. Thomas, do you have a question for someone?

Go ahead.

Mrs. Rachael Thomas: I do have a question. Thank you.

Within this, we're talking about digital news intermediaries, and it's within that definition that we therefore determine whether or not this amendment is suitable, because the amendment would change this clause and its application.

My question is with regard to the CRTC having jurisdiction. Mr. Ripley earlier said that the CRTC does have oversight with regard to broadcasting but not with regard to newspapers. He did go on to clarify, though, that the CRTC would.... This is where I need further clarification, because it sounded like Mr. Ripley was saying that the CRTC would determine, with the help of the Governor in Council, what constitutes a DNI, but if I heard him correctly, he said that the CRTC would not be interfering or having a role to play in terms of determining what qualifies as an eligible news intermediary.

I am just looking for further clarification around that, because I did get the sense from this legislation that the CRTC would, in fact, have a role to play in terms of determining if an entity fits this definition of eligible news intermediary. I am just looking for some clarification around that definition and what role the CRTC will play.

Mr. Thomas Owen Ripley: The mechanism that is set out in the bill is that there are three criteria in clause 6 that will indicate when a digital news intermediary is subject to the legislation. The specifics of those three criteria will be determined through Governor in Council regulations. The CRTC does not have a role in setting those criteria.

Once those criteria are set, the mechanism in the bill is that digital news intermediaries are expected to come forward and identify whether they believe they meet those thresholds or not, and, if they meet those thresholds, they are to indicate to the CRTC that they meet those thresholds.

The CRTC has information-gathering power to ensure compliance with that mechanism, but that's the mechanism that is foreseen by the bill.

If it's helpful, the division of power at the regulatory level between the Governor in Council and the commission is set out in clauses 84 and 85, where you have the specific list of regulatory powers that are given to each entity.

Mrs. Rachael Thomas: Mr. Ripley, thank you for that clarification.

I will come back, then, to this amendment that has been put forward with regard to scope of Parliament, because this bill has to do with two entities. You have your digital news intermediaries, such as Google and Facebook, and then you have your eligible news businesses.

Does Parliament have jurisdiction, then, over news? Is it up to Parliament to determine what qualifies as a legitimate news business and what doesn't? Is that Parliament's responsibility right now?

If so, I am curious as to what legislation permits that or makes that Parliament's role.

• (1415)

Mr. Thomas Owen Ripley: The subjects of regulation—if I were to put it that way—for this bill are the digital news intermediaries, or in other words, the digital platforms.

The legislative obligation to bargain with news businesses is on those intermediaries. The legislative regulatory obligation is on them, and then what the bill does is give greater clarity about what is the expected scope of that bargaining obligation in terms of the kinds of news businesses that a digital news intermediary would have to have agreements with in order to qualify for an exemption, as set out in clause 11.

Failing that, news businesses could invoke the mandatory bargaining framework in the latter part of the act, but the subject of regulation of this bill is the digital news intermediary. It is not news businesses.

The Chair: Mrs. Thomas, your hand is up, so you may speak.

Mrs. Rachael Thomas: Mr. Ripley, I'm sorry, but you can't really regulate one without the other. At the end of the day, it's bargaining, so there are two different entities that are trying to enter into a negotiation and hopefully reach an agreement with regard to compensation.

On the eligible news businesses, you just said that the Governor in Council would determine the criteria, and then the CRTC would be responsible for applying those criteria. If it's the Governor in Council—which, effectively, ultimately comes down to a cabinet decision—then it is actually Parliament that is determining who qualifies as an eligible news business.

At the end of the day, the digital news intermediary can only be held accountable for entering into negotiations with those who qualify. If an entity that doesn't qualify comes forward and says the DNI has refused to negotiate with it, then it's no big deal; they didn't make the cut. But if an entity comes forward that does make the cut, then there is in fact accountability and it would be up to the CRTC to enforce that. However, in order for the CRTC to enforce that, again, coming full circle, it was up to the Governor in Council to determine that set of criteria.

I feel like we're talking in circles here a little bit. How can you engage...? How can the DNIs be expected to engage in negotiations if there isn't a second party? I think the answer to that question is that of course there's a second party and that second party is the eligible news business.

What makes them eligible? You said that it's the Governor in Council that determines that through a set of criteria. Again, coming around another circle, with all due respect, I would say then that Parliament is being put in the place of having to make a decision with regard to what is and is not an eligible news source or a legitimate news source in the nation. In fact, the way the bill currently stands, it doesn't even have to be within the nation. It could be a foreign entity as well.

Anyway, I'm just curious how Parliament is.... Help me understand here. Am I not seeing this correctly? It seems like Parliament would need to be involved in terms of that definition of eligible news source.

Mr. Thomas Owen Ripley: Thank you, Mrs. Thomas.

Maybe I will just clarify, because I wonder if there was a bit of a misunderstanding between us earlier. I had thought you were asking about the designation of digital news intermediaries earlier, and so my comments about those thresholds being set through Governor in Council regulation were with respect to digital news intermediaries, i.e., the digital platforms.

With respect to the eligibility of news businesses, the eligibility criteria are set out in clause 27 of the bill itself. There is no Governor in Council regulatory power set out in clause 27. It is a matter of the CRTC applying those eligibility criteria that are set out in the bill to entities that wish to avail themselves of the mandatory bargaining framework at the latter part of the bill.

With respect to your question, my answer would be that there is nothing that obliges a news business to bargain under the framework. Therefore, if a news business does not wish to participate in the framework, it is not under an obligation to do so.

I come back to the fact that the legislative obligation to bargain is placed on the digital news intermediary. There is no such obligation on the part of a news business to participate in the framework.

• (1420)

Mrs. Rachael Thomas: For final certainty, Mr. Ripley, because the amendment we're dealing with here has to do with "subject to the...authority of Parliament", can you outline the ways in which Parliament will be involved in this legislation?

Mr. Thomas Owen Ripley: The primary way is by passing the bill. Parliament would essentially create that legislative obligation on entities that meet the definition of digital news intermediary to bargain, assuming that they meet those threshold criteria set out in clause 6. Parliament is exercising its jurisdiction over a certain class of business, of undertakings, and subjecting them to a legislative obligation.

Mrs. Rachael Thomas: I understand that Parliament would have an initial role to play in terms of passing this legislation, but coming back to a reference you made with regard to the Governor in Council, and the bill makes reference to that as well.... I hope that my question isn't skipped over. I'm truly seeking an answer here to understand to what extent Parliament will, in any form, be involved in this legislation. The Governor in Council is a component of Parliament.

I am looking for an in-depth answer.

Mr. Thomas Owen Ripley: Parliament's primary role is to consider whether it wishes to pass this bill. If it does, then it obviously puts in place the framework that gives authority, as you note, to the Governor in Council and the commission to play the regulatory roles that are set out in the bill.

If your question is whether there is a regulation-making role for Parliament in this bill, the answer is no. The bill does contemplate a review of the act every five years. That's an opportunity for Parli-

ment to again consider whether the framework has had the desired impact and whether it needs to be modified.

That is the future role contemplated by this bill for Parliament. Of course, it's the prerogative of any Parliament at any time to review legislation, amend legislation or repeal legislation. There is nothing in this bill that takes away from a future Parliament.

Mrs. Rachael Thomas: Mr. Ripley, I am a little concerned with the term "contemplates". Does it ask for the review of Parliament or does it not? What do you mean by the term "contemplate"?

Mr. Thomas Owen Ripley: If it were to be passed, it would require a review every five years. What I meant by "contemplate" was simply a recognition that the bill has not yet been passed by Parliament, so everything in the bill is still conditional on that passage.

Mrs. Rachael Thomas: Thank you.

As a way of coming close to wrapping up here, with regard to the definition of a digital news intermediary, I'm looking for your comments on different applications that I find are quite unique in nature, so I'm looking for some clarity. Does LinkedIn fit the definition of a digital news intermediary? Does Reddit fall within the scope of a digital news intermediary? Do Discord and WhatsApp?

Can you comment on each of those four?

• (1425)

Mr. Thomas Owen Ripley: Thank you for the question.

With respect to LinkedIn, my assessment would be that it meets the definition of social media. It is a social media service and thus meets the definition of digital news intermediary. Again, it would potentially be subject to the framework if it met the threshold in clause 6.

For WhatsApp, as I alluded to earlier, my assessment would be that it is a private messaging service, and thus excluded from the definition of digital news intermediary.

Reddit would likely—again, Mrs. Thomas, you're asking me to do these assessments quite quickly on the fly here—meet the definition of digital news intermediary, although I would come back to the primary point that I made earlier that the framework is intended to apply to the dominant digital platforms. Again, a service like Reddit, for example, obviously is not on the same scale as Facebook or Google Search.

My understanding of a service like Discord is that it is primarily private messaging. Thus, it would fall into the exclusion for private messaging services.

Mrs. Rachael Thomas: Mr. Ripley, just for further clarification, you used the word "dominant" as it is used in this legislation. I'm just curious how that is defined within this legislation in order to know whether or not something falls within the scope of being a DNI and therefore within the scope of Parliament.

What does the term "dominant" mean? How is that differentiation determined?

Mr. Thomas Owen Ripley: It would be determined in relation to the three criteria set out in clause 6. It speaks to size, the market for that service here in Canada, and the question of a strategic advantage over news businesses. That term should be understood in relation to those three factors.

Mrs. Rachael Thomas: Okay.

Mr. Ripley, thank you. I think I have other questions that cross between this section and others, but I can wait for those other sections to put those questions forward.

Thank you.

The Chair: The question on Ms. Gladu's amendment would be, shall CPC-01 carry?

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

The Chair: Now we go to NDP-1, by Mr. Julian.

Does NDP-1 carry?

• (1430)

Mr. Peter Julian: Do you want some comments, Madam Chair?

The Chair: Yes, go ahead, but be brief, Mr. Julian.

Mr. Peter Julian: I certainly will. The Conservatives have indicated they're going to spend an hour and half on each one of their amendments to block this with a filibuster. It's tragic, because the Alberta and Saskatchewan community newspapers, the papers that serve their ridings, are saying Bill C-18 needs to be adopted and it needs to be improved.

This amendment proposed by the NDP is an attempt to improve the legislation. As you recall, Madam Chair, it was suggested by APTN and Dadan Sivunivut that for the indigenous peoples, it's extremely important that it be recognized in the legislation that news media is central to the identities and well-being of indigenous peoples. Legislation like this, designed to support the news media hemorrhaging that we've seen in communities across the country, should reflect the rights of indigenous peoples to operate their own media and should reflect the languages and cultural characteristics of indigenous peoples.

What this amendment does is add a new definition for indigenous news outlet. For the purposes of the act, the definition specifies that an indigenous news outlet must be operated by an indigenous person and produce content for indigenous peoples.

To support the definition of indigenous news outlet, a definition for indigenous peoples is included, and the definition for news outlet is amended to specify that it includes an indigenous news outlet.

I so move NDP-1, reference number 12021983.

The Clerk: We have Mrs. Thomas and Mr. Waugh.

The Chair: Mrs. Thomas, go ahead.

Mrs. Rachael Thomas: Thank you. Sorry, I'll come back.

I'll give the floor to my colleague, Mr. Waugh.

Mr. Kevin Waugh: Thank you, Madam Chair.

I was wondering, for indigenous news outlet, why does it have to be owned by an indigenous news outlet? You know, there are groups out there in the news business that would fund indigenous news outlets, and you're excluding them in this motion here, this amendment.

There are partnerships in this country that we've seen every day in news media, as we all know every day we're seeing strange bedfellows in news media. I would like to bring this to everyone's attention, that you're excluding a group here that wants to work with indigenous peoples. When you say that it has to be owned solely by indigenous groups, I think you're missing the point here. Partnerships are formed every day in this country with indigenous groups.

The Chair: Mrs. Thomas, your hand is up.

Mrs. Rachael Thomas: Thank you, Chair.

My observation with regard to this amendment is that it would create a new category of "indigenous news outlets". I'm wondering if the officials can comment on the impact of this.

Mr. Thomas Owen Ripley: The impact is that the bill is structured in such a way that the obligation on digital news intermediaries is to bargain with news businesses, but there is a secondary category of news outlet that sits below the concept of news business, and that's to, again, recognize that certain media groups own both news properties and non-news properties. The concept of news outlet was to allow the news business to identify the news properties with which they would engage in bargaining.

To make that real, for example, if you have a company like Quebecor, which owns a number of different news assets, Quebecor could come forward and say that they wish to bargain with respect to TVA Nouvelles. TVA Nouvelles is the news outlet.

The impact of this recognizes that it would create a definition for indigenous news outlet, as Mr. Julian set out, and then would have the purpose of including that new definition of indigenous news outlet into the existing definition of news outlet.

• (1435)

The Chair: Yes, Mrs. Thomas.

Mrs. Rachael Thomas: Thank you.

We have a definition of "eligible news business", and then this would further define it within that broader context. Am I understanding that correctly?

Mr. Thomas Owen Ripley: Yes. Essentially, it would create a new concept, a new definitional term within that context, specifically related to indigenous news outlets and indigenous peoples.

I certainly don't want to speak with regard to Mr. Julian's motivations, but I think the follow-through of this amendment is to have an obligation for digital news intermediaries to include digital news outlets in their bargaining, to specifically ensure that digital news outlets would be included in that, but I certainly defer to Mr. Julian.

Mr. Peter Julian: That's a fine motivation.

The Chair: All right.

Yes, Mrs. Thomas.

Mrs. Rachael Thomas: Thank you.

I'm sorry, Mr. Ripley. I didn't follow that. You're going to need to clarify this. What I'm hearing you say is that there would be an obligation for the eligible news business to enter into negotiation with the DNI, but I don't believe that's correct. I believe it's the obligation of the DNI to enter into negotiation with the eligible news source if the eligible news business is asking for that.

I'm sorry. Can you please clarify that?

I also have a second question subsequent to that. I am curious. When we begin amending a bill in this way.... I guess I'm wondering this: If there's a specific category made for indigenous news outlets, what about other ethnic groups, then? Does that disadvantage ethnic media groups in any way by showing deference to one and not another?

I'm asking for further clarification on that just to make sure that there are no unintended consequences with this.

Mr. Thomas Owen Ripley: The motion that is on the table simply creates the definitional concept of "indigenous news outlet". However, part of what the motion does is then modify the concept of "news outlet" to specify that it includes indigenous news outlets.

If you look at how the concept, the existing defined term, of "news outlet" is used throughout the bill, you'll see that it's used in various places, including, for example, in the exemption criterion that specifies that digital news intermediaries must sign agreements that do a variety of things in order to obtain that exemption.

My interpretation or understanding of the effect of this or the motivation behind this amendment would be to be explicit that the concept of "news outlet" includes indigenous news outlets, which would have the effect, then, of requiring digital news intermediaries—or the platforms, in short—to bargain with and include indigenous news outlets in their bargaining, in their agreements. That's my understanding.

With regard to your second question, the amendment would create a specific, defined term for "indigenous news outlet". I won't speak about whether, in my opinion, that has the effect that you put to it. I would defer to the members to speak to that issue.

● (1440)

Mrs. Rachael Thomas: Mr. Ripley, I'm just curious, then, where I would go to get that question answered. That seems like a legal question. I want to understand whether, if one specific category is made, it is to the exclusion of other specific categories—for example, other minority groups. I need to understand that in order to be able to vote in an informed manner on this motion.

Up front, it appears reasonable to me. However, if there are unintended consequences that I am not aware of or repercussions that this would have on other minority groups or ethnic groups, then that's something those of us around this table need to be aware of.

Mr. Thomas Owen Ripley: What I can say is that, if you look at, for example, subparagraph 11(1)(a)(vi), the bill already contemplates or would require bargaining with a range of news outlets, and the government has put down a marker that there has to be a wide range of news outlets reflecting the diversity of the Canadian news marketplace. You will note the reference to "language, racialized groups, Indigenous communities, local news and business models".

My answer to your question as to whether this amendment would come at the exclusion of others is no, but it would explicitly include the concept of indigenous news outlets in news outlets, which then has a follow-through effect through the rest of the bill. My read on the amendment would be that it heightens the importance that must be paid to indigenous news outlets throughout the bargaining process.

Mrs. Rachael Thomas: Thank you. I appreciate that, Mr. Ripley.

You used the term "follow-through effect through the rest of the bill" and you said it would "heighten" the awareness around the bargaining process. In using a word like "heighten", if you're heightening to raise one, automatically some have to be lowered. Again, I have to ask for further clarification.

The Chair: Not necessarily.

Mrs. Rachael Thomas: Madam Chair, I'm sorry. Do you wish to interrupt?

The Chair: No. You just made a comment, and I just said, "Not necessarily". That's all.

Mrs. Rachael Thomas: Madam Chair, I believe that's not normally how we practise at this committee. I could be wrong.

The Chair: Please, Mrs. Thomas, continue with your question.

Mrs. Rachael Thomas: Thank you.

There's some loose language being used, and I just need greater certainty. Will this result in one group being given preference over others in any shape or form?

Mr. Thomas Owen Ripley: If the bill stays as it is and there is still the reference to a diversity of news outlets, and if we have the language that I spoke about earlier—"including diversity with respect to language, racialized groups, Indigenous communities, local news and business models"—I believe what Mr. Julian is proposing is essentially additive. There would still be an obligation on platforms to bargain with those other news outlets that I mentioned, such as the racialized community groups, with respect to language.

Again, it underscores the importance of news outlets, but there is still the existing obligation—if the bill stays as it is—to have agreements with news outlets from those other communities listed in clause 11.

● (1445)

Mrs. Rachael Thomas: Thank you, Mr. Ripley.

The Chair: Go ahead, Mr. Housefather.

Mr. Anthony Housefather: Madam Chair, I think there's a simpler answer. I want to reflect what I understand.

This is adding a new definition of "indigenous news outlet", which will then allow that definition to be incorporated into "news content" in amendment NDP-2, which then allows for indigenous storytelling to be included in what news content is. I think that is the end result of this amendment, and that is the purpose of defining this term, so Mr. Julian can then incorporate this term into "news content" in his further amendment NDP-2.

I think that's the simpler, clearer and shorter answer.

Thank you, Madam Chair.

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

Shall NDP-1 carry?

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

The Chair: The amendment is unanimously carried.

I would like to inform everyone that Mr. Patzer is now replacing Mr. Shields, so when his name comes up you will know why. Thank you.

Now we go to CPC-1. CPC-1 has been moved by Mrs. Thomas.

We have Mrs. Thomas.

Mrs. Rachael Thomas: Thank you.

The reason for this amendment being moved is that right now the legislation as it reads is quite broad, so my concern is that it is... Well, I'll start here. The minister intended or has stated that this bill is intended to help smaller news businesses here in Canada. Interestingly, originally this bill was touted as something that would help local newspapers. It's been expanded to include broadcasters as well, but the point is this. In this definition that we have in clause 2 on line 11, with regard to news businesses, I do believe that it's necessary to further clarify that it is those news businesses that operate in Canada.

There have been many witnesses who have come forward and expressed concern with regard to news businesses that are foreign-funded, or even operating outside Canada but then pushing their news into our country. There is concern that those individuals would have the legal right to demand bargaining with platforms.

For further clarity, I would ask that we amend this bill to make sure that it is restricted to those news outlets that operate in Canada. That is the amendment I am bringing forward here.

I wish to ask some questions, but I'll give others an opportunity to speak should they desire to.

• (1450)

The Chair: I see no hands up.

Madam Clerk, are there any hands up in the room?

The Clerk: Mr. Bittle has his hand up, Madam Chair.

The Chair: Mr. Bittle, go ahead.

Mr. Chris Bittle: Thank you so much, Madam Chair.

Very quickly, we think this is an excellent amendment by Mr. Nater. It doesn't really change anything, but it clarifies things, so we support it.

The Chair: Thank you, Mr. Bittle.

Now, Mrs. Thomas, you wish to speak further to Mr. Nater's amendment.

Mrs. Rachael Thomas: I wish to just ask a quick question.

The Chair: Go ahead.

Mrs. Rachael Thomas: Thank you.

I just want to seek further clarity with regard to the amendment that has been brought forward.

Mr. Peter Julian: I have a point of order.

The Chair: Yes, go ahead.

Mr. Peter Julian: All parties are supporting this amendment. I don't understand why Mrs. Thomas is filibustering her own motion. It's their own amendment, from the Conservatives. All parties are supporting it. This is a classic case of utter time wasting, a filibuster that has no point. All of us are supporting this amendment.

Let's have the vote.

The Chair: Thank you.

I see a call for the vote, so—

Mrs. Rachael Thomas: Madam Chair, I don't think that was a point of order.

The Chair: Mrs. Thomas will decide that she needs to continue to speak.

Speak, Mrs. Thomas.

Mrs. Rachael Thomas: I'm sorry. I'm just curious; perhaps we could seek the clerk on this.

If there's a point of order raised in the middle of a point being made by a member, does the floor return to that individual?

The Chair: Yes, it does, but I would like to say that Mr. Bittle's point of order is very well taken. He's on point.

Mrs. Thomas, we know that you will wish to speak, so go ahead and speak.

Mrs. Rachael Thomas: Thank you, Madam Chair.

The point of order was raised by Mr. Julian.

The Chair: I'm sorry.

I would like to ask everyone on the floor, if you're going to raise a point of order, to let me know who you are. Just state your name first. Thank you.

Go ahead, Mrs. Thomas.

Mrs. Rachael Thomas: I was elected by the people of Lethbridge—

The Chair: Mrs. Thomas, did you have something to say on the amendment that's on the floor?

Mrs. Rachael Thomas: Yes, and that is exactly what I'm doing.

The Chair: Then please speak to the amendment on the floor.

Mrs. Rachael Thomas: Thank you.

To allow the members of this committee to use their bully tactics to accuse me of doing something other than seeking legal counsel is 100% inappropriate. As legislators, it is our responsibility to ask important questions that Canadians would wish to have the answers to.

The Chair: Mrs. Thomas, will you please get to the point you're trying to make about your own amendment? Thank you.

Mrs. Rachael Thomas: Thank you.

I understand that this amendment has support around the table, and I'm thankful for that. I do wish to just have one final clarification made. I want to make certain that this amendment would narrow in the scope of the bill to be then inclusive of those news businesses that are in Canada.

The Chair: Mr. Ripley.

Mr. Thomas Owen Ripley: Thank you, Madam Chair.

Thank you for the question, Mrs. Thomas. The bill is intended to require bargaining with news businesses that operate in Canada. If you look at clause 27 and the eligibility criteria, for example, a "qualified Canadian journalism organization" under the Income Tax Act must be operated and controlled by Canadians. Then, with respect to paragraph 27(1)(b), you'll note the reference to "operates in Canada".

Your amendment is consistent with the intention of the act that, again, in order to benefit, a news business has to operate here in Canada.

Mrs. Rachael Thomas: Thank you, Mr. Ripley. I appreciate the further clarification.

The Chair: Thank you.

I may now call the question.

Shall CPC-1 carry?

Mr. Chris Bittle: It's on consent, Madam Chair.

• (1455)

The Chair: All right.

It's on consent, so is it unanimous?

Mrs. Rachael Thomas: I would ask for a recorded vote, please.

Mr. Peter Julian: On a point of order, Madam Chair, it is traditional that when we have unanimous consent, we adopt that. If what Mrs. Thomas is signalling is that she's decided to oppose the Conservative amendment that everybody else supports, that's different.

Is that what she is indicating to you—that she is now going to oppose this amendment that all members of the committee support?

The Chair: It's a very good point, Mr. Julian.

Is there any opposition to this amendment?

Hearing none, I say that the amendment has been carried unanimously.

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

The Chair: Thank you.

Now we go to CPC-2. Is that Mrs. Thomas?

I'm sorry. I don't know who is moving CPC-2.

Mr. Michael Coteau (Don Valley East, Lib.): If there is no mover, should we move on?

The Chair: Certainly.

All right, let's move on.

Mrs. Rachael Thomas: Madam Chair, in the motion, it is very clear that I moved this motion. I brought it forward and I am moving it.

The Chair: I'm sorry, Mrs. Thomas. Are you accusing me of saying that I did not know that? Are you accusing me of being duplicitous?

I did not and I do not see the name—

Mrs. Rachael Thomas: Madam Chair, I don't believe there was an accusation. There was simply a point of clarification, which is that my name is on this motion.

That is all I said. How you interpret that is up to you.

The Chair: Mrs. Thomas, please....

We now have amendment CPC-2. I will call the question on CPC-2, unless Mrs. Thomas, with her hand up, would like to speak to it.

Go ahead, Mrs. Thomas.

Mrs. Rachael Thomas: Madam Chair, I wonder if the committee would agree.... On other committees I have been a part of, it has been normal practice that the individual who has their name on the amendment—or at least the party, because that individual is not always present—is given an opportunity to speak to the amendment—

The Chair: I have asked for you to speak to your amendment, Mrs. Thomas. Will you please do that?

Thank you.

Mrs. Rachael Thomas: Madam Chair, I am curious if we would consider adopting that practice. That's for further clarity.

The Chair: Mrs. Thomas, will you please speak to your amendment?

Thank you.

[Translation]

Mr. Martin Champoux: On a point of order, Madam Chair.

[English]

The Chair: Yes, Mr. Champoux.

[Translation]

Mr. Martin Champoux: It is 2:58 p.m., and I would like to ask the clerk if we absolutely have to stop the meeting at 3 p.m. on the dot.

[English]

The Chair: The clerk has given me information that we have until 3:05.

[Translation]

Mr. Martin Champoux: Thank you very much.

[English]

The Chair: Thank you, Martin.

Go ahead, Mrs. Thomas.

Mrs. Rachael Thomas: Thank you, Madam Chair.

The reason for the amendment that has been given here with regard to clause 2 has to do with lines 13 and 15. The purpose for this is to confirm that only copyrighted content can give rise to compensation and that hyperlinks alone would not be included in that.

It would also be our intent to ensure that user-generated content is not in any way captured by this legislation, thereby shaping the scope of this bill to a greater extent.

With that, I have some questions for the officials but, again, I'll allow others to ask their questions or make their comments if they wish.

• (1500)

The Chair: Go ahead, Mr. Bittle.

Mr. Chris Bittle: Thanks so much, Madam Chair.

I understand where Mrs. Thomas and the Conservatives are coming from, but we're concerned about the enormous loopholes that this is going to create. Bill C-18 requires the parties to bargain over all the ways that content is made available, and restricting that only hurts news organizations.

Eliminating hyperlinks risks cutting out an important way in which news is shared. We saw what happened in Spain when they eliminated hyperlinks in their legislation. It provided foreign tech companies with a giant loophole to drive a truck through and just show news as hyperlinks, avoiding payment.

I think the intention is good. I hope the intention is good, even though I believe this is something that the foreign tech giants are calling for. We've seen the CPC act as a cheerleader for the foreign tech giants to this point, but this amendment risks gutting the entire bill. It's disappointing, again, that we're seeing the Conservative Party cheerlead for Facebook and Google.

We'll be opposed to it.

The Chair: Thank you, Mr. Bittle.

Is there anyone who wishes to speak, other than Mrs. Thomas?

Go ahead, Mrs. Thomas.

Mrs. Rachael Thomas: I would ask the officials to further clarify, then. Because the amendment that we're bringing forward has to do with copyright, I'm wondering a couple of things. I'm wondering if the phrase “making available of certain news content” in this bill, the way it is right now.... Perhaps you could clarify if that includes links.

Mr. Thomas Owen Ripley: On the concept of “making available” news content, paragraph 2(2)(b) talks about “access to the news content...including an index, aggregation or ranking of news content”, so that would include linking to it.

The concept of “making available” news content, though—and I recognize there's been a lot of debate about this—is the trigger for when a platform is under an obligation to bargain. It does not speak to a necessity to bargain over hyperlinks at an individual level, but it recognizes that dominant platforms are a key way in which Canadians now access their news and information. The concept of “making available” is intended to ensure that there is an appropriate triggering of that obligation to bargain when platforms make news content available. As was pointed out on the floor, it's an exhaustive concept and would include linking.

Mrs. Rachael Thomas: Mr. Ripley, I would just offer a brief comment with regard to my colleague on the floor earlier, and that is with regard to France and the EU. They excluded hyperlinks presented alone.

What we heard from a number of witnesses at the table was that there was concern with regard to treating links as an item of value. There was a Supreme Court decision in the past—I believe it was in 2011, but don't quote me on that—with regard to links and whether or not they held monetary value, and it was found at that time that they did not. These concerns have been raised by experts who study the legality of these things and understand them quite substantially. I think of—

• (1505)

Mr. Chris Bittle: I have a point of order, Madam Chair.

The Chair: Yes, Mr. Bittle.

I want to point out to the committee that it is now 15:07, and we are two minutes over.

Mr. Bittle, go ahead with your point of order.

Mr. Chris Bittle: I am moving to adjourn. I don't consent to continuing any further.

The Chair: Thank you, Mr. Bittle.

The motion to adjourn is accepted, because we are out of time and have no more resources.

Thank you very much.

I now consider this meeting adjourned.

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