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# **Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness**

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**Wednesday, November 3, 2004**

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**Chair**

**The Honourable Paul DeVillers**

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## Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness

Wednesday, November 3, 2004

• (1540)

[English]

**The Chair (Hon. Paul DeVillers (Simcoe North, Lib.)):** I would like to call the meeting to order.

I understand we have people here in the room from the Teachers Institute, so I just want to welcome everyone here.

This is a meeting of the Standing Committee on Justice, Human Rights, Public Safety, and Emergency Preparedness, and we're going to be hearing evidence from the Privacy Commissioner of Canada, Jennifer Stoddart, and her office in consideration of Bill C-6.

[Translation]

Please go ahead, Ms. Stoddart. I understand that you have a presentation to make. I would ask that you first introduce your colleagues who have come along with you today.

[English]

**Ms. Jennifer Stoddart (Privacy Commissioner, Office of the Privacy Commissioner of Canada):** Thank you, Mr. Chairman, and thank you for inviting us today. With me is Assistant Commissioner Raymond D'Aoust, who is responsible for the Privacy Act, and also with me today is Assistant Commissioner Heather Black, who is responsible for PIPEDA—our Personal Information Protection and Electronic Documents Act—which we also administer.

• (1545)

**The Chair:** Thank you.

**Ms. Jennifer Stoddart:** Mr. Chairman, I'd like to make a few prepared remarks, and then I and the other commissioners would be pleased to answer your questions. We have also distributed, I believe, a sheet with our suggestions for amendments at this point in your deliberations.

Specifically, today I want to speak about the principles that underline the recommendations I made to this committee in a letter to the chairman dealing with the legislation. These guiding principles are the importance of ministerial oversight and the need for clear accountability to Parliament. I've also written to the Honourable Anne MacLellan, the Minister of Public Safety and Emergency Preparedness, setting out my views on the bill.

As you know, this bill was introduced in the House of Commons about two weeks ago, so we've had very little time to consider this legislation. However, we are, in all due respect for the committee, going to make some suggestions for change today.

[Translation]

Firstly, Mr. Chair, I should point out that our primary interest in this legislation is in the provisions pertaining to the sharing of personal information. We appreciate that if bodies responsible for emergency preparedness and national security do not share personal information, it can undermine their ability to fulfil their mandate. This point came across clearly in the March 2004 report by the Auditor General, Ms. Fraser.

However, the unauthorized sharing of personal information between different agencies can undermine the data protection principles which are at the very heart of the Privacy Act and which the Supreme Court of Canada deems worthy of constitutional protection.

[English]

So it's important that Bill C-6, which is presently before you, affirm the importance of privacy protection in the operation of this new department as well as the central role of the Privacy Act.

[Translation]

I had begun to briefly explain why the bill which is before you, and which affirms the importance of privacy protection, must recognize the central role of the Privacy Act.

[English]

As currently drafted, the bill sets out legislative authority for the minister to exercise national leadership relating to public safety, including coordinating activities, setting priorities, and facilitating information sharing.

It is equally important, in my view, that Bill C-6 provide for ministerial oversight responsibility for compliance with the federal privacy protection regime, including, of course, the Privacy Act, but also for example meeting the policy requirements regarding privacy impact assessments and data matching.

[Translation]

We also believe that it would be easier for the department to respect accountability and reporting requirements if a senior official was responsible for ensuring complete and consistent compliance with privacy protection principles across this new portfolio.

The existence of such an official, referred to as the Chief Privacy Officer, would strengthen fair practice regarding personal information. An administrative oversight body would form a synergy with the ministerial oversight rule, and would also strengthen Parliament's oversight rule which is carried out by the Office of the Privacy Commissioner of Canada, in other words my office.

[English]

Another suggestion that I made to this committee in a letter to you, Mr. Chairman, as well as to Minister McLellan, is that the minister be required to report annually to Parliament on activities undertaken by her department to ensure effective and consistent management in protection of personal information in accordance with privacy protection laws and policies.

I firmly believe that ministerial commitment to report annually to Parliament would be a welcome sign to Canadians preoccupied by the effects on privacy of national security initiatives. Furthermore, such a commitment would be of great benefit to the new department, as it would facilitate a more effective and economical sharing of information.

Since presenting our views on this legislation, my officials and I met with senior officials from Public Safety and Emergency Preparedness Canada to discuss these matters. During this meeting they raised some concerns with us regarding our recommended amendments to the bill. We appreciate very much the open and frank discussion we had with these officials only yesterday. In particular, I would like to commend the Honourable Minister Anne McLellan and her officials in accepting to work with us on ways to improve their annual reports to Parliament on privacy. I can elaborate on that later if you would like, Mr. Chairman.

I want to emphasize, however, that new and improved administrative measures aimed at better promoting and protecting privacy do not have the same weight or authority as legislative mandated measures. That is why my office is firmly of the view that this committee, and through you, Parliament as a whole, should take a careful look at this legislation to consider what type of amendment may be made to reinforce ministerial oversight and accountability to Parliament for privacy matters.

At the very least, we recommend that the existing clause 5 be renumbered as subclause 5(1) and the following new subclause (2) be added.... I believe you have that before you, Mr. Chair, in both official languages.

• (1550)

[Translation]

**The Chair:** Do you have copies of it?

[English]

**Ms. Jennifer Stoddart:** I would like to point out that our suggested wording for the new subclause 5(2) is slightly different from the wording we originally submitted to this committee in my letter to you, Mr. Chairman. At line 1 of the subclause we have made a substitution of a few words, and we put it in bold type.

[Translation]

It's in bold type in both versions.

[English]

We have replaced "The Minister shall ensure effective and consistent management" with the words "The Minister shall exercise leadership relating to effective and consistent management".

[Translation]

5(2) The minister shall exercise leadership relating to effective and consistent management and protection of personal information...

[English]

This wording mirrors, I would like to point out, the existing wording of subclause 4(2) of the legislation, which states that "The Minister shall, at the national level, exercise leadership"—that's the concept, exercising leadership—"relating to public safety and emergency preparedness."

Given that the sharing of personal information of Canadians will be at the core of what this new department will do, we consider it important that the legislation provide for a clear ministerial role in promoting and protecting privacy rights.

[Translation]

In conclusion, I should just like to point out that this new department constitutes a Canadian equivalent to either the United States Department of Homeland Security or the various ministries of the interior which have long existed in European countries. It would have huge powers in terms of collecting and using personal information. We believe, therefore, that privacy protection must play a more important role in this new department.

I will leave it there, Mr. Chair. I would be delighted to answer any questions that you may have.

**The Chair:** Thank you very much, Ms. Stoddart.

[English]

We'll start with a seven-minute round.

Mr. Toews.

**Mr. Vic Toews (Provencher, CPC):** Thank you very much.

Madam Privacy Commissioner, I appreciate your attendance here and the attendance of your staff on what I consider a very important matter. I thank you for your suggestion.

This issue relates to a much broader issue of ministerial accountability and responsibility that I, as a member of the public accounts committee in the last Parliament, had the opportunity to examine. We heard evidence with respect to this particular issue of exactly what a minister's responsibility should be when he or she carries out statutory responsibilities. As you know, most ministers would shy away from the responsibility that says "shall". Even if you put in the word "may", it just doesn't make as much sense as your positive direction that the minister is to act in a leadership role.

I'm a little concerned. I don't know how the government members feel about this particular issue. I know it's a broader issue, and I don't want to tie down a minister specifically on this kind of an issue. I'm concerned about the minister exercising leadership. But I'm wondering whether this shouldn't be part of a broader exercise that we should be conducting as a government so that whenever a minister disappears and a new minister comes onto the scene, that minister can't say, "Well, it was the past minister; I am the new minister." We see that kind of problem developing.

Let's assume for a moment we accept your words. They're consistent, you say, with other parts of the act. How do you see this will enhance ministerial responsibility and accountability beyond what we expect of ministers, whether it's in statutory form or otherwise?

**Ms. Jennifer Stoddart:** Thank you.

I don't pretend to the expertise in the exact nuances of ministerial authority and responsibility to Parliament that you and other honourable members may have. Our motivation and our intention in suggesting this is to emphasize the importance of privacy protection, to give a clear signal to Canadians when Parliament adopts this very important legislation that there is a particular and specific attention given to this issue. It would seem to me this is simply to highlight that among the other ministerial responsibilities a minister may have, this is one Parliament places particular importance on, given its constitutional status and the fact that this ministry's stock and trade is going to be the exchange of information.

• (1555)

**Mr. Vic Toews:** I share your concern, and I share the belief that a minister does need to act in a decisive manner in terms of leadership, especially on sensitive matters like this. I'm just wondering, and maybe it's an unfair question to you, because it is a little technical. It's a very difficult area of the law, a difficult area of government policy. But what does this add to the bill that isn't already in a minister's responsibilities when he or she takes on the responsibility of carrying out the obligations of a statute or the duties set out in a statute? I simply don't want us to be repeating words that may in fact already exist. Do you feel that it's necessary, in this particular context, to specifically recognize this in this fashion, just to bring it home to the minister and to perhaps make a public statement to the people of Canada that this minister has specifically committed in respect of these obligations?

**Ms. Jennifer Stoddart:** I think your phrasing describes it well: that we are not adding quantitatively to nor changing the constitutional role or the constitutional duties of the minister, to the best of our understanding, but are suggesting that this is the time, this is the context, this is the moment in governmental reorganization to send a clear signal to the Canadian people that the protection of personal information is a special preoccupation with this ministry, among its existing and necessary pre-existing statutory duties.

**Mr. Vic Toews:** May I just have a—?

**The Chair:** You still have two minutes left.

**Mr. Vic Toews:** That's remarkable. Thank you.

I just read in the newspaper about the controversy of the B.C. commissioner. I know this isn't your expertise or my expertise, and it doesn't relate directly to your field, but do you have any comments to

make on that issue with respect to the protection of privacy and information that multinational companies may hold in Canada and their obligation to then share it with other governments? Maybe you could help us a little on that issue.

**Ms. Jennifer Stoddart:** It's a very complex question, Mr. Chair.

The honourable member can read on our website the submission we made this summer to Commissioner Loukidelis's inquiry. We also joined with the commissioner in supporting the recommendations he made to the Government of Canada about examining the conditions and the ways in which personal information circulated within the Government of Canada and developing standard contractual clauses and other such mechanisms when the Government of Canada contracts out the processing of personal information of Canadians. That seemed to us to be a kind of basic privacy protection approach that we could recommend as well.

**Mr. Vic Toews:** It's a complex question, but there are answers that you have suggested, and we can access them?

**Ms. Jennifer Stoddart:** Yes, we have.

**Mr. Vic Toews:** Thank you.

**The Chair:** Thank you, Mr. Toews.

[Translation]

Mr. Ménard, you have seven minutes.

**Mr. Serge Ménard (Marc-Aurèle-Fortin, BQ):** Have you had the opportunity to read the remarks made by the minister in response to the letter that you sent detailing the amendments that you would like to see?

**Ms. Jennifer Stoddart:** Mr. Chair, this afternoon I received a draft letter from Minister McLellan. Perhaps you have the final version.

**Mr. Serge Ménard:** It's dated November 3rd.

• (1600)

**The Chair:** It's a letter that we received and which the clerk has distributed to members of the committee.

**Ms. Jennifer Stoddart:** I don't have it with me, but I did receive the letter.

**Mr. Serge Ménard:** Basically, the minister says that what you are proposing is redundant, given that this obligation is already enshrined in the Privacy Act. What do you have to say about that?

**Ms. Jennifer Stoddart:** That is exactly what she said, and people from her department have expressed that opinion to us. However, I can only repeat what I said to your colleague, our aim is for you to send a clear signal to Canadians, not to stand in the way of existing legislation or Madam Minister's legal responsibilities to the different elements of her portfolio. We are therefore asking that a statement be included in this legislation which creates a mega department within which there will be extensive circulation of personal information. The statement should specify that this responsibility is of a particular importance.

**Mr. Serge Ménard:** However, you also propose to create a public service position to fill this responsibility.

**Ms. Jennifer Stoddart:** In order to ensure that this issue of privacy protection be dealt with, we are indeed suggesting that someone from the department be assigned this responsibility. This is, of course, a ministerial question, I suppose, not a legislative issue.

**Mr. Serge Ménard:** I understand what you are saying, and you will note that I have not yet expressed an opinion on the value of the amendment that you are proposing. I am inclined to think that it is a good amendment. The fact that it is stated elsewhere does not mean that we should not specify that we are creating a mega department which, if operating effectively, will primarily be concerned with exchanging security information. Security information is key to what people like to call the next war of the XXI<sup>st</sup> century. I tend to avoid using the term “war”, given that terrorists, it would seem, are never going to put themselves in a combat situation. However, I am convinced that this information service and the gathering of information will be more useful than repairing submarines or maintaining squadrons.

It is clear to see that to these threats have nothing to do with that style of war. The dangers and terrorist organizations which threaten us, as well as the rest of the civilized world, operate in secret. If they have attacked Paris, they are likely to attack us, we who are neighbours of the United States.

It is clear that the sharing of information is key to our struggle against terrorist movements. For that reason, establishing this department is important. I would however like to have your opinion on what the Minister said. The second argument that she uses in her letter is, essentially, that she finds your suggestion redundant. She argues that she is already bound to this requirement, and that if she were to create such requirement within the department, she would be making information exchange more difficult, which would make her less efficient, when efficiency is so important in the area of security.

**Ms. Jennifer Stoddart:** Are you referring to the last paragraph of the Minister's letter?

**Mr. Serge Ménard:** Yes. If I am not mistaken, I have adequately summed up what she took more words to say to you.

**Ms. Jennifer Stoddart:** OK. We concede that in our original proposal, at paragraph 6(1)d), we had not taken into consideration the fact that the department has to manage and exchange a high volume of both material and personal information.

It goes without saying that our remarks are only applicable to personal information. In that sense, a clarification is required. We want to draw a particular attention to the management not of general, but of personal information. On the second paragraph of page 2 of the letter, it is said that this could change the mandate and role of the Minister with in her portfolio.

Once again, that is not our objective. We do not believe that by adding such a principal the fundamental principals would be changed. For example, it goes without saying that a Minister does not interfere in a matter being hand out by a judiciary or quasi judiciary board. Let us be clear here. We are talking about our general responsibilities. The particular attention given to privacy protection would in no way modify existing legislation.

•(1605)

**Mr. Serge Ménard:** You are making things more complicated. Let me explain something: investigators receive legal training, yet

that's not the type of skill that they require. If we look at how information pertaining to criminal activity is exchanged, we can see that the fight against terrorism is very similar to the fight against organized crime. Exchanging information, or suspicions, is key to the fight against terrorism here. I don't really understand how one can differentiate between objective information and information which isn't of a personal nature. It comes down to identifying individuals, meetings they may have had, their lifestyle, and so forth.

The Minister's criticism is based on the following: if you impose upon her a requirement to have a clearly identified official within her department responsible for ensuring that investigators protect personal information, you will be making it more difficult to exchange personal information. As a result, you will be making the fight against terrorism more difficult, less effective, and slower.

**The Chair:** Mr. Ménard, your time is up.

Could you give a brief answer or comment, Ms. Stoddart?

**Ms. Jennifer Stoddart:** That may well be the opinion of the department or the minister, but, once again, I will reiterate you that is not our intention. Obviously, when dealing with security, or the fight against terrorists or criminals, privacy protection has always got to be reconciled with efficiency requirements. I would reiterate that we have no intention of interfering with existing legislation. The Privacy Act provides exemptions pertaining to national security, justice matters, presumed criminals, etc. I do not understand, therefore, how this could have a destabilizing effect on the work of the department.

[English]

**The Chair:** Thank you, Madame.

Mr. Comartin, for seven minutes.

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

Thank you for coming today, Ms. Stoddart.

I have to say to you that when I first saw the concerns you were raising, I almost felt I was in a surreal situation. The reality is that attempting to protect the privacy of the data of the agencies that are being incorporated into this department is, I think, almost beyond a possibility.

I don't know if you appreciate that during and since the Second World War, we've been exchanging a good deal of the information, including this personal information, with our four traditional allies: the United States, England, Australia, and New Zealand. We've continued to do that right up to the present time. The agencies we're looking at incorporating into this department, in particular CSIS, and to some degree the RCMP, do this all the time with those allies, quite frankly, on a daily basis.

I just saw your change to clause 5. In particular, if you were requiring the minister to exercise leadership—and I'm not sure it changes much—we would be misleading the Canadian public, or maybe we would be creating two systems. One would be in Canada, where we might in fact be able to put into play some meaningful protection around privacy. But we would completely forgo that protection once it crosses international boundaries and ends up in the hands of our traditional allies. I don't know if you're suggesting that we also are going to try to protect the privacy of the individual's information when it goes to our allies.

• (1610)

**Ms. Jennifer Stoddart:** That is certainly beyond the scope of our representations today, and it is of course regulated by other laws.

If you look very carefully at what we're saying, we're simply saying we think we should write into the law a clear message that the minister must exercise an important role to ensure that the legislation that is already in place and has been in place in the federal system for some twenty years is observed throughout this new portfolio, that this is an important value in protecting national security, and that it is done within the existing legislative framework.

This framework has been basically unaltered for twenty years, and it has exceptions that are made for situations like this. Twenty years ago we were exchanging information of different kinds with our allies, and have in fact done so over the years.

When there is an exception that is built into the law, this exception should apply, but the issue is that we must, at the minimum, abide by the protections in the Privacy Act.

**Mr. Joe Comartin:** Going back to my essential point, it means we would have a system of protection of privacy for information that was being exchanged within the departments and agencies in Canada, but we would not have any similar protection once that information left this country and went to our allies.

**Ms. Jennifer Stoddart:** That is beyond the scope of my representation here, Mr. Chair. The Privacy Act speaks to the information that is handled by the Canadian government in Canada. The issue of the extent to and conditions by which the Canadian government shares it with other organizations, to my mind, is not addressed specifically in the Privacy Act. That is another matter I am not addressing today, and it's not addressed by this legislation as I understand it.

**Mr. Joe Comartin:** So the leadership that you would have the minister exercise would be restricted to this country on privacy laws?

**Ms. Jennifer Stoddart:** That's right.

Perhaps Heather Black, our acting general counsel, could help us on this.

**Ms. Heather Black (Assistant Privacy Commissioner of Canada, Office of the Privacy Commissioner of Canada):** Just to clarify what the commissioner is saying, the Privacy Act governs, in totality, what Canadian government departments can do with personal information. If a government department is in fact disclosing personal information outside of Canada, the Privacy Act still governs, because it governs that government institution.

You're talking about exchanges of information with allies, etc. There are ways to balance the need to do that—which clearly we

recognize—with privacy protections. A very obvious, basic example is that you should have in place with your allies controls on what happens to that information once it leaves Canada. Once it is in the hands of a foreign government, is it being used for anti-terrorism purposes or for combating money laundering, crime, or whatever, or is it somehow leaking out and going to other parts of that foreign government and being used for purposes for which we did not disclose it?

• (1615)

**Mr. Joe Comartin:** Just so we're clear, if this amendment goes in, you would expect that the minister in fact would be looking to put those policies into play vis-à-vis our allies.

**Ms. Jennifer Stoddart:** Yes, and that's a subject to which we've already spoken. The exchange of personal information of Canadians abroad in transborder situations should be governed by clear protocols, and departmental officials should follow those.

**Mr. Joe Comartin:** Are we stepping on the toes of the Arar commission at this point? Have you considered that?

**Ms. Jennifer Stoddart:** No, I haven't considered that.

**Mr. Joe Comartin:** Those are all the questions I have, Mr. Chair.

**The Chair:** Thank you, Mr. Comartin.

Mr. Cullen, for seven minutes.

**Hon. Roy Cullen (Etobicoke North, Lib.):** Thank you very much, Mr. Chairman.

Thank you, Ms. Stoddart, Ms. Black, Mr. D'Aoust, for coming here today and presenting your views.

Just on that last point, I don't think you were suggesting that there aren't protocols in existence already, but I'd like to add a further point to some of the good comments from across the way if I might, Ms. Stoddart.

I'm sure all of us value the privacy rights of Canadians. The aspect that concerns me is that we are also interested in human rights, the Charter of Rights, access to information, and a whole host of other very important elements. I'm just wondering if, by putting in a specific reference to privacy, that doesn't intimate that it trumps charter issues, access to information, international relations, etc. It highlights it when we in fact could, I suppose, make a case for putting in these other provisions, which are really provided already through other statutes. I think what you're trying to achieve is laudable, but I'm wondering if it couldn't be achieved through changes to the Privacy Act.

**Ms. Jennifer Stoddart:** To reply to the honourable member's suggestion, Mr. Chair, yes, perhaps they could. The concrete question before us today is about what is in this act. This super-ministry is on the point of being created; I think it exists in some embryonic stage already at this point.

I do not have a date when the government would move to amend the Privacy Act. It's a technical alternative, but it isn't an alternative today because we have no schedule for the reform of the Privacy Act.

Again, I would say to the honourable member that the suggested amendment simply gives an indication of the importance of this principle. In order for it to trump other principles, in my opinion, a far different, more precise and more focused wording would be necessary, so I would not think this would be the effect of this.

**Hon. Roy Cullen:** I'm not so convinced, but that's a good debate, I'm sure.

Just following on that logic, then, I'm wondering if it would be your intent that there would be other machinery of government billed before the House, if there will be other acts that will be presented to this committee and other committees. Would it be your intent to interject this type of provision into a whole range of statutes, or is there something specific about this portfolio that interests you?

**Ms. Jennifer Stoddart:** The Office of the Privacy Commissioner does intend to ask to be heard by parliamentary committees when a matter in legislation that is pending before Parliament has an impact on privacy questions. However, it is very unusual that this type of situation comes up. As I foresee it in the future, most of our interventions would go to wording or pointing out the various issues involved in various pieces of legislation that incidentally may have privacy implications.

It is unique in the history of our country, certainly in technical peace time—and the honourable member has spoken to what kind of war we may be in now—that you have the creation of such a large governmental entity. This huge and unprecedented combination of internal and external security forces is unknown in our history, so it is in that context that we make this suggestion to you.

From what I know of what would be coming up on the parliamentary agenda, I do not immediately foresee that we would be making this in another context. This is made because of the context of the legislation today.

• (1620)

**Hon. Roy Cullen:** Thank you.

**The Chair:** Is that it, Mr. Cullen? Yes?

I see we had scheduled to go until 4:15. Are there still more questions?

Madam Stoddart, does your schedule allow you to remain with us?

**Ms. Jennifer Stoddart:** Yes, it does.

**The Chair:** Fine.

Mr. Toews again, then.

**Mr. Vic Toews:** I'll be very brief.

I appreciate that this is an important issue, but what concerns me about this amendment is essentially what this amendment does in relation to the minister's responsibilities. I'm more than a little concerned that while effective leadership is always a good quality in a minister, we are also dealing with arm's-length bodies here, the RCMP and CSIS. I don't want the responsibility of the minister to

provide effective leadership to corrode the arm's length that should be between the RCMP and the minister or the CSIS and the minister.

In terms of effective leadership in this context, I'm a little worried when we're dealing with these kinds of security agencies that should be operating at arm's length from the minister. I'm wondering if you could just briefly give us some direction there.

**Ms. Jennifer Stoddart:** That's a very good question.

Mr. Chair, I'd remind the honourable member that we were inspired in this wording by the wording of the act, which talks about the minister exercising leadership relating to public safety and emergency preparedness.

[*Translation*]

It says that she exercise leadership in security matters.

[*English*]

If this was put in by the legislative drafters and they're not concerned that this would upset the minister's traditional arm's-length role with the entities that are part of her portfolio—and that was our understanding—I would suggest to the honourable member that this amendment shouldn't have that effect. And I repeat that it certainly is not our intention to change the necessary and legislatively mandated arm's-length relationship of the minister to different entities in her portfolio, but that does not speak to privacy law and policy. It would seem to be that, in interpreting this, there would be little danger of confusing the two: the minister's relationship to her agencies under other legislation and her leadership in terms of privacy policy as an overall issue for her department.

**Mr. Vic Toews:** I just don't ever want to see the minister getting up in the House to say "I interfered in that particular file because I was carrying out effective leadership." That's the sort of tightrope that I feel the committee is walking on. You may well have pointed out a very important problem with the legislation.

I'd have to reconsider some of this, but I'm a little concerned about that, Mr. Chair.

It's no reflection upon your testimony here. You're responding in the language that you saw before you, and I thank you for that.

**Ms. Jennifer Stoddart:** If I may just respond to the honourable member, Mr. Chair, I'd like to underline to the committee that I explained our intentions, our motivation, what we wanted to accomplish by this, and where we found the model for this wording. However, at the Office of the Privacy Commissioner, we do not pretend to any expertise in the very difficult business of legislative drafting. I think you have, at the disposal of the committee, officials of the Department of Justice who could advise you on that. So I'm saying this with the caveat that this is my understanding of what we want to do, but there are expert opinions that are important in this question.

**The Chair:** Thank you, Madame Stoddart.

Are there any further questions? Mr. Ménard? Mr. Bergeron? Mr. MacKay?

**Mr. Peter MacKay (Central Nova, CPC):** I might take the occasion, Mr. Chair, if I could.



Madam Stoddart, I thank you as well for your testimony.

There was a story reported last week on RDI with respect to the use of warrants. This comes under the anti-terrorism legislation, Bill C-36, with which you'd be familiar and which will be under review at some time in the near future, presumably by this committee.

First of all, I wondered if you were aware of the use of the warrants that originate from CSE and essentially give a blanket jurisdiction to monitor calls that emanate from Canada to a country of interest, and the use of those warrants. Firstly, have there been any complaints brought to your attention, or have you examined this situation vis-à-vis the privacy of those individuals who would be targeted by this type of warrant?

•(1625)

**The Chair:** I'll allow a minute or two for you to try to attempt to answer that, if you wish.

**Ms. Jennifer Stoddart:** Yes, Mr. Chair.

I must say to the honourable member that I really don't feel equipped today to give him the response that question deserves.

**Mr. Peter MacKay:** I understand.

**Ms. Jennifer Stoddart:** I really can't answer those questions today. We have read the Minister of Justice's report to Parliament on the use of the anti-terrorism legislation. I'd have to look into it a bit more and get back to you.

**Mr. Peter MacKay:** Fair enough.

**The Chair:** In the course of the review of Bill C-36, there will be more opportunity for exchange with Madame Stoddart on this issue.

**Mr. Peter MacKay:** By all means.

Thank you, Mr. Chair.

**The Chair:** Thank you.

I thank you very much for your time, Madame Stoddart, Madame Black, and Monsieur D'Aoust.

We'll suspend for five minutes to allow our witnesses to take their leave, and we'll then be proceeding to clause-by-clause.

•(1626)

\_\_\_\_\_ (Pause) \_\_\_\_\_

•(1632)

**The Chair:** I call the meeting back to order.

We now have with us, from the Department of the Solicitor General, Mr. Paul Kennedy, senior assistant deputy minister, emergency management and national security; Patricia Hassard, assistant deputy minister, policing, law enforcement and interoperability; Kimber Johnston, director general, strategic policy; and from the Department of Justice, Mr. Bill Pentney, Assistant Deputy Attorney General. Mr. Cullen, the parliamentary secretary, is sitting at the end of the table now.

We're here to do clause-by-clause on Bill C-6, an act to establish the Department of Public Safety and Emergency Preparedness and to amend or repeal certain acts.

Mr. Cullen, do you have any opening comments to make?

**Hon. Roy Cullen (Parliamentary Secretary to the Minister of Public Safety and Emergency Preparedness):** No, Mr. Chairman, that's fine. We can just proceed to clause-by-clause. Thank you.

**The Chair:** We've had three proposed amendments filed. I propose to go through the bill, and when we reach the appropriate points we'll deal with those amendments.

Mr. Toews.

**Mr. Vic Toews:** Just on a point of order, and I've had some discussion with the Honourable Mr. Cullen, with respect to the presentation by the Privacy Commissioner, I found very interesting the points that were raised, but I don't think we're in a position to advance that kind of an amendment. The Conservative Party will not be supporting that amendment at this time.

[*Translation*]

**The Chair:** Mr. Ménard, is the Bloc québécois planning on moving the amendments that the commissioner has just proposed?

**Mr. Serge Ménard:** Yes.

[*English*]

**The Chair:** Okay. So we'll deal with it when we get to it in clause 5.

**Hon. Roy Cullen:** On a point of order, Mr. Chair, the amendments that have been tabled are three.

**The Chair:** Right.

**Hon. Roy Cullen:** Is there one dealing with the issues raised by the ombudsman?

**The Chair:** Mr. Ménard indicates that he will be proposing that amendment when we get to clause 5.

**Hon. Roy Cullen:** I see. Okay.

**The Chair:** The Standing Orders say that we deal with clause 1 at the end.

(Clauses 2 to 4 inclusive agreed to)

(On clause 5—*Portfolio coordination and leadership*)

[*Translation*]

**Le président:** Mr. Ménard, are you wanting to move an amendment to clause 5?

•(1635)

**Mr. Serge Ménard:** Yes. Do I have to read it out, or do you already have it?

**The Chair:** It's the second one.

[*English*]

The first proposed amendment is by Mr. MacKay.

Do you have an amendment to propose?

**Mr. Peter MacKay:** Yes, I would propose that Bill C-6, in clause 5, be amended by replacing line 9 on page 2 with the following:

responsible, including the Royal Canadian Mounted Police, the Canadian Security Intelligence Service, the Canada Border Services Agency, the Canadian Firearms Centre, the Correctional Service of Canada and the National Parole Board, and establish strategic priorities for

The reason for the amendment, Mr. Chair and colleagues, is that I would suggest that by injecting some certainty into what these entities are, that are referred to in this clause, it would add certainty in terms of our ability to track the activities of those entities.

In particular, the Conservative Party draws attention to the entity referred therein, being the Canadian Firearms Centre, which was at one time in the original Solicitor General's department and then moved to Justice Canada. It's now back into the new department.

We have concerns over the funding that has been allotted for this particular entity. We've maintained consistently that this is not in keeping with public safety, not in keeping with what we consider to be good public policy.

As well, I note with some sarcasm that the language found in Bill C-36, which uses the same terminology, "entities", is actually referring to terrorist organizations.

To that extent, I would suggest the bill be amended by specifically referring to the entities and the bodies that are covered by this section of Bill C-6. It is not an exclusive but an inclusive use of the language, "including", and thereby lists those referred to in another section of the bill.

That's the amendment I would propose, Mr. Chair.

**The Chair:** And you would move that amendment?

**Mr. Peter MacKay:** Correct.

**The Chair:** Discussion? Mr. Cullen.

**Hon. Roy Cullen:** Thank you, Mr. Chairman.

The government really can't support this amendment. I'll go through some of the reasons.

First of all, in modern legislation dealing with departments like this it has become the practice not to include all the various agencies and portfolios that it might encompass.

Second, we do know that in this post-9/11 world, where we have to deal with terrorism, where we have national security issues, it is not a static environment. Things change very rapidly, and the government needs to have some flexibility to adapt to any new realities.

There are other entities, for example, that the government could from time to time decide to include within this portfolio. I'll throw out a couple of examples...although not to get into much speculation. For some organizations—CATSA, the coast guard, and many others—there would be a certain logic to say that they might be incorporated under this umbrella as well to provide greater coordination, greater cooperation. And I'm not suggesting the government will move in that direction necessarily.

I know what you're saying, Mr. MacKay, that it's not exclusive but inclusive, but it creates a certain anomaly when, if there were changes to the portfolio, it would have a certain dysfunction in terms of the terminology.

The other aspect, as I think you yourself pointed out just a moment ago, or perhaps it was Mr. Ménard, is that there is this arm's length relationship with the various agencies, the RCMP and CSIS. These relationships are spelled out in those particular acts—the

RCMP Act, the CSIS Act, the Corrections and Conditional Release Act.

So the view of the government would be that it's redundant, it's somewhat restrictive, and it really doesn't recognize the fact that we live in a world that is changing very rapidly in the area of public security and safety. The government needs to be able to respond quickly for the benefit of all Canadians.

• (1640)

**The Chair:** Thank you, Mr. Cullen.

Monsieur Ménard.

[*Translation*]

**Mr. Serge Ménard:** I understand the government's arguments completely, but I still think that the amendment moved by my colleague, Mr. MacKay...

Cautiously, the word "including" is in his amendment. Therefore it is not an exclusive list. Nonetheless, the amendment still results in keeping the most important elements within the department. Our concern is that other organizations that will fall under the new department of Public Safety and Emergency Preparedness will be transferred to other departments.

When the government talks of the events of September 11, 2001, it talks about events which led to the creation of this new department. The reason why it decided to regroup all of these organizations under one new department is precisely because in doing so, a synergy would be created thereby increasing the efficiency of each one of the organizations, whereas if they were scattered across different departments, there would be competition between the organizations, and limits to information sharing. In fact, rivalries occur between these organizations. However, when they are part of the same department, these rivalries can be dissolved much quicker, in order to increase efficiency.

That is the goal of this department: to regroup in one single department all organizations involved in the fight against terrorism, but also in the fight against organized crime. Everyone here is well aware that this will be the great challenge of the 21st century. What we learned, is that it is no longer a fight between two super powers, a fight against a totalitarian ideology. For civilized and democratic nations, great concerns are not military concerns. The great battle of the 21st century, that against which we must ensure the security of our citizens, are terrorist attacks. I would point out that in the fight against terrorism, we cannot allow for any mistakes.

Currently, I see how the police are fighting organized crime. Targets are identified and proof is sought out to indict those involved. The police work for years to obtain proof against the guilty, and some cases are abandoned. In the fight against terrorism, we cannot abandon anything, because a terrorist attack can have absolutely disastrous consequences. Therefore, to the contrary, I believe that this amendment is faithful to the spirit in which this new department was created.

**The Chair:** Thank you, Mr. Ménard.

Mr. Toews.

[English]

**Mr. Vic Toews:** I want to speak in favour of this amendment. I also want to echo some of Mr. Ménard's comments, so I won't do that very extensively.

My concern is that in past legislation we have seen the minister come before the committee...and I remember asking this particular minister, who's responsible for this particular bill, questions on expenditures on the gun registry. There were assurances given to me that those expenditures would be tabled in front of the committee. They never appeared.

Then the firearms registry was shuffled off to another department, and we're met with another minister.

Frankly, while this doesn't eliminate it, I think it goes a long way to eliminate wiggle room and to accentuate responsibility, especially in an area as crucial as the types of agencies we're dealing with. I only give the Canada Firearms Centre as an example. I think the other ones are in many ways much more significant.

I also want to simply respond to the idea that this would somehow interfere with the operations of the agencies. I don't believe this would. It doesn't create any interference in that respect. It doesn't add anything to what the government's proposal is other than to specifically put, in statute, the responsibility of the minister who's responsible for this bill. If the minister then wants to divest herself or himself of that responsibility, he or she can move an amendment in Parliament. This is important enough to be in Parliament.

• (1645)

**The Chair:** Thank you, Mr. Toews.

Monsieur Bergeron and then Mr. Comartin.

[Translation]

**Mr. Stéphane Bergeron (Verchères—Les Patriotes, BQ):** Mr. Chair, if you will allow me to briefly echo my colleague's comments, I would just like to add that aside from the facts that the list is neither comprehensive nor exclusive, the organizations listed in Mr. MacKay's amendment rigorously and scrupulously match the organizations listed in the explanatory notes of the department in section 2. Therefore, if these organizations were included in the explanatory notes as organizations which fell under the purview or responsibility of the new department, I don't believe that it would be inappropriate, far from it, to take the list found in the explanatory notes and to make it part and parcel of the legislative measure.

**The Chair:** Thank you, Mr. Bergeron.

[English]

Mr. Comartin.

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

I'm getting a mixed message here, so I would like an interpretation from the officials. If an agency that's being listed here is no longer to be under the control of this minister, would that require an amendment? If it were an agency that were being moved in under the control of the minister, would that require an amendment?

**The Chair:** Mr. Pentney.

**Mr. Bill Pentney (Assistant Deputy Attorney General, Department of Justice):** Thank you, Mr. Chairman.

Under the Public Service Rearrangement and Transfer of Duties Act, the Governor in Council can, by order in council, shift responsibilities. So whether this list is included or not in the legislation, it would not affect the capacity the government has to transfer duties; things could be added or subtracted from that list without a need for a legislative amendment.

The problem may be in expressing clarity to Canadians about what is at any time included through such a list. If the list is intended to explain more clearly to Canadians what falls within the portfolio, it may, over time, no longer represent what's in the portfolio—and therefore would prompt a use of the House time to change the list.

I think that might explain the trend that Mr. Cullen explained to move away from these types of lists in modern legislative drafting. There is certainly other reporting done to Parliament that clarifies exactly which minister is responsible for what and how moneys are being spent; but in terms of the overall trend away from these lists and drafting style, that would be the explanation.

**The Chair:** Okay, Mr. Comartin.

Mr. Maloney.

**Mr. John Maloney (Welland, Lib.):** I think Mr. Pentney has given us a very reasonable explanation as to why not to include those specific agencies. It makes no sense to me to cherry-pick some and leave others out. The clause is clear: "The Minister shall coordinate the activities of the entities for which the Minister is responsible". It covers the whole works. I think there could be some confusion if we do set out these agencies specifically. I want to avoid that confusion.

**The Chair:** Thank you.

Mr. MacKay, then Mr. Cullen.

**Mr. Peter MacKay:** That argument defies logic: we leave them vague so there will be certainty.

I want to add, Mr. Chair, the reason my colleague Mr. Bergeron asked about the two that were left out that are included in the legislation is that those are arm's-length bodies. They're oversight bodies, essentially. SIRC and the RCMP Public Complaints Commission are arm's-length bodies, so they still fall under the jurisdiction, clearly.

I do agree with Mr. Cullen's assessment that if new bodies were to be added—for example, if the CSE were to be moved in from National Defence, or if the new body that will provide oversight to our security forces were—this would very much allow for the inclusion of those new bodies, or the transfer of bodies, if you will, or entities, to use the word in the legislation.

As to the argument that it's not the practice, well, that's just saying "we don't want to". I don't accept that argument; I think that's pretty vacuous reasoning. I would suggest that as far as the need to amend the bill is concerned, the entire Bill C-36 was passed through Parliament in three days, so this isn't going to create a great workload if in the future we have to add to the legislation.

I disagree with the assessment that we could do so without consultation with Parliament. I don't think that's the case at all, Mr. Pentney. I think that if we were to add or expand this list, it would require some sort of amendment. Were this a new bill, creating a new department, why wouldn't we want to name the entities that are covered by the minister?

I'll just leave it at that, Mr. Chair.

•(1650)

**The Chair:** Mr. Cullen, and then I think maybe we'll put the question. I think we've covered the territory.

Mr. Cullen.

**Hon. Roy Cullen:** Thank you, Mr. Chairman.

I'm going to ask Mr. Pentney in a moment to comment on Mr. MacKay's comment about why we wouldn't have to change legislation to accommodate some additions or subtractions.

I'd like to come back to the point.... I didn't mean to imply that because it's always done that way, that's the way to do it. It's being done that way to provide a little more flexibility, so that as the world changes.... If the list is changing without having to change the legislation, then what will eventually happen is that Canadians will become confused; they will look at the statute and then the statute will have to be brought back into Parliament and be changed. That's why there's an evolution in more modern legislation to not list these various agencies.

Just picking up on your point, Mr. MacKay, you raised the RCMP Commission for Public Complaints. You argued that it falls within the rubric of the RCMP. But I think you could equally argue that if you're going to list these various agencies, you might then also want to put in this type of review agency, for clarity for Canadians—and there are others as well. By leaving them out, you're not confusing Canadians and you're not having to come back to Parliament every time to add or subtract to a list because Canadians are confused. The government has the power to do that without bringing the legislation back, but I think it would create a hybrid model.

Perhaps Mr. Pentney can respond to your specific point.

**Mr. Peter MacKay:** I would certainly accept a subamendment from the minister, if he wants to include those.

**Some hon. members:** Oh, oh!

**Mr. Bill Pentney:** Very briefly, my only point was that under the existing PSRTDA, as it's referred to, the power of the government to add to or subtract from any list, whether it's in a statute or not, would not be affected. Unless the PSRTDA has somehow amended whether this bill is amended so that there is a specific list or not, the power of the Governor in Council to transfer existing duties between ministries would remain.

**The Chair:** Thank you.

I'll put the question on Mr. MacKay's amendment as moved.

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

[*Translation*]

**The Chair:** Mr. Ménard, do you have an amendment to make to section 5?

**Mr. Serge Ménard:** I submit the amendment recommended by the Privacy Commissioner. I move that the existing section 5 of Bill C-6 be renumbered as subsection 5(1) and that a new subsection be added as follows.

**The Chair:** The clerk may read the amendment.

**Mr. Serge Ménard:** I want to make sure that everyone has a copy of it.

[*English*]

**The Chair:** No.

Did you have specific wording for this, that would make this amendment...?

•(1655)

[*Translation*]

**Ms. Joann Garbig (Procedural Clerk):** Thank you, Mr. Chair. I was simply going to suggest some clarification with respect to the instructions for placing the text of the amendment in the bill. If you like, it could read: That Bill C-6, in section 5, be amended by adding, after line 10, page 2, the following. And we could continue by adding the wording that you already have.

**Mr. Serge Ménard:** Logically this section would follow section 4. Section 5 would therefore be renumbered 5(1). At the end we will vote on renumbering, it will become section 6.

This is why Ms. Stoddart, who surely has more experience in federal law than I do, suggested something I find good, by starting with the following: That the existing section 5 be renumbered 5(1) and the new subsection be added as follows.

Honestly, I think she meant “new section”. I don't know how we can consider Ms. Stoddart's amendment to be an amendment to section 5. I think that it deals with such an entirely different subject that it should be included as an entirely different section.

**The Chair:** Perhaps we can discuss the amendment as it stands. Following that, if it is carried, we can make technical arrangements.

**Mr. Serge Ménard:** Yes, you are right, Mr. Chair.

**The Chair:** We know the substance of the amendment.

**Mr. Serge Ménard:** Let's make things clear. If it is not carried, the matter will be resolved. I therefore move that a new section be added after section 4, that reads as follows. It's much simpler this way.

[*English*]

**The Chair:** Okay.

[*Translation*]

**Mr. Serge Ménard:** In English, it would read as follows:

[*English*]

“The Minister shall exercise leadership...”

[*Translation*]

If I understand correctly, I can go faster because you have the text.

[English]

“...relating to effective and consistent management and the protection of personal information, in accordance with privacy protection laws and policies, by the entities for which the minister is responsible.”

[Translation]

In English, it would read as follows: The Minister shall exercise leadership relating to effective and consistent management and protection of personal information in accordance with privacy protection laws and policies, by the entities for which the Minister is responsible.

**The Chair:** Are there any comments on Mr. Ménard's amendments?

Mr. Ménard.

**Mr. Serge Ménard:** Everyone will have understood and I understand completely the minister's objections since I myself brought them to the attention of Ms. Stoddart, even though I am of the same opinion. Indeed, I think we are perhaps reminding the minister a responsibility which is hers under the Privacy Protection Act. However, it's a good time to remind her of this, given the nature and importance this department will have in the future. One must understand that the key, the essence of the department's new functions in the effective fight against terrorism, will consist of systematic sharing of intelligence. This information, I am sure, will for the most part be personal information which normally must be protected.

We therefore must firstly be fully aware of the confidentiality of these exchanges. In intelligence sharing, one must be aware that such information must never be released, not only because it defeats the purpose of police investigation, but also because when such information is made known, one has a sense of where to stop, in spite of a wish that such information should be released to the press, because in some cases, doing so would not hinder accumulating more information. This activity will soon become so necessary and so important that we must set limits, and those who handle intelligence must be aware of these limits.

I am going to share with you a personal experience that I am sure others have had themselves. Doctors and especially nurses, from what I've gathered, are bound by professional secrecy towards their patients. However, if you want to know what pains celebrities are suffering from, you just have to go to a tennis court locker room to hear about so and so who was recently operated on, etc. If you say to these doctors and nurses that their patients have a right to confidentiality, they will agree, but for them, professional confidentiality only applies in the courts. If they are asked questions in court, they agree, but they do not realize their obligation to protect the privacy of their patients.

I am sure that people involved in gathering intelligence in the fight against terrorism and other things, when not bound to secrecy within their police organizations, will have a natural tendency to recount exciting stories to people who do not need to be made aware of these. In the act establishing the department, agents must be reminded once again that secrets they gather in the fight against criminal activity are personal pieces of information that must be

protected, not only because in not doing so may be harmful to police operations and antiterrorist operations, but also because those involved have a right to privacy.

I am sure that people talk about suspicious things. It's normal, when receiving preventive information, when discussing suspicions, when investigating suspicions, when monitoring suspicious organizations against which proofs have not yet been mounted. All of these things must remain secret because suspects have a right, before being condemned, to protection of personal information.

I am convinced that my arguments alone would not be persuasive if, indeed, they did not have the support of the Privacy Commissioner. I am sure that it is not just a whim on my part, it is not just an extension. When I explain this view, I believe you all realize the importance of this and the tendency we must fight against.

• (1700)

**The Chair:** Thank you, Mr. Ménard.

Mr. Comartin.

[English]

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

I can't support this amendment, although I certainly empathize quite strongly with the desire of Mr. Ménard to build additional protection around privacy. But it's quite clear that the Privacy Commissioner has not thought through anywhere near the implications of what we would be getting into.

Mr. MacKay, Mr. Ménard, and I spent a good deal of our summer working on that ad hoc committee, and this issue of privacy certainly was a major issue there. It's going to require much more extensive study by this committee if we are going to get into this issue. This is not the piece of legislation that should have us do that.

Actually I was going to ask the commissioner about the Patriot Act, for instance. That was going to be the next step, but clearly she hadn't even thought through some of the other implications. This is not the bill to be doing this in. It does need to be done—I can put that on the record—but everything we learned this summer says to me that we have some major privacy issues.

I think the other point we have is that the culmination of what this government is going to do with regard to privacy will probably have to await the report by Justice O'Connor on Arar. There are certainly a number of issues directly related to that around the exchange of information under the policy—how it's exchanged, how it's protected, etc. They're going to flow from that inquiry.

So in spite of the fact that I would really like to get additional protection for Canadian citizens into our law around privacy, this just isn't the bill to do it in.

• (1705)

**The Chair:** Thank you.

Mr. Cullen.

**Hon. Roy Cullen:** Thank you, Mr. Chairman.

Let me just make a few brief comments on some of what I said earlier when the Privacy Commissioner was here. Then I'd like to turn it over to Ms. Hassard to comment in a fulsome way.

I think accepting this amendment would create a dangerous precedent. I think it does say that privacy trumps human rights, the charter, and access to information. I do have a concern that accepting this amendment would set a precedent for other pieces of legislation, which would raise the question of whether we should be incorporating all these other important features that are already covered by other acts and are clearly the responsibility of the minister.

So while I appreciate the minister's good work, I think Mr. Comartin touches on a very significant point that it's a good idea, but I think it would need a little more baking before we put it into this bill.

Ms. Hassard.

**Mrs. Patricia Hassard (Assistant Deputy Minister, Policing, Law Enforcement and Interoperability, Department of the Solicitor General (Public Safety and Emergency Preparedness)):** Thank you, Mr. Cullen.

Thank you, Mr. Chairman.

There are just a couple of other considerations that I think might be useful for the committee before you make your decision. On precedent setting, I think there's a question raised about whether this has an impact on the minister's responsibilities under the Privacy Act, in the sense that here is an obligation for the minister that is not within the Privacy Act but does contain obligations concerning the management of personal information.

I think Mr. Cullen has already made the other point that there's an argument that all departmental legislation should have this kind of a protection in it. I think the commissioner did indicate that this portfolio deals with personal information, but most departments deal with personal information.

We're also a little bit concerned about the possible impact this could have on the minister's legal relationship with the portfolio agencies, even though the commissioner has amended the wording to read "exercise leadership" rather than "ensure". But the caution remains as to whether this has an impact on her relationship with agencies where it's very carefully fine-tuned in individual mandated legislation for those agencies.

Thank you.

**The Chair:** Thank you.

Mr. Cullen.

**Hon. Roy Cullen:** Paul Kennedy has to go to catch a plane. He's not being rude, he just has to move on.

**The Chair:** Okay.

Thank you for your attendance, Mr. Kennedy.

[Translation]

Are there other comments before we vote on this amendment?

For clarification, Mr. Ménard, you are moving an amendment to create a new section following section 4, are you not?

**Mr. Serge Ménard:** After section 4.

**The Chair:** We will now vote.

(Amendment negated [See *Minutes of Proceedings*])

[English]

(Clause 5 as amended agreed to [See *Minutes of Proceedings*])

[Translation]

**The Chair:** Mr. Ménard, I believe you have an amendment to make to clause 6.

**Mr. Serge Ménard:** I submitted the amendment in writing and I believe everyone has a copy of it. I move that Bill C-6, in Clause 6, be amended by replacing line 13, on page 2, with the following:

6 (1) performing his or her duties and functions and with due regard to the powers conferred on the provinces and territories, the

**The Chair:** Do you have any comments?

**Mr. Serge Ménard:** Yes. In this case, I'm told that perhaps it is redundant and that ministers always act with due regard to the powers conferred to the provinces and territories. I would say that while they attempt to do so, they do not always succeed. In the past, there have been so many examples of trampling on provincial jurisdiction that it is not useless, in an area where two levels of government will inevitably have to work together, because the stronger of the two, the federal government, will always seek to trample on the weaker. Things have almost always unfold that way. I don't know if anyone can recall of a provincial attempt to trample on federal jurisdiction in the past. It always goes the other way.

I understand that provinces, such as Quebec and others, who have already mounted very elaborate defence and public safety, among others... There are many other examples in other branches of power that we will study. There is not only emergency preparedness. In fact, I believe that the need to create this department does not only stem from concern for public safety; but mainly for our protection from terrorism and to fight against organized crime.

I think this is a good reminder. Indeed, this advantage that we have to be able to force the government to respect the different opinions of more than 50 per cent of the Canadian population could be recognized, in the future, as a trademark of the 38<sup>th</sup> Parliament. Notwithstanding our profound and different convictions on other subjects, I think we are all of the opinion that the majority of the Canadian population agrees that, in this department, the government should be completely respectful of the powers conferred to the provinces and territories.

• (1710)

**The Chair:** Mr. Bergeron?

**Mr. Stéphane Bergeron:** Very quickly, Mr. Chair, to elaborate on what my colleague just said, I would add that it is not uncommon, at least it should not be uncommon that we recognize, in the different pieces of legislation of a federation, the federal nature of the State.

On the other hand, in a discussion held during the break, Mr. Cullen argued that this proposed amendment would be simply redundant. If it is indeed just redundant, because, he seems to believe in the respect of provincial jurisdictions, where is the harm, Mr. Chair, in recognizing that fact in this piece of legislation? Therefore I will obviously be in favour of the proposed amendment moved by my colleague.

**The Chair:** Thank you, Mr. Bergeron.

Are there other comments?

Mr. Cullen.

[English]

**Hon. Roy Cullen:** Thank you, Mr. Chair.

Certainly in terms of the jurisdiction of the provinces and territories we have no difficulty. But I'd like to draw the attention of the committee to subclause 4(1) of this very bill, which says:

[Translation]

The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction—and that have not been assigned by law to another department, board or agency of the Government of Canada—relating to the public safety and emergency preparedness.

[English]

This is spelled out in the bill before you. The minister, of course, will not exercise powers that are not constitutional. I know that when we debated Bill C-6 in the House, Mr. Ménard talked, for example, about the federal and provincial cooperation around a number of disasters in the province of Quebec—the ice storm, the Saguenay flooding—and how there was excellent cooperation between the federal government and the Province of Quebec.

I guess my concern is that if we introduce this amendment, it could affect that excellent rapport and cooperation that goes on between the federal government and the various provinces and territories. I think it is, with respect, redundant. The minister will not act in a way that is unconstitutional. The constitutional powers are clearly spelled out. So in that sense I don't think we need to fix something that isn't broken.

• (1715)

**The Chair:** Thank you, Mr. Cullen.

Monsieur Ménard.

[Translation]

**Mr. Serge Ménard:** I have the impression that when Mr. Cullen mentioned clause 4, he had forgotten that the word “Government of Canada” is included in clause 4. It is as if you were going to tell us that, in any case, you intend to respect that we want you to respect. Yet, what we want to make sure is respected is provincial jurisdiction, whereas in the clause, it reads: “... that have not been assigned by law to another department, board or agency of the Government of Canada”. If you want to change the clause by adding the words “federal or provincial”, that would reflect the same line of thinking.

I would remind you that when I asked a question to the minister when she last appeared before this committee, she said—and I am absolutely certain of her good faith—that she would respect and that she had every intention of respecting provincial jurisdiction. But when a law is created, it applies to more than one minister. Other departments with different intentions can apply it. Therefore, in essence, it means putting something in the bill that the minister wants to respect, but also to ensure continuity beyond the current minister's mandate.

[English]

**The Chair:** Mr. Cullen is next, just before we go to the question.

**Hon. Roy Cullen:** I just want to elaborate, and then ask Mr. Pentney to elaborate more fully as well. I'm sure the English and French translations are comparable; if not, that's a problem we'd have to look at.

I'll read subclause 4(1) in English this time: “The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction—and that have not been assigned by law to another department...”.

So it's those matters over which Parliament has jurisdiction that are understood and laid out constitutionally.

I think there's an issue here too, and Mr. Pentney may elaborate on this. There is a legal principle of interpretation that every word has a meaning. I would like Mr. Pentney to elaborate on that and on the comments made by Monsieur Bergeron and Monsieur Ménard.

**Mr. Bill Pentney:** I'll be brief, Mr. Chairman.

The wording of subclause 4(1) expresses in a positive way that the powers of the minister are those that fall within the federal domain only. The proposed amendment appears to sort of go in the other direction, and refers to the due regard to the powers conferred on the provinces and territories.

As Mr. Cullen has said, the issue of adding redundancies in legislation is really twofold. One is the possible effect of such an amendment in relation to other ministerial powers in other statutes that don't have similar wording. If this sets a precedent in how this minister's powers ought to be interpreted, a court, in interpreting another minister's powers in legislation that didn't have such a reference...that would be a question that would have to be explored in terms of how you interpret statutes. That's because every word would be presumed to have a legal meaning.

[Translation]

**The Chair:** Mr. Bergeron.

**Mr. Stéphane Bergeron:** Mr. Chair, with due respect, this question of interpretation seems to me completely esoteric to the extent that Mr. Pentney has just told us that what Mr. Ménard wants to achieve is expressed in a more positive manner in subclause 4(1). He told us that Mr. Ménard's suggestion expresses the same thing in a slightly more negative manner.

Mr. Chair, what is the possibility of a different interpretation in the case of my colleague's amendment being carried? If, in Mr. Pentney's opinion, there is a possibility of a different interpretation than that set out in subclause 4(1), then perhaps there is a nigger in the woodpile, and indeed we would have to clarify the importance of respecting provincial and territorial jurisdictions.

**The Chair:** Thank you, Mr. Bergeron.

[English]

Mr. Pentney.

**Mr. Bill Pentney:** I'm making a much more humble point, which is that we don't really know how such a provision would be interpreted in this statute, or how it could affect the powers, duties, or functions for other ministers in respect of other statutes where such a clause does not exist, but where they're nevertheless in an area of shared federal-provincial jurisdiction.

•(1720)

[Translation]

**The Chair:** We will now move to the vote.

(Amendment carried [See *Minutes of Proceedings*])

[English]

(Clause 6 as amended agreed to)

(Clauses 7 to 37 inclusive agreed to)

[Translation]

**The Chair:** Mr. Ménard, do you want to move an amendment to clause 38?

**Mr. Serge Ménard:** I move that Bill C-6, in Clause 38, be amended by replacing lines 28 and 29, on page 16, with the following:

38. This Act, other than sections 35 and 36 come into force on a day

**The Chair:** We will first hear what you have to say, Mr. Ménard.

**Mr. Serge Ménard:** Here, they are important. I notice that clause 38, as moved, is quite routine. It deals with the bill coming into force. However, we must take note of the difference between what I move and what is moved by the government, that is the following:

38. The provisions of this Act, other than sections 35 and 36, come into force on a date to be fixed...

I want to replace “the provisions of this Act” with “the existing Act”? It's important for us to understand why. The drafting “the provisions of this Act will come into force on a date to be fixed by order” allows the government to withdraw, by way of the coming into force, certain provisions of the Act. Yet, the provisions can be summed up in a few words in a sentence or in a clause. In addition, these few words can be found always all through the Act.

Currently, the best example of this can be found in the Criminal Code. Indeed, provisions dealing with the obligation to undergo a breathalyzer test and future use of the test reveal to us that those who summon people to undergo a test must provide the latter with a breath sample, so that the person undergoing the test may have the sample analyzed by someone he or she trusts. Following that, for the results to be accepted as proof, this option had to be laid out. However, these provisions are not always in effect. The Act was reorganized to extract an obligation. However, I remain convinced that most members would have voted against this had the guarantee not been made.

In a Parliament such as this, the united forces of the opposition can obtain an amendment and not allow the government, by way of the coming into effect provision, withdraw certain provisions the opposition succeeded in including. As far as I am concerned, I think this rule should prevail for all pieces of legislation.

Here for example, it is being said that sections 35 and 36 are not ready to come into effect. Very well. We are talking about the existing Act, other than sections 35 and 36. When the minister appeared before the committee, I myself asked her if there were other provisions, other than sections 35 and 36, that were not ready to come into force. She answered no. Very well, but to make sure that this does not change from the time the bill is passed to the time it comes into effect, in my opinion it is preferable to change the

drafting of section 38. This way, when the government decides to have the bill come into effect, the entire legislation will come into force, save perhaps for the exceptions the legislator will have wanted to add.

Overall, this section gives full meaning to the separation of powers between the legislative and the executive branches of government. This set up prevents the executive from exercising legislative power to amend an act by withdrawing certain provisions voted by lawmakers. In a Parliament where no political party holds the majority, this is even more important. In my opinion, things should always have been this way, but since it is not the case, this amendment would allow us to adopt a different approach. In fact I hope that the same thing will be adopted in other pieces of legislation passed by this Parliament.

•(1725)

[English]

**The Chair:** Mr. Cullen.

**Hon. Roy Cullen:** Thank you, Mr. Chair, Monsieur Ménard.

Following the example of the opposition parties in cooperating on various amendments, and in the interest of collegiality, the government is prepared to support this amendment.

**Mr. Myron Thompson (Wild Rose, CPC):** Hear, hear!

**Hon. Roy Cullen:** That's my comment. I think the member dealt with it quite extensively in his remarks.

**The Chair:** In that case, I'll put the question.

[Translation]

(Amendment agreed to)

(Clause 38, as amended, agreed to)

[English]

**The Chair:** Shall the short title carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the bill as amended carry?

**Some hon. members:** Agreed.

[Translation]

**Le président:** Shall the Chair report the bill as amended to the House?

**Members:** Agreed.

**Le président:** Shall the committee order reprint of the bill, as amended, for the use of the House at report stage?

**Members:** Agreed.

[English]

**The Chair:** Do we need a reprinting?

**Some hon. members:** Agreed.

**The Chair:** That being all we have, we will now adjourn.



Thank you very much.

[*Translation*]

**Le président:** Thank you everyone. Thank you to our staff and our interpreters, thank you very much.

**Voices:** Thank you.

The meeting is adjourned.

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