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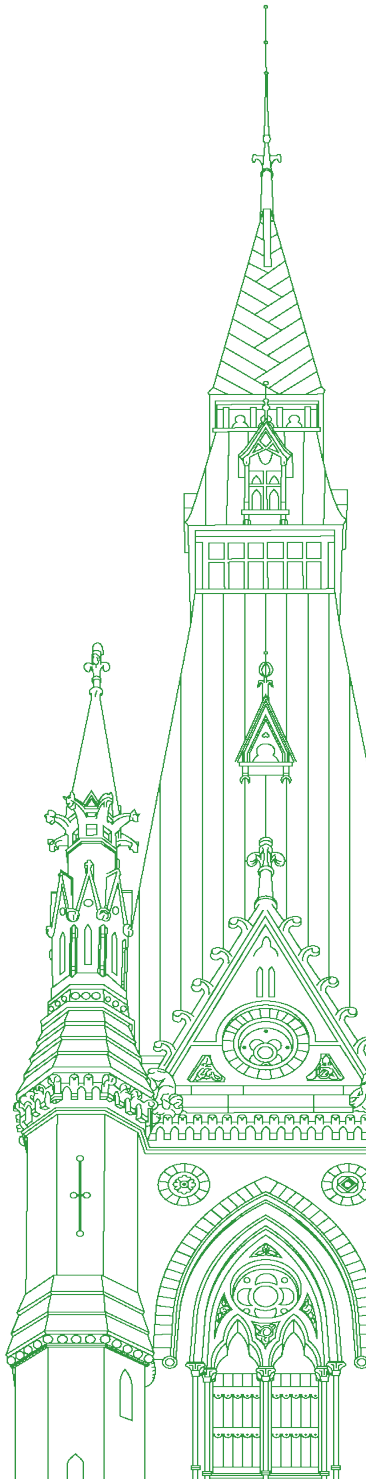

Chair: Mr. Joël Lightbound

Standing Committee on Industry and Technology

Wednesday, April 10, 2024

● (1640)

[*Translation*]

The Chair (Mr. Joël Lightbound (Louis-Hébert, Lib.)): Good afternoon, everyone.

I call this meeting to order.

Welcome to meeting number 117 of the House of Commons Standing Committee on Industry and Technology.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Furthermore, pursuant to the order of reference of Monday, April 24, 2023, the committee is resuming consideration of Bill C-27, An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts.

I would like to welcome our witnesses today and thank you all for being here.

From the Department of Industry, we have Mark Schaan, Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector; Samir Chhabra, Director General, Marketplace Framework Policy Branch; and Runa Angus, Senior Director, Strategy and Innovation Policy Sector. Thanks to all three of you for being with us again.

If memory serves, Mr. Turnbull had the floor at the end of our last meeting. And if I'm not mistaken, he was preparing to move a subamendment.

Mr. Turnbull.

[*English*]

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

It's good to be back, colleagues.

Thanks to the officials for being here. I know you'll spend some time with us over the next couple of months. We look forward to working with you and getting to know you better.

I had asked the officials numerous questions to set the stage for introducing a subamendment that, at least we think, is a bit of a compromise on the language and provides further clarity. It's taking out some language, and it's based on some arguments that were made last time. Hopefully, those clarifications were helpful for committee members.

This was drafted by my colleague Iqwinder, who is here. I am introducing it today because he was absent last time and I intended to do it then. I want to thank my colleague Mr. Gaheer for his work on this.

The subamendment is that CPC-1, which proposes to amend clause 2 of Bill C-27 by adding a preamble after line 7 on page 3, be amended as follows:

> (a) replacing “Whereas Parliament recognizes the importance of the privacy and data protection principles contained in various international instruments;” with the following:
>
> “Whereas Parliament recognizes the importance of privacy and data protection;”
>
> (b) replacing “Whereas the processing of personal information and data should respect minors' privacy and their best interests;” with the following:
>
> “Whereas minors actively take part in the digital and data-driven economy and their personal information is worthy of stronger protection given their varying levels of capacity to understand how it is used by organizations and the potential long-term implications of such use;”
>
> (c) deleting the following:
>
> “Whereas the design, development and deployment of artificial intelligence systems across provincial and international borders should be consistent with national and international standards to protect individuals from potential harm;”
>
> (d) replacing “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;” with the following:
>
> “Whereas Parliament recognizes that emerging technologies should uphold Canadian norms and values in line with the principles of international human rights law;”

Thank you, Chair.

The Chair: Thank you, Mr. Turnbull.

I believe colleagues all have a written copy of the subamendment, reference number 12991258, by Mr. Gaheer, moved by Mr. Turnbull.

We'll now open debate on the subamendment.

Mr. Vis.

Mr. Brad Vis (Mission—Matsqui—Fraser Canyon, CPC): Thank you, Mr. Chair.

Thank you to our officials for being here today.

I'll start with my notes. In the last meeting, I did introduce Conservative amendment CPC-1, which would amend the preamble to include “fundamental right to privacy” and include text that would state, “the processing of personal information and data should respect minors’ privacy and their best interests”.

This subamendment clearly deletes the “best interests” clause. I will note in good faith that later on in the amendment process, there is universal agreement on the fundamental right to privacy. My real concern here is the second phrase that's being deleted: “respect minors’ privacy and their best interests”.

I put forward this amendment because it was one of the key recommendations tabled by the Office of the Privacy Commissioner. In the Office of the Privacy Commissioner's submission, they recommended the following, in addition to putting in “fundamental right to privacy”, which I think there's unanimous agreement on at this committee:

> The preamble should also reflect the importance of protecting children and minors. Jurisdictions around the world have recognized that children and minors may be impacted by technologies differently than adults, be at greater risk of being affected by privacy-related issues, and therefore require special protections.

The Office of the Privacy Commissioner also said:

> Updating the preamble in such a manner would encourage organizations to build privacy for children into products and services, from the start and by design. Since Canada’s privacy laws were designed to be technology neutral, this would help ensure that the best interests of children will be considered for new and emerging technologies, and for future uses of data.

It went on:

> ...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 [bills].

I believe the law should recognize the rights of the child and the right to be a child. Taking into consideration the push-back on this language from the government—and some of the comments made by you, Mr. Schaan, at our last committee meeting—I hosted a meeting with the Privacy Commissioner yesterday to ask him to further emphasize the importance of including this language in Bill C-27. I will note that Mr. Masse joined me at that meeting. In having this important meeting, the commissioner gave some key insights as to why it is crucial to keep the “best interests of the child” language within the preamble.

Mr. Schaan, at the last committee meeting, we heard that the term “best interests of the child” was a subjective construct. After speaking with the leading experts in this field, I have to say that I don't agree with your interpretation and the way you phrased that term.

Can you provide us with the legal opinion that led to you making that statement on behalf of the department at the meeting?

● (1645)

Mr. Mark Schaan (Senior Assistant Deputy Minister, Strategy and Innovation Policy Sector, Department of Industry): The drafting process for amendments considers both policy and legal considerations. Our recommendation that “best interests” might be less interpretable than, in particular, the capacity indications we've indicated in the government amendment is a mixture of those. I'm not in possession of a legal opinion that I'm able to share with the committee.

Mr. Brad Vis: In my discussion with the Privacy Commissioner yesterday, he referenced a couple of existing cases in Canada that he said related to the best interests of the child. In fact, he gave me a couple of examples of where the best interests of the child were included.

The first example is the case of K.M.N. v. S.Z.M., 2024 BCCA 70. The B.C. Court of Appeal allowed an appeal by a mother because the trial judge failed to conduct a proper analysis of the allegations of family violence by the father. The court in this instance recognized that the best interests of the child are of paramount importance in family law matters. This new judgment clarified that it is not sufficient to limit the best interests of the child analysis “to evidence of violence specifically directed towards the child”.

We can also look at the 2015 Supreme Court of Canada case Kanthasamy v. Canada. In this case, the Supreme Court of Canada considered the best interests of the child and made a decision in the context of an application for permanent residence on humanitarian and compassionate grounds. It held that decision-makers, in this case the Department of Immigration, must identify, define and examine the best interests of the child and consider them in view of the other relevant factors.

The best interests of the child, in my opinion, is not a subjective construct. Provinces across the country have the best interests of the child written into many laws. Here is a list of the references where the best interests of the child is used: Manitoba family law, B.C. family law, Alberta family law, Nova Scotia family law, Ontario family law, Northwest Territories, Prince Edward Island, Newfoundland and Labrador, and Nunavut.

An hon. member: Quebec....

Mr. Brad Vis: I just want to get down to that. Why would you say that it's a subjective construct when it's clearly a defined term that's used in the Canadian legal system already?

● (1650)

Mr. Mark Schaan: I appreciate the references that have been put on the record. I'd note that they're all in a family law context. What is at issue here is the construct of the best interests of the child from a commercial context, given that we're talking about the commercial application of personal information in a transaction between a consumer and a corporate entity. Those family law constructs are well understood in custody and various other family law contexts, but they are not jurisprudentially established in a commercial law context.

Mr. Brad Vis: I would also point out that the Canadian Bar Association has a document outlining their perspective on the best interests of the child.

The first point from the Canadian Bar Association—and I don't believe this is reflective just of family law—is that the best interests of the child is a “substantive right” and should be “a primary consideration in actions concerning the child due to the child's dependency, maturity, legal status and often ‘voicelessness’ [in society]”.

Second, the Canadian Bar Association outlines with respect to the best interests of the child that it is in fact an “interpretative principle”, noting, “if a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen”.

Third, the Canadian Bar Association points out that the best interests of the child refers to a “rule of procedure”, which includes “legal representation, timely decisions, reasons for how a decision was reached, how factors were weighed, and how the child's views were considered.”

Fourth, the best interests of the child, according to the Canadian Bar Association, is “a substantive right and guiding principle that covers all [Convention on the Rights of the Child] rights, is aimed at the child’s holistic development and requires a rights based approach that promotes the child’s human dignity: adult judgment, and cannot override a child's rights.” I don't believe this is subject solely to family law

I will also point out that I have a quick analysis by the Library of Parliament. They have a number of examples of where a child's best interests lie, and they go beyond family law. This also relates to the treatment of indigenous children through, for example, An Act respecting First Nations, Inuit and Métis children, youth and families. There are numerous other cases that I'd be happy to share with the committee. That was done very quickly, but I did get that from the Library of Parliament. They gave me 50 different examples of where the best interests of the child is in Canadian law at the provincial and federal levels.

I'm just going to say that in response.

As to my next question, last year, the privacy commissioners across the country all signed a special resolution of the federal, provincial and territorial privacy commissioners and ombuds with responsibility for privacy oversight, which specifically highlights putting the best interests of young people at the forefront of privacy and access to personal information.

Mr. Schaan, do you agree with the use of the term “best interests of the child” in the joint declaration of every single privacy commissioner, including the Privacy Commissioner of Canada, which was put out in October 2023?

● (1655)

[*Translation*]

Mr. Mark Schaan: Thank you, Mr. Chair.

I agree with the sentiment that the privacy commissioners have expressed. To my mind, "protection of the best interests" of the child is the centrepiece of our bill.

[*English*]

In that spirit, I'm not at all at odds with the directional push from privacy commissioners to ensure that there are appropriate protections in place for children.

Mr. Brad Vis: The Privacy Commissioner, along with every single territorial and provincial privacy commissioner in Canada, considered putting the best interests of young people at the forefront of this law. I'm at a loss as to why the department does not want to include the very language that our privacy commissioners at the provincial, territorial and federal levels of government have signed for and requested we add, which is from the documents they unanimously agreed to.

The document “Putting best interests of young people at the forefront of privacy and access to personal information” is about building in a child's right to privacy “by design”. It's about being “transparent”. It's about setting “privacy protective settings by default” and turning off “tracking and profiling”. It's about rejecting “deceptive practices”, limiting “the disclosure of personal information”, allowing for “deletion or deindexing and limiting retention” and facilitating “access to and correction of personal information”.

All of you can find this document on the Privacy Commissioner's website. It's right on there.

Again, I'm at a loss, from what I've heard today from the department officials, as to why they would say this is a subjective construct.

Ms. Denham, in response to the testimony from the last meeting, wrote to me. She is a former privacy commissioner of British Columbia and a former privacy commissioner of the U.K., where they embedded the best interests of the child into British statute law. She stated:

> I remain supportive of the Conservative amendment in the preamble. “Best interests of the child” is a legal test [not a construct] used to decide what would best protect a child's physical, psychological and emotional safety, security and well being. It is defined in the UN Convention on the Rights of the Child, and Canada is a signatory. But in Canadian provincial law—

I agree with this.

> —it generally means decisions about the issues of the child related to guardianship, parental responsibilities, parenting time, when the child can decide something on their own, relating to the level/stage of maturity etc.

She goes on:

> I think it is critically important that privacy as a fundamental right, and special protection for children and minors' rights, is referenced in the preamble. The Bill also mandates that children's data be considered sensitive data—and that is very important and impactful.

The Privacy Commissioner of Canada recommended that we include the best interests of the child in the preamble, which he also recommended be included in the body of the bill. The former privacy commissioner of British Columbia, and one of the leading global experts, recommended that we do that as well.

They're not coming from nowhere on this. The OECD, in fact, which Canada is a signatory to, has a recommendation on children in the digital environment. Canada is a signatory to this document. I read it today during question period. It's actually called "OECD Recommendation on Children in the Digital Environment". It's an OECD legal instrument document.

In the document, they speak about the best interests of the child. This is an international legal document that Canada has signed. The OECD, which Canada is a signatory to, recognizes that:

> ...the digital environment is a fundamental part of children's daily lives and interactions in a number of contexts, including formal and informal education, formal and informal health services, recreation, entertainment, maintaining links to culture, socialising, expressing themselves and their identity through the creation of digital content, engagement with political issues, and as consumers....

They recognizes that:

> ...children's capabilities vary by age, maturity, and circumstances, and that actions and policies for children in the digital environment should be age-appropriate, tailored to accommodate developmental differences, and reflect that children may experience different kinds of access to digital technologies based on their socio-cultural and socio-economic backgrounds and the level of parental, guardian, and carer engagement....

They also recognize that "safeguarding children's privacy and protecting children's personal data is vital for children's well-being and autonomy and for meeting their needs in the digital environment".

● (1700)

That document also references the UN's rights for children "in the digital environment", which states, "The best interests of the child is a dynamic concept that requires an assessment appropriate to the specific context."

What the subamendment doesn't accomplish is that it doesn't allow for that very specific language that is well defined in documents that Canada is a signatory to, including from the OECD and the G7, which I will get to, as well as various American state laws that I will touch upon.

The UN states, "States parties should ensure that, in all actions regarding the provision, regulation, design, management and use of the digital environment, the best interests of every child is a primary consideration." Canada is a signatory to the document where they outline this.

I'll go back to the OECD for a second, for their guidelines for digital service providers:

> The Guidelines aim to support Digital Service Providers, when they take actions that may directly or indirectly affect children in the digital environment, in determining how best to protect and respect the rights, safety, and interests of children, recognising that girls, children belonging to racial, ethnic and religious minorities, children with disabilities, and others belonging to disadvantaged groups may require additional support and protection.

That document also states, "Limit the collection of personal data and its subsequent use or disclosure to third parties to the fulfilment of the provision of the service in the child's best interests". Again, Canada is a signatory to that document.

Internationally, there was a resolution by data protection authorities from around the world on children's digital rights. That was signed by Canada's Privacy Commissioner as well. That states, "Affirming that in the implementation of policies relating to their rights in the digital environment, taking into account the evolving capacities of children and their best interests must be a primary consideration."

I'll go on.

In France, a trading partner of Canada, their commission outlines it:

> In order to support young people, parents and professionals develop a digital environment that is more respectful of children's best interests, the CNIL has published 8 recommendations stemming from a review conducted with all the stakeholders concerned.

France, in their laws, recognizes the best interests of the child. Also, Ireland's data commissioner has a core message that "the best interests of the child must always be a primary consideration".

One that is very important is the G20 digital ministers' call for actors involved in the digital environment to "Uphold the child's best interests". Canada is a signatory to the G20, which outlines that the best interests of the child in the digital environment must be taken into account in our policy development and our legal rules.

That's in response to what you just said.

For Mr. Schaan or any other department official, is California an important trading partner for Canada?

Mr. Mark Schaan: I think you'll find, from the statistical data on trade flows, that yes, it is.

Mr. Brad Vis: What importance does California have in the development of technology that might be applicable to Bill C-27?

Mr. Mark Schaan: I'm not sure that I'm in a position to offer all the ways in which California is engaged in technological development, but obviously they're a tech centre.

Mr. Brad Vis: From what I understand—and I think you would probably agree—many Canadian companies in the tech sector do business with tech sector companies in California. Is that a fair assumption?

Mr. Mark Schaan: Again, I'd say that California is a locus of activity related to the tech sector. As for whether Canadian companies do business with them, I think that would vary.

Mr. Brad Vis: In California, Mr. Schaan, there is the California Age-Appropriate Design Code Act. That act states very clearly:

> If a conflict arises between commercial interests and the best interests of children, companies should prioritize the privacy, safety, and well-being of children over commercial interests.

This is in the law that governs the largest economy in the United States, where more technological development takes place than anywhere in the world. I am still at a loss as to why the department would state that the "best interests of the child" is a subjective construct. Please answer.

● (1705)

Mr. Mark Schaan: I hope I've been clear. Our considerations and commentary on the record are that, in a commercial context, the interpretability of this term may pose challenges for implementation by corporate entities in terms of their understanding.

I think we've spoken to the fact that the established tests for courts or parents to understand that are important considerations, but as it relates to the commercial context, there may be better ways of being able to express the same concern about the stronger protections required.

Mr. Brad Vis: We did not hear from a single witness who disagreed or did not believe that the best interests of the child is a concept worthy of being in this legislation.

Throughout the initial Parliamentary debate and from everyone we've heard from so far, it's been very clear that in this changing and dangerous digital landscape, we have to protect children. In my meeting with the Privacy Commissioner yesterday, he very clearly stated that the adoption of this subamendment would reduce his ability to do his job and effectively enforce the protection of children's privacy rights.

I'll also mention that I reached out to Mr. Michael Beauvais. He was another witness. Along with Professor Leslie Regan Shade, he said in response to the proposed subamendment:

> The overarching problem with the proposed sub-amendment is its narrowness. Children are citizens and are more than just economic actors. Not mentioning the best interests removes an important tool in the regulator's toolbox to develop guidelines or regulations dealing with minors. The proposed sub-amendment suggests that minors' information is only worthy of increased protection because of their "varying levels of capacity to understand how [their personal information] is used by organizations" and the use's long-term implications. It may lead to an interpretation that minors with "capacity" merit less robust protections. Even educated adults experience difficulties in understanding how organizations use their personal information, especially in "Big Data" contexts.
>
> Moreover, focusing on children as participants in the digital economy—

This is per the department's views.

> —takes too narrow a view. For example, the Bill would apply to indigenous bands regulated under the Indian Act. (This is currently the case with the Personal Information Protection and Electronic Documents Act). While this is part of a broader issue, the draft language exacerbates the framing of individuals as consumers/economic actors.

Let me state very clearly the Conservatives' position. My job is to protect children. I believe that is the same objective of everyone around this committee table. I looked very closely at the subamendment, and I cannot in good faith support this measure in its current form. We have to include the language of the best interests of children. There is too much at stake that we don't understand.

I know that I've been going on for a while now. I will note, and I will re-emphasize, that in the first recommendation from the Office of the Privacy Commissioner, the commissioner requested that we put the preamble into the body of the bill. There were also concerns raised regarding the reference to artificial intelligence.

On Monday, we had some semantic arguments about schedule 1 and schedule 2. We're not going to repeat that. However, when this bill was created, it reminded me of my catechism class as a young man when we learned about the Holy Trinity: three in one, one in three, one being the same, consubstantial, begotten of the Father, not made. Francesco probably went to the same classes as I did.

Mr. Francesco Sorbara (Vaughan—Woodbridge, Lib.): You paid attention; I didn't.

Some hon. members: Oh, oh!

Mr. Brad Vis: This is like the Holy Trinity of digital bills. It is three in one, and it's one and the same. Three are different, not the same, but all are together.

It's confusing. I am really confused. I know that some of the terms of the titles refer to acts, but they are, in fact, all three bills—one in three, three in one, one and the same.

I know that Mr. Schaan's having a good chuckle about that as well.

I will stop there for the moment. I believe I'm going to stand by the recommendations of the Privacy Commissioner in good faith, and I look forward to further debate on the subamendment.

● (1710)

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

Next I have Mr. Perkins.

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

I'm out of breath.

Som hon. members: Oh, oh!

The Chair: How do you think the interpreters feel?

On that note, because we opened that door, Mr. Vis, could you speak a little more slowly going forward, especially when you read?

Mr. Brad Vis: I was trying to be nice to everyone. I had over 10 pages of notes.

The Chair: It's appreciated, but it's for the interpreters.

Mr. Brad Vis: Yes, Mr. Chair.

The Chair: Mr. Perkins.

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

If I can just take a brief step back on this, I want to acknowledge MP Turnbull's proposal to try to find a way to put CPC-1 and NDP-1 together.

I want to acknowledge your opening remark that you're supportive of the idea of the preamble going into the legislation itself. I want to thank the government for a genuine effort, I believe, to try to do the overall statement.

On the proposed subamendment, if that's the right term—it says "Mr. Gaheer", but I think it's in your name now, Mr. Turnbull—our discussion here isn't about parts (c) and (d), which I think show the problem with the references to the artificial intelligence act and bring in an element of MP Masse's amendment. I don't have a problem here; I think we have total agreement with that.

As MP Vis just pointed out, we're struggling with the loss of what we think is a very important concept: the best interests of the child. I have a couple of things I'd like to ask questions about and one thing to make sure about.

Mr. Schaan or Ms. Angus—I don't know who the appropriate one is on this—just to take a step back, what we're talking about here is that the idea of the best interests of the child, as stated in our discussion of these amendments last time, is a subjective construct. That's a legal term, right? I'm wondering if you could explain for everyone watching—to know why we're having this discussion—what a subjective construct is when looking at legislation.

Mr. Mark Schaan: For the purposes of our considerations, much of what we'll likely offer as responses to questions over the course of the consideration of this bill is about the interpretability of its implementation, which is to say that we are deeply motivated by ensuring that this bill can be understood by corporations of all sizes that use personal information in the Canadian context so they can be held accountable and live up to it.

From our perspective, our considerations and comments were in relation to the fact that for the purposes of the implementer, the corporation—which needs to make a determination about the use of personal information and is not necessarily afforded the efforts of a family court or has not sat and presided over a significant number of cases where this is their bread and butter—being clear about the stronger protection required for minors' information is what we saw as pivotal to relay, hence our comments and considerations.

Mr. Rick Perkins: In other words, the term "best interests of the child", if it were put in this bill without some mechanism for defining what that means, would rely on the courts and companies to interpret what Parliament's intent was, because there isn't adequate case law to define the best interests of the child with regard to privacy.

● (1715)

Mr. Mark Schaan: We imagine this would probably be a zone where the Office of the Privacy Commissioner would seek to issue guidance. We imagine this would be a zone where there would need to be further guidance, either through jurisprudence or through the OPC, to aid commercial entities in understanding how they should interpret the best interests of the child for the use of personal information in the commercial context. This would apply, as per the bill, to every commercial entity operating with personal information in the country. All of them are going to need the capacity to know what to do with minors' information and to understand their obligations. Hence, that's our interpreting frame.

I think the answer to your question would be that there will need to be some meat put around this, which will probably borrow from much of the case law that was cited by the honourable member and in other instances to try to translate it into real implications for commercial entities in their transactions related to the personal information of minors.

Mr. Rick Perkins: We had some lawyers, although not a lot, thankfully—sorry, Mr. Gaheer—appear before the committee on some of these things.

Voices: Oh, oh!

Mr. Rick Perkins: We had some lawyers appear for the bill in general. With regard to another aspect of it, when we were discussing the terminology of "legitimate interests" and those things, they said that there was case law around that definition, not in Canada but in other countries, that courts would turn to as well in looking at this.

MP Vis went through the law and presumably case law in other countries around the best interests of the child. Doesn't that help already in guiding the corporate legal counsel advising people, like I was in the marketing field in large corporations, on what we should and should not do, whether you have an internal privacy watchdog or not within the company? It doesn't have to be just Canadian case law, does it, in order to provide a definition for "best interests of the child"?

Mr. Mark Schaan: I think some measure of OPC guidance on international best practices can afford corporations in a number of these spaces the capacity to know how and when to interpret obligations. I think international case law can be useful, but it obviously always needs to be brought back to the crux of things. What is their legal regime? What is their overall system? How similar or non-similar is it to ours? What obligations do they or do they not possess in terms of their authorities?

There are a number of those questions, but certainly if I were an entity looking for inspiration as to how to start to interpret this, those would be among my places to start.

Mr. Rick Perkins: I'm not going to get into the schedule 1 and schedule 2 thing again, but I am going to make reference to another section, if that's okay. In particular, proposed paragraph 122(1)(e) deals with the regulatory power of the Governor in Council. It basically gives the Governor in Council the ability to make regulations with respect to the replacement of the Privacy Act on some very specific things in proposed paragraphs 122(1)(a), (b), (c) and (d). However, proposed paragraph 122(1)(e) also says, "prescribing anything that by this Act is to be prescribed".

If the preamble is now part of the opening of the bill and therefore has some legislative and legal interpretive weight, does that not give the Governor in Council the ability to use regulation to provide some legal fence posts around what the government would see as the best interests of the child out of the starting gate?

Mr. Brian Masse (Windsor West, NDP): I have just a quick point of order, Mr. Chair.

Could we get that page number?

The Chair: It's page 61.

Mr. Brian Masse: Thanks.

Mr. Mark Schaan: I've had enough correspondence with the Standing Joint Committee for the Scrutiny of Regulations to know better than to provide a definitive answer to Mr. Perkins as to whether or not the regulation-making authority in proposed paragraph 122(1)(e) would compose sufficient room to issue regulations on the basis of the preamble, but I'll say likely not. Normally, a statute needs to indicate that regulations are to be prescribed, or it can use terms like “prescribed entity” and then draw on the power of paragraph (e) to say what those prescribed entities actually are.

As I said, I am not going to be definitive, but all of that is to say that if this term ends up in the preamble, as I've noted, it's the likely space from which OPC guidance would probably be forthcoming.

● (1720)

Mr. Rick Perkins: In a number of areas that the Minister of Innovation, Science and Industry oversees in his responsibilities, he has issued policy directives. I'm thinking of things around the Investment Canada Act. I'm thinking of things already around artificial intelligence, for example, and voluntary codes.

If this amendment passes and becomes law with the term “best interests of the child”, and if you and the lawyers believe you can't use proposed section 122 to define it under regulation, can you not provide some similar policy guidance for companies and anyone else in the public who wants to understand where the government sees the fence posts for this definition? I know that it doesn't have the same legal standing, perhaps, in court, but it provides a sense of guidance and intent, does it not?

Mr. Mark Schaan: The interpretive authority of the CPPA will be the same as the interpretive authority of PIPEDA. The interpretive authority is the Office of the Privacy Commissioner. They hold the capacity to interpret the statute as enacted. There is a capacity for the minister, proposed under the CPPA, to ask the commissioner to issue guidance and take up any particular issue related to the interpretation of the act.

Mr. Rick Perkins: That's interesting. In other words, you can issue guidance, just not necessarily the government. It's the Privacy Commissioner.

This brings me to the document that MP Vis referenced, which was issued on October 4 and 5, 2023, at a conference and signed by the federal and provincial privacy commissioners. It's on the website of the Office of the Privacy Commissioner of Canada.

I know there are a lot of people watching this, because we get emails, texts and phone calls after every meeting about what we got right or wrong. There seems to be a lot of lawyers. Hi to all the lawyers watching this.

I'll start.

The opening of it is called “Context”. It says, “Canada ratified the United Nations Convention on the Rights of the Child...in 1991.” There's a long URL that links to it. That would have been by the Mulroney government. It goes on:

> The UNCRC affirms children’s rights, including the right to privacy, and introduces the concept of the best interests of the child.
>
> This concept implies that young people's well-being and rights be primary considerations in decisions or actions concerning them directly or indirectly. As a guiding principle, this concept can be applied in a variety of contexts to help assess and balance the interests of young people against others.
>
> In over 30 years, the UNCRC has had a tremendous influence on young peoples rights around the world, including privacy. Many jurisdictions have recognized that young people may be impacted by technologies differently than adults, be at greater risk of being affected by privacy-related issues, and therefore require special protections.
>
> Some of the most authoritative and current policy and legal instruments that focus on or include provisions for young people’s right to privacy are....

There's a list of them here. I won't go into the URLs, but they are as follows:

> The UN General comment No. 25 on children's rights in the digital environment, which supplements the UNCRC;
>
> The OECD—

I think my colleague referenced the Organisation for Economic Co-operation and Development, of which Canada is a member.

> —Council Recommendation on Children in the Digital Environment....

There's a URL link. It goes on:

> The OECD Guidelines for Digital Service Providers;
>
> The Age Appropriate Design Code, or Children's Code, created by the U.K.'s Information Commissioner's Office;
>
> The resolution by data protection authorities from around the world on children's digital rights;
>
> France's Commission nationale de l'informatique et des libertés's—

Excuse my French. I'm working on it.

> —recommendations to enhance the protection of children online;
>
> Ireland's Data Protection Commission's Fundamentals for a Child-Oriented Approach to Data Processing....

My colleague Mr. Vis mentioned the following:

> The G20 Digital Ministers' call for actors involved in the digital environment to uphold the child's best interests;
>
> The California Age-Appropriate Design Code Act; and
>
> The EU's Digital Services Act.

It goes on to say the following:

> These initiatives and many others recognize that the digital environment presents many opportunities for young people, but they are also a necessary response to the well-documented harms to young people, such as mental health related harms.
>
> These initiatives are promising, but the signatories believe that there is still work to be done in Canada to ensure that young people are protected from these harms through legislative measures to make their best interests a primary consideration in the design of products and services that concern or impact them.
>
> Therefore
>
> Canada’s Privacy Commissioners and Ombuds with responsibility for privacy oversight call on their respective governments to put the best interests of young people first by taking immediate action as necessary to....

There's a series of bullets:

protect young people from commercial exploitation and the use of their personal information to negatively influence their behaviour or to cause them harm;

promote the privacy rights of young people;

review, amend or adopt relevant privacy legislation to be consistent with internationally recognized policy and legal instruments to ensure adequate protection of the privacy rights of young people; and

● (1725)

require private sector organizations that collect, use and disclose the personal information of young people to:

implement strong safeguards;

be transparent about these practices;

enhance access to effective remedies for young people.

The signatories recognize that the privacy rights of a young person are their own rights. Any limitation to their exercise (e.g. vis-à-vis parents/guardians or public bodies) must start from that principle, be specific and limited to the particular circumstances, and be consistent with the best interests of the young person.

The signatories also recognize that privacy rights apply both within and outside of the digital environment. While this resolution mainly focuses on the digital environment, its principles should be applied broadly.

The signatories highlight that young people's personal information is particularly sensitive.

The bill addresses that with the definition.

Any collection, use or disclosure of such information must be done with this in mind.

The signatories recommend that public and private sector organizations...adopt the following practices, which also reflect principles that should guide legislative reforms:

1. Build in young people's privacy and best interests by design

Digital privacy risks to young people should be identified and minimized as early as possible. Organizations should ensure that privacy and the best interests of young people are built into the product or service right from the design stage.

Organizations should:

conduct privacy impact assessments...for projects involving the data of young people or to examine the specific potential impacts on them;

adapt their traditional PIA process to think specifically about the perspectives and experiences of young people (as individuals and as a group) before collecting, using or disclosing their information;

I know the officials are very familiar with this, but I'm not sure that everyone who's watching is, so the next point is what organizations should do:

actively involve young people, their parents/guardians, teachers, or child advocates in this assessment process;

conduct an intersectional analysis to consider the specific privacy risks to vulnerable groups of young people (e.g. those with disabilities, First Nations, 2SLGBTQI+).

That means two-spirit, lesbian, gay, bisexual, transgender, queer, intersex and others.

2. Be transparent

Transparency is necessary for informed decision-making and consent.

Organizations must:

provide privacy information to young people (and their parents/guardians as appropriate) in a concise, prominent and clear manner suited to the maturity of the young person;

inform young people of who to contact if they have questions about the information presented;

be transparent about the privacy risks associated with using their product or service. This could include information on their special efforts to protect young people from those risks...

3. Set privacy protective settings by default, and turn off tracking and profiling....

There's a whole list of things there.

4. Reject deceptive practices

Young people must not be influenced or coerced into making privacy-related decisions contrary to their interests.

Organizations must not:

incorporate into products and services manipulative or deceptive design or behavioral incentives that influence young people to make poor privacy decisions or to engage in harmful behaviours;

encourage young people to provide more information than what is necessary to use the product or service or to turn off protective privacy settings.

Organizations should:

design products and services intended to empower young people to make informed, privacy protective choices and take assertive action to advance their privacy and transparency rights.

5. Limit the disclosure of personal information....

There's some more guidance for organizations:

6. Allow for deletion or deindexing and limiting retention....

7. Facilitate access to and correction of personal information

● (1730)

Young people have a right of access to their personal information. This right is fundamental to ensuring that the information held is accurate, up to date, and retained for appropriate purposes. The right of access also serves to hold organizations accountable.

All organizations have a general legal responsibility to provide timely and complete access to a young person's personal information upon request from that person, and in most cases, upon request from their parent/guardian. It is recognized that a parent/guardian's access to information may be limited by a young person's privacy rights as is qualified by the individual's best interests and dependent upon the particular facts of each case.

It goes on to describe more responsibilities for an organization and has a number of footnotes and references. You can see the logos of all the various privacy commissioners in there.

You said you expect the Privacy Commissioner might issue guidance, that he or she has the ability under the act to do this and that this would probably be the appropriate route. However, the Privacy Commissioner has already done that. This looks pretty specific to me. He could reissue it under his power, I guess, once this bill goes through, but it's pretty specific guidance right now.

I don't know how an organization in Canada wouldn't understand the guide-posts that have been set out. They are very detailed and clear. Perhaps the Privacy Commissioner would provide even more detail if this provision on the best interests of the child is passed, but I'm struggling, as my colleague MP Vis is, to claim that it's subjective. It doesn't look subjective to me. It looks very specific. Privacy experts have defined this very well, so we struggle with the idea that the removal of that term is something the government wants to do, rather than provide that term in legislation, not only for the courts to interpret but also, as you pointed out, to allow the Privacy Commissioner to give very specific guidance if he needs things to be more detailed than this under the act.

Without the term “best interests of the child” in the act, it's difficult for the Privacy Commissioner to provide that legal guidance, which you said he has the power to do with that terminology. Is it not?

● (1735)

Mr. Mark Schaan: I think the goal of providing guidance on stronger protections is what we imagine the Privacy Commissioner would rely on.

Mr. Rick Perkins: How can the Privacy Commissioner issue guidance on the best interests of the child if that's not the terminology in the act? You can't issue guidance on something that doesn't exist in the act.

Mr. Mark Schaan: What we're indicating is that the general construct of having stronger protections for minors would be elucidated through the specific obligations contained in the CPPA and would also be the subject of guidance in terms of actual, implementable capacity for an organization. It's not just the general value of “best interests of the child” as an interpretive frame, but also the actual, specific ways in which an organization would be able to draw on that in making a determination—for instance, on the disclosure of personal information or the specific use of a piece of personal information.

Mr. Rick Perkins: Did the department or minister talk to the Privacy Commissioner about this proposed change to our amendment before tabling this subamendment?

Mr. Mark Schaan: We have had an ongoing dialogue with the Office of the Privacy Commissioner as it relates to this bill, including on the government's potential areas for amendment.

Mr. Rick Perkins: In our discussion with the Office of the Privacy Commissioner yesterday on the specific wording of the bill, he had a view different from what you just articulated. He said it actually narrowed the Privacy Commissioner's ability to issue guidelines for the best interests of the child. Not using that terminology, those words, in the act restricts his ability to provide guidance to organizations on that concept.

I'm assuming the department is saying that you don't agree, that it doesn't restrict it.

Mr. Mark Schaan: Our view is that the appropriate considerations we're looking for are around the ways in which organizations can provide stronger protections for minors. I don't hold a specific view on whether this does or does not do that in the specific ways that have been articulated.

Mr. Rick Perkins: I was almost finished until you said that. I'm sorry.

Obviously this is not a political discussion. This is a very specific thing that some of us who are marketing guys are trying to.... We look at words differently from how lawyers do.

When the department and the department's many lawyers—I presume the Department of Justice is part of looking at these things—decided to remove the words “best interests of the child” and replace them with other words, they were trying to do so for a specific intent, and in the opinion of the Office of the Privacy Commissioner, that specific intent was to narrow his scope.

If you don't agree with that, then what was the specific intent of removing the words “best interests of the child” and replacing them with language that other lawyers think narrows the scope?

Mr. Mark Schaan: The specific intent of the subamendment was—in the absence of already issued guidance or guidance still to come—to provide interpretability to commercial actors that would need to live up to this ambition from the moment of promulgation. The intent was to provide them with a clear pathway towards living up to the act, noting, as we have, that this inclusion would require further guidance.

Mr. Rick Perkins: Then the words the government is proposing here aren't enough to provide the guidance; something else will have to happen.

Mr. Mark Schaan: The words we provided, “worthy of stronger protection”, are consistent with the obligations found within the CPPA, notably the sensitive definition of “information” as it relates to the information of minors.

Mr. Rick Perkins: It doesn't reflect the language of the many documents that MP Vis and I outlined, which the Government of Canada has signed, thereby accepting that our legislative frameworks should reflect the terminology that has been negotiated internationally whether by the OECD, by the G7 or in the UN convention, which use the terminology “best interests of the child”.

● (1740)

Mr. Mark Schaan: I think the declarations outline the intention to get to an outcome of stronger protection for minors, and we believe that to be consistent with those declarations.

Mr. Rick Perkins: Then that terminology should be in the bill. If it's worthy of being signed by Canada, then why isn't it worthy of being put in the bill by Canada?

Mr. Mark Schaan: I don't have a response to that.

Mr. Rick Perkins: Okay.

The Chair: That's fair enough.

Thank you, Mr. Perkins.

I have Mr. Masse next on my list.

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

First of all, Mr. Schaan, as a former vice-chair of the scrutiny of regulations committee, I, along with maybe three other people, got your joke. It's one of the most obscure committees in Parliament.

I appreciate the government bringing forth this amendment. It's clearly trying to address Conservative and NDP amendments that are very similar, but what I'm worried about is whether this is going to be used more like a political compromise, which unfortunately could, at the end of the day, fall short for the legislation.

Are you familiar with the U.K.'s legislation? I would like to know whether you're familiar with the U.K.'s legislation and what they've done with children in theirs.

Mr. Mark Schaan: If you're speaking about the design code for children, then yes.

Mr. Brian Masse: Under the U.K. Data Protection Act, they have a really robust section. I won't read it out. They also talk about how children change over time and there are other anomalies with it.

Would you say this amendment, or even what we've offered before, is stronger or weaker than the U.K.'s protection of children in terms of what we have in front of us for this legislation? Do you have an opinion on that?

Mr. Mark Schaan: I think the amendment we have before us is a preamble to the bill. If you're asking me about the bill itself and its actual obligations on entities with respect to their treatment of personal information, we would suggest that the CPPA as proposed, with a number of amendments that might follow, would allow for commensurate degrees of protection for children, possibly to include things like the design code, which would be certified by the Privacy Commissioner.

Mr. Brian Masse: How would it rank up to the U.K.? I mean, they have a children's code too. I guess we don't have to do exactly what the U.K. does, but I'm wondering whether we're setting ourselves up to do more or we're setting ourselves up to do less than the U.K. They fall under the same legal system and parliamentary system as Canada, so I think there's a decent comparable there. The United States doesn't fall into the same parameters in those two facets directly.

Mr. Mark Schaan: As I said, in pith and substance, with amendments, I think the CPPA will offer protection to children commensurate to that of the United Kingdom.

Mr. Brian Masse: Okay.

What would be, in your opinion, the downside if we didn't go ahead with the subamendment and then the other amendments went through? What would be the downside to the industries that would then be affected by this? How significant of a risk is that, really? We already have a problem in our world with child labour laws. We also have AI issues in building AI. We even have a significant problem as civilizations of treating children, despite these declarations, with humanity. Even the United States went through this last year, with some of their supply chains having children involved in brand-name companies.

My concern is this. In this day and age, why would we risk potentially...? The information I'm getting, at least, is that this amendment would lessen this protection of children. Why would we risk that versus what benefit we get out of it?

Mr. Mark Schaan: I think there were two points or considerations we put before the committee. One is that we desire this for ease of interpretability and implementation at the outset of the passage of this piece of legislation. That was our commentary around part (b) of the subamendment. Then, as it relates to parts (c) and (d), it's to ensure that the preamble is specific to the legislation that it informs.

● (1745)

Mr. Brian Masse: You want clarity for companies, but I can't imagine.... Where is the big risk in this? Is there a legal risk for companies? Is it a risk for investments in Canada because they won't understand it, and then with all their resources, all their lawyers, all the money they have and everything at their disposal, they won't be able to figure out where they're going to be hurt from it?

Mr. Mark Schaan: I know the member knows this, but in terms of the Canadian economy, this bill applies to every single private sector organization transmitting, collecting or disclosing personal information. Small and medium-sized enterprises make up 99% of the Canadian economy. They will have similar obligations for understanding, interpreting and living out this act.

Important for us, I think, is that there is an ease of interpretability and implementation for all those commercial entities. I think the risk is that if there's ambiguity or uncertainty, they either take actions that are ill-informed or potentially the wrong ones or potentially take no action and instead choose not to engage in commercial service because it's simply too risky or ambiguous.

Mr. Brian Masse: That's a fair point raised with regard to small and medium-sized businesses. We have these challenges in other types of policies related to taxation. I take note of that.

To get to my last question, if we do not pass this point in the bill, what do you see as a better alternative? Is changing...or the amendments that are proposed that would come forth from that? That's without the changes.

Mr. Mark Schaan: I can't speak for the government. If the subamendment fails, I think we would simply note our considerations around interpretability and, as I've said, the other two clauses of the subamendment, which address issues that we think might either introduce non-neutral technology language or apply language to acts that are not actually the subject of the legislation.

Mr. Brian Masse: Okay. We'll see when we get to that. We have a lot to think about for the short term.

Thank you, Mr. Chair.

[*Translation*]

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

The next speakers on my list are Mr. Généreux, Mr. Turnbull and Mr. Garon.

Mr. Bernard Généreux (Montmagny—L'Islet—Kamouraska—Rivière-du-Loup, CPC): Mr. Chair, with your permission, I'm going to yield the floor to Mr. Garon out of a concern for fairness since we've taken up quite a bit of time. I want to make sure we can do a complete round. Then I'll speak.

The Chair: I appreciate your generosity, Mr. Généreux, but I have to stick to the prepared list. I can give you the floor after Mr. Garon, if you skip your turn, but Mr. Turnbull is on the list too.

Mr. Bernard Généreux: I could speak after Mr. Turnbull. That's not a problem.

The Chair: Fine.

We will go to Mr. Turnbull, followed by Mr. Garon.

Mr. Turnbull.

[*English*]

Mr. Ryan Turnbull: Well, in the spirit of co-operation, I'll yield to Mr. Garon if you put me back on the list.

[*Translation*]

The Chair: This is the best committee.

Mr. Garon.

Mr. Jean-Denis Garon (Mirabel, BQ): Mr. Chair, it seems to me that a lot of people have taken pity on me and want me to get my participation points; so I thank them for that.

I'm trying to understand something about the "best interests of the child". We have that in Quebec. Family law jurisprudence was mentioned. We have that in the civil law as well. It's very clearly defined and understood.

Am I to understand that, if we use the words "best interests of the child" in the act, one of the problems will be that 10 provinces interpret the notion differently?

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

That's one of the aspects. As we understand it, the difference is that the entity or agency responsible for interpreting the notion of the "best interests of the child" is a work, undertaking or business. What guiding principles will influence the way that concept is interpreted in a commercial organization when it comes to using a child's personal information? That's why we've raised these aspects.

There's another factor. If the commercial organization abides by its province's interpretation, there may be differences as a result of the differences among the provincial statutes.

● (1750)

Mr. Jean-Denis Garon: Some federal statutes are interpreted differently from province to province. I'm thinking, for example, of the Young Offenders Act, the application of which in Quebec reflects the fact that the provincial institutions that take rehabilitation into consideration are different. That's not really a problem.

I don't want to spend an hour talking about that, as some people are doing.

Some voices: Oh, oh!

Mr. Jean-Denis Garon: Incidentally, I want to thank Mr. Généreux from the bottom of my heart for yielding the floor to me. I want to be sure he doesn't regret it too much. Oh, oh!

First, the Privacy Commissioner of Canada may issue opinions on whatever he wishes. Is he subject to any restrictions? If you include the notion of the best interests of the child, can the Privacy Commissioner of Canada decide to issue an opinion as to what that means?

That can be a yes-or-no question.

Mr. Mark Schaan: I think so, yes.

The Commissioner has previously exercised his authority to construe the Consumer Privacy Protection Act quite broadly. A former commissioner has also wielded his interpretation authority more liberally.

Mr. Jean-Denis Garon: I understand, but that interpretation authority exists. The Commissioner can interpret it and issue opinions. The courts will also be called upon to interpret it and to issue opinions and guidelines. Consequently, they will also be able to assist Canadian and foreign businesses in complying with the act and the concept of the best interests of the child.

Mr. Mark Schaan: I'm going to address two points regarding those issues.

First, the department and I believe that the courts have the authority to do so. If a case reaches the Court of Appeal or the Supreme Court, for example, the court will then truly have the power to interpret the concept. That's not the problem. The problem is that commercial organizations will have to interpret it and implement the act first. It's ultimately possible—

Mr. Jean-Denis Garon: I understand that, but how is that different from any other act?

We're drafting and voting on a bill here in Parliament; we're saying that it will contain interpretive concepts and that the courts will be asked to do the interpreting. If we refrain from legislating every time the courts fail to interpret a concept, then we should throw in the towel.

Mr. Mark Schaan: There are two important aspects here. First, one of the aims of this bill is to ensure that works, undertakings and businesses implement the act as effectively as possible. To enable them to do so, we need to use the clearest and simplest terms, concepts and rules.

Second, I want to make a brief comment about the courts, since you mentioned them. Sentencing authority is definitely one of their powers. However, if the facts are established by the Commissioner, the courts won't have authority to reconsider them.

Mr. Jean-Denis Garon: That confirms what I was thinking. I don't just want to question the officials; I also want to speak to my colleagues.

The impression that could give Quebeckers and others watching us—there must be a few—is that the act is designed to make life easier for foreign businesses. It suggests that we think Quebec's civil law and Canadian jurisprudence are too complicated and that it's better to yield to the dictates of democracy and the courts. California businesses want to sell products to our children, but it's so complicated for them to do so that we have to do everything in our power to pave the way. That's how it's going to be understood. We're giving the impression that the minister has decided to play along with those businesses and make every effort to facilitate matters for them.

Actually, this isn't the only place in the bill where you sense this intent to facilitate matters. There are the self-regulation issues in part 3, but I'll come back to them—I don't want the chair to rule me out of order. This isn't a blanket criticism of the entire bill, but I get the impression from reading it—and it contains a lot of positive elements—that we're trying to please big businesses.

My impression in this instance is that, if we don't adopt the Conservatives' amendment, we'll be disregarding the best interests of the child in order to please businesses, which I really find unpleasant.

● (1755)

The Chair: Thank you, Mr. Garon.

Mr. Généreux.

Mr. Bernard Généreux: Thank you, Mr. Chair.

If I hadn't been here continuously since we began studying this bill, my impression would be that you are industry witnesses, that you're trying to make sure the bill is as weak as possible and that you're trying to make life as easy as possible for yourselves. I let Mr. Garon speak before me because I was sure his comments would align with mine.

Our purpose here as parliamentarians is to make laws, not to please industry. We're here to protect Canadians. That's my perception, but I could be wrong. The Liberals have decided to introduce a subamendment to abolish a terminology that's recognized globally. The "best interests of the child" isn't a concept that we've invented; it's not some kind of political toy. It's recognized around the world, even in California and many American states.

I'm trying to understand the logic in all this, and I hope Mr. Turnbull will explain it to us. More than 50 amendments, moved by the Liberals, have been introduced in connection with this bill, which, I repeat, was also introduced by the Liberals. The bill would enact three new statutes.

Personally, I am 62 years old; the Internet came into our lives 30 years ago, in the fax machine era. We're now in the artificial intelligence era, and the risks that children face will increase by a factor of 10. We have a duty to ensure that children are protected.

I'm going to ask a relatively simple question. If we adopt this subamendment and don't include this line, do you sincerely think children will be less protected?

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

I'm going to make a comment in French, but I'll clarify it in English.

I think that, if the subamendment is adopted, the best interests of the child will enjoy the same protection. That protection will be established in the bill.

[*English*]

Comments about the ease of implementation should be understood quite distinctly from the rising obligations being placed on commercial actors, which are replete throughout this bill. The CPPA definitively increases obligations, penalties and responsibilities for commercial actors for the use of personal information.

I comment on that only because comments were made about whether or not officials are appearing here on behalf of any other interests. I would like to be absolutely clear that a primary consideration for the departmental participation in the establishment of this law was to ensure the effective protection of the privacy of Canadians.

[*Translation*]

Mr. Bernard Généreux: Thank you, Mr. Schaan.

I don't want you to feel accused of anything. As my colleague Mr. Garon said earlier, I'm concerned about the perception people may have as they listen to us. We have 250 amendments to consider, and we're only on the second one after two meetings. We have to take this very seriously.

Since we began this study last fall, most witnesses have told us, first of all, that we should have introduced three bills instead of one, or at least two, in order to separate certain aspects. From the moment they're in the same bill, we have to take all aspects into consideration.

What I'm saying is that the "best interests of the child", a phrase recognized around the world, must be included in the bill, considering what the future will bring.

Once again, I hope Mr. Turnbull will explain to us why the Liberals absolutely want to delete it.

● (1800)

The Chair: Thank you, Mr. Généreux.

Mr. Turnbull.

[*English*]

Mr. Ryan Turnbull: Thank you.

Thanks to all my colleagues for a really robust debate and discussion on this. I appreciate all your comments. There have been some really thoughtful arguments and questions for the officials.

I'll start by saying that what we have expressed is, I think, a policy intent that is very much the same. Wanting to protect minors in a digital age, when they are vulnerable to having their personal information collected and used in ways that may not be in their best interests, is consistent with the overall objectives of the bill.

I think you have acknowledged that to some degree with some of the comments about deeming all minors' personal information as sensitive.

I think we are aligned. As the officials have said numerous times, the intent behind the subamendment was to try to provide interpretive clarity within the realm of commercial law. I understand that “best interest” is not a concept that's always known to companies. I think Mr. Schaan has made the point very clear.

At the same time, what we're debating here is the language in the preamble of the bill. In expressing the intent we all have, which I think we're aligned on, we should be able to compromise.

I'll ask Mr. Schaan a question. Tell me why you have a preamble in a bill. What is it really for? It's a very simple question, but I think it's fundamental to the debate we're having.

Mr. Mark Schaan: A preamble, obviously, is a precursor to the fundamental obligations that a piece of law contains. The piece of law will follow with specific obligations and enumerate them in a number of ways, but a preamble gives the overall ambition and lens to those seeking to understand what those obligations are.

It gives a sense of intent and it gives a clear notion of the ability to implement the obligations that then follow.

Mr. Ryan Turnbull: In some ways, it just expresses the intent. Where we were coming from with this subamendment was to try to have consistency in the approach and language in the bill, but perhaps focusing more on the legal interpretation of it rather than just a policy intent.

Mr. Schaan, could you comment on that? Having the phrase "best interests" in the preamble doesn't necessarily have.... It is about the intent in some respects, and it does express the intent we share. We've heard that all around the table. It's just that it's also a legal term that exists in family law and doesn't exist in commercial law.

I understand how the legality of that term could impact what we want in the preamble if we're focusing on interpretive consistency and expressing it. However, if we take a step back from that, we recognize that the purpose of this bill, which all parliamentarians agree on, is to protect minors, in my view.

Could you comment? If the ambition or purpose of the bill were expressed in the preamble, including with "best interests", it doesn't necessarily change the nature of the bill, other than the fact that it would then be interpreted as wanting to protect the best interests of children.

● (1805)

Mr. Mark Schaan: The considerations we were attempting to put forward were about the use of consistent language that would ensure the fundamental obligations that we see as important, which this law sets out, are followed through on. This would mean they're understood and can actually be lived out.

As for the possibility of ambition being expressed in a way that maybe isn't the exact way that it's understood in the specific obligations, it's a consideration around interpretability and legibility, but fundamentally the ambition that was proposed in the subamendment is the same.

Mr. Ryan Turnbull: That's helpful.

Lastly, I'll go to Mr. Généreux's points and some other points that were made, which you, Mr. Schaan, reacted to a bit with your remarks. Mr. Généreux said that it sounded like you're here on behalf of corporations or something—I've heard other comments like that—but from my perspective, our reason for being here and undertaking this really important work is very clearly to protect Canadians and children. It's also to ensure the interpretive clarity needed to allow us to live up to those obligations. That's actually in the best interests of children. If small and medium-size companies can't interpret this bill in a way that allows them to abide by it, and if there is ambiguity entrenched in it such that they can't possibly fulfill their obligations, they're going to need a court opinion or something else.

I just want to express the intent that I think we are aligned on. The ease of interpretation and the rise in obligations that you referred to are both parts of the same underlying objective and commitment. I want to leave it there.

I want to seek unanimous consent. I know procedure from being on the procedure and House affairs committee. I can't amend my own subamendment unless I have unanimous consent, but hear me out. In the spirit of compromise and collegiality and in the spirit of wanting to work constructively together, if you'll allow me, with unanimous consent, I'd like to revert to the original wording that was noted in part (b), which was, "Whereas the processing of personal information and data should respect minors' privacy and their best interests".

If we can agree on that change, I'd be happy to move it with unanimous consent, if the committee will humour me.

Mr. Rick Perkins: Can we take a moment to have a quick chat?

The Chair: Yes, of course. I'll briefly suspend.

● (1805)

_____(Pause)_____

● (1810)

The Chair: Okay, colleagues, I think we've reached consensus. Everyone heard what Mr. Turnbull seeks to accomplish with unanimous consent, which is to remove part (b) of his subamendment.

● (1815)

Mr. Ryan Turnbull: I can make sure everyone is clear on this.

I think you're right. It's to retract the change to what we had in our subamendment—which was under part (b)—and revert back to exactly the same wording the Conservative Party proposed. I'll read it to make sure everything is 100% clear. It would say, "Whereas the processing of personal information and data should respect minors' privacy and their best interests".

The Chair: Do we have unanimous consent?

Some hon. members: Agreed.

The Chair: We are continuing debate on the subamendment as amended. I have on my list—if you're done, Mr. Turnbull—Mr. Perkins, Mr. Généreux and Mr. Vis.

We're good to vote on the subamendment if there are no more comments.

Do I have unanimous consent on the subamendment?

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

[*Translation*]

The Chair: That brings us back to amendment CPC-1 as amended.

[*English*]

Are there comments?

Shall CPC-1 carry as amended?

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

The Chair: The next amendment I have on my list is NDP-1.

I don't know whether or not Mr. Masse wants to move it at this stage.

Mr. Brian Masse: I'll move it.

The Chair: Okay, we'll go to Mr. Masse for NDP-1.

Mr. Rick Perkins: I thought we already addressed this.

The Chair: Yes, Mr. Turnbull.

Mr. Ryan Turnbull: I checked earlier whether the two were dependent on one another or overlapping. We heard very clearly from the legislative clerk that they were not. However, I believe what we've just done in subamending and agreeing to CPC-1 has already dealt with NDP-1. Could we take a moment to verify that so we don't get snagged into debating something that is not needed?

The Chair: It is true that there is a lot in common with CPC-1, but the end is not exactly the same. If Mr. Masse wants to move it, it would be receivable.

Wait one second. I will just consult with the legislative clerks.

● (1815)

(Pause)

● (1820)

The Chair: Colleagues, we have until 20 minutes to seven.

I gather that NDP-1 will not be moved because it has essentially been dealt with by the subamendment of MP Turnbull.

That brings us to NDP-2.

Just before it is moved, I'd just like to highlight that if NDP-2 were to be adopted, G-2 could not be proposed because there is a line conflict.

● (1825)

I'll let Mr. Masse speak to NDP-2.

Mr. Brian Masse: I'll read this for the people who are intently following along at home.

I move that Bill C-27, in clause 2, be amended by replacing lines 16 and 17 on page 3 with the following: “modify personal information to ensure that no individual”.

I'll just speak briefly to it, and then others can ask questions.

This comes from the Privacy Commissioner. It's to strengthen the framework for de-identification and anonymized information. Basically, it's to protect and de-identify anonymized data, and it comes from the Privacy Commissioner's recommendations.

[*Translation*]

The Chair: Thank you, Mr. Masse.

Mr. Turnbull.

[*English*]

Mr. Ryan Turnbull: Thanks, Mr. Masse, for putting this forward.

Mr. Schaan, I'll start with you.

My understanding is that this specific amendment impacts the definition of anonymized information, and I believe it effectively removes “generally accepted best practices” as a concept from the definition of “anonymize”.

Could you clarify that for me?

● (1830)

Mr. Mark Schaan: That's right. Currently, the interpretation clause reads:

> anonymize means to irreversibly and permanently modify personal information, in accordance with generally accepted best practices, to ensure that no individual can be identified from the information, whether directly or indirectly, by any means.

Right now, the NDP clause would remove “in accordance with generally accepted best practices”.

Mr. Ryan Turnbull: Having “generally accepted best practices” in there seems to me to be a pretty high bar and an important concept that would potentially allow for the evolution of best practices to be referenced in the bill.

In my work before I got into politics, I came from a world where promising practices and best practices were things we often talked about. They would emerge, specifically, in areas where technology or innovation was happening. It seemed to be fairly commonplace for fast-changing industries to evolve quite quickly, and sometimes promising practices were the precursor to eventually determining best practices.

Can you unpack for us the impact of taking that out? How would that impact the bill and the strength of the bill?

Mr. Mark Schaan: I'd raise two considerations.

One is that this would not be consistent with the definition that currently appears in Quebec's privacy law, which requires information to be anonymized according to generally accepted best practices. There would be a deviation between those two, which is not in and of itself necessarily.... They are separate statutes, but in terms of company obligations and how companies will be able to live up to both of those statutes, where consistency can be found, it can be very helpful.

The other is that “generally accepted best practices”, as you note, is a well-established construct that allows for standards and certifications to continue to keep pace with the movement of technology and the construct. It being absent suggests that you're held to a standard without the notion that you are, in fact, to draw upon the state of the art as it relates to the meeting of the obligation.

Mr. Ryan Turnbull: Thank you for that.

Based on your knowledge and having done a lot of consultation on this bill, do privacy experts generally want this notion to be kept in the bill? What's your perspective on that? Have they advocated for or expressed any desire for “generally accepted best practices” to be included in the bill?

Mr. Mark Schaan: First, there's a desire for a high bar as it relates to the construct of anonymizing, and "generally accepted best practices", as it relates to the obligation for anonymizing, is seen by many to be a high bar.

Second, I think there is a desire for consistency of application of the construct, which is why "generally accepted best practices" ensures there are standardized approaches, as opposed to a potential patchwork or highly diverse attempts at trying to get to the anonymization of information that may introduce other vulnerabilities because people are doing it very differently.

Mr. Ryan Turnbull: As you said, this would put our bill out of alignment with Quebec's privacy law.

Mr. Mark Schaan: Quebec's privacy law specifically requires information to be anonymized according to generally accepted best practices.

Mr. Ryan Turnbull: This may be one more clarification question. Who decides what a generally accepted best practice is? Is it subject to OPC guidelines as well? How would that be determined and identified for people?

● (1835)

Mr. Mark Schaan: The OPC issues guidance. Certainly in the field of anonymization, there are lots of folks who have done work in this space. However, there is also considerable effort under way by the standards community and others to set out appropriate mechanisms for that. These include civil society actors as well as academics and those who implement the construct in real time.

Mr. Ryan Turnbull: Thank you for all of those clarifications.

Mr. Masse, at least from our perspective, Mr. Schaan has provided a lot of clarification and rationale for our position, which is to oppose this amendment. We think the "generally accepted best practices" portion of the wording in this particular clause will be quite useful for keeping pace with the practices that are clearly going to evolve and emerge over time on anonymization.

That was to provide rationale for our position. I don't know how others feel about this particular amendment, but that's certainly where we stand.

[*Translation*]

The Chair: Thank you.

Mr. Williams.

[*English*]

Mr. Ryan Williams (Bay of Quinte, CPC): Thank you, Mr. Chair.

I think this is an important discussion. I'm sure it will spill over into our next meeting.

I thank the NDP for bringing up an important amendment.

It's very important that we get the definition of "anonymize" correct. We had a lot of witnesses talk about anonymization versus de-identification.

I'm going off of what we were talking about before. The conversation was about the balance between what businesses need in order to interpret the risk and what the body responsible for enforcing the laws in the Privacy Act needs, which is the Privacy Commissioner, the OPC. They have to see certainty, not uncertainty, when they are interpreting the law for privacy. Based on our last amendment, we rely on the Privacy Commissioner to give us the best definitions to allow them to uphold the Privacy Act. The Privacy Commissioner and the tribunal will need those definitions to be exact.

To give you an example, the Privacy Commissioner, Philippe Dufresne, laid out a case during his appearance before the committee in our fall meeting on October 19, 2023. He said, "The bill says that more can be done with de-identified information, and that if it's anonymized, the law doesn't apply at all. So there's a big responsibility that comes with that. These definitions need to be strict." That's about how they interpret those definitions in the bill. I think that's why we're spending a lot of time here. Even though it's a preamble and a definition, it sets the tone for the rest of the bill and the rest of the conversations we're going to have.

Proposed subsection 6(5) of the CPPA exempts anonymized information from all protections it establishes. Given that our argument from this side—which you'll hear more than once—is that privacy is a fundamental right, we're making sure we get the definitions right when we go through this.

The Office of the Privacy Commissioner's submission from May 2023 talked about this piece and noted:

> A final point relates to the new definition proposed for anonymized information. As currently drafted, organizations could anonymize personal information using "generally accepted best practices". However, there is no explanation of what these practices are or what would be considered "generally accepted." Including this language opens the door to the possibility that some organizations might rely on anonymization techniques promoted by certain experts or groups that are insufficient for a given dataset.

It could be insufficient for a given test regarding what we're trying to define and enforce under this privacy law. That is why it's very important. We have a problem, as the Privacy Commissioner did, with including the language "generally accepted best practices".

Mr. Schaan, I know Mr. Turnbull just asked some questions on this, but do we have an actual legal definition of "generally accepted best practices" or a list that will be very specific for the OPC?

Mr. Mark Schaan: I think it's an evolving technology. I think having generally acceptable best practices in the statute allows for the OPC to continue to pass judgment on whether or not the actions conformed to the generally acceptable best practices that have emerged. I think we point to it as a means to encourage standardization of approaches and to ensure that people are living up to the best available opportunity to ensure the anonymization of the information.

● (1840)

Mr. Ryan Williams: I think when we look at the opportunity, we want to look at business. We're going to look at some of the burdens they see from this act. They've come to the committee and talked about compliance costs, regulatory burdens and impacts on innovation and competitiveness. However, when we look at the OPC and what they need, they need certainty. They need to make sure they have clear definitions. They need to be able to uphold the law. It's so different when we look at the Competition Act, some of the definitions and the ways they've looked to interpret that to enforce the law.

We've certainly been very clear that we want to see the protection of children, and privacy as a fundamental right. I think this is a big one, because this bill is not for today but for the future. When we look at de-identification—you'll hear about this further in some of the arguments we'll present—it still states, even in the definition, that “a risk of the individual being identified remains”. That is in the definition of “de-identify”. Anonymization removes that, but to remove more of that nuance to ensure that “generally accepted best practices” doesn't define what those are—

The Chair: Mr. Williams, as interesting as I think your comments are, we're reaching the end of the hour. You'll have some time over the weekend to think about that. We'll hear some more on Monday as we resume this study.

Thanks to our witnesses.

We'll see you all on Monday.

The meeting is adjourned.