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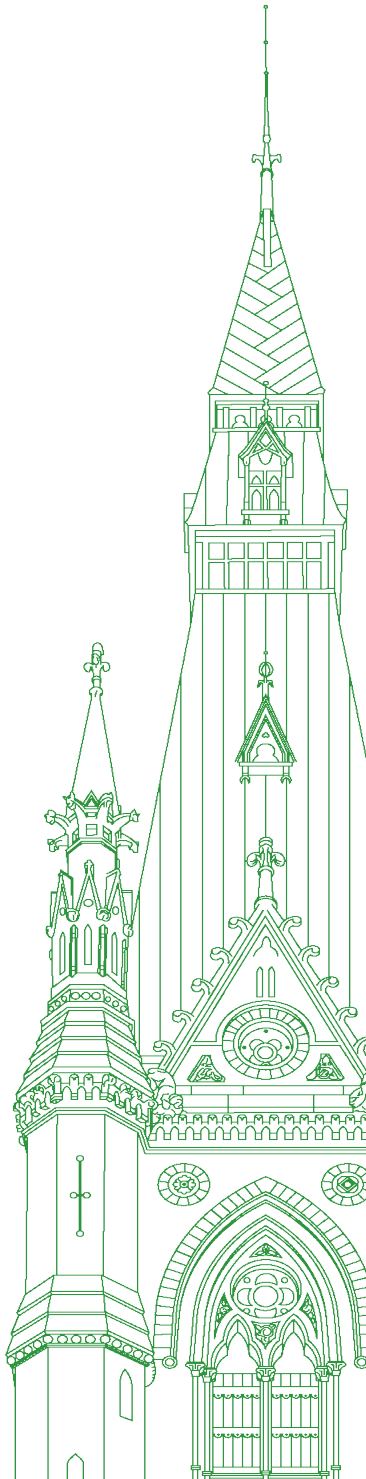

Chair: Mr. Heath MacDonald

Standing Committee on Public Safety and National Security

Thursday, February 1, 2024

● (0820)

[*English*]

The Chair (Mr. Heath MacDonald (Malpeque, Lib.)): I call this meeting to order.

Welcome to meeting number 91 of the House of Commons Standing Committee on Public Safety and National Security.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and remotely by using the Zoom application.

I would like to make a few comments for the benefit of the witnesses and members.

Please wait until I recognize you by name before speaking.

To prevent disruptive audio feedback incidents during our meeting, we kindly ask that all participants keep their earpieces away from the microphone. Audio feedback incidents can seriously injure interpreters and disrupt our proceedings.

This is a reminder that all comments should be addressed through the chair.

Pursuant to the order of reference of Monday, March 27, 2023, the committee is resuming its study of Bill C-26, an act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other acts.

Today we have two panels of witnesses. I would like to welcome our witnesses for the first panel.

From the Business Council of Canada, we have vice-president of policy and legal counsel Trevor Neiman. From the Canadian Internet Registration Authority, we have Byron Holland, president and CEO.

Up to five minutes will be given for opening remarks, after which we will proceed with rounds of questions.

Welcome to all.

Now I invite Mr. Neiman to make an opening statement, please.

Mr. Trevor Neiman (Vice-President, Policy, and Legal Counsel, Business Council of Canada): Mr. Chair and committee members, thank you for the opportunity to take part in your study of Bill C-26.

Founded in 1976, the Business Council of Canada is composed of approximately 170 chief executive officers who run Canada's most innovative and successful businesses. Our organization represents a broad cross-section of Canada's critical infrastructure sectors.

Today I will restrict my comments to part 2 of the bill, which is the proposed critical cyber systems protection act.

I'll begin my substantive remarks by underlining that Canada's leading businesses are committed to maintaining a strong and resilient security posture in the face of growing cyber-attacks. Indeed, in a survey of our members, every single chief executive officer indicated that cybersecurity was either a high or very high priority for their business.

Our members are backing their commitment to cybersecurity with significant resources. In critical infrastructure sectors, most of our member companies each invest well over $100 million in Canada per year on measures to prevent, detect and respond to cybersecurity incidents. A plurality of these same members invest over $500 million individually in the same measures.

As cybersecurity risks to the country grow, so too do the resources that our members plan to devote to protecting Canadians. Over the next two years, over two-thirds of our members plan to increase both their cybersecurity spending and their personnel staffing by at least 25%.

However, we cannot lose sight of the fact that defending Canadians against cyber-attacks is very much a team sport, requiring close coordination between government and industry.

That is why the Business Council of Canada supports the objectives of recent government cybersecurity initiatives. This includes part 2, which, if properly drafted and implemented, can improve the overall cyber-resiliency of the Canadian economy by establishing a baseline of cybersecurity across critical sectors.

It's also important to note that the enactment of part 2 would bring Canada's cybersecurity framework in line with the best practices among our closest security partners. In a period of growing global tensions, Canada must move in lockstep with its closest allies and strengthen its cyber-resiliency; otherwise, Canada risks being perceived as a weak link, which could have severe consequences for Canadians' future security and prosperity.

Of course, no public or private sector initiative is perfect. It should therefore be no surprise that Canada's business leaders would like to see targeted amendments to part 2. In the interest of time, I will highlight just three of the most common suggestions for improvements that I've heard from our members.

First, part 2 should be amended to adopt a risk-based methodology that would impose regulatory requirements on designated operators proportionate to their level of risk. Imposing fewer and less onerous obligations on low-risk operators that have well-established cybersecurity programs would allow them to spend more of their finite resources on incident prevention activities. Regulators, on the other hand, could dedicate more of their finite resources toward the high-risk operators that pose the largest threat to Canadians.

Second, part 2 should be amended to place fair and reasonable limitations on the cabinet's power to issue cybersecurity directions. In the absence of statutory safeguards, part 2 would allow cabinet to issue any direction, regardless of whether such a measure would be effective in reducing a risk to a critical system. Directions could also be issued without cabinet first consulting with impacted provinces and territories, negotiating in good faith with designated operators or considering relevant factors, such as the potential cost of a direction, whether reasonable alternatives exist to issuing a direction and the potential consequences of a direction on competition, services or customers.

Third and last, part 2 should be amended to define key terms more precisely, such as “cyber security incident” and “critical cyber system”. The current definitions of these terms are overly broad. This would likely result in reporting inconsistencies, as well as the over-reporting of immaterial incidents, which could overwhelm government authorities.

I'll conclude by noting that part 2 is just one of several national security reforms that are urgently needed to protect Canadians. As a priority, the Business Council of Canada urges that lawmakers also amend the CSIS Act to enable CSIS to proactively share threat intelligence with Canadian companies when it's in the public interest, subject to all necessary safeguards and oversight.

This and nearly 40 other much-needed reforms are included in the Business Council of Canada's most recent report, “Economic Security is National Security”. That report is publicly available on our website.

Thank you for the opportunity to speak. I look forward to your questions.

The Chair: Thank you.

Mr. Holland, go ahead, please.

Mr. Byron Holland (President and Chief Executive Officer, Canadian Internet Registration Authority): Mr. Chair and members of the committee, my name is Byron Holland. I am the president and chief executive officer of the Canadian Internet Registration Authority, or CIRA. Thank you for the invitation to share our views and recommendations on Bill C-26.

CIRA is a private, not-for-profit organization best known for operating the “.ca” registry, with 3.4 million .ca domain names under management. CIRA's core mandate is a safe, stable and secure operation of the .ca domain and the global network that ensures that it's available no matter where in the world you are. We also have a broader mission to promote a trusted Internet, which we work toward by providing high-quality registry, domain name system and cybersecurity services, and by investing in the Internet community in Canada.

CIRA participates in numerous fora to promote the security and resilience of the Internet. Recently, this has included ISED's Canadian forum for digital infrastructure resilience and the CRTC interconnection steering committee. We are also long-time participants in global Internet governance. This includes extensive engagement with the Internet Corporation for Assigned Names and Numbers, or ICANN, the global overseer and coordinator of the domain name system that ensures that your web browser can reach websites like Canada.ca. We also contribute to the Internet Engineering Task Force, or IETF, where the technical standards that underpin the Internet are developed.

CIRA also provides cybersecurity services to help Canadians stay safe online. They include Canadian Shield, our free cybersecurity service that protects an estimated four million Canadians from online threats; DNS Firewall, our enterprise-level DNS protection used by more than a thousand Canadian organizations, including numerous critical cyber systems; and Anycast DNS, our global infrastructure that increases the performance and resilience of top-level domains like .ca, and helps mitigate malicious activity such as distributed denial of service attacks from foreign actors. Moreover, CIRA collaborates with several institutions to keep these services up to date, including the Canadian Centre for Cyber Security and the Canadian Centre for Child Protection.

CIRA strongly supports the government's objective to raise the baseline level of cybersecurity across critical infrastructure through Bill C-26.

We offer three recommendations to part 2 of Bill C-26, also known as the critical cyber systems protection act, or CCSPA, to better balance the bill's cybersecurity objectives with well-established best practices and oversight, information sharing and transparency.

First, to promote more effective oversight, the issuance of cybersecurity directions under the CCSPA should be subject to section 3 of the Statutory Instruments Act. This would ensure that cybersecurity directions are examined by the Clerk of the Privy Council in consultation with the deputy minister of justice.

Second, to increase confidence in the proposed information sharing enabled by the CCSPA, conditions on the use of information should be strengthened. Currently, Bill C-26 does not explicitly limit how government entities can use information collected under certain sections. For example, CIRA believes it would not be appropriate for the CSE to use data collected under section 15 of the CCSPA for purposes other than its cybersecurity and information assurance mandate.

Third, to promote transparency, the CCSPA should be amended so that information on cybersecurity directions is reported to Parliament on an annual basis. This would include information on the number of cybersecurity directions issued and revoked, as well as the number of designated operators impacted.

We have provided specific legislative wording for each of our recommendations in our written submission.

In conclusion, CIRA recognizes the need for some level of secrecy and timeliness in matters of national security and public safety. However, secrecy and expedience must be counterbalanced by the addition of provisions in Bill C-26 that would enhance Canadians' trust and confidence in the proposed legislation.

Thank you.

● (0825)

The Chair: Thank you, Mr. Holland.

I'll now open the floor to questions.

Mr. Motz, you're up first for six minutes.

Mr. Glen Motz (Medicine Hat—Cardston—Warner, CPC): Thank you very much, Chair.

Thank you to the witnesses for being here.

While I and my colleagues certainly agree that Bill C-26 is an important piece of legislation that has been a long time coming, and that we need to protect our critical infrastructure, I'm going to take this opportunity to move the following motion, which has been properly placed before the committee:

> That in light of the recent Federal Court ruling, which found that the government's use of the Emergencies Act in February of 2022 was illegal and that the special criminal laws subsequently created by the Liberal Cabinet were an unconstitutional breach of Canadians' Charter rights, the Committee undertake a study, pursuant to Standing Order 108(2), of the Department of Justice's role in supporting the government's illegal and unconstitutional decisions concerning the Emergencies Act, together with the consequences which follow the Court's decision, provided that
>
> (a) the Committee invite the following to appear, separately, as witnesses for at least one hour each:
>
> (i) the Honourable David Lametti, the Minister of Justice and Attorney General of Canada at the time;
>
> (ii) the Honourable Marco Mendicino, the Minister of Public Safety at the time;
>
> (iii) the Honourable Arif Virani, the Minister of Justice and Attorney General of Canada;
>
> (iv) representatives of the Canadian Civil Liberties Association, and
>
> (v) representatives of the Canadian Constitution Foundation; and
>
> (b) an order do issue for all legal opinions which the government relied upon in determining that
>
> (i) the threshold of "threats to security of Canada", as defined by section 2 of the Canadian Security Intelligence Service Act, required by section 16 of the Emergencies Act, had been met;
>
> (ii) the thresholds required by paragraphs 3(a) or (b) of the Emergencies Act concerning a "national emergency" had been met;
>
> (iii) the situation could not "be effectively dealt with under any other law of Canada", as required by section 3 of the Emergencies Act;
>
> (iv) the Emergency Measures Regulations were compliant with the Canadian Charter of Rights and Freedoms, including the analysis relied upon by the Minister of Justice in discharging his responsibilities under section 4.1 of the Department of Justice Act, and
>
> (v) the Emergency Economic Measures Order was compliant with the Canadian Charter of Rights and Freedoms, including the analysis relied upon by the Minister of Justice in discharging his responsibilities under section 4.1 of the Department of Justice Act,
>
> provided that these documents shall be deposited with the Clerk of the Committee, without redaction and in both official languages, within seven days of the adoption of this order.

Now, it's critically important that we understand why we are bringing this motion forward. It is very important to remember that the Federal Court rendered a decision last week that was critically important, and it should have been a landmark for this country and for this government.

In order for us to have a clear understanding of what the Emergencies Act was about—how it came to be—and of the decision of this Federal Court and all those sorts of different nuances, I want to take some time just to provide a very paraphrased version, a summary, of the Federal Court—just a couple of pages.

In Ottawa on January 23, the Honourable Justice Richard Mosley of the Federal Court issued his decision. In part, it read as follows:

> Summary: Four groups applied for judicial review of the decision by the Governor in Council [GIC] to declare a Public Order Emergency under the Emergencies Act....
>
> The February 14, 2022 Proclamation Declaring a Public Order Emergency [the "Proclamation"] and the enactment of temporary special measures in order to deal with protests in various parts of the country—which included the occupation of the downtown core of Ottawa and blockades of ports of entry—were under review.

The decision went on to say:

> This was the first time the Act was invoked since its enactment in 1988. The Proclamation, the Emergency Measures Regulations [the "Regulations"] and the Emergency Economic Measures Order [the "Economic Order"] adopted under the Act had a threefold impact: a) they prohibited a range of activities relating to protests in designated areas, b) they required third parties to assist police in ending the protest and c) they authorized financial institutions to disclose information on designated persons and entities to federal officials, and to suspend their accounts.

● (0830)

> The Applicants/Parties raised issues which lead to the following...questions:
>
> 1. Was the Proclamation unreasonable?
>
> With respect to the first question, the Court considered the decision under the reasonableness standard of review and concluded that the answer was yes, the Proclamation was unreasonable and illegal ("*ultra vires*") of the Act.

Those of you who are lawyers will understand "ultra vires".

The court said that they acted “beyond one's legal power and authority”. That's what the Latin term “ultra vires” means. It literally means that it's beyond the scope, or in excess of, power and authority.

Judge Mosley's decision continued:

> While the Court recognized that the occupation of downtown Ottawa and the blockades of the ports of entry were matters of serious concern calling for government and police action, the threshold of national emergency required by the Act was not met. Under paragraph 3(a) of the Act, a national emergency is an urgent and critical situation that exceeds the capacity or authority of the provinces to deal with it, and that cannot be effectively dealt with under any other law of Canada. The Proclamation applied the temporary special measures in all of Canada's provinces and territories, despite the lack of evidence that it was necessary. Apart from the situation in Ottawa, the police were able to enforce the rule of law by applying the Criminal Code and other legislation.
>
> While the conclusion that the Proclamation was illegal (“*ultra vires*”) was sufficient to dispose of the applications, the Court addressed the other issues should it be found to have erred in its findings on the first question.
>
> Second, the Court considered the threshold for “threats to the security of Canada.” Section 2 (c) of the Canadian Security Intelligence Service Act [CSIS Act] defines threats to the security of Canada as “activities...directed towards or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective.”
>
> Under s. 17 of the Emergencies Act, the GIC required reasonable grounds to believe that the standard set out in section 2 of the CSIS Act had been met.
>
> The evidence in the record before the Court did not support a finding that the impugned activities reached that threshold.

The second question as put forward by Justice Mosley was as follows:

> 2. Did the powers created by the Regulations and the Economic Order violate sections 2(b)(c)(d), 7 or 8 of the Canadian Charter of Rights and Freedoms, and, if so, could they be saved under section 1 of the Charter?

What do those sections actually say in the charter? Section 2 says:

> Everyone has the following fundamental freedoms:
>
> (a) freedom of conscience and religion;
>
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
>
> (c) freedom of peaceful assembly; and
>
> (d) freedom of association.

Section 7 talks about “Life, liberty and security of person”:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance of the principles of fundamental justice.

Section 8 of the charter deals with “Search or seizure”:

> Everyone has the right to be secure against unreasonable search or seizure.

Justice Mosley asks if they could “be saved under section 1 of the Charter”. Section 1 says:

> The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Justice Mosley continues:

> Concerning the Charter, the Court found that the Regulations infringed the guarantee of freedom of expression under s. 2(b), as they were overbroad in their application to persons who wished to protest but were not engaged in activities likely to lead to a breach of the peace.

● (0835)

> The Economic Order infringed s. 8 of the Charter by permitting unreasonable search and seizure of the financial information of designated persons and the freezing of their bank and credit card accounts.
>
> The infringement of sections 2(b) and 8 of the Charter were found to be not minimally impairing, and could not, therefore, be justified under s. 1 of the Charter.
>
> The Court found that there was no infringement of the rights to freedom of peaceful assembly and of association in paragraphs 2(c) and (d) of the Charter. Any infringement of s. 7 respecting the liberty interests of the individual was found to be in accordance with the principles of fundamental justice and thus not a breach of the Charter.

Now, I think it's important to understand how things transpired, why we had a protest and how we got to this point in the first place. It has to do with the increasing degrees of overreach and abuse of power by the Liberal government and its trampling of the charter rights of Canadians.

In January 2022, nearly two years after the start of the COVID pandemic, Canadians were growing frustrated with government restrictions and mandates. The straw that broke the camel's back was the order that truckers—cross-border truckers, especially—and other essential workers would no longer be exempted from vaccine requirements. This was a threat to their livelihoods and a violation of their rights. For them, enough was enough.

They gathered from across Canada and came to Ottawa and other locations not just to voice their frustrations but also to be heard by this government. I think it's important to understand that this government had no interest in listening to them, and I know that firsthand.

I personally worked vigorously behind the scenes to arrange meetings between the then-minister of transportation, Omar Alghabra; the then-minister of public safety, Marco Mendicino; and protest organizer Tamara Lich, with the understanding that such a conversation would result in the protest being dismantled. However, they refused all attempts to make that happen personally with them, even on a phone call. The government completely refused.

I think, quite honestly, that their unwillingness to dialogue from the very beginning.... Had they changed their attitude, the situation would certainly have been totally different, and it could have been avoided.

The Prime Minister also added to this. He seemed to be fine stoking division, calling people names and allowing frustrations and tensions to grow to the point that he and his cabinet decided to take their overreach and disregard for charter rights to the next level by stepping outside of the law and their lawful authority by invoking the Emergencies Act for the first time in history.

What exactly what did that order say? I think it's important that Canadians are reminded of what the Emergencies Act actually said.

I will quote from the February 14, 2022, Government of Canada bulletin, which reads:

> Whereas the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency;

> And whereas the Governor in Council has, before declaring a public order emergency and in accordance with subsection 25(1) of the Emergencies Act, consulted the Lieutenant Governor in Council of each province, the Commissioners of Yukon and the Northwest Territories, acting with consent of their respective Executive Councils, and the Commissioner of Nunavut;
>
> Therefore, Her Excellency the Governor General in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, pursuant to subsection 17(1) of the Emergencies Act, directs that a proclamation be issued
>
> (a) declaring that a public order emergency exists throughout Canada and necessitates the taking of special temporary measures for dealing with the emergency;
>
> (b) specifying the emergency as constituted of
>
> (i) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

● (0840)

> (ii) the adverse effects on the Canadian economy—recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19)—and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,
>
> (iii) the adverse effects resulting from the impacts of the blockades on Canada's relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,
>
> (iv) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and
>
> (v) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians; and
>
> (c) specifying that the special temporary measures that may be necessary for dealing with the emergency, as anticipated by the Governor in Council, are
>
> (i) measures to regulate or prohibit any public assembly—other than lawful advocacy, protest or dissent—that may reasonably be expected to lead to a breach of the peace, or the travel to, from or within any specified area, to regulate or prohibit the use of specified property, including goods to be used with respect to a blockade, and to designate and secure protected places, including critical infrastructure,
>
> (ii) measures to authorize or direct any person to render essential services of a type that the person is competent to provide, including services related to removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade anywhere in Canada, to relieve the impacts of the blockades on Canada's public and economic safety, including measures to identify those essential services and the persons competent to render them and to provide reasonable compensation in respect of services so rendered,
>
> (iii) measures to authorize or direct any person to render essential services to relieve the impacts of the blockade, including measures to regulate or prohibit the use of property to fund or support the blockade, to require any crowdfunding platform and payment processor to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada and to require any financial service provider to determine whether they have in their possession or control property that belongs to a person who participates in the blockade,
>
> (iv) measures to authorize the Royal Canadian Mounted Police to enforce municipal and provincial laws by means of incorporation by reference,
>
> (v) the imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the Emergencies Act; and
>
> (vi) other temporary measures authorized under section 19 of the Emergencies Act that are not yet known.

I think it's also important for Canadians to appreciate that the Emergencies Act laid out requirements for the government to do certain things during and after the invocation. Subsection 62(1) of the Emergencies Act says that there needs to be a review by a parliamentary review committee. It says, "The exercise of powers and the performance of duties and functions pursuant to a declaration of emergency shall be reviewed by a committee of both Houses of Parliament designated or established for that purpose." I'll get back to that in just a minute.

The other thing that was required was an inquiry. Subsection 63(1) says, "The Governor in Council shall, within sixty days after the expiration or revocation of a declaration of emergency, cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken for dealing with the emergency."

I think it's important also to appreciate that Justice Rouleau's decision did not provide Canadians with the confidence they were seeking on both sides of this discussion. He made a decision that the very high threshold required was met; however, he did so reluctantly, very reluctantly, and he says so in his decision. He accepted the government's broader interpretation of the Emergencies Act without being given an opportunity to see it. He was troubled by that particular move. He also included in his report that he did not come to this decision easily, and interestingly, he states that the facts that he based his decision on were not overwhelming.

● (0845)

To me, the statement that says it all about how Canadians should lack confidence in his decision is that a reasonable and informed person could reach a different conclusion than he arrived at. That does not actually give Canadians much confidence.

Now, getting back to the parliamentary review committee, it was called the special....

Mr. Chair, with regard to the commentary over there, if the member wishes to participate in this debate, I invite him to do so after I'm done.

Thank you.

Mr. Chris Bittle (St. Catharines, Lib.): I have a point of order, Mr. Chair.

This is just another example of the Conservatives pretending to care about security. We have witnesses here to talk about cybersecurity, which the Conservatives pretend to care about but clearly don't.

Mr. Glen Motz: You can grandstand all you want somewhere else.

Mr. Chris Bittle: "Grandstand all you want"? Really?

This is from the person who's grandstanding—

The Chair: Everyone, can we just stop for a moment, please?

Listen—

Mr. Chris Bittle: The person who is grandstanding is working with Tamara Lich. Wow. This is unbelievable—

The Chair: Mr. Bittle, Mr. Bittle—

Mr. Chris Bittle: This is unbelievable. You are making witnesses....

Who's the grandstander?

Mr. Glen Motz: Mr. Chair....

Mr. Chris Bittle: It's clearly you.

The Chair: Please, everyone, I'm going to say this once.

We had an incident in here before that was very close to damaging someone's ears due to the mistake of a microphone just being too close. I asked at the beginning of this meeting that we do not harm the interpreters, so let's not talk over one another. Everybody will have a chance.

Thank you.

Mr. Glen Motz: Thank you, Chair.

I will continue.

As I as saying, the Emergencies Act has requirements in subsection 62(1) for a parliamentary committee. A Special Joint Committee on the Declaration of Emergency is required to review "the exercise and powers and the performance of duties and functions pursuant to [the] declaration" by the government.

Mr. Brock and I are fortunate and on that committee and honoured to be there, along with colleagues from all parties, along with four members of the Senate. It's interesting that we've been meeting since March of 2022, and on December 1 of 2022, the committee moved that an interim report be presented to the House. I think it's very important that this committee—which quite possibly will also be having a look at this particular decision by Federal Court to examine this overreach by government—to hear what the committee, which we affectionately call the "DEDC", the declaration of emergencies committee, has to say.

The committee directed "[t]hat the joint chairs be directed to present the following interim report to each House forthwith":

> 1. The Special Joint Committee on the Declaration of Emergency, acting as the Parliamentary Review Committee under section 62 of the Emergencies Act, and pursuant to its orders of reference from the House of Commons and the Senate, adopted on March 2, 2022, and March 3, 2022, respectively, has been reviewing the exercise of powers and the performance of duties and functions pursuant to the declaration of [an emergency order] that was in effect from February 14 to 23, 2022.
>
> 2. Despite a parliamentary secretary urging an interpretation of this mandate such that it "does not have a retrospective element whatsoever vis-à-vis what happened prior to the invocation of the declaration"...[the] committee, at its meeting on April 5, 2022, adopted a motion that it would study
>
> > "the options that the Government of Canada utilized during the invocation of the Emergencies Act and enumerated in the Proclamation Declaring a Public Order Emergency; [and] That in this study of each option and for the committee's final report, the committee consider the necessity, implementation, and impact of that option...."
>
> 3. To that end, one of the areas of significant interest in the questioning of witnesses throughout the course of the committee's work has been whether the necessary thresholds for the government to declare a public order emergency had been satisfied.
>
> 4. Given the particular relevance to the issues which will be addressed in this interim report, the committee wishes to set them out below.
>
> 5. Subsection 17(1) of the Emergencies Act provides that when the Governor in Council believes, on reasonable grounds, that a public order emergency exists and necessitates the taking of special temporary measures for dealing with the emergency, the Governor in Council, after such consultation as is required by section 25, may, by proclamation, so declare.
>
> 6. Section 16 of the Emergencies Act offers pertinent definitions:
>
> > "public order emergency" means an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency;
> >
> > " threats to the security of Canada" has the meaning assigned by section 2 of the Canadian Security Intelligence Service Act).
>
> 7. A "national emergency" is, meanwhile, defined by section 3 of the Emergencies Act:
>
> For the purposes of this Act, a "national emergency" is an urgent and critical situation of a temporary nature that:
>
> > (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or
> >
> > (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada and that cannot be effectively dealt with under any other law of Canada.

● (0850)

> 8. Finally, the Canadian Security Intelligence Service Act definition of "threats to the security of Canada", sometimes dubbed "the CSIS Act threshold", which is imported into the Emergencies Act, is as follows:
>
> "threats to the security of Canada" means
>
> (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
>
> (b) foreign influenced activities—

● (0855)

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): On a point of order, Mr. Chair, while I'm enjoying Mr. Motz's presentation, it occurs to me that because part of this motion is a demand for an order for cabinet confidences and privileged communication—lawyer-client privilege—I question whether we have the authority to do this.

I would ask that we get a ruling as to whether this motion is in order, because it exceeds the powers of this committee.

Mr. Glen Motz: Can I speak to that?

The interim committee report I am presenting to the committee right now gets into the law, the rules and procedures of the House, and the authorities at the House for committees to have the inherent right to have access to and ask for these documents. Therefore, the motion is in order because it complies with the requests from other committees and it is also in compliance with the rules and procedures of the House.

The Chair: Thank you.

Mr. McKinnon, we'll take that into consideration and allow the member to continue.

Mr. Glen Motz: Thank you, Chair.

Under the CSIS Act, "threats to the security of Canada" means:

> (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
>
> (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
>
> (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and

> (d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada, but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).
>
> 9. The significance of these thresholds was explained to your committee by the Honourable Perrin Beatty...who, as Minister of National Defence, was the sponsor of the former Bill C-77 which enacted the Emergencies Act—or the law's so-called "author"—and who appeared before your committee on March 29, 2022.
>
> 10. Mr. Beatty spoke of the choice of the CSIS Act threshold as a deliberate one "because of the care that had gone into writing it" (Evidence, page 17). He continued,
>
> A public order emergency must meet two stringent tests. The first is to establish the existence of a severe emergency that cannot effectively be dealt with under any other law of Canada. The second is that it must meet a definition of threats to the security of Canada that was drafted to protect Canadians' rights and that specifically provides for "lawful advocacy, protest or dissent" (Evidence, page 17).
>
> 11. The Honourable David Lametti, P.C., K.C., M.P., Minister of Justice and Attorney General of Canada, appeared before your committee on April 26, 2022. When asked whether he had received any written opinions that the Emergencies Act should be invoked, he declined to answer on the basis of solicitor-client privilege (Evidence, page 20).
>
> 12. Similarly, while claiming solicitor-client privilege when he was asked what facts or considerations were provided in giving advice in relation to the CSIS Act threshold, Mr. Lametti commented,
>
> First of all, the document that we tabled goes through the nature of the various threats across the country, including some of the threats that you very rightly identified in the way that you framed your question. These, we felt, met the question of serious threats to persons under the CSIS Act definition—primarily that. There is also the economic damage, which could be considered part of the property question. (Evidence, page 21).
>
> 13. In the face of this claim, your committee, on May 31, 2022, exercised its authority to send for persons, papers and records and ordered the production of
>
> all security assessments and legal opinions which the government relied upon in determining that (a) the threshold of "threats to security of Canada", as defined by section 2 of the Canadian Security Intelligence Service Act, required by section 16 of the Emergencies Act, had been met; (b) the thresholds required by paragraphs 3(a) or (b) of the Emergencies Act, concerning a "national emergency" had been met; (c) the situation could not "be effectively dealt with under any other law of Canada", as required by section 3 of the Emergencies Act....
>
> 14. François Daigle, Deputy Minister of Justice and Deputy Attorney General of Canada, replied to this order, on June 29, 2022, writing, "Upon full consideration, it is our Department's determination that all legal opinions in our holdings that would be responsive to the Committee's order are subject to solicitor-client privilege." He added, "I confirm that I am unable to produce legal opinions as sought in the Committee's order."
>
> 15. At its next meeting, on September 22, 2022, your committee agreed to
>
> deem the evidence, including testimony and documents—

● (0900)

[*Translation*]

Ms. Kristina Michaud (Avignon—La Mitis—Matane—Matapédia, BQ): I have a point of order, Mr. Chair.

The Chair: You have the floor, Ms. Michaud.

Ms. Kristina Michaud: Thank you.

I don't know if Mr. Motz could tell us how much longer he will be. I understand that the purpose of introducing his motion today is to delay the study of Bill C-26 . However, we have guests here who have prepared to testify, who have prepared a brief and who have interesting information to share with us to help us do our work on the study of Bill C-26. That would be of great benefit to all committee members. We have only a few minutes left to ask them questions. According to the schedule, we will change panels for the next hour of the meeting.

In short, I don't know if Mr. Motz can tell us how much longer he will be. Personally, I find that this shows a great lack of respect for the witnesses here today.

[*English*]

The Chair: Mr. Motz, could you give us an indication of how much longer you're going to be?

Mr. Glen Motz: I don't know. It could be a couple more days, to be honest with you, and I apologize to the witnesses.

The issue that we as a committee and that government should be seized with is remedying the egregious overreach of the act, so quite honestly....

I again apologize to the witnesses. Bill C-26 is important, but to me, this issue supersedes it. Bill C-26 has been on the books since 2022, so—

The Chair: Thank you, Mr. Motz. Can you continue?

Mr. Larry Brock (Brantford—Brant, CPC): I have a point of order, Mr. Chair.

I'm trying to hear the response. You asked Mr. Motz to provide a response to Madame Michaud's intervention. I'm sitting right beside my colleague Mr. Motz, and all I can hear is chirping from Mr. Bittle. He is laughing. This is extremely disruptive to the functioning of the committee, sir.

The Chair: Everyone, let's....

Mr. Motz, could you please continue? Thank you.

Mr. Glen Motz: Thank you, Mr. Chair.

I would recommend that the witnesses today be excused, because I have no intention of ending until I'm finished.

The Chair: Please continue, Mr. Motz.

Mr. Glen Motz: Thank you.

Again, I apologize to the witnesses.

The Chair: You have 10 minutes.

Mr. Glen Motz: Pardon me?

The Chair: They can be dismissed in 10 minutes. They're on for the first hour.

Mr. Glen Motz: They're the first set of witnesses, yes. Thank you.

I'll continue with the interim report on paragraph 14: "François Daigle, Deputy Minister of Justice and Deputy Attorney General of Canada, replied to this order, on June 29...."

I'm sorry. I read that already.

Paragraph 16 says:

> 16. The matter of the interpretation of the thresholds, including the CSIS Act threshold, has lately become a central issue in the proceedings before the Public Order Emergency Commission.

> 17. According to a pre-hearing interview held with Commission counsel, David Vigneault, the Director of the Canadian Security Intelligence Service,
>
> stated that at no point did the Service assess that the protests in Ottawa or elsewhere ... constituted a threat to the security of Canada as defined by section 2 of the CSIS Act, and that CSIS cannot investigate activity constituting lawful protest....
>
> Mr. Vigneault emphasized that the threshold imposed by the CSIS Act and under which the Service operates is very specific. For example, the determination that something may not constitute a threat to national security under section 2 of the Act does not preclude a determination that a national security threat under a broader definition, or from the perspective of the public, does exist.
>
> 18. Despite February's protests, "at no point", constituting a threat so as to trigger the Service's own investigative thresholds—which, under section 12 of the Canadian Security Intelligence Service Act, is based on reasonable grounds to suspect, a much lower legal standard than the Governor in Council's burden, under section 17 of the Emergencies Act, of reasonable grounds to believe—Mr. Vigneault recommended to the Prime Minister that a public order emergency be declared, "based on both his understanding that the Emergencies Act definition of threat to the security of Canada was broader than the CSIS Act, as well as based on his opinion of everything he had seen to that point" (Commission document WTS.00000079, page 8).
>
> 19. In his public testimony, on November 21, 2022,

—some months later—

> Mr. Vigneault confirmed he had been given advice encouraging him to apply a broader definition to the Emergencies Act threshold:

He stated:

> So when that was first brought up, the fact that the Emergencies Act was using the same words as the CSIS Act to define the threat, so imported into the Emergencies Act, I needed to understand for myself and for, you know, the course of this, what was the implication of that.
>
> And that's when I was assured that, you know, they were—it was a separate understanding. You know, the confines of the CSIS Act, the same words, based on legal interpretation, jurisprudence, Federal Court rulings and so on, there was a very clear understanding of what those words meant in the confines of the CSIS Act, and what I was reassured by, is that there was, you know, in the context of the Emergencies Act there was to be a separate interpretation based on the confines of that Act (Commission transcript, page 58).
>
> 20. Under cross-examination by counsel for the Canadian Civil Liberties Association (CCLA), Mr. Vigneault acknowledged that this was the result of a legal opinion he sought from the Department of Justice (Commission transcript, page 95).
>
> 21. This novel interpretation of a "broader definition" became a theme in the evidence given by ministers and senior officials before the Commission—

● (0905)

The Chair: Sorry, Mr. Motz, for the interruption. I was just asking a clarification question to the witnesses on when they leave, on whether they leave at 9:15 or they continue on, because there may be a possibility when you're finished that we can give questions to them. I'm sorry for the interruption. That was my mistake.

Please continue.

Mr. Glen Motz: That's fine. Thank you, Chair.

As I was saying with regard to paragraph 21, the committee was seized with this now novel interpretation of a broader definition, and that became a theme of the evidence given by ministers and senior officials. What's interesting is that when the ministers and some senior government officials provided their testimony before the Special Joint Committee on the Declaration of Emergency in early 2022, there was no mention from any of them when questioned about that very high threshold that is required in section 2 of the act. There was no mention by any of them of this broader interpretation or broader definition. In fact, it was only when Lametti, Freeland, Mendicino, Trudeau and other government officials testified at the Rouleau commission—

Mr. Ron McKinnon: I have a point of order.

I'd ask the member to recognize these individuals by their proper titles, per Standing Order 18.

The Chair: Mr. Motz, can you please do that?

Mr. Glen Motz: Sure.

Minister Lametti, Minister Freeland, Minister Mendicino, Prime Minister Trudeau and other officials testified at the Rouleau commission in the fall of 2022. That was the first time we heard that everybody was relying on this broader interpretation, this interesting term.

I and many other Canadians are left to wonder why it took so long from when they started providing testimony to the Special Joint Committee on the Declaration of Emergency in April of 2022. Did it take them that long before...? We never heard about it before then.

I have some opinions, Chair, on why there was a delay when they were trying to convince Canadians. They acted unreasonably and illegally to invoke the act by relying on some broader interpretation.

One, I don't believe for a moment that any broader interpretation existed when the Emergencies Act was invoked, as they suggest. If it did exist, it would have been trotted out by the ministers and the government officials at the earliest opportunity.

Two, this broader interpretation has remained secret. It's been shrouded behind cabinet confidences and shrouded behind solicitor-client privilege, and they have refused to disclose it to our committee, to the Special Joint Committee on the Declaration of Emergency, refused to disclose it to Commissioner Rouleau, and refused to disclose it to Justice Mosley in his decision.

We all know this government has a history of operating outside the law. When they are not content to operate within the confines of the law, they attempt to break it. Does anyone remember SNC-Lavalin? When they try to justify their unreasonable and illegal overreach, they say they had a broader interpretation. What that really means is this government and this Prime Minister believe they are above the law and are not confined by it.

That is dangerous, folks; that is very dangerous. Thankfully, the Federal Court has ruled otherwise in a very important landmark decision.

I'm going to go back to the interim report, Chair, if I may, which says in paragraph 22:

> 22. Jody Thomas, National Security and Intelligence Advisor to the Prime Minister, appeared before the Commission on November 17, 2022. She asserted, "My understanding is that the Emergencies Act is assigned a meaning as defined in the CSIS Act but is not limited by the CSIS Act", and that "it can go beyond what the Act says which is a threat to the security of Canada" (Commission transcript, pages 238 and 239).
>
> 23. When cross-examined by CCLA counsel

—counsel for the Canadian Civil Liberties Association—

on November 17, 2022, on the threshold "in the Emergencies Act [being] tied exclusively and exhaustively to the definition in the CSIS Act", Ms. Thomas answered, "The Federal Government legal opinion is different" (Commission transcript, page 271).

24. For her part, Janice Charette, the Clerk of the Privy Council and Secretary to the Cabinet, who appeared on—

● (0910)

[*Translation*]

Ms. Kristina Michaud: I have a point of order, Mr. Chair.

I'm listening to Mr. Motz, and it seems to me that the motion he's introducing today could be presented to another committee, such as the Special Joint Committee on the Declaration of Emergency, which has already studied the invocation of the Emergencies Act. Do you know that Mr. Motz himself is vice-chair of that committee? He could very well introduce this motion to that committee. That way, the Standing Committee on Public Safety and National Security could focus on studying Bill C-26. I suggest he do that. It would be much more efficient if this motion were studied by the Special Joint Committee on the Declaration of Emergency.

[*English*]

The Chair: Mr. Motz, do you have a response?

Mr. Glen Motz: I respect my colleague and I will tell her that the Special Joint Committee on the Declaration of Emergency will be meeting and I'm sure will be discussing this further. This committee also has a responsibility to—

Mr. Peter Julian (New Westminster—Burnaby, NDP): On a point of order, what Mr. Motz has just said is very important. Is the committee meeting next week?

Mr. Glen Motz: No.

Mr. Peter Julian: That's my understanding.

If that's the case, then it would seem to me a bit premature to have consideration of this motion, as well intended as it might be, if we already have the Emergencies Act committee meeting next week to discuss what was an important ruling. It would seem to me that we, as a committee, could then be seized with the motion afterwards.

We do have witnesses. It costs thousands of dollars to bring them here, and it would be wise, I think, as Madame Michaud has said, for us to hear from the witnesses so that we can improve the legislation that is so important on cybersecurity. It is costing taxpayers thousands of dollars to bring the witnesses here.

Following the meeting of the Emergencies Act committee next week would be a good time, I think, to have the discussion around the motion.

The Chair: Thank you, Mr. Julian.

Mr. Motz, do you have any response whatsoever?

Mr. Glen Motz: I have lots of responses to that, Chair.

I'll keep it to this. Several committees can also be seized with dealing with the same issue.

The joint chairs are meeting next week. There is no full meeting of the special joint committee next week. It's important to realize that while the focus of the special joint committee is different from this committee's focus, this committee deals with national security and emergency preparedness. I don't see a more fitting committee than this one.

Thank you, sir.

● (0915)

Mr. Ron McKinnon: I have a point of order.

Some time having passed, I would like to renew my objection to this motion on the basis that I don't believe the committee has the power to deal with it.

Mr. Motz mentioned the SNC-Lavalin inquiry. I was a member of the justice committee at that time. In order for us to deal with matters pertaining to that inquiry, which involved cabinet confidences and solicitor-client privilege, cabinet had to explicitly grant access to those. We as a committee had no power to gain that access.

I would renew my concern that this motion exceeds the authority of this committee.

The House itself cannot override cabinet confidence. It requires an act of Parliament to do that, or the cabinet itself.

Mr. Glen Motz: I'm getting to that.

Mr. Ron McKinnon: I would renew my objection.

I know it's an important question, and I think it's important that the committee be seized with the act itself to deal with it, but I also note that this is a pattern of behaviour from our esteemed colleagues, because in the last meeting we were also disrupted by a motion on car thefts. I'm sure next time it will be about snow removal in Ottawa.

Anyway, I will renew my objection that this motion is out of order.

The Chair: Thank you, Mr. McKinnon.

I'm going to suspend for a couple of minutes to review this situation with the clerk.

Thank you.

● (0915)

_____(Pause)_____

● (0925)

The Chair: We will continue with the meeting, but before we go any further, Mr. Holland and Mr. Neiman have other engagements, so I'm going to ask....

First of all, thank you for coming. Your testimony will be extremely important for Bill C-26.

I will ask you a question in case we don't have an opportunity to have you back, if that's appropriate, Mr. Clerk, and I hope it is. If we could ask for a brief of your notes that you were going to discuss with us today, we would certainly appreciate that so that we could put those into the report.

Mr. Peter Schiefke (Vaudreuil—Soulanges, Lib.): Mr. Chair, would it also be prudent to perhaps ask for permission to send written questions, if we have any, to the witnesses and have the answers to those questions included in any briefs that they provide? I think that we all have some very important questions for which we'd like to have answers on the record.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Schiefke. Yes, that's a good point.

Carry on with the rest of your day. I hope it's as enjoyable as the first hour that you spent with us.

Now we'll go on to the ruling on cabinet confidentiality. We're still getting some information back on that, so we may have to decide on that a little later.

Mr. Motz, I'm going to let you continue, but at some point, if we do get the information back, then we may have to do a ruling.

Mr. Glen Motz: Thank you very much, Mr. Chair.

I would like to actually respond with some rulings that exist with regard to whether committees can have access to documents.

The Chair: Mr. Motz, can you continue with your motion?

At some point, if I do that, then I'd be more than happy to listen to those submissions.

Mr. Glen Motz: Okay. We have to discuss it. There is precedent already.

The Chair: Thank you.

Mr. Glen Motz: As a matter of fact, Chair, in the interim report that I'm going through right now from the Special Joint Committee on the Declaration of Emergency, they actually produce.... You will see here in a bit about the jurisprudence that already exists for access to cabinet confidences and documents. I'll get to that in just a couple of minutes.

I'll pick up on paragraph 25 of the interim report from the Special Joint Committee on the Declaration of Emergency.

It reads:

> 25. Nathalie Drouin, the Deputy Clerk of the Privy Council and Associate Secretary to the Cabinet, and a former Deputy Attorney General, who appeared on a panel with Ms. Charette, offered this perspective under cross-examination:
>
> the idea was to make sure that we interpret...the incorporation by reference....
>
> I guess what I'm saying here is when the Legislator adopted the Emergency Act versus when the Legislator adopted CSIS Act, it was for different purposes. The purpose of doing an investigation under the CSIS Act is not the same purpose of triggering or invoking the Emergency Act for public order emergency. (Commission transcript, page 218)
>
> 26. The Honourable Bill Blair, P.C., C.O.M., M.P., President of the King's Privy Council for Canada and Minister of Emergency Preparedness, told the Commission, on November 21, 2022, "for the purposes of the Emergencies Act that definition I believe has a broader application that is contained within that definition." (Commission transcript, page 197)
>
> 27. The Honourable Marco Mendicino, P.C., M.P., Minister of Public Safety asserted that "the threshold was met in the broader interpretation of the law." (Commission transcript, page 197)

In the report here, Chair, I'm noticing a theme developing between the testimony of ministers.

> 28. Meanwhile, the Honourable Dominic LeBlanc, P.C., K.C., M.P., Minister of Intergovernmental Affairs, Infrastructure and Communities, who also appeared on November 22, 2022, assured the Commission that "My colleague, David Lametti, will be here tomorrow. He'll be able, I'm sure, to speak directly to the legal test that the government was using and concluded when the Governor in Council made the decision." (Commission transcript, page 296)
>
> 29. Mr. Lametti, for his part, when he appeared on November 23, 2022, attempted to square the circle on the interpretation of the threshold: "while it is the same standard of the same magnitude, the interpretation of that standard is being done according to a wider set of criteria by a very different set of people with a different goal in mind, and that goal is given by the Emergencies Act and not the CSIS Act." (Commission transcript, page 81)
>
> 30. He later clarified,
>
> The threshold, as applied, as you've seen in testimony before this Commission, has evolved. The rules of thumb for interpreting that have evolved. The purpose of that Act is very different…. the very same words will have, not a wider meaning, but can be—will have a wider area of interpretation, according to the very structure of the Emergencies Act. And I think that is the interpretation that I would put to you as the one that best bears out in practice and is correct. (Commission transcript, pages 83 and 84)
>
> 31. Unfortunately, though, when he was asked to explain the assurances which Mr. Vigneault spoke about, and which are quoted above, Mr. Lametti was unable to answer (Commission transcript, page 170)
>
> 32. The Right Honourable Justin Trudeau, P.C., M.P., Prime Minister, was the final witness before the Commission on November 25, 2022, and he was also asked about the CSIS Act threshold issue. For his part, Mr. Trudeau explained,
>
> The use of the definition in the CSIS Act, as I said before, has two very different contexts from the use of it by CSIS and the use of it in invocation of a public order emergency. The context is different, the purpose is different, the decision maker is different. The requirements around it, the inputs are different. (Commission transcript, pages 72 and 73)

This is a sidebar, Chair. Back in my day, if I was to listen to testimony in a court of law and I heard a number of people providing testimony, and they all sounded very much alike, I would certainly have the impression that they got their heads together in cahoots to compare their testimony pretrial.

Anyway, I'll continue:

> 33. Suffice it to say, the outstanding issue about the novel—and what some, like the CCLA, have called "creative"—legal interpretation has become a very salient issue in the issues before both your committee and the Commission. Indeed, it has been an irritant to more than just some of the members of your committee.

● (0930)

> 34. Commission counsel Gordon Cameron remarked, at the conclusion of Mr. Lametti's examination, that the Commission had "attempted to find a way to lift the veil that has made such a black box of what has turned out to be a central issue before the hearing," lamenting that "we just regret that it ends up being an absence of transparency on the part of the government in this proceeding." (Commission transcript, page 171)

Those are powerful words from the counsel, Mr. Chair.

Paragraph 35 of our interim report states:

> 35. The Honourable Paul Rouleau, the Commission's Commissioner, indeed, added to this observation,
>
> as was mentioned by Commission Counsel, there's an issue of the reasonableness of it. And I'm having a little trouble, and I don't know if you can help me, how we assess reasonableness when we don't know what they were acting on. And do we just presume they were acting in good faith without knowing the basis or structure within which they had made that decision? And you know of what I speak. (Commission transcript, page 176)

Again as a sidebar, Mr. Chair, unfortunately Justice Rouleau accepted the novel interpretation by the government without actually seeing it, which I think is a black mark on his work on the committee inquiry.

I want to go back and remind my colleagues around the table that this interim report was presented by the Special Joint Committee on the Declaration of Emergency of all parties. That is the opinion so far for the last half hour of this report that was submitted. It's not just me talking here.

> 36. Essentially, it boils down to an argument of "just trust us" as to the justification for a proclamation of a public order emergency which allows the federal Cabinet both to legislate by decree and to do so on matters which are normally a matter of provincial jurisdiction.
>
> 37. Why the government would take such a course of action and remain so opaque on this one area begs many questions, invites a lot of speculation, and prompts a search of other evidence in order to draw inferences.
>
> 38. For example, as other documents adduced before the Commission came to light, it became apparent that Mr. Lametti may have long been an advocate for strong action, up and including the invocation of the Emergencies Act.
>
> 39. Notably, on the third day of the protests—

—and that's critical—

> —he texted his chief of staff, "Do we have a contingency for these trucks to be removed tomorrow or Tuesday?... What normative authority do we have or is some order needed? EA?" (Commission document SSM.CAN.00007851_REL.0001). By February 2, 2022, he was texting Mr. Mendicino, "You need to get the police to move. And the [Canadian Armed Forces] if necessary." (Commission document SSM.CAN.00007851_REL.0001)
>
> 40. Meanwhile, Mr. Lametti's interventions at a February 5, 2022, meeting prompted Royal Canadian Mounted Police Assistant Commissioner Mark Flynn, M.O.M., to remark to his colleagues in a group chat, "When the AG talks like this, we better get our own plan going". Minutes later, in the same group chat, RCMP Commissioner Brenda Lucki, C.O.M., wrote, "I need to calm him [down]", then, contemporaneously with Assistant Commissioner Flynn's remark about Mr. Lametti, added, "ok so calm is not in the cards" (Commission document PB.NSC.CAN.00008043_REL.0001)
>
> 41. During the 10 minutes immediately following Mr. Lametti's intervention which had caused such a stir, Commissioner Lucki sent Ontario Provincial Police Commissioner Thomas Carrique, O.O.M, several messages, including:
>
> "Between you and I only, [Government of Canada] is losing/lost confidence in OPS..."

—meaning the Ottawa Police Service—

> "we gotta get to safe action/enforcement"
>
> "Cause if they want to go to Emergency Measures Act, you or may be brought in to lead…not something I want"
>
> "Trying to calm them down, but not easy when they see cranes, structures, horses, bouncing castles in downtown Ottawa"
>
> "Any suggestions for calming them?" (Commission document OPP00004583)

They're referring back to ministers and cabinet.

> 42. Could it be that the Attorney General (and possibly others of his Cabinet colleagues) were so committed to the invocation of the Emergencies Act that any legal advice was moulded to shape the desired answer?

● (0935)

> 43. Certainly, doubts about the strength of the case for invoking the Emergencies Act are acknowledged by Ms. Charette in her February 14, 2022, memorandum to Mr. Trudeau recommending the declaration of a public order emergency: "In PCO's view, this fits within the statutory parameters defining threats to the security of Canada, though this conclusion may be vulnerable to challenge." (Commission document SSM.NSC.CAN.00003224_REL.0001, page 8)

As we can see, Mr. Chair, it certainly has been vulnerable to challenge.

> 44. These issues implore your committee to revisit its earlier orders for production of the legal opinions which the government relied upon—both for the benefit of [the] committee's work, but also that of the Public Order Emergency Commission. As Mr. Beatty had explained to [the] committee, when he appeared on March 29, 2022:
>
> "If you were looking at the actions taken by the government flowing from the invocation and if you uncover evidence indicating that the invocation of the act was inappropriate, then everything that flowed from it was inappropriate, as well. It seems to me that they're part and parcel of the same thing."

I think it's important that we read that again. This is Mr. Beatty, who actually crafted the legislation back in the mid-1980s:

> "If you were looking at the actions taken by the government flowing from the invocation and if you uncover evidence indicating that the invocation of the act was inappropriate"—

—which has since been done—

> —"then everything that flowed from it was inappropriate, as well. It seems to me that they're part and parcel of the same thing."

Here it gets to the crux of the transparency, Mr. Chair.

> 45. It is incumbent, for full transparency, for there to be full disclosure of the legal opinions which the government relied upon in declaring the first-ever public order emergency in Canada, so that we can determine whether it was appropriate or inappropriate. We have questions which we want answered.

This is a committee of Parliament talking, with a report being sent to Parliament.

> 46. The preeminent right of committees to obtain answers to their questions—

—and this may be of importance to Mr. McKinnon—

> —stems from the Houses' authority to institute and conduct inquiries and the power to send for persons, papers and records. These parliamentary privileges are rooted in the preamble and section 18 of the Constitution Act, 1867, and section 4 of the Parliament of Canada Act. These powers were delegated by both Houses to [the] committee—

—meaning the Special Joint Committee on the Declaration of Emergency—

> —through the Houses' orders establishing the Committee.
>
> 47. Given their constitutional nature, a committee's powers—

—not just the special joint committee's power, but all committees' powers—

> —supersede statutory law and other privileges, such as solicitor-client privilege. With regard to papers, there is no limit on the types of papers that can be requested; the only prerequisite is that the papers exist in hard copy or electronic format, and that they are located in Canada. They can be papers originating from or in the possession of governments, or from the private sector and civil society (*House of Commons Procedure and Practice*, 3rd ed., page 984; see also *Senate Procedure in Practice*, pages 199 and 200).
>
> 48. In practice, committees may encounter situations where the authors of or officials responsible for papers refuse to provide them or are willing to provide them only [if] certain portions have been removed. Public servants and ministers may sometimes invoke their obligations under certain legislation, such as the Privacy Act or the Access to Information Act, to justify their position (*House of Commons Procedure and Practice*, 3rd ed., page 985).
>
> 49. As noted in *House of Commons Procedure and Practice*, these types of situations do not limit the power of committees to order the production of papers and records:

> No statute or practice diminishes the fullness of that power rooted in House privileges unless there is an explicit legal provision to that effect, or unless the House adopts a specific resolution limiting the power. The House has never set a limit on its power to order the production of papers and records.

This can also be seen in Speaker Milliken's rulings in the Debates from March 2011 and in Speaker Rota's ruling on June 16, 2021, Debates, pages 8548 to 8550).

● (0940)

50. Similarly, as noted in Erskine May, 25th edition, at paragraph 38.32, the same power to send for records is not considered subject to statutory exception in the United Kingdom House of Commons:

> There is no restriction on the power of committees to require the production of papers by private bodies or individuals, provided that such papers are relevant to the committee's work as defined by its order of reference. Select committees have formally ordered papers to be produced by the Chairman of a nationalised industry and a private society. Solicitors have been ordered to produce papers relating to a client; and a statutory regulator has been ordered to produce papers whose release was otherwise subject to statutory restriction.

Paragraph 51 of the interim report goes on to say:

> 51. In recent years, there was a very high-profile instance of the United Kingdom House of Commons insisting on the production of government legal opinions when, amidst the Brexit debates, on November 13, 2018, it adopted a motion requiring the production of any legal advice in full, including that provided by the Attorney General, on the proposed withdrawal agreement on the terms of the UK's departure from the European Union including the Northern Ireland backstop and framework for a future relationship between the UK and the European Union.
>
> 52. On December 3, 2018, the Attorney General of England and Wales presented to Parliament a Command Paper which purported to describe the "overall legal effect" of the EU withdrawal agreement of November 25, 2018. On the same day he made a statement to the House; neither the Command Paper nor the statement made reference to the resolution of November 13, 2018, and the Command Paper did not purport to be a return to the resolution of the House.
>
> 53. Later that day, after representatives of five opposition parties alleged the government had not produced the documents required, Mr. Speaker Bercow ruled that there was a *prima facie* contempt (Official Report, column 625).The House of Commons, on December 4, 2018, adopted the following motion:
>
> > That this House finds Ministers in contempt for their failure to comply with the requirements of the motion for return passed on 13 November 2018, to publish the final and full legal advice provided by the Attorney General to the Cabinet concerning the EU Withdrawal Agreement and the framework for the future relationship, and orders its immediate publication.
>
> 54. In response, the government produced a complete, unredacted copy of the Attorney General's legal advice the next day. The Attorney General later said that he had complied with the order of the House of 4 December "out of respect of the House's constitutional position." (United Kingdom House of Commons Procedure Committee, "The House's power to call for papers: procedure and practice" (2019), paragraph 68))
>
> 55. Your committee wishes to draw attention to what appears to be a possible breach of privilege, in relation to the production of legal opinion in response to its order of May 31, 2022, and recommends that the House take such measures as deemed necessary.
>
> 56. Further, your committee makes the following recommendation:
>
> That an Order do issue for all legal opinions which the government relied upon in determining that
>
> (a) the threshold of "threats to security of Canada", as defined by section 2 of the Canadian Security Intelligence Service Act, required by section 16 of the Emergencies Act, had been met;
>
> (b) the thresholds required by paragraphs 3(a) or (b) of the Emergencies Act, concerning a "national emergency" had been met; and
>
> (c) the situation could not "be effectively dealt with under any other law of Canada", as required by section 3 of the Emergencies Act, provided that
>
> (d) these documents shall be deposited with the Office of the Law Clerk and Parliamentary Counsel, in both official languages, within 14 days;
>
> (e) a copy of the documents shall also be deposited with the Office of the Law Clerk and Parliamentary Counsel, in both official languages, within 14 days, with any proposed redaction of information which, in the government's opinion, could reasonably be expected to compromise national security;
>
> (f) the Office of the Law Clerk and Parliamentary Counsel shall promptly thereafter notify the Speaker, who shall forthwith inform the Senate or the House, as the case may be, whether it is satisfied the requested documents were produced as ordered, provided that the Speaker shall, if the Senate or the House, as the case may be, stands adjourned, lay the opinion of the Office of the Law Clerk and Parliamentary Counsel upon the Table pursuant to Senate Rule 14-1(6) or House Standing Order 32(1), as the case may be;

● (0945)

> (g) the Office of the Law Clerk and [the] Parliamentary Counsel shall transmit to the Public Order Emergency Commission a copy of the unredacted documents, referred to in paragraph (d), forthwith upon receipt;
>
> (h) the Speaker shall cause the documents, redacted under paragraph (e), to be laid upon the Table at the next earliest opportunity, and, after being tabled, they shall stand referred to the Special Joint Committee on the Declaration of Emergency;
>
> (i) representatives of the Office of the Law Clerk and Parliamentary Counsel shall discuss with the committee, at an in camera meeting, to be held within [a] month of the redacted documents being tabled, whether it agrees with the redactions proposed by the government; and
>
> (j) the committee may, after hearing from the Office of the Law Clerk and Parliamentary Counsel, accept the proposed redactions, or reject some or all of the proposed redactions and request the production of those unredacted documents in the manner to be determined by the Special Joint Committee;
>
> That the Clerk be directed to notify the Public Order Emergency Commission of the adoption of this Order; and
>
> That a message be sent to the other House to acquaint it accordingly.

You can see by that information, Mr. Chair, that there's certainly some precedent to allow for documents to be presented to committees, even if they are behind cabinet confidences.

Now, as I move forward, I think it's important to get a sense of what the response has been. As we move on, I'm going to get into the actual poignant points of the decision from Justice Mosley, but I want to go through some of the comments in the media in response. I'm just going to pick out a few of the comment points that have come through.

Paul Wells writes, on the 23rd of January, the day of the actual decision by the Federal Court:

> There will be all kinds of claptrap written about this decision, some of it from people who believe themselves to be friends of this government, so it's worth emphasizing that this challenge succeeded thanks in part to good lawyering from career civil-liberties defenders who went to fancy law schools and cannot be dismissed, as this government clearly dismisses far too many of its critics, as tools of Donald Trump.

He goes on to say:

> My opinion on all of this is pretty far from any of the overheated schools of thought that usually debate the Convoy and its aftermath. I didn't really much like the Convoy, and less as it went on. But I believe it could be addressed. And to a great extent it was addressed, using ordinary law and ordinary police power. I think Trudeau's government, operating under extraordinary pressure and particularly under heavy commercial pressure from the United States, decided to break the emergency glass and grab the little hammer. I didn't like the precedent that set, so I'm happier with Mosley's ruling than with—

● (0950)

Ms. Jennifer O'Connell (Pickering—Uxbridge, Lib.): I have a point of order, Mr. Chair.

Put a finger where you're reading from to get back to it.

Mr. Glen Motz: Pardon me?

Ms. Jennifer O'Connell: Put a finger where you're reading from to get back to it.

Mr. Glen Motz: Thank you.

Ms. Jennifer O'Connell: Mr. Chair, I think it's important to point out that while Mr. Motz reads from newspaper articles, we have witnesses waiting to appear on the issue of cybersecurity who have taken the time out of their busy day to come and provide their expertise while Mr. Motz proves his reading skills and simply reads newspapers.

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

Mr. Motz, can you continue, please?

Mr. Glen Motz: Thank you very kindly.

The Chair: Try to keep it as it applies as much possible to the—

Mr. Ron McKinnon: I have another point of order.

I would also request that even though Mr. Motz is reading from articles, he should give due recognition of the titles of the people—

Mr. Glen Motz: I did. I'm reading what the authors wrote. I'm not going to change what they wrote.

Mr. Ron McKinnon: Well, I think you could interject some respect there.

Thank you.

Mr. Glen Motz: Unfortunately, that's what happens when you interject yourself.... I won't get into that.

The Chair: Let's not get into a debate, Mr. Motz.

Mr. Glen Motz: Thank you, Mr. Chair.

The Chair: Please make sure that you identify the articles and the authors.

Go ahead, Mr. Shipley.

Mr. Doug Shipley (Barrie—Springwater—Oro-Medonte, CPC): I have a point of order.

I'm sorry: He was reading a quote. Do you, Chair, expect him to change the quote?

Ms. Jennifer O'Connell: I have a point of order—

The Chair: Hold on, guys.

Mr. Shipley, I just said to Mr. Motz that he should just read the article and identify the paper that it's coming from and the author. That's it.

Mr. Doug Shipley: We're good with that. Okay. He doesn't have to change the titles.

Thank you.

The Chair: Thank you.

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

The Chair: Go ahead, Mr. Julian.

Mr. Peter Julian: Thank you, Mr. Chair.

We have spent thousands of dollars to get these witnesses here. This is an important bill on cybersecurity. I'm wondering if you could ask Mr. Motz to pause the debate and allow the witnesses to provide that testimony. We can come back to the debate at the next meeting. I don't understand why we would take thousands of dollars of taxpayers' money to invite witnesses to testify and then not hear them on an important cybersecurity bill.

The Chair: Thank you, Mr. Julian.

Mr. Motz, you heard the question from Mr. Julian. Could you...?

Mr. Glen Motz: Yes.

I know he's an NDP colleague, but I actually like Peter. If we could adjourn this debate on this motion, and in the time that we have remaining go to Bill C-26, I'm fine with honouring his request.

● (0955)

Ms. Jennifer O'Connell: He moved a motion to adjourn. Let's call it.

Mr. Glen Motz: No, I did not.

Ms. Jennifer O'Connell: Yes. You just did.

Mr. Glen Motz: I said to suspend this conversation.

Ms. Jennifer O'Connell: You said “adjourn.”

Mr. Glen Motz: I did not move a motion. I'm agreeing with him to get to Bill C-26 for the remainder of our meeting today and I'll pick this up at the next meeting.

Thank you very much.

The Chair: Is it the agreement of the committee?

Some hon. members: Agreed.

The Chair: Okay. We'll go to our witnesses. We'll suspend for two minutes while our witnesses get in place.

● (0955)

_____(Pause)_____

● (0955)

The Chair: I call this meeting back to order.

I would like to welcome our second panel of witnesses.

By video conference, from the Canadian Constitution Foundation, we have Joanna Baron from Toronto. She is the executive director. In person, from the Centre for International Governance Innovation, we have Aaron Shull, managing director and general counsel, and from the Privacy and Access Council of Canada, we have Sharon Polsky, president. Welcome.

If whoever wants to start could do an introduction, that would be appreciated.

Ms. Joanna Baron (Executive Director, Canadian Constitution Foundation): Good morning.

My name is Joanna Baron. I'm executive director of the Canadian Constitution Foundation. I am happy that I didn't cost taxpayers thousands of dollars to appear by video conference this morning.

Shall I go into my remarks?

The Chair: Yes, please.

Ms. Joanna Baron: Thank you very much.

I'm here, of course, to address Bill C-26. This is a bill that grants the government sweeping new powers. We have concerns that there is no accompanying regime of checks and balances to safeguard rights. I'd like to speak to some of these points on behalf of a legal charity dedicated to defending fundamental freedoms.

As drafted, the bill threatens to undermine our privacy rights as well as the principles of accountability and due process, which form the bedrock of our democracy. The powers proposed by the bill risk impacts on the charter-protected rights of privacy, freedom of expression, equality and the right against unreasonable search and seizure.

Of course we understand that cybersecurity is a huge imperative. We do not believe or accept that cybersecurity ought to come at the cost of civil liberties.

The proposals that the CCF is pleased to sign on to, along with other civil liberties groups, align with other international approaches such as those taken by our partners in the U.K. and Australia, both of which place a far greater emphasis on proportionality, accountability and privacy rights.

The issues raised by this bill apply to Canadians in our everyday lives. For example, under the bill, if someone's device or smart appliance were hacked and used to target a government website, the federal government could order their telecom service to be shut off in an order that could be kept secret from the public. The affected person or business would never even know that it was the government that ordered their service disconnected.

The bill also does not provide a mechanism for restoring service to individuals or businesses who lose it, which obviously interferes with basic livelihood in 2024.

I'll speak to a few substantive issues.

The bill raises the spectre of new and pervasive surveillance obligations. It empowers the government to secretly order telecom providers to “to do anything, or refrain from doing anything” . This opens the door to new obligations on private companies as well as to other risks of encryption standards, which pose an inconsistency with privacy rights.

There are no guardrails in the bill. The bill lacks proportionality, privacy or other checks that might constrain abuse of the new powers it grants the government. These are powers that are backed by steep fines and even potential imprisonment for non-compliance.

We propose adding a proportionality test and an obligation to consult with experts to help ensure that the minister does not use small problems to justify disproportionate actions. Adding a proportionality requirement will bring Bill C-26 more in line with our counterparts in Australia and the U.K.

Next, I'd like to talk about some privacy concerns.

The bill empowers the government to collect broad categories of information from operators. It may be enabled to obtain identifiable personal data, which can be distributed to domestic and other, perhaps foreign, organizations. The bill does not have a mechanism for limiting what Ottawa can do with the data it collects, nor does it specify periods for data retention or measures to deal with possible negligence with people's data.

We find that the secrecy provisions undermine accountability and due process. The bill enables the government to shroud its orders in secrecy with no mandatory public reporting requirements. Of course we understand the need for confidentiality, but the public ought to have a sense of how these powers are being exercised, and to what effect, if our elected decision-makers are to be held to account.

This excessive secrecy has clear implications for the freedom of expression rights of the public as well as the media, as protected by section 2(b) of the charter.

Finally, I'd like to speak about the use of secret evidence in court, which is authorized by Bill C-26.

Even if security orders made under the act are subject to judicial review, the bill could restrict applicants' access to evidence, which is a violation of the rules of natural justice. The minister is permitted to request that some of the government's evidence be heard in camera solely by the judge. The applicant for the review is not permitted to access information that—this is from the statute—“in the judge’s opinion...would be injurious to international relations”—

● (1000)

The Chair: Thank you, Ms. Baron. We're scooting over time here, and we're running short overall.

Ms. Joanna Baron: I apologize.

The Chair: No, that's fine.

We'll go to Ms. Polsky or Mr. Shull or whoever wishes to go next, please.

● (1005)

Mr. Aaron Shull (Managing Director and General Counsel, Centre for International Governance Innovation): Thank you, Mr. Chair.

Members of the standing committee, ladies and gentlemen, I thought what I could do with my brief time today is offer you a little bit of advice and make you a good faith offer. What I'm going to do is maybe make a general observation.

I think the bill is pretty good as it stands and a pretty good step forward. Obviously there is a lot of advice in terms of what has been provided to this committee, and most of it's really good. I'm not going to do a clause-by-clause take of the bill, but I'm going to use a quote from former U.S. defense secretary Robert McNamara, which is "Never answer the question that is asked of you. Answer the question that you wished had been asked of you."

I wish I was asked the question that the honourable member from Saint-Jeanasked earlier this week, actually, concerning incentives around cybersecurity. The advice I'm going to offer to you is that I think you can make a change to this bill that will do a lot of good. It's to create a tax incentive for small and medium-sized enterprises to implement something called the baseline controls, or the cyber-safe standard. Why this matters is that SMEs are 98% of our economy, and they appear nowhere in this bill.

Also, the cyber-safe standard that was put in place by the CSE is pretty good. If most SMEs put in place those controls, chances are they'd be just fine, because what I can tell you about cybercriminals is that they're lazy, and that there's another sucker just down the street. If we harden our SMEs through these controls, chances are they'll be just fine.

If we put in place a tax incentive to encourage cybersecurity compliance rather than a hammer to punish non-compliance, I think that would get us far away toward doing so. Obviously the reason behind this is that it can promote participation. It can strengthen national security and create tons of economic advantages, because fewer companies in our supply chain would be down, so the taxable revenue would likely be up at the end of the year.

Now, I appreciate that this bill has to get through the House of Commons, and while I'm non-partisan, I appreciate you all have a job to do. I think partisan politics are a healthy part of our democracy, so I encourage the types of discussions that you're all having. However, I am thinking through the politics of it. The Liberal Party would see it aligned with their innovation and economic development agenda. The Conservative Party would see the fiscal responsibility and the national security aspects of what I'm talking about, I think, to be favourable. The New Democratic Party would appreciate the support for our core communities, which are built on SMEs. The Bloc would recognize the protection that this extends to Quebec's economic interests; and the Green Party, I think, would endorse this sustainable approach to securing our digital future.

That's my advice—put a tax credit in for SMEs to put in place the cyber-safe standard.

My offer to you is this: I work at one of the best think tanks in the world. If it's of service to this committee, I'm happy to provide draft language of what I think that could look like. Then I'm happy to convene some of our experts to offer further advice or answer any questions that you have. I think you all have a tough job to do.

The last think I'll say, and then I'll be quiet, Mr. Chair, is probably something you all don't hear enough—thank you for your work. Being a member of Parliament is a tough job. It's demanding, and I don't think most people appreciate how hard you all work.

Notwithstanding the politics, my job is to provide advice on policy without politics, and I hope I've done so. Thank you, Mr. Chair.

The Chair: Thank you, Mr. Shull. I appreciate your comments.

We have Ms. Polsky. Go ahead, please.

Ms. Sharon Polsky (President, Privacy and Access Council of Canada): Thank you very much.

Thank you for inviting me to appear on behalf of the Privacy and Access Council of Canada, an independent, non-profit, non-partisan organization that is not funded by government or industry.

Our members, like everybody in this room and the rest of us who use the Internet, can thank Sir Tim Berners-Lee, whose brainchild became the web we know and love—or love to hate. It's a source of news and views, ones that might be at odds with our own, where we can freely find and share information. It is that very freedom that is now under threat, with democratic governments leading the charge.

Canada's government has said that controlling Internet content is vital to protect democracy and social cohesion and has pointed to the January 6 insurrection in Washington, D.C., which by all accounts was organized online. It has crafted several laws to protect us from potential danger.

Of course, Bill C-26, which is one of them, is to provide a framework for the protection of the critical cyber-systems that really are vital to national security and public safety. Bill C-26 allows Canada to take strong action against threats to the security of its telecommunications sector, but also so very much more. To start, it applies to six critical infrastructure sectors, but that is just the start.

As referenced by Ms. Baron, any service, system and class of operator can be designated as a vital service or system. Every company is at risk of falling under the bill's sweeping powers, and being required to do, or refrain from doing, anything they are ordered to do, such as create back doors and break encryption or go on a fishing expedition to find whatever information the government wants—including what's in your emails and your texts, your cellphone and vehicle locations, purchaser or purchasing information, or donor details—so that it can make an order. The order will be secret until the target realizes something is up, because just disclosing the existence of orders made under this bill will be illegal.

With a nod to eastern European regimes 100 years ago, this bill lets the minister compel any person, under threat of punitive fines, to provide any information, within any time, subject to any conditions that might be specified, or authorize anyone to enter and seize any information and systems, but without the checks and balances that are a mainstay of democracy.

Notably, there is no requirement for those timelines or conditions to even be achievable. The bill does not limit compelled information to corporate or operational. There is reason for that, but it provides a dragnet for unsupervised collection, use, and broad disclosure of personal information, threatening individuals' privacy and making it impossible for organizations to comply with privacy laws or provide accurate responses to access to information requests.

Sadly, the bill makes no mention of consulting the Privacy Commissioner to ensure that personal information is adequately safeguarded. While the bill specifies that corporate information may be designated as confidential, it offers no such consideration for personal information. The bill's vague language opens the door to telcos and ISPs being given unreasonable orders to spy on or deny service to any person, company or group whose conduct or commentary the government deems a threat to the security of Canada.

To encourage voluntary compliance, the penalties are steep and unaffordable by all but the largest of organizations. In the manner of the Salem witch hunts, anyone who fails to pay the penalty or dispute the notice, and anyone who does pay, is “deemed to have committed the violation”. Either way, businesses pass their costs and fines along to consumers, so penalties will reduce competition by eliminating organizations that can't afford the fines. Consumers will end up covering the penalties paid by those that are large enough to afford them.

Incentives like that can be a strong motivator. Some would call it coercive, since companies and people eager to retain their hard-earned money and avoid fines are easily nudged to simply do as they're told, while the government will be shielded from claims of overreach, since it won't be the government but the organizations voluntarily complying with orders that will be the ones violating charter-protected freedoms.

In our view, allowing Bill C-26 to become law in its current form, and granting elected representatives and unelected bureaucrats overly broad and unaccountable authority, will further undermine public trust in the government, public service and federal institutions, and further foster a technocracy built on Sir Tim Berners-Lee's brainchild. Canadians deserve better.

We would be happy to help by providing additional information and suggested amendments.

● (1010)

The Chair: Thank you, Ms. Polsky. You are right on time.

We will go right into questions.

Members, with the time we have, you will have four minutes each. There'll be a hard stop on your questions.

We're starting with Mr. Shipley, please.

Mr. Doug Shipley: Thank you, Chair.

I would like to start with Ms. Baron. I want to give you an opportunity to finish your opening remarks here first.

Ms. Joanna Baron: I really appreciate that.

What I wanted to mention is that I think it's important that the bill be amended to allow procedure for special security-cleared advocates, which are used of course in the immigration context. We've actually suggested they should be allowed in the Emergencies Act context, just to follow up on a conversation today.

A provision for security-cleared advocates is an imperfect solution for due process, but they would be allowed to test the evidence brought forward in these secret hearings. These advocates would have top secret clearance to allow a minimal check procedurally on applicants' rights.

Mr. Doug Shipley: Thank you.

I was scribbling down some notes during your opening remarks as well as I could. You mentioned service being cut off. Could you expand on that? I didn't quite get all of that. Was it individual service, such as their cell service, or was it companies? What did you mean by that? Can you expand on those points?

Ms. Joanna Baron: Since the bill allows the minister to do anything or to prevent a person from doing anything, the understanding is that this could allow the government to issue an order to a telecom provider to cut off the Internet service of companies or of private individuals if, for example, they believed or even had evidence that their service was compromised or was being used to target a government website or was being used for some other improper procedure.

● (1015)

Mr. Doug Shipley: Thank you.

You also mentioned that you had some surveillance concerns and said there was some need for guardrails against abuse of these new powers.

Can you expand on what those surveillance concerns are?

Ms. Joanna Baron: Yes.

Again, the bill empowers the government to secretly order telecoms to do anything or refrain from doing anything, which raises the clear spectre of imposing surveillance obligations on private companies as well as possibly weakened encryption standards.

Mr. Doug Shipley: Thank you.

I would like to ask Ms. Polsky something.

You mentioned that this applies to six critical infrastructure areas. We have had some other people saying that this is not enough. Following on your opening remarks, do you figure that six is too few or too many?

Ms. Sharon Polsky: I think as it is now and actually as the critical infrastructure categories were defined just after September 11, anything could be construed to fall under one or more of those categories. They are very broad and not really very well defined.

Anything has economic value. Many things have implications for transport. I think it's not a matter of defining the categories so much as looking at what the threats are and what the implications of the legislation as drafted could be.

Mr. Doug Shipley: Thank you.

I have a quick follow-up.

You mentioned about the minister's control too. I believe you said there was permission for them to enter and seize and that there need to be some checks and balances. Did you want to expand on that statement?

Ms. Sharon Polsky: Certainly.

From our understanding, the legislation allows for anybody to be appointed as an inspector. That person would have the power to enter any premises, short of a residence, without a warrant. They can seize anything. There is no limit. There's no requirement that it be related to a certain complaint or concern. It's open-ended.

The Chair: Thank you.

We're going to move onto Mr. Schiefke, please.

Mr. Peter Schiefke: Thank you very much, Mr. Chair. I would like to add my thanks to the witnesses for being here today in person and virtually.

Mr. Shull, I want to start with you.

First, thank you for using your opening remarks to provide solutions and ideas. In fact, that's why we're here. We're looking for ways to improve on Bill C-26 and ensure that we have a bill that protects Canadians while also ensuring that we protect their constitutional rights.

My first question for you is with regard to mandatory reporting for affected sectors and when there's a cybersecurity incident. Why is it important that we have that mandatory reporting?

Mr. Aaron Shull: There are two or three different reasons.

The first is that it allows CSE or the Cyber Centre to take action.

The problem is that many of the critical sectors are targeted by state-level actors, and I've got news for you: If someone swipes in with a military badge on the other side and goes after a civilian structure, they're going to get in.

You can take a briefing from CSE on this: Adversarial states are loading up our critical infrastructure with malware. They are pre-positioning in the case of a conflict. That's bad. To the extent that we can increase the efficacy of government agencies on those networks, we should, against when something bad happens.

The second point is that it increases visibility across the network.

Third, it allows for the spreading of best practices. If there's an exploit that's used, let's make sure it only gets used once.

Mr. Peter Schiefke: Thank you for that.

The next question I'm going to ask is for Ms. Polsky and Ms. Baron. I'll ask each of you for responses. If you could keep them quick, that would be great. I only have four minutes.

The first question is whether you would support the inclusion of a reasonableness standard for both cybersecurity directions and telecommunications systems orders.

I'll start with you, Ms. Polsky.

Ms. Sharon Polsky: The short answer is yes. It needs to be there.

Ms. Joanna Baron: Yes—given that it's a normal, robust reasonableness standard, absolutely.

Mr. Peter Schiefke: Thank you.

The next question for both of you is whether you would support clarifying the scope of the ministerial order-making power by changing wording found in the bill from “do anything” to “do a thing specified in the order”.

I'll start with you, Ms. Polsky.

It currently states, “do anything”. Would you support a change to “do a thing that is specified in the order itself”?

Ms. Sharon Polsky: To suggest “do a thing that is specified in the order”, we could hope that this would limit it. Unfortunately, in my experience and in discussions with law enforcement, with members of the bar and bench and, frankly, some of your colleagues, they admit they don't get it. They don't understand it. I'm talking about technology and artificial intelligence and the implications and unintended consequences of some of the legislation that is being promoted now.

To say “limit it” when the judges don't have to have any education about these matters.... They can be presented with whatever you want and be bamboozled, really and truly.

● (1020)

Mr. Peter Schiefke: Ms. Baron, would you comment?

Ms. Joanna Baron: I would say that it also sounds like it would not build in any concept of proportionality to do anything specified in the order. I like it more than “do anything” or “refrain from doing anything”, but it sounds like it could also be quite unmoored.

Mr. Peter Schiefke: The chair looks very generous today, so I'm going to ask one more question, if I may. Would you support establishing a list of factors that must be considered before an order can be issued?

I'll turn it over to you, Ms. Polsky.

Ms. Sharon Polsky: Yes, but who's going to create that list, and what are their motives?

Mr. Peter Schiefke: Thank you.

Ms. Baron.

Ms. Joanna Baron: Yes, assuming that broad consultation of stakeholders will precede that.

Mr. Peter Schiefke: Thank you both.

Thank you, Chair.

The Chair: Thank you.

Ms. Michaud is next.

[*Translation*]

Ms. Kristina Michaud: Thank you, Mr. Chair.

Thank you to the witnesses for giving their valuable time to be here with us on this study.

Mr. Shull, I liked your opening remarks. You cut to the chase, as they say. I appreciate that.

I've spoken to a few groups outside this committee, and most of them think that Bill C-26 is a great step forward. Overall, they feel it's a good thing.

However, they have two key criticisms.

First, they are criticizing the fact that government is being given a great deal of power. This bill gives certain ministers the freedom to issue orders in council and interim orders, but it doesn't necessarily provide any details on that. We don't know how that might look.

Second, they find the sanctions too severe. You talked about tax incentives. If I'm not mistaken, rather than imposing sanctions, you're proposing that tax benefits or incentives be put in place for companies that would be required to set up a cybersecurity framework, for example. You look at the issue from another angle: We should make participation a little more voluntary, while ensuring compliance and making sure the information exchanged is protected.

Can you tell us a little more about that?

[*English*]

Mr. Aaron Shull: Mr. Chair, that's a great question.

What I'm talking about is small and medium-sized enterprises and protecting them, as opposed to critical infrastructure providers that are defined in the act. It allows you to take federal jurisdiction by using your tax power to protect the companies that make up the bulk of our economy. Critical infrastructure is super-important, because...well, it's critical, and if it goes down, people are going to know about it.

The problem we have is that many companies that are not critical infrastructure providers are being robbed through ransomware. Enough is enough, and a tax credit would provide that incentive.

It's a good question, Mr. Chair.

[*Translation*]

Ms. Kristina Michaud: What would you suggest: Should we replace the sanctions with tax incentives or leave the sanctions in place?

[*English*]

Mr. Aaron Shull: I'd leave the sanctions in place. Your point is a good one. There's almost an internal inconsistency in the bill, because they say that the administrative monetary penalties are to encourage compliance, but those penalties can be up to $15 million a day. This is not meant to be punitive, but they can fine you $15 million a day. It sounds pretty punitive when you think about it that way.

All that is to say I would leave the penalty structure in place as currently defined for critical infrastructure providers. I would add on the incentive structure for small and medium-sized enterprises that do not fall within the statutory definition of critical infrastructure providers.

[*Translation*]

Ms. Kristina Michaud: You're talking about small- and medium-sized enterprises. Some are afraid of the additional paperwork it might involve. As we know, cybersecurity is evolving very rapidly. If they have an incident, for example, they have to meet the deadlines for sharing the information with the government. This is all in addition to the security and confidentiality of the information. Businesses have concerns about that. However, I haven't been able to get many answers from the government to reassure them.

What do you think we should say to those companies? Are their concerns justified?

[*English*]

Mr. Aaron Shull: Again, it's a great question, Mr. Chair.

I'm personally a bit unconvinced by the regulatory burden argument. All the bill is saying is that if you work in critical infrastructure, you need to have a plan in place. You need to have a cybersecurity plan. The opposite of that is not having one, which is unsatisfactory. Then, if something happens, they have to report it. If they don't comply with that requirement, there's a penalty for not doing so.

While I appreciate that there is some regulatory burden, there is a lot of regulatory burden on businesses all over the place. In this one, you're providing a critical function in the economy and you need to have your crash helmet on. If not, there are consequences, because the role you're playing is just too important for it to be left alone.

● (1025)

[*Translation*]

Ms. Kristina Michaud: Thank you.

[*English*]

The Chair: Thank you, Ms. Michaud.

Our final questioner is Mr. Julian.

Mr. Doug Shipley: Mr. Chair, could I interrupt?

I'm sorry, Mr. Julian. It's a very quick point of order.

I know that as members of Parliament, we're away from friends and family a lot, so I want to take this opportunity to wish Ms. Michaud a happy birthday today. I know she's here with us and I want to say happy birthday in public.

The Chair: Happy birthday.

Mr. Julian, please continue.

A voice: As a special gift, we won't sing.

Mr. Peter Julian: I'm going to take my four minutes. At the end, I think we should be singing to Madame Michaud. I'll hold that until four minutes from now.

Mr. Chair, I think we all had questions for Mr. Neiman and Mr. Holland, so I'm hoping we can have them back at committee. I know that's an additional expense because of the Conservative filibuster, but it's critical to get this legislation right. I appreciate the witnesses who've been able to answer our brief questions. We have many more questions to ask.

I want to come to Ms. Polsky and Ms. Baron.

You're part of the coalition that provided an excellent joint submission that talks about recommended remedies. There are 16 recommendations on how this committee can improve the legislation. They touch on a number of areas: “restraining ministerial powers”; “protecting confidential personal and business information”; “maximizing transparency”; “allowing special advocates to protect the public interest”; and “enhancing accountability for the [Communications Security Establishment]”.

Of the 16 recommendations, which are the most critical ones that we need to consider, or are they all part of a package—something vital to make sure this legislation does what it's intended to do but does it in a transparent way?

I'll start with Ms. Polsky.

Ms. Sharon Polsky: Thank you. I think you hit on the key, transparency.

It's not a matter of one being more or less important than the other. They all have to be present for the legislation to be reasonable, fair and balanced, and for it to deserve the public's trust. They all have to be incorporated into legislation. It's as simple as that. Without all those components, there aren't the balance, reasonableness and proportionality that have to be there.

Mr. Peter Julian: What I hear you saying is that the 16 recommendations are all interlinked. Without all of them, you and the coalition would not be prepared to support the legislation.

Ms. Sharon Polsky: The premise of the legislation is important, but there's an old saying: “You can't lose fast enough.” I think it's incumbent on us all to take the time and do it right—not do it over or have people suffer as a result of legislation that could have been done right in the first instance but is now perhaps being rushed through.

Mr. Peter Julian: Thank you for that.

Mr. Baron, I have the same question for you.

Of the 16 recommendations, which are the ones you feel are most critical to get right in this legislation?

Ms. Joanna Baron: We've been discussing these various remedies for several years now—the civil liberties groups—and I agree with Ms. Polsky that I can't pick a favourite child. I would say that all the recommendations, overarching, have the same purpose of proportionality, privacy and checks on the exercise of unconstrained power. They go together as a package.

I couldn't single one out. If I did, it would be one that I have particular expertise in, but that doesn't mean it's the most important for the goal of cybersecurity, which we all agree is an absolute imperative.

Mr. Peter Julian: Thank you. My question was more on what is absolutely critical. Where is there a line in the sand in terms of ensuring this legislation is right? What I hear both of you saying is that all of the recommendations are critical. I thank you for that.

My four minutes are up, but I think I would join the rest of the members in singing *Happy Birthday* to Ms. Michaud.

Some hon. members: Hear, hear!

● (1030)

The Chair: Thank you, committee.

Thank you, witnesses. We appreciate your time. I will mention to the witnesses that there may be some additional questions, because your time was limited. If there is anything else you would like to submit to the committee, we'd appreciate it.

Go ahead, Mr. McKinnon.

Mr. Ron McKinnon: Mr. Chair, I would like to underscore that, but I also would like to invite the witnesses to augment whatever submissions they've done with any specific amendments that they would like to suggest. I think that would be most helpful going forward.

The Chair: Thank you.

The meeting is adjourned.

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