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—
Chair

Mr. Art Hanger

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• (0905)

[English]

The Vice-Chair (Mr. Derek Lee (Scarborough—Rouge River, Lib.)): I call the meeting to order.

We're reviewing a private member's bill, Bill C-299, moved by Mr. Rajotte. Mr. Rajotte is here as a witness.

Mr. Rajotte, we usually allow ample time for the mover of a private member's bill to explain it and promote it. Then we'll go to questions.

Mr. James Rajotte (Edmonton—Leduc, CPC): Thank you very much, Mr. Chairman.

Good morning to you, and good morning to all members of the committee. Thank you for allowing me to appear before you today on my private member's bill, Bill C-299. This is with respect to the general issue of protection of personal information.

I want to acknowledge the work of some members on this committee, both in the debate in Parliament—I appreciate that—and also in helping me to move this bill forward.

The purpose of this bill, Bill C-299, is to protect individuals against the collection of personal information through fraud and impersonation. This practice is often known as “pretexting” and is a widespread problem in the growing market for personal information.

This bill aims to close some of the loopholes in Canada's data protection law that allow data brokers to exploit people's personal information for commercial gain.

Specifically, this bill seeks to do three things. First of all, it seeks to make the practice of pretexting illegal through changes to the Criminal Code and to the Competition Act. Second, it seeks to provide a remedy for victims of this kind of invasion of privacy through legal recourse in the courts and compensation. Third, it seeks to tackle the cross-border aspect of pretexting by holding the Canadian affiliates of foreign companies liable for invasions of privacy committed against Canadians.

Mr. Chairman, information is one of the most valuable commodities in the new economy typified by the growing data brokerage industry. Data brokers buy and sell information, usually for commercial or marketing purposes. Sometimes this information is personal. Some of this industry is legal and consensual; however, there is mounting evidence to suggest that many aspects of the data brokerage industry are poorly regulated and that pretexting is a recurring problem.

Broadly speaking, there are two kinds of data brokers with the potential to invade people's privacy. First, there are the larger companies that trade in data, often for commercial or marketing purposes. Much of this is aggregated and not particular to individuals; however, individual information may sometimes be extracted from these databases. Second, a range of smaller companies offer to target individuals for a fee. These companies may simply sell personal information, or they may offer more invasive services, such as private investigation.

At the federal level, as you know, data protection falls under the Personal Information Protection and Electronic Documents Act, known as PIPEDA.

Privacy Commissioner Stoddart submitted a report in May 2006 to the privacy and ethics committee detailing possible improvements to this act. Notwithstanding possible changes to PIPEDA—and I welcome those—there are three major loopholes in Canada's data protection framework.

First, though fraud and impersonation are crimes under the Criminal Code, they do not apply to personal information such as phone records, consumer preferences, or purchases. This bill includes this type of information.

Second, while these actions violate PIPEDA insofar as it says that information cannot be disclosed without express consent of the consumer or a court order, this does not guarantee a remedy. For instance, the commissioner's rulings are not legally binding without a federal court order, and the transgressors are not named. Bill C-299 would change that by making it a crime under the Criminal Code to collect, or to counsel to collect, personal information through fraud, impersonation, or deception.

Third, the Privacy Commissioner has no jurisdiction to pursue complaints outside of Canada. This was a problem in Ms. Stoddart's own case, the case in which her own phone records were obtained by *Maclean's* magazine from a data broker in the United States. This bill would allow Canadian victims of privacy invasion to seek compensation from Canadian affiliates of foreign companies that had invaded their privacy.

Mr. Chairman, I know this bill passed second reading with the support of a majority of the members of the House of Commons, but members at that time raised with me, in a very responsible way, the fact that amendments were needed to this legislation in order to pass it through three readings and through committee stage. I have discussed this with some of you here and I want to indicate that I am very open to amendments, as I was at second reading. I understand there are many concerns regarding elements of this particular bill and that some of you will not support the bill as drafted.

That being said, I believe in the need for this bill to address this issue—one part of privacy, one part of identity theft—and I have undertaken, with members of Parliament and with the offices of both the justice minister and the industry minister, to seek amending advice to improve the bill's effectiveness while alleviating many of your concerns.

So what has been proposed, which I would support as a two-pronged approach, is that this committee entertain significant amendments to tighten the scope of the legislation; and secondly, that a motion be passed referring certain clauses of this bill to the Standing Committee on Access to Information, Privacy and Ethics for consideration under the current legislative review of PIPEDA.

If it is the will of this committee to entertain significant amendments within the scope of the bill, I am informed that the government is prepared to bring forward amendments seeking to, first of all, delete the clauses seeking to amend the Competition Act and the Canada Evidence Act; and secondly, tighten the Criminal Code amendments to criminalize the collection of personal information with the intent of committing fraud or impersonation; the use of deception to obtain personal information from a third party for the purposes of committing fraud or impersonation; and the passing on of personal information of a third party to be used to commit fraud or impersonation.

I certainly welcome comments from the members, but my understanding is that these amendments will address most of the practices currently utilized to obtain, circulate, and execute identity theft and fraud. These amendments, the departments believe, are necessary, as the Criminal Code provisions as currently drafted in this bill might not pass a charter challenge and could also jeopardize current investigative practices used by some of our law enforcement agencies.

I strongly believe in the amendments I have proposed for the Competition Act, Mr. Chairman, but I understand that there are some serious concerns about these. Therefore, I would respectfully ask that the committee refer these to the Standing Committee on Access to Information, Privacy and Ethics, to be studied as part of the PIPEDA legislative review. I have the assurance from both the chair and the vice-chair of that committee that the referral would be welcomed by them.

Mr. Chair, in conclusion, I do want to say that the issue of identity theft is a serious and growing problem in Canada. This bill attempts to deal with one small part of that. I understand that the justice department has been looking at this issue for some time. I welcome that.

I look forward to a more comprehensive piece of legislation to deal with the issue of identity theft in general, but I believe it's important to move forward on this issue in terms of protection of personal information at this time. I would welcome this committee to study this bill and to amend the bill in the fashion I outlined, or I'm certainly willing to entertain any other reasonable amendments.

At this point, Mr. Chairman, I'd like to conclude. I look forward to your comments and the comments from other members of this committee. Thank you.

● (0910)

The Vice-Chair (Mr. Derek Lee): Thank you, Mr. Rajotte, for your flexibility, your clarity, and your brevity.

Just to recap and clarify, it is your suggestion that you would not object if the committee did not adopt clauses 4, 5, and 6 of the bill. We can't strike them. The House has sent the bill to us. It is your suggestion that the committee not adopt those clause, but actually, in a separate report, refer this subject matter to the other standing committee that deals with privacy matters.

Mr. James Rajotte: You are correct, Mr. Chairman.

In clause 4, with respect to the Canada Evidence Act, I understand the concerns that have been brought forward.

With respect to the changes to the Competition Act, which are in clauses 5 through 9 of the bill, I'm still of the view that this needs to be looked at seriously, but I don't want that to hold up the changes with respect to the Criminal Code. If this committee so wills it, I'm prepared that we send the intent of those sections to the committee currently conducting the PIPEDA review.

The Vice-Chair (Mr. Derek Lee): That's very helpful.

Members are not bound by this, but if we took the approach proposed by Mr. Rajotte, we wouldn't have to ask too many questions about clauses 4, 5, and 6 of the bill, if members felt that way. I'm just trying to give some focus. There are still clauses 1, 2, and 3 of the bill, which are the core focus.

I'll go to questions now, if that's all right, looking to Mr. Murphy for the first round.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chair.

Just to clarify your clarification, it would be clause 4, under the Canada Evidence Act, that Mr. Rajotte is suggesting he won't proceed with, due to charter issues, and he suggests that clauses 5 through 9—or a few more clauses there—should be sent to the ethics committee because they deal with the Competition Act and the interlay with the PIPEDA.

Really, all we're going to talk about here, or ask about, are clauses 1, 2, and 3, dealing with the Criminal Code of Canada. Is that what you were clarifying? Is that right, Mr. Rajotte?

Mr. James Rajotte: Yes, but that's if it is the will of the committee to send those clauses to the legislative committee on PIPEDA. You're free to ask about the intent of those clauses, but obviously the committee would focus on the first three.

Mr. Brian Murphy: I obviously can't speak for everyone, but I've read all the speeches. I gave a speech myself. To be quite blunt, Mr. Rajotte, it seems to me that the flavour of it all is that clauses 4 through 9 might not have a great chance of success here. However, everybody seems to be excited about the tightening up of the Criminal Code, which you cover in clauses 1 through 3.

Without prejudice, I suppose, to my colleagues on subsequent rounds in terms of discussing how many angels are on the point of the needle with respect to the Competition Act and PIPEDA, I am just going to proceed with Criminal Code talk, if you like.

As you know, Mr. Rajotte, there were a few problems brought up with respect to the Criminal Code amendments. Are you prepared to be specific on your comments about tightening up the Criminal Code? Do you have any specifics on the changes of definitions of things like false pretence under section 361, for instance? Do you have any specifics, or are we going to work our way through this?

Mr. James Rajotte: Is this subsection 362(1) or 362(3)?

Mr. Brian Murphy: Yes.

Mr. James Rajotte: With respect to specifics, the first one that was raised with me by the justice department was the fact that we need *mens rea*, which I believe you and I discussed in Parliament as well. I'm not a lawyer by trade, but my understanding is that we need to add "knowingly" in at least one clause or perhaps two clauses of the bill. I'd obviously rely on legal counsel for that.

The second bit of information that I have to admit I'm not completely certain about is the definition of the term "personal information" in clause 1. In your speech in the House, you had mentioned that perhaps the personal information definition should be broader than the one in PIPEDA. I'm open to a discussion on that. I'm not completely wedded to the definition in PIPEDA. I used it to be consistent with that statute, obviously.

With respect to other issues, there are people who have approached me—not law enforcement agencies, but private investigators and others—and said that they often use this as a method and therefore need some tightening up of the bill in that aspect. What specifically needs to be done in that area I can't say for sure, so obviously I look to the committee. I believe there may be other witnesses coming forward—not only Justice officials, but others—who will have specific amendments on those issues.

• (0915)

Mr. Brian Murphy: As a result of this bill being spoken to, we received a couple of briefs, one from the CBA, which clearly you've read and listened to, because their major concern was that the Competition Act is not really about criminalizing activity but promoting competitive prices, essentially, and choices for consumers. They make other comments about the Criminal Code, and I think you've taken those to heart as well. You and the committee are going to get some help from legislative people, and I think that's great.

There is, however—and I'll call it what it is—a fairly vested interest brief from the private investigators, who talk about pretext. What comments would you have about their position and how you might protect their position as far as it goes? I'll be quite blunt. Many of the case studies that they refer to are indeed laudable goals for the

protection of society, both directly and indirectly. But one could see that if your amendments to the Criminal Code aren't strong enough, some of the pretext language could in fact be used to go against the purpose of your bill.

What comments do you have in general about the private investigative association brief?

Mr. James Rajotte: To talk to you about the CBA brief, frankly I found it very helpful in terms of guidance. The Chamber of Commerce also had some very helpful comments about both the Competition Act and the amendments.

With respect to the bill, my specific direction to the Private Members' Business Office in drafting this was not to impede any law enforcement agencies in any appropriate measures that they may take in their duties. With respect to private investigators, it is a vested interest. Obviously it's their employment; it's what they do. So they're concerned about it from that point of view.

Frankly, I'm unsure as to whether their arguments are valid or not. I've read through the information they sent to me, and perhaps it will be clarified further in committee. But the brief from the Canadian Bar Association, for instance, was very specific about what it found objectionable in the bill and what recourse it wanted changed.

In terms of the private investigators, it seems that some of their changes would almost gut the bill entirely in terms of impersonation or false impersonation. So I am a little concerned about adopting their brief entirely, but I look forward to their being more specific in what they would actually change in the legislation.

They didn't talk much about the Competition Act; it was more about the Criminal Code. But I look forward to their bringing forward specific amendments to the first three clauses of the bill.

Mr. Brian Murphy: Good. That's all I have.

The Vice-Chair (Mr. Derek Lee): Thank you, Mr. Murphy.

Monsieur Ménard.

[Translation]

Mr. Réal Ménard (Hochelaga, BQ): Welcome, Mr. Rajotte. Sponsoring a private member's bill is always an important part of our work as a member. Moreover, as I've had occasion to tell my party, I hope we set aside more hours for private members' business, because I believe it's important.

Your bill poses a problem for me. I understand its intent, but I find it hard to understand how you are going to define, for example, personal information. That expression is already defined in another act. Consequently, I think that can be fine for this definition. However, the specific types of offences that you want to create and for which you would like people to be prosecuted aren't clear in my mind.

I'd like you to give us some very specific examples on the subject. We have some fear about the entire matter of telemarketing. Some companies exercise a form of solicitation that is increasingly common in our consumer world, with all the advantages and disadvantages that that entails. I agree that it's not always pleasant to be solicited.

Some private companies use information brokers to conduct telephone solicitations and buy data bases. Explain to us how marketing works and how information is transmitted in that context, and, more specifically, what type of behaviour you want to criminalize.

• (0920)

[English]

Mr. James Rajotte: Monsieur Ménard, that's a very good question, as well as the one you raised in the House about why section 403 of the Criminal Code would not address the problem that I'm raising. The best illustration is the situation in 2005 when *Maclean's* magazine actually obtained the personal phone records of our current Privacy Commissioner from a data broker online—purchased those records. Now, if you look at that as a problem, in my view, obtaining her personal phone records is obviously a serious invasion of privacy. The commercial transaction in and of itself is an issue, but the fact that these records were obtained by someone through fraudulently impersonating someone else as a means to obtain these records is the problem that I looked at. In my view, section 403 did not adequately address this.

So the fact that I could obtain her phone records by presenting myself as someone else, obviously with an intent of either making commercial profit, which is one issue, or using these for instances that may then transgress the Criminal Code—obtaining that personal information was fraudulent, which my intent was to try to stop with this bill.

[Translation]

Mr. Réal Ménard: What exactly happened in the *Maclean's* case? Telemarketing, telephone solicitation and the people who use data bases containing personal information are not at issue. However, you're saying that *Maclean's* magazine obtained information. I don't understand the legal aspects of the example you've cited. Be more specific.

[English]

Mr. James Rajotte: Sure, I'll clarify. It's not telemarketers; I hope I didn't use that term. I'm not talking about telemarketers who phone your home and try to sell you a product. It's actually someone who is trying to obtain personal information.

There are data brokers in the United States—in Canada as well—who have aggregate information, and they also have personal information. There are data brokers who obviously obtain information legally and consensually. If I fill out a form and voluntarily check a box and say yes, I want to receive updates or you can share my information with other companies, I have no problem with that whatsoever. My concern is when persons or businesses or whoever try to obtain yours or my personal information by fraudulently impersonating someone else. That is my concern.

[Translation]

Mr. Réal Ménard: What does “impersonate” mean? Give me an example. Is it someone who says he works for Household Finance, when in fact he works for another company? What does “fraudulently impersonate someone” mean, apart from pretending you're Céline Dion when you're Roch Voisine? I can understand that. Give me a specific example of companies that you want to target.

[English]

Mr. James Rajotte: I wouldn't want to name a specific company. For instance, it would in my view be legal and justified if, say, your financial institution calls and says, “Monsieur Ménard, we have a new product that we'd like to inform you about” or “We'd like to put you on our electronic mailing list” or “We'd like to have you as part of a study. Would you consent to do that?” If you consent to those three things, or more, then they have accurately done that.

If someone phones and says, “Monsieur Ménard, this is your financial institution”, and in fact it is someone who wants your personal information, of any type, to use for their own means or to sell online or to sell to someone else, that is the problem the bill was trying to address. So if someone phones you and says “Monsieur Ménard, I'm from the Bank of Montreal”, and in fact they are not, that is the problem I was trying to address.

[Translation]

Mr. Réal Ménard: Do you know the present extent of this problem in Canada? If your bill had an application and we were to implement it, how could we detect those companies?

• (0925)

[English]

Mr. James Rajotte: All indications I have, both from the business community and individual cases such as Commissioner Stoddart's, are that this is a growing problem in Canada and the United States. Especially with the ease of the Internet and more products being sold online, more personal information being stored and collected, and more personal information being shared, this is an increasing problem that we will have to address. I think it's very much a growing problem.

Implicit in your question is how the bill will address that entire problem. The bill would address collection of information and improper sharing of it, but that's just one of the problems with identity theft.

That's the purpose of the bill. Obviously the bigger issue of identity theft does need to be addressed by a broader piece of legislation.

[Translation]

Mr. Réal Ménard: Do you have the support of consumer associations? If we asked them to appear before us, do you believe they would agree on this bill?

[English]

Mr. James Rajotte: My indication from consumers associations—I don't have any written support with me—is that they would certainly support it. I have a lot of support, as well, for the legislation from companies that deal with information. I would encourage you to call consumer groups before the committee too.

[Translation]

Mr. Réal Ménard: Thank you, Mr. Chair.

[English]

The Vice-Chair (Mr. Derek Lee): Thank you, Monsieur Ménard.

Mr. Comartin.

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

I must say, Mr. Chair, I think I'm about to breach one of my cardinal rules, which is to never ask an unintelligent question. But I am so confused by what has happened here.

Mr. Rajotte, this is no reflection on you. I get some sense of where you're trying to go with this, but in reading the briefs, I'm really quite uncertain as to where we're going to end up.

Here comes the stupid part. Do I understand correctly that you're proposing that we take a good deal of this away bill from the Criminal Code, that there are only some very minor amendments to the Criminal Code that you're proposing?

Mr. James Rajotte: The bill obviously amends three acts. I think both from the second reading debate and from discussions with the two relevant departments and with members, I've come to the conclusion that there's not support to pass the clause on the Canada Evidence Act and the four clauses on the Competition Act. The clauses on the Competition Act, I think, deserve further study. So if the committee studying PIPEDA is willing to look at those, I would be fine sending those there. But obviously my goal here is to move the legislation forward.

The primary point in introducing the legislation was the Criminal Code amendments. I'm not suggesting that we remove any of the clauses, but I understand that the justice department obviously wants some tightening up, and members of this committee want some tightening up, of some of the language of the Criminal Code amendments.

Mr. Comartin, I did want to say that my training is as an economist, as a political scientist. So I sort of gave the direction to drafting counsel to draft it with this intent. But if there are suggestions as to how this should be tightened up, obviously I'm willing to listen to them.

Mr. Joe Comartin: Okay, this may be a bit unfair, but I'm not sure where the government is going on this. Do you have any sense of that, specifically with regard not to any Criminal Code amendments but to amendments to the Competition Act and maybe the Canada Evidence Act? I think it's more concentrated on the Competition Act. Do you know if there's activity there? The Bar Association repeatedly says that this area needs more study. I read into that that they mean more study before we actually come forward with amendments.

So I guess my question is whether you have any sense of what's happening with regard to amendments to the Competition Act, or has there already been a decision made that we don't need amendments to the Competition Act?

● (0930)

Mr. James Rajotte: My sense, Mr. Comartin, is that the industry department does not wish these amendments to the Competition Act to go forward. That's my sense. The Competition Act is one of the most difficult pieces of legislation. I've sat through so many reviews that I think I'm going straight through purgatory for it. Their view is that it is not an appropriate piece of legislation to deal with this kind of issue.

Now, my only point in response would be that the Competition Act is one way of seeking civil recourse if you are a person affected by this. So I think the issue needs to be studied, and I'd love to hear the Privacy Commissioner, the Competition Commissioner, and others come forward to speak to it. I want the public policy debate to carry forward on that, but I'd like to see the Criminal Code amendments enacted as soon as possible, which is why I'm willing to see it go to the other committee.

Mr. Joe Comartin: Okay, I have just one final question.

I know how much you've looked into this. Have you seen any reports or studies that would indicate that amendments to the privacy legislation, at either the federal or provincial level, would be the more appropriate way of dealing with these transgressions?

Mr. James Rajotte: That in fact may be the more appropriate way. Perhaps—and the legislative committee may recommend this—the Privacy Commissioner herself may in fact be given broader powers to deal with these kinds of transgressions. That may be more appropriate than amending the Competition Act. I've heard that argument, and I think it's a valid point.

Mr. Joe Comartin: That's all, Mr. Chair. Thank you.

The Vice-Chair (Mr. Derek Lee): Thank you, Mr. Comartin

We'll go to Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thanks, Mr. Chair.

And thank you, Mr. Rajotte, for all your work on this file. It's an important file, and I certainly appreciate the effort you've put in, and also your flexibility in dealing with this committee to achieve something that is workable and something that hopefully we can all support.

Sometimes we get lost in all the conversation about each clause and each detail of a private member's bill. Can you take us through the typical transaction, the typical event, that you would like to prohibit? I know that a lot of this is happening. We hear the horror stories sometimes in the media about identity theft, and increasingly so. But so much of this is happening behind the scenes, and people aren't aware. It could be that every one of us around this table has been the victim of identity theft and we don't realize it. So could you take us a bit through maybe the more minor situations, and then maybe through some of the worst case situations that you're trying to address through the Criminal Code provisions, specifically?

Mr. James Rajotte: Thank you very much, Mr. Moore.

You are correct in the sense that identity theft is a serious and growing problem. You have the most basic form in which people steal people's credit cards or other information and actually actively try to impersonate them.

I am coming back to it over and over, but I cannot think of a better illustration than what happened to the Privacy Commissioner. Her own personal information was obtained by someone who impersonated someone else. That's the kind of thing this bill is specifically trying to address.

Some people may ask why we are being so narrow in our focus. It's to address the issue. Obviously with a private member's bill, if you are focused, you have a better chance of moving the bill forward and moving the issue forward and perhaps putting some friendly pressure on the government to move forward in a more comprehensive way on the issue.

Coming back to that, I can't think of a better example than that of someone presenting themselves as part of an institution like a bank or an insurance company, or presenting themselves as someone else and obtaining that information. That is one issue.

The other issue is obviously that of taking that information, collecting it, and selling it. That is the typical situation I am trying to prevent with this bill.

• (0935)

Mr. Rob Moore: There are a couple of situations. There is the scenario you mentioned in which this information is obtained through a third party. You also mentioned these data brokers who are collecting information from people and then selling it to someone else.

What about the data brokers themselves? I understand that your bill would attempt to criminalize the obtaining of that information from the third party, but what about the actions they are taking to obtain this information in the first place?

Mr. James Rajotte: That's an important point.

There are two types of data brokers. There are the larger companies. They trade in larger or commercial aggregate data. For instance, they look at how many people are buying a certain type of product in a certain region, and they market that type of information. Second, there are other companies that target individuals. They're more specific to individuals. They target them for a fee. The invasiveness that these data brokers have is on a continuum. They can't be pegged into one category or another, but they are the ones

that, frankly, I am more concerned about, because they're targeting individuals or obtaining personal information on individuals.

Now, if it's voluntary, if it's consensual, I have no problem with that. But obviously if they're obtaining it through illegal means, then I am concerned about that.

Mr. Rob Moore: On the issue that was raised by the private investigators, do you see a narrowing of the focus on the Criminal Code side? Do you see tightening that provision as addressing the concerns that they've raised, that they would perhaps no longer be captured as long as they were not using that information for what would be a criminal purpose?

Mr. James Rajotte: Are you referring to "PI's, Pretext, Privacy, & and the HP Scandal"? Is that the document?

Mr. Rob Moore: We had a submission from the Council of Private Investigators, Ontario on the bill to criminalize pretexting.

Mr. James Rajotte: I don't know if I have that specific document.

Mr. Rob Moore: Okay.

Mr. James Rajotte: Do you mind reading the section you'd like me to address?

Mr. Rob Moore: They had raised a couple of concerns, but that's fine. I understand that they're looking at the private member's bill as it was, and perhaps not as it may be if we adopt some of the suggestions you're making.

Mr. James Rajotte: On the committee I would be open to amendments from private investigators, but I think we ought to distinguish between private investigators and law enforcement agencies like the RCMP. My intent here and my guidance was not to impinge upon the RCMP or other law enforcement agencies in carrying out their functions, but obviously we want to distinguish between private investigators. If they have some legitimate amendments to bring forward, I'd certainly welcome those as well.

Mr. Rob Moore: Thanks for bringing this bill forward, and also for your willingness to entertain amendments to make it an ideal product at the end of the day to protect Canadians. We appreciate all your efforts.

Mr. James Rajotte: Thank you.

The Vice-Chair (Mr. Derek Lee): Thank you, Mr. Moore.

Ms. Jennings.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you, Mr. Chair.

Thank you very much for your presentation.

[English]

My colleague Mr. Murphy, in his questions, began questioning a number of things. My question is this. A number of the briefs we've received—and we'll be hearing from them, I assume, at some course—like the one from the Canadian Bar Association, have suggested that to amend the code piecemeal—that's the word I'm looking for—is not in fact the best way to do so. They noted that there are serious issues with regard to the efficacy of the Criminal Code in a number of clauses, as it now stands, given the new technologies, etc. And when Justice Canada in 2004 conducted consultations on the issue of identity theft, one of the recommendations that were made by CBA to Justice Canada was that the government should in fact conduct a vast consultation on overhauling the Criminal Code in its entirety, rather than going piecemeal, whether by the government itself or through private members' bills.

So my question to you is, one, given that your bill only addresses one very narrow issue within the vast issue of identity theft, because it does not cover everything to do with identity theft, with the legal obtainment of personal information but then the illicit use and possibly criminalization of that illicit use, do you agree with CBA that in fact there should be a general consultation and an overall reform to address all of the issues and to ensure that through a piecemeal approach we're not creating unintended consequences and continuing to leave open significant loopholes? And this piecemeal approach would give a false sense of security to members of the public that because we fixed this one thing, everything is fine and dandy.

• (0940)

Mr. James Rajotte: That's an excellent question. I do absolutely agree that to address the entire problem of identity theft, we need a much more comprehensive piece of legislation, or pieces of legislation, to deal with the issue. Frankly, I look forward to that. You mentioned the Justice Canada initiative in 2004, and they've continued their work on that. In fact, the department's been keeping me up to date on that, and I appreciate it. The last document was produced in June 2006.

My frustration, though, is that we need these laws in place now in Canada, because we have increasing and growing problems in this area, so anything I can do to move this issue along generally, anything I can do to address any part of the problem of identity theft, to me is a good thing.

I think you're correct in saying the bill addresses a narrow issue; it addresses a narrow issue by design. My focus obviously is to focus on a certain area and try to address the problem there as a way of dealing with part of the problem of identity theft. But while it's a narrow issue, it's an important one. I feel that if this bill were passed, it would obviously address part of the issue of identity theft, it would improve the laws of Canada in dealing with part of this problem, and I think, frankly, it would encourage the government to move to bring forward a more comprehensive package. If the government, in its wisdom at that time, felt that they could bring forward a comprehensive package and at that time all of my concerns were addressed in that package, obviously I would support it. If this bill does become law, and amends the law, I would certainly welcome that.

My concern is that if I were to withdraw the bill and back off, I'm not sure exactly when we would have the comprehensive pieces of legislation come forward to truly address the whole problem. I see this as a way to instigate it to address the entire problem.

Hon. Marlene Jennings: I appreciate that, Mr. Rajotte.

This is my next question. Given that you would and do welcome a comprehensive review of all aspects of identity theft and an omnibus legislation that would deal with all of the necessary provisions that would need to be brought to the Criminal Code, or amendments to the Criminal Code, in order to bring it into the 21st century on this particular issue, I have to presume—and you may correct me if my presumption is wrong—that you've had discussions with both the previous justice minister and the current justice minister and with the parliamentary secretaries as to whether that is a priority for the government, and if it is, what timeline is being worked on.

Justice Canada has been studying this for—we're going into the third year. A report came out last spring, I believe, sometime in 2006. So how far along is the government in dealing with this issue in a comprehensive fashion?

Is the answer that you've received the reason you wish to proceed with this, because you don't expect to see anything?

• (0945)

Mr. James Rajotte: That's a tougher question in the sense of conversations—

Hon. Marlene Jennings: And I like you, but I think it's an objective question.

Mr. James Rajotte: It's an objective question.

I think it's tough to give a timeline to these kinds of things. Frankly, the discussions I've had have been more general in terms of what issues need to be addressed. Obviously I'm not privy to what's discussed in cabinet or what's discussed in the cabinet committees. So in terms of timelines as to exactly when legislation will come forward, I'm not privy to that. I don't think it's fair for me to ask cabinet to break confidence to say that.

They have been very helpful, I would say, in terms of sharing information with me—information that is obviously available to all the public—and in encouraging me to bring forward suggestions in other areas as well.

I'm confident that this is a priority for the government. I certainly think that's the indication I've been given. I've also been given the indication right from the get-go that the government is willing to work with me on this piece of legislation. My understanding has been that if I were open to amendments, if the bill addressed some of the concerns not only of the government but also of opposition members, the bill could then go forward and address one part of the problem right now, and then the more comprehensive legislative package could come forward and complement the entire area.

Does that clarify it?

Hon. Marlene Jennings: No, it doesn't, but I've been informed by the chair that I have no time left.

The Vice-Chair (Mr. Derek Lee): The exchange has been fulsome.

Mr. James Rajotte: I guess the short answer is yes.

Hon. Marlene Jennings: It has.

The Vice-Chair (Mr. Derek Lee): And it will give birth to a subsequent round for Ms. Jennings, I'm sure.

Hon. Marlene Jennings: Yes, it will.

The Vice-Chair (Mr. Derek Lee): Ms. Freeman.

[*Translation*]

Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ): Thank you, Mr. Chair.

I'd like to thank you for introducing your bill. I must say I share certain concerns. Earlier you answered a question from Mr. Moore asking you for the exact number of cases you're contemplating. In my view, those cases are quite limited.

I read the Canadian Bar report and, once again, I share my colleagues' concerns. You're attacking the problem of personal information obtained by fraud and identity theft by introducing a bill containing partial amendments to the Criminal Code. The addition of those partial amendments concerns the vast field that you want to cover.

Do you think the bill you're introducing is the best way to handle such a broad and complex problem as personal information obtained by fraud?

[*English*]

Mr. James Rajotte: I believe the bill addresses that issue. It does certainly deal with obtaining personal information from a third party by false pretense or by fraud, counselling another person to obtain this personal information. In terms of this specific issue within the broader ambit of identity theft, I think it does certainly address the problem of obtaining personal information fraudulently.

If there's a broader way of addressing that particular problem within the larger issue of identity theft, I'd certainly be open to that. But I think the bill is quite comprehensive in addressing that specific issue.

[*Translation*]

Mrs. Carole Freeman: Don't you think that, by amending the Criminal Code in this way, that is to say very partially, you risk creating other weaknesses and inconsistencies, rather than helping to solve the problem of personal information obtained by fraud? It's a big problem. Here we're talking about the Internet and so on.

• (0950)

[*English*]

Mr. James Rajotte: I look forward to a comprehensive package being introduced on the general issue of identity theft. But sometimes issues as big as this—if you look at identity theft, copyright, competition law, and a lot of other areas of public policy—are actually addressed better by identifying a specific problem and making amendments to target that specific problem.

I'm chair of the industry committee, and we have a lot of examples of where public policy is so broad—Copyright is one example. We've been debating that for the last 20 years. We don't know when

the legislation will come forward, because people have one problem with one particular aspect of the bill.

A way to start addressing identity theft is by saying, here's a specific way of dealing with this personal and specific problem we have, and plugging that gap right now. Then when the government brings forward legislation to deal with the broader issue, if it's covered within their legislation they may say, okay, that problem has been addressed; let's address everything else. Or they may bring forward their general legislation and say that it is addressed within the general legislation.

Either way, I think this bill has moved the issue forward and addressed the specific issue that needed to be addressed.

[*Translation*]

Mrs. Carole Freeman: Thank you, Mr. Rajotte.

[*English*]

The Vice-Chair (Mr. Derek Lee): Thank you.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Chair.

First, I want to thank Mr. Rajotte for this bill. As short as it is, I think it's excellent.

I'd like to tell you about a problem we're dealing with. In Quebec, private companies gather personal information. After obtaining it, those companies transfer it to other companies, to companies in Ontario, among others. In the case I'm going to discuss, the information was forwarded to Houston, Texas, where there's a major information centre.

If I file a credit application, for example, I realize that my personal information, obtained from a third party, is in the hands of a company that is not under the jurisdiction of my province. In Houston, American laws are in effect.

The Ontario company that issues my credit card, MBNA, for example, which many of us are familiar with, obtains information from Houston. I can't solve the problem at the provincial level. However, the amendment that you want to make to the Criminal Code would enable me to file a complaint in the event my personal information was stolen or someone obtained that information through a third party and that caused me harm. From what I've understood, this amendment, as minor as it is, would mean that, under the Criminal Code, it would be possible to seek this remedy in the 10 provinces and three territories of Canada.

Paul Szabo talked about the people who were the victims of an identity theft on October 25, 2006. I was the victim of that kind of theft, and I can tell you that it's hard to recover from even 10 years later. Personal information associated with my name went to Houston. In Houston, it was transferred to credit companies. Even today, when I want to get a credit card, it states that Daniel Petit went bankrupt. However, I'm a lawyer and I can't go bankrupt. False information was forwarded. My identity was stolen. Process servers even came to my home to serve me with documents concerning civil proceedings with which I had nothing to do.

I lived through that situation, and it's really sad. Ten years later, I'm still on file at Air Canada. There are problems with a certain Daniel Petit, but it isn't me. It's a dangerous situation. As short as it is, this bill is excellent. If it had been in effect at the time, I could have instituted criminal proceedings against the companies and had my identity restored, which I was unable to do.

I've told you about my case. When you thought of this bill, did you think of that? All the provinces are separate from one another, and the Criminal Code is the only act that applies from east to west, across the country. Did you think about the fact that, for me, the Criminal Code would have been the best tool?

• (0955)

The Vice-Chair (Mr. Réal Ménard): Thank you, Mr. Petit.

Mr. Daniel Petit: Thank you, Mr. Chair.

The Vice-Chair (Mr. Réal Ménard): Please feel comfortable. Your friendship is dear to me, Mr. Petit.

[English]

Mr. James Rajotte: Thank you very much, Mr. Petit.

Clearly it is a situation. There's a situation very similar to yours in my riding with a gentleman who 10 years later is still having trouble boarding Air Canada flights. When he and his wife board to go somewhere on a holiday, he still phones me and says he has a problem. It's a situation that needs to be resolved.

One of the things the third point of the bill was trying to address was the cross-border aspect of pretexting, of sharing this information, by holding the Canadian affiliates of foreign companies liable for invasions of privacy and identify theft committed against Canadians. The challenge here—and obviously this partly explains the amendments to the Competition Act—is that the Privacy Commissioner, Jennifer Stoddart, has no mandate to pursue investigations outside Canada. Perhaps, as Mr. Comartin mentioned, it might be better addressed by broadening her mandate, or broadening her powers in some way, through the PIPEDA review.

With the Internet and with wires going across borders and not respecting borders, we have to find a way to deal with exactly the kind of situation you describe—a company in Quebec that transfers information with the click of a finger down to a company in Texas, and 10 years later you're still dealing with this problem. That obviously has to be addressed. I think you mentioned it was 10 years ago; this is a problem that needs to be addressed now.

[Translation]

The Vice-Chair (Mr. Réal Ménard): Mr. Petit, do you have a final question to ask? We'd listen to the departmental officials, unless you have a brief supplementary—

Mr. Daniel Petit: No, Mr. Chair, but I would like to thank Mr. Rajotte because this is a problem that concerns me personally. And I hope the committee will take good note of the fact, not for me, but for all others like me.

Thank you.

The Vice-Chair (Mr. Réal Ménard): All right.

Did you have a brief question to ask, Mr. Thompson? Do it quickly because we want to listen to the officials.

[English]

Mr. Myron Thompson (Wild Rose, CPC): I think a couple more people would like to go for it.

But I want to tell Mr. Rajotte how much I appreciate what he's attempting to do here. I share the frustration he's talking about. I've been sitting on this justice committee for 13 years, and I can certainly understand why clause 4 needs to be dealt with in a different way. I can understand why clauses 5 through 9 need further consideration. What I cannot understand, when it comes to issues of utmost importance that you're trying to specifically address—they have to be dealt with as quickly as possible, because they are hurting a lot of people. I know a few people it has already got to.

I believe in the military system, where justice is firm, fair, and fast. My gosh, for 13 years I've sat around wondering what is taking us so long. How many more people have to die on a highway before we really deal with drunk drivers, for example?

I share your frustration, and I'm offering to have a cup of coffee with you so we can share the frustration together in that sense.

Mr. James Rajotte: Thank you, Mr. Thompson.

[Translation]

The Vice-Chair (Mr. Réal Ménard): That was a testimonial. Do you expect a response or would you let Mr. Moore have the—?

[English]

Mr. Myron Thompson: I just want to know if he's going to have coffee with me.

[Translation]

The Vice-Chair (Mr. Réal Ménard): All right. Are you requesting a recorded vote on this, Mr. Thompson?

Some hon. members: Oh, oh!

The Vice-Chair (Mr. Réal Ménard): Go head, Mr. Moore.

[English]

Mr. Rob Moore: As you know, there was a discussion yesterday between critics and me. We were very much looking forward to Mr. Rajotte's presentation. I appreciate your presentation today, but I would like to move that in the event that Mr. Rajotte is willing to entertain further consideration of the direction described in his private member's bill, we suspend consideration of Bill C-299 until next week, when there will be an advance distribution of the government's friendly amendments to the bill to committee members, so we can better consider that package.

[Translation]

The Vice-Chair (Mr. Réal Ménard): In order to give direction to the Chair, if ever committee members seconded this motion, would that nevertheless require us to hear witnesses from Justice Canada, or do you want to adjourn the committee meeting?

[English]

Mr. Rob Moore: I'd like to hear from Justice Canada officials when we have the final picture of what we hope will be something we can all agree to. That would probably be more appropriate at a later time.

•(1000)

[*Translation*]

The Vice-Chair (Mr. Réal Ménard): Would the motion be seconded by all colleagues? As notice is not necessary since this concerns committee business, I understand that no one is amending the vote, but that the motion is seconded as regards consideration of the bill. We would suspend the meeting for two minutes to enable the Justice Canada officials to take their place.

Is that it? Do you want to wait for the Justice Canada officials?

[*English*]

Mr. Rob Moore: We'll hear from them later, once we have the amendments in place.

[*Translation*]

The Vice-Chair (Mr. Réal Ménard): So we adjourn the meeting?

[*English*]

Mr. Rob Moore: Yes.

[*Translation*]

The Vice-Chair (Mr. Réal Ménard): All right. Is there unanimous agreement on that?

[*English*]

Mr. James Rajotte: Thank you.

[*Translation*]

The Vice-Chair (Mr. Réal Ménard): Ms. Jennings.

Hon. Marlene Jennings: Are we voting on the matter?

Mr. Réal Ménard: On the budget, all right, because we have future business.

Mr. Rajotte, we thank you for appearing this morning. We wish you to the best of luck for the future and we shall consider your amendments.

The sitting is suspended for two minutes.

[*The meeting continues in camera*]

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