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Chair: Mr. Joël Lightbound



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• (1105)

[Translation]

The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)): Friends and colleagues, welcome to meeting number 116 of the House of Commons Standing Committee on Industry and Technology.

I call this meeting to order.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders.

Pursuant to the order of reference of Monday, April 24, 2023, the committee is resuming consideration of Bill C-27, An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts.

[English]

Before we start, colleagues, I would just like us to adopt the seventh report of the subcommittee on agenda and procedure of the Standing Committee on Industry and Technology, the steering committee, as we call it.

You've all received it, and I would seek your consent to adopt the steering committee's report.

Are there any comments on the steering committee report?

[Translation]

Apparently not.

Is there unanimous consent to adopt the subcommittee's report?

I'm getting nods. Wonderful.

Before we begin clause-by-clause consideration of Bill C-27, Mr. Vis would like to speak.

Mr. Vis, we're listening.

[English]

Mr. Brad Vis (Mission—Matsqui—Fraser Canyon, CPC): An economy with low productivity can grow only so much before inflation sets in. Economies with strong productivity have faster growth, more jobs and higher wages, and they rely less on increasing interest rates to protect against inflation. High labour productivity is also closely associated with improving living standards because it allows wages to rise without increasing inflation.

Sadly the level of productivity in Canada's business sector is low. In fact, it is more or less unchanged from where it was seven years ago. The Organisation for Economic Co-operation and Development ranks Canada 29th among 38 OECD countries for labour productivity. OECD has also reported that Canada has the lowest number of manufacturing companies with more than 250 employees per one million people. Canadian companies on average use less capital and technology and are less innovative than are those of many other advanced economies. Compared to the U.S., Canada invests less than half in research and development, software, hardware and data as well as on marketing and sales.

This matters because the standard of living in Canada has deteriorated compared to that in other countries. Business insolvencies in the year ending February 29, 2024, have increased nearly 60% according to the Office of the Superintendent of Bankruptcy. Month over month, Statistics Canada continues to report that more businesses are closing than are opening, and that is why I'd like to move the following motion:

That, given that the Bank of Canada is warning that weak productivity and low business investment have become a national emergency; that Canada has long lagged the United States when it comes to how much the economy produces per hour of work, and that Canada has fallen behind G7 countries with only Italy seeing a larger decline of productivity relative to the United States; the lack of Canadian business investment in machinery, equipment and intellectual property; and that new Canadians are working in low-wage, low productivity jobs that don't take advantage of skill sets they possess and that this weak productivity is making the central bank's job of controlling inflation more difficult, the committee call for four meetings to be held immediately and invite the following witnesses:

the Governor of the Bank of Canada;

the interim chief statistician;

various small and medium-sized businesses and industry representatives;

and that the committee hear from these witnesses the extent of the harm to the Canadian economy and the ability to control high inflation caused by weak productivity and low investment, and from government officials what they are going to do to remedy this emergency; and report back to the House.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Vis.

The motion has been moved, so we'll open it up for debate.

I recognize Mr. Masse.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair. Maybe I can get clarification in terms of the mover's intention with respect to the chief statistician, because his party tried to eliminate the long-form census and actually did so under Tony Clement, the former minister of industry. I'm wondering what the relevancy or their intent is with respect to this position, whether they're trying to get rid of the census again or whether or not this is for a witness who they would like to have testify in front of us, given there's a definite conflict in terms of the Conservatives' position on the chief statistician and the Canada census.

The Chair: Thank you, Mr. Masse.

Mr. Vis, do you want to respond to that?

Mr. Brad Vis: Briefly, to my colleague Mr. Masse regarding the information presented by Statistics Canada, this deserves to be raised at the industry committee. It's not every day the Bank of Canada talks about a crisis of productivity in this country. I know we're about to commence Bill C-27 amendments but I'm hoping, with the will of this committee, we can have extra meetings to discuss some very serious concerns raised by the business community in Canada and the independent Bank of Canada and to hear from Statistics Canada on the alarming trends they are outlining in their regular reporting to Canadians.

Thank you, Mr. Chair.

[*Translation*]

The Chair: Thank you.

Mr. Turnbull and Mr. Sorbara, you're the next speakers.

Mr. Turnbull, the floor is yours.

• (1110)

[*English*]

Mr. Ryan Turnbull (Whitby, Lib.): Thanks, Chair.

Today's meeting is supposed to get into clause-by-clause analysis. Mr. Vis has brought this motion. I would note that we just unanimously passed the subcommittee report on agenda. We had a very productive meeting, which resulted in this report that we just passed unanimously. It has a schedule that outlines all of our meetings and how we'll spend them, and the priorities we've agreed to. I will say we came to a consensus on this through a very productive conversation.

Our committee schedule seems to be quite full. The Conservatives keep bringing up many other topics they would like to study. It's certainly their prerogative to do so, but there are only so many things you can fit into an agenda. We've all agreed that Bill C-27 and its clause-by-clause are the priority to get through.

I feel like these things keep being brought up in order to delay Bill C-27. I want to know whether the intention of this, Mr. Vis, is to delay getting to Bill C-27, or whether the Conservatives are legitimately interested in studying this. In that case, I would say the most appropriate time is when we finish Bill C-27 or the other items that we've come to agreement on. I'm not sure. It might be the fall by the time we actually get to something like this.

If the Conservatives want to replace this with one of their other priorities, which they've set out in our discussions...there are a

number of them here. There are number five and number six, and number five was definitely a Conservative.... Maybe you want to substitute one of the other things to have a meeting on this topic.

I wonder if the Conservatives could clarify what the intention is here. Is it to delay Bill C-27, or is it to study this? Which other priority of theirs would they like to substitute this for?

The Chair: Before I turn it over to you, Mr. Vis, I have Mr. Sorbara, Mr. Perkins and Mr. Masse.

I will go to Mr. Sorbara first.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): Good morning, Chair.

I'm happy to see everyone this morning. Happy Monday to everyone.

First, to my colleague MP Vis, I was very happy to hear you say "the independent Bank of Canada". That was very important. I thank you for putting on the record that the Bank of Canada is independent. I know your Leader of the Opposition wanted at one time to fire the Bank of Canada governor, and said that publicly. I think the independence of the Bank of Canada is very important for institutional integrity for many reasons, so I'm glad you put that on the record, Brad.

I want to get clarification on whether these meetings would be in addition to the meetings on Bill C-27.

We all want to have a strong economy with strong growth, and to create good jobs. I think yesterday's announcement on the AI front was part of that endeavour, and it continues to be.

I'm going to stop there. I look forward to getting to Bill C-27 and doing clause-by-clause.

The Chair: Thank you, Mr. Sorbara.

Mr. Perkins.

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

To MP Turnbull, these are in addition. I'm not surprised that you would like us to remove the green slush fund from further study and put this back on.

On the broader issue, the committee is in charge of its own destiny, and the statements and speech by the Governor of the Bank of Canada and the Bank of Canada officials happened after our steering committee meeting, when we agreed on the agenda. We thought it would be an appropriate time, given that productivity is obviously an urgent issue. If it wasn't, the Governor of the Bank of Canada wouldn't have raised the issue at this time.

Do not delay it until next year, or some other mythical time, and have a discussion, but actually do it when the Bank of Canada has raised it as a primary concern about the future ability of our country to afford the programs, the lifestyle and the things we all enjoy and love so much about being here.

In the spirit of being in charge of our own destiny and being nimble in order to reflect things that go on in the economy, because I think we can walk and chew gum at the same time, it's incumbent upon us to have these officials here to talk about this urgent priority raised by the governor and his officials.

[Translation]

The Chair: Thank you, Mr. Perkins.

I'll now give the floor to Mr. Masse, and then to Mr. Garon.

[English]

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

I have lived through debacles with the Canada census, which was seen as a model for many democracies for many years. We saw the outsourcing to Lockheed Martin, which we were able to stop under the Liberals—that was a Paul Martin regime decision—because it would have made our private information vulnerable to the United States under the Patriot Act. Nevertheless, Mr. Sheikh and Mr. Smith resigned.

I'm just curious about the Conservatives' renewed faith in the interim chief statistician right now, given their history of wanting to eliminate the long-form census under Stephen Harper, and of Tony Clement, as the former minister of industry, making stuff up on the fly about the census, including talking about putting people in jail. That's the history we have here at this committee with regard to the Conservative Party and the census. I would like further clarification about whether or not they have changed their position on the census and value having the interim chief statistician come to this table, or whether they're going to attack that individual when they come here and try to eliminate the census again.

That's what I gain from looking at this motion here, because it seems highly unusual that the Conservatives have actually renounced their position, given their history here, their former minister of industry Tony Clement and what took place.

At the same time, they're one of the star witnesses for this motion that was presented to us at the last moment.

I have a lot of reservation about this, again, from having fought against the previous outsourcing to Lockheed Martin and having fought to continue the long-form census, which was seen negatively by the Stephen Harper administration and up to today. I'm not sure where the Conservatives stand with regard to the chief statistician. I do not want the chief statistician to come here and be attacked or

manipulated, versus what we have in the motion here. Again, to the Conservatives, is this a witness that they see as a value-added aspect to the motion, in terms of wanting to have the information come forward, or is it actually a front to try to eliminate the census again?

• (1115)

The Chair: Thank you, Mr. Masse.

[Translation]

Mr. Garon, you have the floor.

Mr. Jean-Denis Garon (Mirabel, BQ): Thank you, Mr. Chair.

I'll try to keep this short. I'm also sure that the purpose of this motion is to delay our work. I even wondered whether to speak.

I have a question for everyone. What's the point of meeting as a subcommittee, planning, working diligently, agreeing on something, adopting a report and then completely contradicting what we unanimously adopted five minutes ago? There was filibustering for much of the meeting. What type of organization or committee does things of this nature? It makes no sense.

Honestly, I'm not sure that the Conservatives are all that interested in productivity. It's clearly a political ploy to make the news. Why weren't immigration policy experts proposed? We have a Canadian immigration policy, which aims to bring cheap labour and vulnerable people to Canada in large numbers. There isn't anything to challenge this. From an electoral standpoint, it helps the Conservatives and the Liberals. There isn't anything in this.

They weren't interested in productivity when it came to implementing policies that boosted oil exports from the west. I have an important point to make. When the Conservatives' policies are put in place, when more oil is exported, the Canadian dollar appreciates. This completely stifles Canada's industrial heartland in Quebec and Ontario.

We should be having these conversations long before the proposed conversations with the Governor of the Bank of Canada and the chief statistician. The Conservatives have shown little regard for them, as my colleagues said.

I would like us to remain consistent. At the last meeting, we could discuss other topics. We agreed on something. I'm a person who still believes that words have value. As a result, I think that we should continue our legislative work. Despite our disagreements on Bill C-27, we should continue to work diligently, as quickly as possible.

The Chair: Thank you, Mr. Garon.

I see that Mr. Vis wants to speak.

[English]

Mr. Brad Vis: First, I will point out to Mr. Masse that the labour force survey, the work that Statistics Canada does on understanding Canada's economy, goes far beyond the parameters of the census. I want the right data from the right people at the right committee to study the right problems that Canadians are raising with all of us right now.

It was during a period of time when Parliament wasn't sitting that the Bank of Canada made this announcement. I, as an opposition MP, have only so many tools at my disposal to raise the issues that the business community in Canada is very concerned about, and this is right at the top of the list. If I was not using my ability as an opposition member to raise a motion in committee with regard to a story that really has a lot of people concerned in Canada's business community, I wouldn't be doing my job effectively. They need to know that we're listening; my constituents need to know that I'm listening. The private sector doesn't get a lot of attention from this government right now. I have to do my job, and that's what I'm doing here in good faith, so I don't know why you're attacking me so strongly this morning. This was done in good faith, and I didn't want to do it in a way that would disrupt Bill C-27.

Thank you, Mr. Chair.

● (1120)

The Chair: Thank you.

Mr. Masse.

Mr. Brian Masse: Mr. Chair, I'm not attacking. I'm just bringing up the facts of the matter. I don't want to agree to a motion that would put the chief statistician in front of me here, given the history that has taken place with your party. I don't know where your party stands on the chief statistician who oversees this information and this process. It's as simple as that. I can't agree to put somebody in front of us right here who could be attacked for something that is supposed to be, basically, part of holding the position and doing their job. That's why I'm questioning that. I want to know specifically whether the Conservative Party agrees with the census or not.

That's a specific thing I'm asking. You don't have to answer it, but it's not an attack. It's a factual thing. I support the long-form census. I support the short-form census. I support the chief statistician. I support the whole department. All those things are on the table for me. I want to know that if I'm supposed to support putting somebody in front of me without the proper tools. I want to know the reasons to be here. It seems odd to me that that's the balance of what you're asking for in this motion.

The Chair: Thank you, Mr. Masse.

(Motion negatived: nays 7; yeas 4)

The Chair: I'm glad to see that we are all in good spirits after two weeks in our constituencies. It fills me with hope as we embark on this journey to do clause-by-clause on Bill C-27.

[Translation]

Once again, I would like to welcome the witnesses, who are here to answer our questions throughout the process.

We're meeting with Mark Schaan, senior assistant deputy minister, strategy and innovation policy sector in the Department of Industry; Samir Chhabra, director general, marketplace framework policy branch; and Runa Angus, senior director, strategy and innovation policy sector.

Mr. Garon, you have the floor.

Mr. Jean-Denis Garon: Sorry to interrupt you, Mr. Chair.

According to some informal conversations, the committee could soon meet with Rio Tinto representatives, as agreed on the agenda.

Where do things stand on this front?

The Chair: Correct me if I'm wrong, Madam Clerk. According to the current schedule, one hour would be allocated to the Rio Tinto representatives on April 17. Another hour would then be allocated to the minister. This isn't confirmed, but it would be in addition to the main estimates sometime in May.

As I was saying, I would like to thank the witnesses for starting this process with us. As everyone knows, April and May are set aside for clause-by-clause consideration of Bill C-27. We'll be seeing each other often over the coming weeks.

● (1125)

Pursuant to Standing Order 75(1), consideration of clause 1, which concerns the short title and the preamble, is postponed.

The chair calls clause 2.

(Clause 2)

The Chair: According to my list, the first amendment, amendment G-1, comes from the government.

Mr. Turnbull, you have the floor.

[English]

Mr. Ryan Turnbull: My understanding is that G-1 is a very technical change to the bill. It's not making a policy change or a shift in the bill. A similar adjustment has been made in AIDA's schedule, so it's a very insignificant change, I would say. That's my understanding. Hopefully, we can deal with this one fairly quickly and move on to CPC-1.

Perhaps Mr. Schaan can just clarify it.

[Translation]

Mr. Mark Schaan (Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector, Department of Industry): Mr. Chair, as the honourable member said, the amendment proposes a technical change to the bill. The amendment is recommended by the Department of Justice and would ensure a proper interpretation of the bill.

The Chair: Thank you, Mr. Schaan.

Are there any comments on amendment G-1?

Mr. Perkins, you have the floor.

[English]

Mr. Rick Perkins: It's a technical or administrative amendment, right? I didn't hear you say what it actually does, Mr. Schaan.

Mr. Samir Chhabra (Director General, Marketplace Framework Policy Branch, Department of Industry): The act currently reads in the section, "the schedule to this Act". The Department of Justice has recommended, for more clarity and better reading, to emphasize the "Schedule 1 to this Act". The addition here the numeral "1", just for precision.

Mr. Rick Perkins: Why does that schedule have to be numbered?

Mr. Samir Chhabra: My understanding from the DOJ is that it's simply for precision and clarity to ensure there's no unnecessary ambiguity with the reading of the act.

Mr. Rick Perkins: Does it have to do with the fact that you have introduced in a further amendment later in the bill another schedule?

Ms. Runa Angus (Senior Director, Strategy and Innovation Policy Sector, Department of Industry): No. It doesn't have anything to do with any other amendments.

Mr. Rick Perkins: It doesn't have anything to do with schedule 2 in AIDA.

Ms. Runa Angus: No.

Mr. Rick Perkins: Well, if it doesn't have anything to do with schedule 2 in AIDA, I don't understand why you need to make it "Schedule 1", since it's the only schedule in the bill.

Mr. Samir Chhabra: I appreciate where you're coming from. In effect, once and if Bill C-27 passes, AIDA would become its own stand-alone piece of legislation. As well, the CPPA would become its own stand-alone piece of legislation.

The two schedules would not interact with one another. This is purely a recommendation made by the Department of Justice for the appropriate reading of the CPPA once it's promulgated.

Mr. Rick Perkins: Okay. I'll think about that and come back.

[Translation]

The Chair: Thank you.

Next up is Ms. Thomas, followed by Mr. Masse.

Ms. Thomas, you have the floor.

[English]

Mrs. Rachael Thomas (Lethbridge, CPC): I'll actually pass on my turn right now. I'm sorry.

Thank you.

The Chair: Mr. Masse.

Mr. Brian Masse: Could you say that again? It's not what we expected here this morning.

Mr. Mark Schaan: Potentially, even though the current digital charter implementation act is one current legal project, there are three stand-alone pieces of legislation contained within it: the CP-PA, the tribunal and AIDA. Upon promulgation, each of them becomes their own statute.

The CPPA has a schedule. AIDA has a schedule. The two schedules have nothing to do with each other, though, but for precision the Department of Justice would like us to suggest that "Schedule 1" is what we were referring to at the outset, notwithstanding that there's not more than one schedule currently within the bill. It's simply for the purposes of appropriate reading to suggest that this is what we are referring to when we talk about the bill. It has no relationship to the other schedule that will appear in AIDA.

Mr. Brian Masse: I'm trying to think this through, because I have wanted these bills separated from the day I met the minister about the bill two and a half years ago.

• (1130)

Mr. Mark Schaan: I think that's a separate question about the consideration of this legal project, which is known as the digital charter implementation act, and the three bills contained within it. Notwithstanding that they're being contemplated and considered as one legal project, Bill C-27, they will become stand-alone legislation insomuch as the statutes of Canada will be amended to include a statute called the CPPA, a statute called the AIDA and a statute related to the tribunal.

Mr. Brian Masse: All right. That brings me back to it being a political decision to assimilate the three bills. They could have been separated. It was a political decision to keep the three bills together.

The Chair: I don't know if that's a question or a comment.

Mr. Brian Masse: I'm sorry. It's a comment.

The Chair: It seemed more like a comment, Mr. Masse.

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

The Chair: I have Mr. Perkins, and then Madam Thomas.

Mr. Rick Perkins: I'm struggling with the schedule. You have an amendment to schedule 2 in this bill, but that's later on, so what's schedule 1? In terms of the numbering, there's no schedule 1 in the AIDA, and you've put schedule 2 in the AIDA. You must have been contemplating a relationship between that schedule, not in the sense of the content and what it does, but in this bill.... You're turning the unnamed annex schedule in the privacy part of the bill into schedule 1 because you've introduced an amendment called schedule 2.

Ms. Runa Angus: The Department of Justice has advised us that this is a drafting convention. That is why they wanted the schedule to be named schedule 1. There's no policy reason. This is not related to any of the other government amendments. It's just a drafting convention.

Mr. Rick Perkins: Can you call something schedule 2 if there's no schedule 1?

Mr. Mark Schaan: I don't [*Inaudible—Editor*] drafting convention, but this is schedule 1 to the CPPA. That's what's in question at the moment.

Mr. Rick Perkins: No, there is no schedule 1 in the CPPA. You're renaming an annex schedule as schedule 1 and there's a reason for doing that, other than just having gotten it wrong. Seeing as the government has introduced 55 amendments, it clearly got a lot wrong in this bill. Of the 55 amendments, the first one you've put in is changing this to schedule 1 because you introduced an amendment called schedule 2 with there being no schedule 1.

I think it's a pretty simple question. Doesn't 2 follow 1? Isn't that why you're numbering it?

Mr. Mark Schaan: If I read the current draft of the act on page 3 as it relates to enactment, clause 2 reads:

The Consumer Privacy Protection Act, whose text is as follows and whose schedule is set out in the schedule to this Act, is enacted:

An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in the course of commercial activities

The CPPA clearly does refer to a schedule per the text of the bill, so it is in fact related to the CPPA. It is for the precision of a drafting convention, as advised by the Department of Justice, to schedule it as schedule 1.

Mr. Rick Perkins: However, presumably the Department of Justice drafted this bill and this was the only schedule in the original Bill C-27. As such, it didn't need a number, or they would have numbered it. Now you're amending it for more precision to say it's schedule 1 for a reason, which is not that there isn't another schedule, but that you had already numbered the other schedule.

It's a simple question in the sense that you have one schedule in the bill that you're renumbering and you have another schedule that's new in an amendment you're proposing. You can't have two schedules that don't have numbers, so you've said in the opening of the bill that you're calling the one existing schedule schedule 1 because you have a future amendment.

Is that not the case?

• (1135)

Mr. Mark Schaan: No. As indicated, the schedules we're referring to strictly speak to the consumer privacy protection act—the CPPA—and the schedule is what's outlined in the CPPA. Notwithstanding that potential schedules might exist in the artificial intelligence and data act, this schedule, per drafting convention and as advised by the Department of Justice, would be more legible if it was understood as schedule 1.

Mr. Rick Perkins: Can I ask why they missed that in the first place?

Mr. Mark Schaan: Obviously, our drafters at the Department of Justice work very hard to try to ensure a bill is in the best state possible at the time of introduction. However, as has been seen through multiple corrections over multiple courses of legislative amendment acts, we have a statute update act for the very purpose of ensuring that we get it right. That's essentially what's being requested by the Department of Justice.

Mr. Rick Perkins: If this section is left the way it is.... Let's say that your amendment here is defeated, for the sake of argument. Can you still move schedule 2 in an amendment since it's in the same bill? Would the bill start off with "Schedule" and then have "Schedule 2"? Is that the legal issue?

Mr. Mark Schaan: As I've laid out, this is, strictly speaking, related to the consumer privacy protection act, so it has no bearing on future amendments related to the artificial intelligence and data act.

Mr. Rick Perkins: No, but it's all part of one bill. It's all part of the same bill, Bill C-27.

Mr. Mark Schaan: It's not part of the same legislation.

Mr. Rick Perkins: Yes, it is because the bill is the piece of legislation before Parliament.

Mr. Mark Schaan: No, the bill contains three legislative acts. The bill and the three pieces of legislation are not the same. The bill is the digital charter implementation act. The three pieces of legislation it is enacting are the CPPA, the tribunal and the AIDA.

Mr. Rick Perkins: Then what is schedule 1 if this amendment doesn't go through?

Mr. Mark Schaan: If this amendment does not go through, the "Enactment of Act" clause at the start of the CPPA will refer to a schedule unnumbered, which, by drafting convention, is not what the Department of Justice would like to see. Therefore, it will be slightly less legible.

Mr. Rick Perkins: What is that schedule?

Ms. Runa Angus: Schedule 1 is a holdover from PIPEDA. It adds the World Anti-Doping Agency as being subject to the CPPA, as it is currently subject to PIPEDA.

Mr. Rick Perkins: Okay.

The Chair: Thank you, Mr. Perkins.

I have MP Thomas and MP Masse.

Mrs. Rachael Thomas: Thank you.

I'm sorry. I just want further clarification.

Mr. Schaan, if schedule 1 were to not pass, what would be the impact on this legislation?

Mr. Mark Schaan: The amendment is simply with regard to how the schedule is referenced in the act, not to the schedule itself. The amendment is proposing to reference the schedule as "Schedule 1" rather than as "Schedule". As noted, it would be a slightly less legible bill in the eyes of the Department of Justice from a drafting perspective.

Mrs. Rachael Thomas: Thank you.

You've used the term "legible" a few times—legible, less legible, more legible. What do you mean by that?

Mr. Mark Schaan: Essentially, what the Department of Justice attempts to do is provide ease of interpretability, so when I say “legible”, I mean that it's easily interpretable and understood by those who are seeking to understand and utilize the legislation.

Mrs. Rachael Thomas: Okay, so it's the same as when I read through notes and have headings, subheadings and bullet points. That is essentially what we're looking at in terms of the increased legibility of this bill.

• (1140)

Mr. Mark Schaan: I'm not a legislative drafter, but I understand that this is understood to be convention for the ease of the reader.

Mrs. Rachael Thomas: You're saying that even if you don't have a schedule 1, though, you could potentially have a schedule 2 and that this would still somehow increase the legibility of the bill.

Mr. Mark Schaan: I believe we will come to the schedules of the artificial intelligence and data act when we get to the AIDA. This is the schedule of the CPPA.

Mrs. Rachael Thomas: I understand that, sure, but if this amendment does not go through and then there is no named schedule 1, it would be confusing to have a named schedule 2. The two of them need to be discussed in conjunction with one another.

Mr. Mark Schaan: The schedule we are referring to here is the schedule of the CPPA. The AIDA has schedules that we will contemplate, including potential amendments to those schedules. The legibility of the AIDA should be understood within the context of the AIDA.

Mrs. Rachael Thomas: Why would it be called schedule 2 here instead of just the AIDA schedule 1? To your point, you have said there are three separate pieces of legislation here being discussed in an omnibus manner.

Mr. Mark Schaan: As I understand it, right now, the proposal is to refer to the schedule in the AIDA as schedule 2. If this is not adopted, we will probably seek to refer to it as a schedule just like this one, as in it's not drafted as such—contrary to drafting conventions.

Mrs. Rachael Thomas: You have three separate bills being discussed as—

Mr. Mark Schaan: It's one bill and three laws.

Mrs. Rachael Thomas: Okay. You have one bill and three laws being discussed as a collective.

Mr. Mark Schaan: Yes.

Mrs. Rachael Thomas: If schedule 1 is precluded from one of those laws, you're saying it won't have an impact on schedule 2 within the third law.

Mr. Mark Schaan: We would probably seek to refer to it as a schedule, like this one is referred to as a schedule now. That will have to come when we get to the consideration of schedule 2.

Mrs. Rachael Thomas: I understand that, but I think what we're seeing is that they are related in terms of the numbering scheme and the legibility of the bill.

Mr. Mark Schaan: There is a relationship in the numbering, but one doesn't preclude the other. Calling it schedule 1 doesn't necessitate a schedule 2.

Mrs. Rachael Thomas: Sure. It's not the content but in fact the naming that is no longer increasing the legibility of the bill.

Mr. Mark Schaan: It is still the drafting convention to refer to it as schedule 1, as I understand it from the Department of Justice.

Mrs. Rachael Thomas: Even if it doesn't pass, it will still be referred to as schedule 1.

Mr. Mark Schaan: No. I'm sorry. Even if the anticipated outcome is that a schedule 2 doesn't exist, to refer to it as a schedule is still the drafting convention, as I understand it.

Mrs. Rachael Thomas: I understand, but then schedule 2 will only exist if schedule 1 does.

Mr. Mark Schaan: As I said, as a naming convention, schedule 2 will be schedule 2 if this is schedule 1. If this is just referred to as “Schedule”, there will probably be a move toward also understanding the schedule in the AIDA as an unnumbered schedule.

Mrs. Rachael Thomas: I understand. Thank you.

[*Translation*]

The Chair: Thank you.

I'll now give the floor to Mr. Masse, and then to Ms. O'Connell.

[*English*]

Mr. Brian Masse: Is there a document you have that tells us what the drafting convention is?

Mr. Mark Schaan: I am not in possession of that document, as I am not a drafter. I believe there are likely drafting conventions utilized by the Department of Justice, but I know they also evolve over time, and there's drafting...which is why they're conventions. I'm not at liberty to share a document.

Mr. Brian Masse: I appreciate that, but we're continually hearing reference to a drafting convention like we're supposed to understand it, like it's a set of hockey rules that we would understand. I'm not aware that any drafting convention has ever been presented to me.

A lot of this bill is about trust, to be quite frank. If the general public wants to see the bill, it's right here. It's much smaller than the amendments in front of me to fix the bill, and we're supposed to follow drafting conventions that could have subsequent consequences for all of these amendments. However, we don't even know what the drafting conventions are.

Okay. I have no questions.

• (1145)

The Chair: Ms. O'Connell.

Ms. Jennifer O'Connell (Pickering—Uxbridge, Lib.): Thank you, Chair.

I have to wonder whether that display from the Conservatives just now was a filibuster of this legislation.

I heard the earlier debate on the motion about giving attention to the private sector, and to sit here and listen for more than 15 minutes to a debate regarding—

Mr. Rick Perkins: I'm sorry we're wasting your time.

Ms. Jennifer O'Connell: Excuse me. I have the floor.

We're listening to a debate on whether to title something "Schedule 1"—not the details of the schedule but simply titling it "Schedule 1" versus "Schedule"—in a bill of significance dealing with the importance of AI and with privacy for Canadians. The Conservatives filibustering for this amount of time to debate whether or not to label something "Schedule 1" versus "Schedule" shows Canadians just how unserious they are in dealing with Canadians' privacy in this day and age of AI.

I strongly hope that if there's debate on the legislation and amendments, it's genuine and legitimate debate that will make the legislation better, not some sad display about "Schedule 1" versus "Schedule", so that Canadians can have confidence that the parliamentarians sent here are actually doing work to benefit them, because that was, frankly, embarrassing.

The Chair: Thank you, Ms. O'Connell.

For MPs around the table, in this committee we try to show some respect to other members, so when one member has the floor, I expect others to wait their turn to speak. I do it all the time myself.

Mr. Perkins.

Mr. Rick Perkins: Perhaps I'll help the last member who spoke understand—who hasn't participated in the 21 meetings we've had so far on this bill—why this came up.

Ms. Jennifer O'Connell: Please don't mansplain to me.

Mr. Brad Vis: Mansplain?

Mr. Rick Perkins: She's an expert on Bill C-27.

Let me start by saying that I think, Mr. Schaan, they are linked. They're linked in the idea that one requires the other, in that one is one and two is two. This is important, just so you understand that, because of what schedule 2 says.

Perhaps I can enlighten the Liberal members who aren't aware of what schedule 2 says. Schedule 2 allows the government to moderate content Canadians can see online, and that's why these two are linked.

Let me quote directly from the amendment to schedule 2:

The use of an artificial intelligence system in

- (a) moderating content that is found on an online communications platform, including a search engine or social media service; or
- (b) prioritizing the presentation of such content.

To be clear, the government has given itself the ability, through this provision, which is linked to schedule 1 in the numbering, to regulate the design, function, presentation and use of AI systems on social media platforms as it relates to what content the government wants prioritized and moderated on social media platforms.

The minister's submission to the committee outlined that the purpose of the provision seeks to tackle the bias in AI. All AI, by the way, have biases. The powers provided to ISED in the regulation will allow it to go much beyond simply addressing the issue in AI systems. ISED has already confirmed this.

In speaking at the business leaders breakfast, hosted by McCarthy Tétrault advisers at the TD Bank tower in Toronto on

November 7, 2023, Simon Kennedy, the deputy minister of ISED, told industry groups that the purpose of this provision in the minister's amendments to Bill C-27 seeks to tackle online misinformation. This could be accomplished through the minister's amendments to the AIDA, which are still very vague, and provide ISED with an incredible amount of power, including the legal authority to moderate online content to Canadians, as argued at this committee by Barry Sookman. Importantly, the provisions of the AIDA with regard to content moderation, as they relate to high-impact AI systems, have very few safeguards and are incredibly vague.

As Barry Sookman highlighted in his written submission to the committee, the provisions outlined in Bill C-27 will extend to "AI systems that filter, rank, or recommend content on platforms such as social media, search engines, or any digital service that curates or moderates"—

• (1150)

The Chair: Mr. Perkins, I'll just interrupt for one second.

I have 20 pages of amendments here. You're talking about the substance of schedule 2. We will be voting on schedule 2 at page 20 of this package.

If you can, just stick to G-1, which we're debating. Try to focus on the amendment before us. Then, when we get there, you'll have plenty of opportunity to talk about the amendment. We will get there at some point, but now we're on G-1.

I'll just ask members, in general, to try keep their comments to the amendment before us.

Mr. Rick Perkins: The relevance is very clear. The relevance is that officials have agreed that schedule 1 should be called schedule 1 because there is a schedule 2 being presented in the bill, for convention of drafting instructions. That brings relevance to this question in this committee hearing.

Mr. Ryan Turnbull: I have a point of order.

Mr. Perkins is putting words in the officials' mouths. They didn't say what he just said they said. Is he allowed to just say anything? We were just witnesses to what the officials said about schedule 1 being separate and being a drafting convention. Mr. Perkins is somehow suggesting that they've agreed to something they didn't state.

The Chair: Thank you, Mr. Turnbull. I don't think that's necessarily a point of order.

I'll let Mr. Perkins continue.

If you can make sure that what you're saying—

Mr. Rick Perkins: It's a drafting convention because of schedule 2. That introduces schedule 2 as relevant to this particular amendment.

The Chair: I'll let the officials answer, Mr. Perkins, but the substance of schedule 2 will be voted on when we get there. We're very far from that at this point.

Mr. Schaan, I don't know if you want to respond to Mr. Perkins.

Mr. Mark Schaan: I would just note again that schedule 1 and schedule 2 are numbered as such, but schedule 1 lives and breathes on its own and would still be, in drafting convention, referred to as schedule 1, as I understand it, notwithstanding that we will have a discussion about schedule 2, as you note, when we get to it.

Mr. Rick Perkins: Schedule 2 is introduced here because you're renumbering schedule 1. That was already part of the presentation. Otherwise, you wouldn't have called it schedule 2. You would have called it schedule 1.

Mr. Mark Schaan: We're calling it schedule 1 at the recommendation of the Department of Justice. There is a schedule 2 that will appear in the AIDA. As I understand it, we will discuss schedule 2 when we get to schedule 2.

Mr. Rick Perkins: That's the relevance, Mr. Chair. It's the fact that schedule 1 was being introduced as an amendment by the government because it's introducing another amendment, calling it schedule 2. Therefore, they have to number them for the clarity of this bill.

When you bring schedule 1 into it, that brings schedule 2, per the drafting convention rationale, into the discussion and allows us to discuss schedule 2 as part of where we are in these clause-by-clause hearings.

The Chair: Mr. Perkins, try to keep it relevant to G-1, which has been explained at length.

Mr. Rick Perkins: Well, the relevance to G-1 is that schedule 2 provides this extraordinary power in the scheduling, and without that—

Ms. Jennifer O'Connell: It's not a filibuster.

Mr. Rick Perkins: I can filibuster if you want.

The member on the opposite side likes to heckle in committee, which isn't the way it operates.

The Chair: I agree with Mr. Perkins on this. I would appreciate no heckling at this committee. That is not how we do things.

[*Translation*]

Mr. Garon, you have a point of order.

Mr. Jean-Denis Garon: I just want to share a regret, Mr. Chair.

Given our efficiency, I think that a motion on productivity would have been in order.

The Chair: Thank you for your witty remarks, which brighten up this tiresome meeting.

Mr. Perkins, you have the floor.

[*English*]

Mr. Rick Perkins: Thank you.

Is there another country in the world, besides China, that has put a provision into its legislation that gives the government the power to moderate online AI content?

• (1155)

Mr. Mark Schaan: The provision in question—

Mr. Ryan Turnbull: I have a point of order.

Mr. Mark Schaan: —which is not related to the amendment that I believe is before the committee, sets out the types of high-impact AI systems that will be subject to regulation. The schedule does list a number of high-impact AI systems, including those that can influence behaviour as it relates to online recommendations. That type of artificial intelligence system is the subject of considerable amounts of activity in international fora.

The Chair: I have Mr. Turnbull on a point of order.

Mr. Ryan Turnbull: Relevance is the point of order. This has nothing to do with the amendment we're focused on, which is the change of a number. It's the addition of a "1" to the schedule for ease of reading.

What I don't understand is why Mr. Perkins keeps asking questions about something that you have already indicated is 20 pages into the amendments we have and has to do with the AIDA portion of the bill. That's not the portion of the bill we're focusing on. This is the very first amendment, and this looks very much like a filibuster.

The Chair: Thank you, Mr. Turnbull. I accept your point of order. I will ask members to stay relevant.

For clause 2, if we get through this amendment, we still have 155 other amendments to go through. That's just on clause 2. We need to move a little more swiftly, so I will ask members in their questions and comments to stay relevant to the amendment before the committee.

Do I have any other speakers? I have Mr. Masse—

Mr. Rick Perkins: Do I still have the floor?

The Chair: You still have the floor, Mr. Perkins, but please stay relevant to G-1.

Mr. Rick Perkins: In the last Parliament, the government tried to legislate algorithms through Bill C-10. It then backed off and brought in Bill C-11 this time. It said, "Look at us. Aren't we being nice? We're going to tell people how to write their algorithms and not actually look at them."

In this bill, you have schedule 2, which is numbered as schedule 2, and schedule 1, and I'd like to know—

Mr. Ryan Turnbull: I have a point of order.

The Chair: I'm sorry, Mr. Perkins, but I have a point of order.

Mr. Ryan Turnbull: Mr. Perkins keeps referring to schedule 2, which is not in this amendment. The amendment specifically refers to schedule 1, so maybe he could refrain from referring to a schedule we're not debating.

Mr. Rick Perkins: It's an administrative drafting convention that the government has introduced because it made a mistake in the drafting of this bill. It introduced a schedule 2, in the draft given to the committee in advance, as a draft amendment—one of the minister's eight after his appearance—and it has now introduced it formally through the clause-by-clause process.

It's very clear to most people that the drafting convention is you can't have a schedule 2 if there is no schedule 1. It just doesn't make sense. Therefore, the government drew the link by introducing this. That allows it to be relevant in the discussion, because I don't believe you can have the other amendment without this amendment.

The Chair: That's a good question to ask the officials, Mr. Perkins. I would ask you to stay on the numbering of the schedules, not the substance of the schedules. We will get to that if we ever get there.

Mr. Rick Perkins: Can you introduce a schedule 2 if you don't renumber the annex schedule as schedule 1?

Mr. Mark Schaan: As noted, I think in all likelihood, if this does not get numbered as a schedule, it will have implications for the subsequent schedule. There would probably be a move to try to keep the two consistent, so this one would be referred to as an unnumbered schedule, as would the schedule referenced in the AIDA.

Mr. Rick Perkins: That's the relevance. It has implications on schedule 2. That allows us in this instance today to ask about that schedule and make sure that we understand the impact of not having that change in schedule 1 done, and its implications on schedule 2 if it isn't in this bill the way it is.

I believe we get to ask questions on that, because the assistant deputy minister has, once again, just made the link between the two.

• (1200)

The Chair: If I understand you correctly, Mr. Schaan, what you're saying is that, basically, they would be named differently, provided this change in G-1 is adopted. However, the substance of them would not change.

It's about how they are labelled, so I would appreciate questions on the labelling of the scheduling, and not the substance of the labelling.

We will get there, Mr. Perkins—well, I'm not so sure we will get there, but I hope we will get there. It's in the plan.

Mr. Perkins.

Mr. Rick Perkins: Go to whoever is next on the list.

The Chair: Thank you.

I have Mr. Masse.

Mr. Brian Masse: Normally, we have the department that's proposing legislative changes come in front of us. I think the problem we're facing is that we have the Department of Industry here representing the Department of Justice.

Has the Department of Justice provided any written material that you could give to the committee so we can resolve this?

My standing convention is for a department to have representation in front of the committee when it wants amendments. That's the problem here. Basically, a vessel for the justice department has come to the industry committee for this amendment. There's the confusion. Regardless of that, there is a consequence to this change. They wouldn't be asking for this change if there weren't a reason and consequences. If it were convention that it be included, then that's a pretty bold mistake to begin with in the legislation. It has a consequence, as we know.

Is there any written information from the Department of Justice? Can we get anybody from the Department of Justice on the phone for this? I don't know. It's just—

Mr. Ryan Turnbull: Let's call a friend.

Mr. Brian Masse: Yes, let's. It's a mess, because we only have a vessel here.

We're here for a reason. The parliamentary secretary can shake his head, and the Liberals can heckle and do all the stuff they've been doing since the beginning of this meeting, but it doesn't take away from the fact that there's a lack of trust here. Again, we don't have information.

Specifically, is there any written information from the Department of Justice or anything from a representative of the Department of Justice about the amendment they want to this legislation?

The Chair: You're asking specifically about G-1, Mr. Masse.

Mr. Brian Masse: It's for G-1, yes.

The Chair: Mr. Schaan.

Mr. Mark Schaan: I have no written information from the Department of Justice. Throughout the entirety of this process, we'll be relaying information that is both of a content nature and of a drafting nature. I will be relaying that as it has been relayed.

In this particular case, it is about the drafting convention of the naming of schedules. Schedules are best understood with precision, and we are therefore asking for this schedule to be renumbered.

Mr. Brian Masse: The bottom line, then, is they couldn't be bothered to show up.

What amendments do we have from departments other than Industry out of the number of amendments we have coming forward? Maybe we should have them here and available to us if we want to get this done properly.

The Chair: Thank you, Mr. Masse.

Mr. Vis.

Mr. Brad Vis: Thank you, Mr. Chair.

Regarding schedule 1, it refers to proposed subsection 6(3). What page can you point me to in the legislation to see proposed subsection 6(3)?

Mr. Mark Schaan: On page 7, under "Application", proposed subsection 6(3) reads:

This Act also applies to an organization set out in column 1 of the schedule in respect of personal information set out in column 2.

Mr. Brad Vis: What organization is that? Is that the one Ms. Angus referred to, the World Anti-Doping Agency?

Mr. Mark Schaan: That's correct.

Mr. Brad Vis: Okay. Let's look at proposed subsection 122(2) as well. What page is that on?

• (1205)

Mr. Mark Schaan: That would be on page 61 of the bill, under "Orders". Paragraph (c) reads:

amend the schedule by adding or deleting, in column 1, a reference to an organization or by adding or deleting, in column 2, the description of personal information in relation to an organization in column 1.

Mr. Brad Vis: I'm sorry. Is that in proposed paragraph 122(1)(c), which reads, "specifying information for the purposes of section 51"? Am I reading that correctly?

Mr. Mark Schaan: No. That's proposed paragraph 122(2)(c).

Mr. Brad Vis: I apologize. It says:

amend the schedule by adding or deleting, in column 1, a reference to an organization

Where is column 1?

Mr. Mark Schaan: Column 1 is in the schedule.

Mr. Brad Vis: Okay, and that is the only column. Column 1 is the World Anti-Doping Agency.

Ms. Runa Angus: There are two columns. Column 1 is the organization and column 2 is a description.

Mr. Brad Vis: It reads:

amend the schedule by adding or deleting, in column 1, a reference to an organization or by adding or deleting, in column 2, the description of personal information in relation to an organization in column 1.

What is the impact of proposed paragraph 122(2)(c), then, on the schedule outline?

Mr. Samir Chhabra: The purpose of proposed section 122 is, under the regulations and general provisions of the act, to set out the requirements by which the Governor in Council may make regulations for carrying out the purposes of the act.

Mr. Brad Vis: I'm sorry. I have bad hearing.

Mr. Samir Chhabra: I apologize. I can say that again.

Proposed subsection 122(1) specifies how the Governor in Council may make regulations for carrying out the purposes of the act, and the recitals following that cover off the conditions that must be met and how you would go about doing that.

Proposed subsection 122(2) notes, "The Governor in Council may, by order" and so on. As to the point of proposed paragraph 122(2)(c), which is the specific part you referenced, the Governor in Council may amend the schedule where currently the World Anti-Doping Agency is referenced. The Governor in Council could add other organizations, or add or delete organizations from that list.

Mr. Brad Vis: I don't know the exact date anymore, but with respect to the naming convention, when we received the high-impact system schedule, schedule 2—just out of curiosity, because we've

had such a fascinating discussion about it—did the Department of Justice write—

Mr. Ryan Turnbull: I have a point of order.

The Chair: Go ahead, Mr. Turnbull.

Mr. Ryan Turnbull: The member keeps referring to schedule 2. I think we over and over again have gone back to referring to schedule 1.

The amendment we're discussing and debating right now is only to add a "1" to "Schedule" to clarify. I don't know where Mr. Vis is going with this, but it's not relevant.

Mr. Brad Vis: I have been very specific and on topic, Mr. Chair, and I continue to be.

Mr. Ryan Turnbull: No, you haven't.

Mr. Brad Vis: Yes, I have, because the department sent forward a number of amendments after the bill was tabled, and one of them was for schedule 2.

Did the officials from the Department of Justice have in mind this first amendment when schedule 2 was provided to Parliament after the bill was tabled?

Mr. Mark Schaan: I'm not aware of the exact line of thinking that went into the particular determinations, but there was a determination from the Department of Justice that the bill would be improved by naming schedule 1, and then schedule 2 would follow as a function of AIDA.

Mr. Brad Vis: Did the Department of Justice write schedule 2, or did the Department of Industry?

Mr. Mark Schaan: The production of government amendments went through a drafting process by which the Department of Justice and the Department of Industry collaborated to create the amendments that are before the committee today.

Mr. Brad Vis: This is of significance. Despite the badgering from Liberal members, the high-impact system, schedule 2, is legislation that everyone understands is going to have a big impact on Canadian society. I'm just trying to understand what the rationale or thinking of the officials was when they gave us an amendment, tabled before clause-by-clause, outlining a new schedule without giving us any context as to other changes that would be forthcoming.

• (1210)

The Chair: I know we're all eager to get to the end of this clause-by-clause and discuss the substance of schedule 2, Mr. Vis, but now—

Mr. Brad Vis: I'm not interested in the substance of schedule 2.

The Chair: —we're looking at the labelling, which is to add a "1". That's amendment G-1. That's what's before this committee.

Are there any other comments on G-1?

Mr. Brad Vis: I've asked that—

The Chair: We can agree or disagree with the labelling. We will debate the substance, and we will debate the amendments you're referring to, but now we're on G-1, the very first of a big stack of amendments. It's a very simple one.

Mr. Williams.

Mr. Ryan Williams (Bay of Quinte, CPC): Mr. Chair, I will be relevant to this subject.

First, I just want to make a quick comment.

There have been some comments from the other side of the room that we're trying to filibuster or that we don't have the right to question. This bill is very important, and it's very important to Canadians. I know people in this room will get into privacy as a fundamental right and will get into some of the other substance of this, but it does stem from a government recommendation, and we have concerns with where this points to. Certain aspects of this bill will bring up big debates, and I think part of that is about understanding why these decisions were made and why we're going to be making further decisions down the road.

It is relevant in a lot of ways to ask why we have a schedule 1. My question for the officials is this. Besides schedule 2, which I seem to see in the amendments, are other schedules going to be introduced to this bill in any section or any part of it?

Mr. Mark Schaan: No, not to my knowledge. There is a schedule proposed for the CPPA and a schedule proposed for the AIDA.

Mr. Ryan Williams: I'm sorry. You said no, but you answered yes.

Is there more than one schedule? Are we labelling a separate one? Is there one for the AIDA? Is that what you're saying?

Mr. Mark Schaan: I believe we already understand that there is a proposed amendment that would introduce the schedule to the AIDA, so those are the two schedules that are currently before the committee.

Mr. Ryan Williams: Thanks. You misunderstood me. I just asked if there are more than the one here before us. In this amendment, there's a change to add a number 1 to the schedule, but to your knowledge there is another amendment coming to add a schedule 2. Is that correct?

Mr. Mark Schaan: There's one schedule to the CPPA, and this amendment seeks to label it as schedule 1.

There is a schedule proposed in later amendments to the artificial intelligence and data act, and that amendment proposes to call it schedule 2.

Mr. Ryan Williams: To clarify, then, yes, there is a schedule for this one, and there's going to be a schedule for the AIDA proposed in the amendments, which I think others have been referring to.

Are there any other schedules being proposed or being talked about anywhere else in this document?

Mr. Mark Schaan: No, not to my knowledge. There are no other amendments that introduce schedules.

Mr. Ryan Williams: Okay.

Regarding schedule 1, you've already told my colleague that we have the World Anti-Doping Agency in there, and this pertains to that. Of course, we can debate the substance of that later.

In terms of adding anything else, would there be any other numbering conflicts? Has the Department of Justice had any other con-

cerns about labelling or numbering in any other part of this document? Was this the only change they said needed to be labelled for protocol or decorum?

Mr. Mark Schaan: There are other technical amendments that will be introduced as we go through this that relate to specific drafting wording. I don't believe they relate to numbering, not to my knowledge, but there are other technical amendments that will be proposed.

Mr. Ryan Williams: I have a general question. At the end of the study, we normally come back and look at the title or look at the preamble. If other schedules could be added during the course of the debate on this, why are we doing this at the beginning and not at the end?

• (1215)

Mr. Mark Schaan: As I understand it, the annotated agenda for the consideration of the bill was to take it in course, so this is the way in which the committee has decided to adjudicate the bill.

Mr. Ryan Williams: In that context and spirit, I'm going to recommend that we table this amendment.

The Chair: Mr. Williams, I'm afraid that's not going to be possible unless we adjourn the meeting, because if we were to do that—correct me if I'm wrong, Jean-François—we would have to set aside clause 2 entirely, along with 156 amendments. G-1 is the first of these 156 amendments.

The other way we can do this is to vote on G-1. That's what I humbly suggest.

Mr. Ryan Williams: Anyway, I think we're seeing the problem here.

Let me point this out. The government brought Bill C-27 through in June 2022. We waited a year—it was tabled before it was introduced. A bunch of amendments to this bill were brought.

Now we're debating the first amendment when we're not even sure there's going to be a schedule 2 or 3, and we're starting with that. I find that very problematic. It follows how this bill has been rolled out, introduced and debated as a whole. We sometimes have major issues with how we're bringing things through. I hope this is a learning experience for most people, but at this time, this is a bad way to bring an amendment forward to this committee.

Thank you, Mr. Chair.

[*Translation*]

The Chair: Thank you, Mr. Williams.

Any other comments?

[*English*]

Shall G-1 carry?

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

The Chair: Congratulations. That's the first of 156 amendments on clause 2.

We will move on. The next one I have on my list is CPC-1. Who do I recognize?

Mr. Vis.

Mr. Brad Vis: Thank you to all committee members.

Today I am very pleased to speak about CPC-1.

Over the course of all our meetings, I really emphasized the need for a fundamental right to privacy, as many of you did, and the special rights we have the opportunity to put in place, not only to protect our freedoms and ensure fairness in the push for a just society, but to do so specifically for Canadian minors.

Let me break CPC-1 down for you. It essentially embeds the preamble into part 1 of the act and adds a crucial clause. It would read:

Whereas the protection of the fundamental right to privacy of individuals with respect to their personal information is essential to individual autonomy and dignity and to the full enjoyment of fundamental rights and freedoms in Canada...

Whereas the processing of personal...data should respect minors' privacy and their best interests...

Why do these changes matter? The Office of the Privacy Commissioner has noted that, as Bill C-27 is currently drafted, the preamble of Bill C-27 appears only in the introductory text of the bill and not at the beginning of the CPPA or the AIDA. According to the Privacy Commissioner, once enacted, neither act will contain any mention of the preamble, which includes the bill's only mention of the fundamental right to privacy. While, yes, I understand that the preamble of an act is not legally binding, it does provide guidance to the courts with regard to the intention of our work in drafting this bill. When privacy interests and those of businesses are in conflict, the inclusion of the preamble will allow the courts to identify the intent of our work here at committee.

In addition to embedding the preamble in the act, this amendment would also make changes to the preamble's existing text. One, it would strengthen the recognition of a person's fundamental right to privacy in the existing text by making a specific reference to the right to privacy. Two, it would recognize that the processing of the personal information of minors should respect their best interests.

These amendments were recommended by the Office of the Privacy Commissioner as a means to strengthen privacy protection for all Canadians. More specifically, the Office of the Privacy Commissioner, in the submission made on April 26, 2023, made it clear that the preamble of the bill must...and stated, "Privacy is both a fundamental right in itself, and is instrumental to the exercise of other rights."

Also in this submission, the OPC makes recommendations and proposes amendments in the following five areas to advance this broader theme—privacy as a fundamental right, children's privacy and the rights of the child, appropriate purposes, administrative monetary penalties and disposal. It recommends that the preamble should "recognize that the processing of personal data should respect children's privacy and the best interests of the child."

The preamble of the bill would apply to the CPPA and the AIDA, which is why the OPC believes it is important that this amendment is included in the text of the bill. Its submission also stated:

As the preamble would apply to all the Acts comprised in Bill C-27, including the CPPA and AIDA, adding the proposed language to the section that frames

the legislation's intent would help ensure that the best interests of children and minors are prioritized and consistently considered across all the related Acts.

At meeting 87, on September 28, the Privacy Commissioner repeated what was voiced in the OPC submission. He said:

Under the theme of privacy as a fundamental right, I recommend strengthening the preamble and purpose clause to explicitly recognize privacy as a fundamental right, and highlight the need to protect children's privacy and the best interest of the child, so that these important principles inform the interpretation of all aspects of the legislation.

In addition to listening to the recommendations given by the Office of the Privacy Commissioner, it is very important for us to listen to what other stakeholders said on this as well.

In meeting 99, on November 28, Elizabeth Denham, who is the chief strategy officer of the Information Accountability Foundation, came to voice her input. She's worked for decades as a privacy professional and worked for 15 years as an information rights regulator in 15 jurisdictions. She previously had a role as the information commissioner for the United Kingdom in 2016, where she brought into oversight the board that administered the general data protection regulation, an important part of EU privacy and human rights law, which was also raised consistently at our meetings.

● (1220)

While working as the U.K.'s information commissioner, she oversaw the creation of a children's appropriate design code, which has influenced the U.K.'s laws related to privacy. The GDPR's children's code of age-appropriate design assists organizations in creating digital services that cater to children's needs, respect their rights and foster their exploration and growth online. In later meetings, I will speak about this further, as we have an amendment that would create a similar code to protect children in Canada. That being said, I think it's important for us to recognize what the GDPR has done in explicitly emphasizing the language of the best interests of the child.

Furthermore, in meeting 99, Ms. Denham emphasized the importance of including "privacy as a fundamental right" and the best interests of the child in the preamble. Two of the leading experts globally, who both happen to be Canadian, are asking for this. Ms. Denham said:

Looking first at Canada's CPPA from a global perspective, I see a big missing piece, and the legislation's language, in my view, needs adjusting so that it explicitly declares privacy as a fundamental right for Canadians. Its absence really puts us behind nations who lead the way in privacy and data protection.

She also stated:

One of them needs to be a statement in the preamble or in the purpose statement that recognizes that companies need to provide services in the best interests of the child. That language comes out of the UN convention that I mentioned earlier. Canada is a signatory to that.

The best interests of the child—

During meeting 98, on November 23, we heard from Michael Beauvais, a doctoral candidate at the University of Toronto's faculty of law, who said:

...the best interests of the child should be included as a fundamental principle in the act. Doing so would make the child's interests a primary concern in all aspects of the proposed legislation. For example, the best interests of children should matter in specifying the purposes of data collection, use and disclosure, as well as data retention.

During meeting 92, on October 26, Vivek Krishnamurthy, associate professor of law at the University of Colorado law school, said:

Including language that says the best interests of the child need to be taken into consideration throughout the interpretation of the subsequent provisions means that if you're doing a legitimate interest analysis, that's going to impact that analysis by the company or other organization that's collecting and processing children's data.

During meeting 94, on November 2, interim director of the privacy, technology and surveillance program at the Canadian Civil Liberties Association, Daniel Konikoff, alluded to the fact that the current legislation does not give people a fundamental right to privacy. He said:

First, Bill C-27 does not give fundamental rights their due and frequently puts them in second place, behind commercial interests. It has been said before but CCLA believes that it's worth emphasizing that Bill C-27 must be amended to recognize privacy as a human right, both in the CPPA and in AIDA, since privacy is something that should be respected at all points throughout data's life cycle.

The stakeholders and witnesses have been diligent in making the case for why we must include this critical amendment. As legislators who serve a democracy, it is crucial for us to draft legislation that listens to the voices of professionals in this field, and they have been very clear on this point.

I now want to further emphasize why it is important that this bill specify a fundamental right to privacy and a child's best interests in the preamble.

First, privacy has long been considered a fundamental right in Canada. Our Charter of Rights and Freedoms, the Privacy Act and territorial and provincial privacy legislation work together to protect Canadians' personal information held by governments or private institutions.

Recent trends and events have raised new concerns about whether personal information is adequately protected by governments and companies when this information travels outside of Canada's borders. With the increasing flow of computerized data across international borders, particularly to the United States, privacy concerns and the rights of Canadians to safeguard their personal information make it more important than ever to include the language of a fundamental right in the preamble of the bill.

• (1225)

In 1948, Canada signed the Universal Declaration of Human Rights, which is an integral part of protecting individual autonomy, dignity and the fundamental rights of people. We need to ensure that the text of this bill emphasizes this right, as article 12 of the Universal Declaration of Human Rights states:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Privacy is a fundamental right because it is intricately tied to our dignity and the enjoyment of other fundamental freedoms. Let me elaborate on this.

Privacy is not merely about keeping secrets. It's about control over our personal information. Our identities, beliefs and choices are deeply connected to the data we share. We heard that time and time again throughout all of our meetings.

Respecting privacy rights ensures that individuals maintain their dignity and autonomy. Think about some of the conversations we had during the meetings about what this would do to protect young people, who might make a really bad decision when they're young and online. We need to make sure that this law gets it right so that children have a right to have those bad decisions forgotten online and something is not following them throughout their entire careers and personal life. Essentially, it allows us to define who we are without undue interference, either intentionally or unintentionally.

In cases of conflict between private interests—such as convenience, business and security, as outlined in the bill—and public interest, privacy should always prevail. This balance acknowledges that, while innovation and security are essential, they must not come at the expense of individual privacy rights.

Privacy isn't an obstacle to progress. It is the catalyst that all of us have spoken so clearly on through this whole process. When people trust that their data is protected, they are more likely to engage in positive digital activities or even to use new technologies in a way that might help our economy, for example. Canada's innovation and competitiveness therefore rely on this amendment to provide a robust framework that encourages responsible data use.

Privacy will accelerate trust. When citizens feel their privacy is respected, they trust their institutions more. As digital citizens, we want to participate fully in society and the economy without compromising our fundamental privacy rights.

In summary, privacy is a fundamental right and is crucial for our digital age, which is why the preamble of the bill must highlight this right. It would ensure that we can benefit from technological advances while safeguarding our personal information and giving tools to the courts to make future decisions.

Secondly, I want to emphasize the importance of including the second half of the amendment, which states that “the processing of personal...data should respect minors' privacy and their best interests”. This line is vital at the beginning of the bill, as it sets a precedent and standard that should be followed throughout. This is especially important, as the bill proposes multiple clauses that are subject to a lot of regulation by the Department of Industry. By specifically indicating the precious needs of minors' data and in taking a nuanced approach that puts children first, we are putting protections that will hold future regulators and commissioners accountable to this fundamental concern, which we have all outlined during our meetings.

More specifically, the concept of the best interests of the child is, in fact, an international standard. It was first established in 1989, serving as a primary United Nations human rights treaty that focused on safeguarding children's rights. Article 3 states:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

This declaration underscores the universal recognition of the importance of prioritizing children's well-being and interests in all decision-making processes, particularly that, one, “the best interests of the child will be a primary consideration in all actions affecting children”; two, “there will be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status”; three, states or parties that have signed it “recognize that every child has the inherent right to life and will ensure to the maximum extent possible the survival and development of the child”; and four, “children will be assured the right to express their views freely in all matters affecting them, their views being given due weight in accordance with the child's age and level of maturity”.

● (1230)

Incorporating the best interests of the child into this legislative framework is not merely a legal obligation but a moral imperative for all of us. It reflects our commitment to nurturing environments where children can, where possible, thrive free from exploitation and harm, particularly in the digital realm, which we discussed at length. The digital landscape presents so many unique challenges and risks to our kids. We can get this done. With this robust safeguard, we can protect our kids. Embedding provisions that explicitly protect minors' privacy and prioritize their best interests within the legislative framework is essential.

Thank you so much.

The Chair: Thank you very much, Mr. Vis, for moving CPC-1.

An hon. member: What a joke.

The Chair: Please, colleagues.

I will recognize Mr. Perkins, and then Mr. Turnbull.

Mr. Perkins, please go ahead.

Ms. Jennifer O'Connell: What a joke.

Mr. Brad Vis: What a joke?

Ms. Jennifer O'Connell: He said that was just moving it.

The Chair: Please, colleagues.

I will recognize Mr. Perkins, and then Mr. Turnbull.

Mr. Brian Masse: I have a point of order, Mr. Chair.

I want to point out that three interventions from this member have been quite questionable in terms of parliamentary respect. I hope that will end. That's significant for this committee, because we can have our differences. I fought out my differences with my colleague at the beginning of this committee in an open and accountable way that was recorded. That's versus this type of stuff taking place off the microphone, which is clearly unacceptable.

● (1235)

The Chair: Thank you.

Ms. O'Connell.

Ms. Jennifer O'Connell: Mr. Chair, I was laughing with my colleague Mr. Turnbull, and Mr. Vis did not hear correctly what we were talking about. If that has caused any disruption, I apologize.

To make some sort of incorrect statement is not right. Mr. Masse's comments are fine, but I am allowed to talk to my colleagues at this committee.

Mr. Brian Masse: I can quote what you said earlier off the record, if you like.

Ms. Jennifer O'Connell: Like what?

Mr. Brian Masse: There was “good reading”, “mansplaining” and other things you've stated directly to the member across the aisle.

Ms. Jennifer O'Connell: Thank you for putting that on the—

The Chair: Colleagues, we usually work very collegially and respectfully at this committee, but I've heard comments from all sides throughout this meeting that I don't wish to hear again. If you have anything to say, please seek my attention. I'll give you the floor and you can say it on the record. Otherwise, we will let other members speak and we will listen respectfully. Thank you very much.

Mr. Perkins.

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

To the witnesses, in the last Parliament, there was a previous version of this bill that did not recognize privacy as a fundamental right, and I think there was a lot of push-back then. I was not in the last Parliament. The bill was introduced in June 2022, again, as we know, without much consultation beforehand.

Is there a reason the department has chosen not to put a fundamental right in the preamble of this legislation? There have been two attempts at it and it still hasn't done that.

Mr. Mark Schaan: The minister has stated an openness to seeing a fundamental right to privacy in the bill, and the views of the minister are reflected in both amendments. I can't speak for the government. I can only speak from the department's perspective and say that we've reflected the wish to have the fundamental right to privacy understood in this bill.

Mr. Rick Perkins: I appreciate that, but of the 55 government amendments, there wasn't one proposed in this area.

Page 8 of the Privacy Commissioner's 2022 submission on this legislation says:

As the preamble would apply to all the Acts comprised in Bill C-27, including the CPPA and AIDA, adding the proposed language to the section that frames the legislation's intent would help ensure that the best interests of children and minors are prioritized and consistently considered across all [aspects of the act].

If the bill's preamble is amended in this manner, does it affect all aspects of the legislation, including the AIDA?

Mr. Mark Schaan: I'm sorry, Mr. Chair—

Mr. Rick Perkins: There are basically three pieces to this bill. The Privacy Commissioner seems to be asserting here that if you amend the preamble in this manner, the preamble affects all three, but in particular the first and the third. Would that be correct?

Mr. Mark Schaan: As I understand it, what is being proposed is that a preamble be inserted into the CPPA. I believe there's also potential for a preamble to be inserted into the artificial intelligence and data act. This preamble would inform the reading of the CPPA, and when we come to the AIDA, as I understand it, there are proposals on the table for a preamble to the AIDA, which would inform AIDA.

To the member's question as to whether this informs all three parts of the act, by putting it in the CPPA you are informing the CPPA.

Mr. Rick Perkins: It's just the CPPA, but not the artificial intelligence part.

Mr. Mark Schaan: That is correct.

Mr. Rick Perkins: As it's constituted now without this amendment, would the preamble be included in the final Privacy Act once published and passed by Parliament, or would it not?

Mr. Mark Schaan: In its current format, no.

Mr. Rick Perkins: No, it wouldn't. Then from the perspective of the department, what's the purpose of the preamble if, once the bill is passed, it has absolutely no purpose or inclusion in the Privacy Act?

• (1240)

Mr. Mark Schaan: Courts have often looked to the context in which the overall piece of legislation was introduced and understood. While not being party to the bill in its further carriage as a statute, the preamble offers interpretive value to the courts as to the thinking of Parliament and informs the consideration of its ongoing implementation.

Mr. Rick Perkins: The impact of putting this into the act would only affect the CPPA. Would it add more certainty or cause a problem with anything else in the CPPA if you put it in? I ask because there's a reason the government doesn't have it in.

Mr. Mark Schaan: It carries with the bill, so it becomes a part of the piece of legislation, which means that the legislation reads with it, basically, on an ongoing basis. I think inserting the preamble into the bill itself is a very direct mechanism by which to inform its ongoing interpretation, as opposed to the potential that a court look back on the interpretive record. To answer your question, it is a more direct way of ensuring that it continues to be understood in that manner.

Mr. Rick Perkins: Would the government have any objection to that?

Mr. Mark Schaan: I can't speak for the government. I can simply suggest that I think the preamble, as an interpretive tool, can be important.

One thing we do think about from a technical perspective is that it stays consistent with the overall bill. It should, ideally, speak to only the CPPA portions of the act to ensure that the preamble is informing the act in which it's included, as in it shouldn't speak to other acts or other bills, because that can cause confusion. You might hear some thoughts on that.

Mr. Rick Perkins: If this goes in but, say, proposed section five, the purpose section, doesn't change, does that provide clarification or contradiction?

Mr. Mark Schaan: I see no conflict between the purpose and this preamble, no.

Mr. Rick Perkins: Why in the preamble—and maybe you can't answer this—was the...? I'll call out one of the things in this amendment, which is the focus on a very specific issue around personal data with regard to minors and their best interests. MP Vis spoke eloquently to that issue. Why was that not seen to be a priority? In the minister's opening speech during second reading in the House and in my conversations with him, he said the primary purpose of this whole bill was about protecting children's rights. However, it seems that when we go through it, we see there's actually very little reference to that at all. There's just a reference to minors once in the definitions section.

If the government felt that what this bill was doing was protecting children's rights to a greater extent than the existing law, why wasn't that more robustly put in the preamble, the purpose section and various other parts of the bill?

Mr. Mark Schaan: I think it's important to understand that the escalation of the personal information of minors to the class of sensitive information is an extraordinarily powerful legislative tool. It essentially insists that all parties subject to the CPPA will be held accountable to the degree to which they have put in place appropriate safeguards in their privacy programs for minors' information on the basis that it is, just by its existence, sensitive. A fundamental way in which we've addressed the issue of minors and their information is by ensuring that the level of care and conduct that's afforded to this is quite elevated and significant.

• (1245)

Mr. Rick Perkins: That's in the existing bill. That's what you're saying. Are you trying to say that we don't need this to do that?

Mr. Mark Schaan: I think we're talking about two different things. I think we're talking about a preamble that provides interpretive value to the overall bill and highlights, in the Conservative amendment, the important issues related to minors' privacy. However, the bill itself has provisions for the fundamental obligations on the actors that are subject to the law to treat minors' information as sensitive.

They're not in conflict; they're different things.

Mr. Rick Perkins: Can you point me specifically to the clauses? I can't find any reference to minors other than in the definitions section.

Mr. Mark Schaan: G-5 and G-55 both speak to the fundamental right of privacy—

Mr. Rick Perkins: No, in the existing bill.

Mr. Mark Schaan: In the existing bill, the elevation of children's personal information to the level of sensitive is found in proposed section 62—

Mr. Rick Perkins: I'm sorry. What page is that?

Mr. Mark Schaan: Give me two seconds.

Ms. Runa Angus: It's on page 30, in proposed paragraph 62(2) (e).

Mr. Rick Perkins: I don't see any reference to minors or children.

Ms. Runa Angus: It's a reference to sensitive information.

Mr. Rick Perkins: That's regardless of age, so it's doesn't specifically call for minors—

Ms. Runa Angus: It includes minors.

Mr. Rick Perkins: —to be treated in a different way. They're treated the same as adults.

Ms. Runa Angus: It's the sensitive information of all adults and all information about minors.

It's not going to be treated exactly the same way as it is for adults, because only sensitive information of adults will be treated as sensitive. For children and minors, all of their information is considered sensitive and treated in that way.

Mr. Rick Perkins: No, not if the amendment passes. I'm talking about the existing bill.

In the existing bill, where does it state that minors' information is treated differently?

Ms. Runa Angus: It is at the very top of page 6. It reads, "Interpretation—minors".

Mr. Mark Schaan: It reads, "For the purposes of this Act, the personal information of minors is considered to be sensitive information."

This provision, which Ms. Angus just read out, is how sensitive information is treated in the act.

Mr. Rick Perkins: Okay. Not being a lawyer, I need you to help me out. That is the only reference to minors I found in the act, and it uses the exact same language as it does for adults, which is that it's sensitive information.

Mr. Mark Schaan: No. The important clarification is that there is information of adults, and a subset of information related to adults can be considered sensitive. What this does is include all information related to minors as sensitive.

Mr. Rick Perkins: It's all information, as opposed to some.

Mr. Mark Schaan: That's correct.

Mr. Rick Perkins: Okay. Thank you for explaining that.

Mr. Chair is not here.

Mr. Vice-Chair—

Some hon. members: Oh, oh!

An hon. member: Give him a break.

Mr. Brian Masse: On a point of order, I'd like a clarification, Mr. Chair, about NDP-1 and CPC-1.

The Chair: Mr. Masse.

Mr. Brian Masse: I believe NDP-1 is no longer relevant if CPC-1 passes, if I'm correct.

Mr. Rick Perkins: I'm not sure that's true, because CPC-1 has—

The Chair: No, this is not the information I have, but I can—

Mr. Rick Perkins: It has additional things.

Mr. Brian Masse: I just wasn't sure about the—

The Chair: NDP-1 would still be receivable should CPC-1 carry.

Mr. Brian Masse: Okay. I wasn't sure.

The Chair: However, I think Mr. Turnbull might have something to propose on this.

Mr. Brian Masse: Sure. That's fair enough.

The Chair: I will recognize Mr. Turnbull.

Mr. Ryan Turnbull: Thank you, Chair. It's great to talk about this.

To start with, I think there's some support for this in principle. There are aspects of the NDP-1 amendment put forward, which also expresses some language to go in the preamble that is now being inserted into the CPPA, that we support in principle.

There are still some challenges, perhaps, with the wording, but I want to express support for the fundamental right to privacy and the protection of minors. Of course, that's something we support, but I think there's some language.... What we've done is taken away both of those and considered a kind of compromise on language that we could propose, obviously subject to the committee's debate and vote, but I want to start with just a couple of clarifications.

Mr. Masse brought up a point that I was going to clarify too, which is that CPC-1 is a stand-alone amendment. I'm looking to the legislative clerk, perhaps, to clarify that. My understanding is that NDP-1 and CPC-1 are separate and can be voted on separately, and they do not impact one another. Is that correct?

• (1250)

[Translation]

The Chair: Yes, that's correct.

[English]

Mr. Ryan Turnbull: Okay.

The other thing is similar to Mr. Perkins' line of questioning, but I might take a slightly different angle.

Mr. Schaan, perhaps you could clarify whether the coexistence of a preamble in the bill and a preamble in the CPPA could cause conflicts in interpretation, and whether there are any specific concerns you could raise for us that might come into effect if CPC-1 as proposed were to pass.

Mr. Mark Schaan: To build on an earlier point I was making, because this is being inserted into the CPPA to inform the interpretation of the CPPA, one area of concern is that it does then reference content related to the artificial intelligence and data act, particularly that it speaks to a particular aspect of technology above others that we think may potentially cause interpretative challenges.

The CPC-1 amendment states:

Whereas Parliament recognizes that artificial intelligence systems and other emerging technologies should uphold Canadian norms and values in line with the principles of international human rights law....

Our thought is that this clause may actually suggest the preamble is straying into territory to inform artificial intelligence regulation as opposed to privacy regulation.

Mr. Ryan Turnbull: I know the Conservatives are trying to tell me something here, but as to the reference in what is being proposed to “artificial intelligence systems”, I believe embedding that into the language of the preamble of the CPPA makes it less technology-agnostic in language. Is that what you're saying, Mr. Schaan?

Mr. Mark Schaan: Yes. As a principles-based and technology-neutral statute, the CPPA aims to inform privacy practices for all corporate activities, and by including specific reference to “artificial intelligence systems” in the CPPA, we think that might cause an interpretative challenge.

Mr. Ryan Turnbull: Thank you.

With regard to minors, I'll go back to something that was clarified earlier. I know the Conservatives were bringing up the definition of “sensitive information” or the idea of classifying all personal information of minors as sensitive, but perhaps we can clarify the approach we have taken with regard to minors in the drafting of the bill, because that's something I feel very committed to. I have a young daughter. I'm very concerned about her information being shared online and I want to make sure children are protected.

I think part of this inserts the concept of best interests of the child. I think there are ways we have dealt with that throughout the bill, and we have proposed amendments that I want to make sure don't get confused, given what I might propose in terms of language in a subamendment to this particular wording.

I want to clarify the protection of minors, Mr. Schaan. Can you outline our approach to that? Specifically, I'm looking for information on how we're making that a priority in this bill.

• (1255)

Mr. Mark Schaan: Absolutely.

Through the amendments being offered as well as in the text of the bill itself, as I noted, the most fundamental shift is in declaring that minors' information is sensitive and needs to be treated as such. That's an elevated bar for the purposes of a privacy management program, and it would engender a very significant level of scrutiny on the part of the Privacy Commissioner with respect to ensuring that safeguards are in place.

In a number of spaces, we speak, through the amendments, about the notion of ensuring that minors have the capacity to have their information thought of as sensitive and can have their parent or guardian potentially act on their behalf to do so. It's also about having the understanding in place that if a minor has the capacity to do so, they are able to act on their own behalf.

As potentially a necessity to be implemented by folks, “the best interests of the child” is obviously very good declaration language. In terms of precise obligations related to that, I think we have suggested that it's important to get at the construct of being able to act on behalf of a minor and to also have the capacity of the minor understood in cases where a minor would be able to act on their own.

Mr. Ryan Turnbull: Just to clarify the government position, we don't disagree with wanting to protect the best interests of the child. That's exactly what we want to do. The intention there is pure and the right one to have. However, with respect to the mechanism through which to do that within the language of the bill, it seems to me there may be some challenges with embedding the best interests as wording in the preamble of the bill. Doing that may cause some challenges later on because, of course, we will have to debate the substance of the bill later.

Whether we decide to go with best interests or the capability test, which I think is what we intend to propose at some point, can you outline for me why there are challenges around embedding best interests in the language of the bill? I'm talking not just about the preamble, because I think there's an implication here. If we embed it in the preamble and then later on that term is not used in the bill itself, I think that creates interpretive problems.

Mr. Mark Schaan: Where possible, we seek to have consistency of language both in the obligation and in the ambition. The preamble, obviously, sets the ambition of the bill, and then the obligations of the bill will follow.

As per your previous point, I think the government, through their amendments, intends very much to get at the issue of minors' rights to privacy, but the best interests of the child as a legal obligation, when we get to the obligation section, is a subjective construct that potentially introduces quite a bit of ambiguity with respect to the commercial actor that needs to make a determination on that. It may actually engender quite a bit more collection of personal information in order to understand and interpret what is in the best interests of the child.

Mr. Ryan Turnbull: Mr. Vis said in his opening remarks when introducing this to put children first and maintain their “dignity” and “autonomy”, which is language that I largely agree with. I think it is part of why perhaps we want to ensure that those who have the capability of making a determination about how they exercise their rights over their personal information, which will come up later... That, I think, is the intention behind some of the language we intend to include or would like to see included in the bill.

Is that right, Mr. Schaan?

Mr. Mark Schaan: That is correct.

Mr. Ryan Turnbull: Okay. The other thing is that who determines the best interests of the child is the challenge with the interpretation of the bill. When dealing with a commercial entity, is that commercial entity able to determine the best interests of the child, or is it dependent upon the parent to do so? Can you clarify how the language in the bill includes parental authority?

• (1300)

Mr. Mark Schaan: In the amendments and in the text of the bill, the construct the government has put in place is both to treat minors' information as sensitive and to authorize parents and guardians to be able to act on behalf of those interests, and then to include the prospect that where the capacity of the minor is understood to be sufficient, they would be able to make determinations in their own right. It's introducing a new construct, the best interests of the child. That would then need to be implemented by commercial actors, which includes what they would need to do with the information and how to treat it.

The amendment proposals that follow essentially get at the fact that it's either the parent or the minor, where there's capacity, as opposed to a construct that may be open to some interpretation.

Mr. Ryan Turnbull: The challenge is how you implement and determine the best interests of the child. I think what you've stated is that a company would have to collect a lot of additional personal information in order to determine that.

Mr. Mark Schaan: In many instances, I think it would not necessarily be obvious from the personal information that's in the possession of the commercial actor to know whether or not its continued usage would or would not be in the best interests of the child.

Mr. Ryan Turnbull: Would you be in a sense unintentionally defeating the intention of including that best interests language? By including it in the bill, you might be encouraging further breaches of privacy of personal information of children—inadvertently of course, as that's not the intention.

Mr. Mark Schaan: It may lead to overcollection for the purposes of trying to establish what that best interest is.

Mr. Ryan Turnbull: Here's what I'm trying to tease out here and understand. Can we convey in the preamble the desire, the spirit, of the Conservative language without including the concept of best interest, only insofar as we want to clarify the intention of protecting minors? I think that's the intention behind the subamendment that I now intend to move, which you have.

The Chair: Just a moment, Mr. Turnbull.

Mr. Ryan Turnbull: Would you like me to read it?

The Chair: I think I have a point of order.

Mr. Brian Masse: I'm just looking at the clock and also understanding where we're at. That's all.

The Chair: Yes, I appreciate that, Mr. Masse.

Mr. Turnbull, we did start at 11:03. We've reached the end of our time for this meeting. What I would suggest is that when we come back, you move the subamendment you are prepared to move, and that we do it as the first item of business.

Mr. Masse, you—

Mr. Brian Masse: I'm sorry. Is that the one from Mr. Gaheer?

The Chair: Yes. That's MP Gaheer's subamendment, which you've received.

Mr. Brian Masse: Okay. Thank you.

The Chair: That will give you time to take a look at it before the next meeting.

Are you okay with that, Mr. Turnbull?

Mr. Ryan Turnbull: Absolutely fine, yes.

The Chair: Thank you, colleagues.

The meeting is adjourned.

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