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Chair

Mr. Daryl Kramp

Standing Committee on Public Safety and National Security

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•(1530)

[English]

The Chair (Mr. Daryl Kramp (Prince Edward—Hastings, CPC)): Colleagues, welcome to the Standing Committee on Public Safety and National Security meeting number 42.

Today we are doing clause-by-clause consideration of Bill C-44. You'll notice the chair had committee business right at the start, but in order to make it easier to move people in and out and off, we will have just a very brief amount of committee business in order to set a date. If the committee is comfortable, I will move the committee business to five or ten minutes at the end of the meeting.

Mr. Easter.

Hon. Wayne Easter (Malpeque, Lib.): I think it's a point of order, Mr. Chair.

I'm okay with what you're suggesting, but I do want to express a concern if I could put it that way. Given the haste with which we do these bills, neither the critic for the NDP nor I was able to be here for witnesses we had called for at the meeting the other day since Bill C-42 was being debated in the House at the same time.

I read the minutes as soon as they were available to me. Based on some of the evidence, especially that from Professor Craig Forcece, there are other amendments that I think could be made to this bill. We haven't heard from the Privacy Commissioner either. Whatever the reason the government has for wanting to push these bills through, we run the risk of not doing an adequate job of our work as parliamentarians because of that haste in doing it, and I just want to issue a complaint. I think that's absolutely wrong. I don't feel we're doing our job correctly. We haven't had time to review all the evidence and make appropriate amendments. We do have amendments, but other information comes up out of those minutes of the meetings I was unable to attend. Why the government wants to move with such haste, I don't know. Haste makes waste. The better thing to do is a good job.

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

Mr. Garrison, do you have a point of order as well?

Mr. Randall Garrison (Esquimalt—Juan de Fuca, NDP): It's on the same point.

I think we have registered our concern that it has become the habit of the government to severely limit the amount of time we spend especially on witnesses, but also on clause-by-clause consideration. While the minister has said many times that this is a short bill, he has also said it's an important bill. I share the idea that it's an important

bill, and therefore I'm concerned that we take our time to do this. Having only one day for witnesses and then having the deadlines that come up because of clause-by-clause means that we have had very little time to prepare amendments and we have a large number of amendments to go through. I believe we were not able to adequately consider some of the submissions and some of the testimony before we were forced to move on. So I echo the concern about the pacing on these bills.

•(1535)

The Chair: Okay. That is duly registered.

Are there any further comments?

I see none.

Before we go to clause-by-clause, I will just update the committee with a little bit of information regarding the incident at the end of last meeting. The chair has had discussions with the Sergeant-at-Arms. The clerk is also having discussions, and there is an ongoing investigation with the superintendent of our emergency planning. The chair will report back to this committee with further information. Of course we will do so in camera at that time for security reasons. I just bring that to your attention so that you feel comfortable that the matter is being looked into at this point.

Thank you very much.

Colleagues, we will now go to clause-by-clause consideration of Bill C-44.

Pursuant to standing order 75(1) consideration of clause 1, the short title, is naturally postponed until after the clauses are all moved. Should there be any variation in the title, consideration of that will be postponed. So at this point we will go directly to clause 2.

(On clause 2)

The Chair: Mr. Easter has an amendment I do believe.

Hon. Wayne Easter: Yes, Mr. Chair. It is as follows:

That Bill C-44, in Clause 2, be amended by replacing line 9 on page 1 with the following:

"human source" means an individual who resides or who is present in Canada and who, after"

The purpose of the amendment is to clearly define that a human source who provides information to CSIS under the conditions prescribed in the bill should be accessible by some means in the course of any prosecution. That individual would then be accorded protection from disclosure. I think it is fair to say this issue is not clarified in the legislation on how the courts would have access to an individual who is afforded protection from disclosure by CSIS when a charge is laid against someone in Canada. If a charge is laid against someone in Canada, how does that person get his just due in court if he can't access an individual because he or she is not in Canada?

That's the dilemma. You do need the right of fairness under the law and the right to question the individual who provided the information against you should you be charged.

The Chair: Thank you very much.

Mr. Garrison or Ms. James can comment.

Ms. Roxanne James (Scarborough Centre, CPC): I disagree with Mr. Easter on this one. Really, I do disagree.

You're specifically excluding anyone who is currently outside of Canada, and that's not the purpose of the clarification in this act. We believe—or I believe—firmly that when a promise is made to a human source, it shouldn't be restricted to those who are currently residing in Canada. You've indicated that there may be an issue with bringing that person to court or whatever else, but that's a decision the court would make.

For those reasons, I cannot support the amendment you have put forward.

The Chair: Mr. Garrison.

Mr. Randall Garrison: Mr. Chair, the New Democrats have a concern about the extension of the blanket protection for our human sources, and from the testimony that was given before the committee and from some of the submissions we've had, there is no evidence that the case-by-case basis is not working. I think Mr. Easter is trying to correct a part of that in this amendment. We'll be presenting an amendment with similar impact later on, but we would be in support of this amendment.

The Chair: Ms. Ablonczy.

• (1540)

Hon. Diane Ablonczy (Calgary—Nose Hill, CPC): I hate to disagree with you, Wayne, but security risks are not tidy little creatures who keep themselves within the confines of our great country. People are very mobile these days, and as we just saw in the news this morning with the discovery of an intention to blow up five European airliners, this is a very mobile threat. For us to say that if information on intentions to blow up a Canadian airliner comes in from a source who's in Paris or Bonn then we're not going to protect those people, how does that make sense, Wayne? To me, it makes no sense at all. I don't know why you would suggest it.

The Chair: Mr. Easter, in response, go ahead.

Hon. Wayne Easter: I understand what Diane is saying, Mr. Chair, and I understand it from a national security point of view, but on the other side of the coin, if an individual is informing on someone else, that person needs to be able to question that individual in court, and that is the dilemma. They need to be able to defend

themselves. That is why the amendment is there. But I do understand where you are coming from as well.

The Chair: Thank you very much for the comment.

(Amendment negated)

The Chair: I just make note as well, colleagues, that I do believe everybody has hard copies of the amendments. I just want to make sure that everybody does. I also want to thank our staff for putting them all into the modified sequence. You will also note there were no additions or subtractions to amendments, simply the modified sequence. I just bring that to your attention. If anybody doesn't have a copy of those, the chair would certainly be pleased to deal with it.

Also there has been a correction to the date at the bottom.

We will now go to amendment PV-1.

Mr. Hyer, I would just caution you at this point that as an independent, you have the right to speak to this, but of course your time is limited to, let's just say, a minute plus. The chair will be flexible, but I think you understand where we are coming from.

Mr. Bruce Hyer (Thunder Bay—Superior North, GP): Thank you, Mr. Chair. I'll try to do it in a minute minus.

Mr. Chair, the way this bill defines “human source” could have some negative effects on the ability of law enforcement or the courts to investigate and prosecute terrorists.

Obviously, CSIS needs to be able to promise some sources confidentiality, but the courts have found several times that this promise can be implicit. If we are not explicit here, this could handcuff our ability to actually convict terrorists.

You may recall that in committee Professor Kent Roach spoke to and testified that “language should at least be limited so that it is only an explicit promise made by CSIS of anonymity that would trigger this broad privilege”.

The wish here is that we clarify this potential ambiguity by adding the words “explicit written promise”.

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

Is there further debate or comment on the motion?

Ms. James.

Ms. Roxanne James: I was just going to disagree with that amendment. For one thing, just to be more specific, the fact that this says “written promise”, something does not have to be written to already be explicit and be known. Obviously everything that is done between CSIS and an informant is taking best interests into account.

I disagree with this completely. I can't imagine anyone thinking that a CSIS agent would have to get out a computer and type up some sort of a contract or agreement and then have someone sign it before CSIS would promise them confidentiality. I think that's out of line.

• (1545)

The Chair: Thank you very much.

Ms. Ablonczy.

Hon. Diane Ablonczy: I remember talking to a highly respected political figure a few years ago, and he said something very interesting to me. He said, “Diane, anything you put in writing becomes a public document.”

I think that's the concern, Bruce. If you have something written on a piece of paper that is floating around, the chances of it becoming public are very high. We've seen with WikiLeaks and other things that even so-called confidential documents suddenly become spread all over the Internet. If I were an informant—not that I know anything, but there might be some who do—knowing that this document was on computers and in the cyberworld would make me extremely nervous. I would be much less likely to come forward with information in that case.

As a lawyer, I would point out another thing. We all love lawyers, but you get into the question of how explicit does it need to be. Is it explicit enough? What kind of language is actually explicit?

Lawyers would have a field day. It's like the disclaimer at the end of e-mails. It started out saying “this is for the addressee only”, but now it's like a whole page of a disclaimer because more and more stuff has been added. I think we're wading into waters that would just cause more problems than this would solve.

The Chair: Thank you very much.

We'll hear from Mr. Garrison and then we'll go back to Mr. Hyer.

Mr. Randall Garrison: Mr. Chair, I look forward to the debate on amendment NDP-3 since Ms. James and Ms. Ablonczy have expressed concerns about the written commitments. Our amendment proposes something very similar, but instead of a “written” promise, it refers to an “express” commitment.

I look forward to the debate on that amendment.

We will be supporting this amendment even though we thought it would be better placed in another section of the bill and we did not include the “written” part in our similar amendment.

The Chair: Mr. Hyer, go ahead briefly.

Mr. Bruce Hyer: I'm not a lawyer, but I was a judge for a decade and it's not exactly in explicitly written stated form, but it's well known that verbal agreements are worth the paper they're printed on, Mr. Chair. We hope that everyone will choose to make this more clear.

The Chair: Is there any further comment?

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

(Clause 2 agreed to)

(On clause 3)

The Chair: We have amendment NDP-1.

Mr. Randall Garrison: Mr. Chair, we've moved this amendment because of the most recent report from SIRC. In that report, SIRC says very clearly that CSIS did not provide complete and accurate information to the review committee, and they did not always

provide it in a timely manner. When I read through the act, I didn't find any such express obligation placed on CSIS. This simply takes a problem that SIRC has encountered and puts it into the legislation so that it's very clear to CSIS that they do have the responsibility, upon request, to provide complete and accurate information in a timely manner. It's not a change in powers, but it's as it says in the legislation “for greater certainty” that CSIS is obligated to take this action.

The Chair: Is there further discussion on this amendment?

Ms. James.

Ms. Roxanne James: Thank you, Mr. Garrison, for bringing that forward. I'm not sure whether it's within the total scope of the actual bill that's before us, because we're not dealing with anything necessarily associated with SIRC, but I think, according to the information I have, that the whole issue of SIRC oversight is contained in section 39 of the CSIS Act. It's already in there. It achieves the same objectives. Of course SIRC is the oversight body. It oversees the actions of CSIS. It's just provided a report, as you know. That's its job and it's already doing it. So I'm not going to support this amendment. Whether it's within the scope or not—I think it might possibly be outside of the scope of what's being dealt with in Bill C-44—for obvious reasons, I'm not supporting it.

• (1550)

The Chair: Mr. Garrison.

Mr. Randall Garrison: Not to belabour the point, but this amendment is not about SIRC. It's about CSIS and it's about the responsibilities of CSIS to the review body. So with respect, I do believe it is within the scope of the bill. I guess I'd have to say I'm disappointed, given the annual report we had from SIRC in which it expressed that this is a problem, that the committee would not see its way clear to assist SIRC by making this requirement for CSIS.

The Chair: Mr. Easter.

Hon. Wayne Easter: I would just add something to that, Mr. Chair. In its report, SIRC did talk considerably about problems within CSIS—regions not speaking to regions adequately enough or not speaking to the central office—and in my view, having it in the bill would put some pressure on CSIS to be absolutely aware that they must report this information to SIRC as they go along. I think it puts pressure on CSIS to be aware and to be absolutely certain that they provide the information. I do not see how what we're trying to do in any fashion complicates or jeopardizes the bill.

The Chair: Madam Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre (Alfred-Pellan, NDP): Thank you, Mr. Chair.

On this amendment, I agree with Mr. Garrison and Mr. Easter.

When we debated this bill in the House, we had the opportunity to put questions to the Minister of Public Safety. It was said several times that not only does public safety need to be taken into account, but that civil oversight is important as well. The Minister of Public Safety was entirely in agreement with that, as were all of the parties in the House.

Given the last published report, I am having some trouble understanding why the Conservatives would want to vote against this amendment, which is precisely in keeping with what all of the parliamentarians subscribed to. Moreover, this would put some positive pressure on the Canadian Security Intelligence Service to ensure that its activities are clear and precise.

[English]

The Chair: Mr. Carmichael, please.

Mr. John Carmichael (Don Valley West, CPC): Mr. Chair, perhaps I can weigh in on this. I think it's already part of the CSIS Act, in section 39, that, when requested, CSIS is required to report in a timely and effective manner to SIRC. CSIS activities are subject to robust oversight right now by the Minister of Public Safety, and reviewed by SIRC and the Federal Court.

Effectively what we're doing is creating redundancy. SIRC is also responsible for reviewing the activities of CSIS.

So I feel that in this case it's already implied in the act and well stated.

The Chair: Are there any further comments?

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

The Chair: We will now go to Parti vert amendments 2 and 2a.

Mr. Hyer.

Mr. Bruce Hyer: Mr. Chair, PV-2 and PV-3 are very similar except that PV-2 refers to duties and functions and PV-3 refers to investigations.

These two proposed subclauses in the bill widen the possibility for cooperation with other intelligence services by adding “within or outside Canada”. Our amendment seeks to ensure that this information was obtained without torture, since Canada has signed and ratified the UN Convention against Torture.

It's not only our opinion, but Privacy Commissioner Daniel Therrien, who asked to appear before this committee and was not invited, wrote in his letter, “My Office is concerned with the adequacy of existing safeguards to ensure against the risk of such violations, including the risk of torture.” We agree with the Privacy Commissioner.

We think this clarification, with an underscoring of the importance to be consistent with what we have already agreed to, should be in here.

• (1555)

The Chair: Thank you, Mr. Hyer.

Ms. Ablonczy.

Hon. Diane Ablonczy: Mr. Chair, Mr. Norlock asked me if I would pass on some concerns that were discussed before the meeting, because he has lost his voice.

Voices: Oh, oh!

Hon. Diane Ablonczy: I know; we're all very sad and sympathetic—

An hon. member: We're not.

Hon. Diane Ablonczy: —and we're doing this with a smile on our face, for some reason.

The Chair: I'm sure you feel his pain.

Voices: Oh, oh!

Hon. Diane Ablonczy: We discussed the fact that there is a ministerial direction on information sharing with foreign entities. It was issued to CSIS in, I believe, July 2011. That set out an approach about information sharing where there may be a risk of mistreatment, because it certainly is a concern.

We believe, Rick and I—I don't know about everybody else—that this ministerial direction covers the intent of this amendment, and we think it's the best way to handle it.

You can nod if I'm correct.

The authority is actually broader in this case, because if you subject it to international law rather than to the information sharing ministerial direction, you limit the scope of our operations by what might be written outside of Canada. This is basically a made-in-Canada protocol. We think it's adequate and the one that should be followed.

Is there anything you want to croak...to add?

There are no croaks from Mr. Norlock, so I think I have stated his concerns adequately.

The Chair: Given that there is no croak, is there any further discussion?

Mr. Garrison.

Mr. Randall Garrison: I thank the Green Party for these two amendments. I think they do raise an important question.

I guess what we're dealing with in this bill...which the minister has repeatedly described as “short”. The point is that the credibility of CSIS, both externally and internally, depends on meeting the highest standards. While I agree with what Ms. Ablonczy has said about the ministerial directive, it's not legislated. By putting those guarantees into the law, we achieve a higher standard of certainty, and one that can be relied upon even with a change of government, a change of ministers, or a change of opinion by the current minister.

Therefore, I think the Green Party amendments do add something important to the bill.

The Chair: Is there further discussion on amendments PV-2 and PV-2a?

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

(Clause 3 agreed to)

(On clause 4)

The Chair: We have other amendments here by the Green Party, PV-3 and of course PV-3a.

Mr. Hyer, you have the floor.

Mr. Bruce Hyer: Mr. Chair, to reiterate, we signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Did we mean it when we signed it, or did we not mean it? If we meant it when we signed it and if we still believe in it, there should really be no qualms whatsoever about reaffirming it and making it explicitly clear in this bill.

It's regrettable that you chose not to pass the amendment to clause 3, but I hope that at least through clause 4 we will show our commitment to what we signed in 1984, for the very good reasons, which I won't reiterate, that, as the honourable member from the NDP stated, governments change, commissioners change, and ministers change.

Once again, we agree with the Privacy Commissioner that it is important to make sure this is explicit and well understood, and that we recommit to those principles.

• (1600)

The Chair: Is there further comment?

Mr. Carmichael.

Mr. John Carmichael: I'll weigh in on it.

The amendment as it's currently written would not achieve its intended effect.

This issue is covered by the ministerial direction on information sharing with foreign entities dated July 28, 2011. It sets out a coherent approach regarding information sharing where there may be a risk of mistreatment.

I'll be voting against it.

The Chair: Is there further discussion on amendments PV-3 and PV-3a?

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

(Clause 4 agreed to)

(Clause 5 agreed to)

(On clause 6)

The Chair: We have amendment NDP-2.

You're on, Mr. Garrison.

Mr. Randall Garrison: Mr. Chair, this is a small amendment, but I think it's an important one in that it indicates the tendency of the government to overreach as it drafted the legislation. As drafted, the legislation says that CSIS could keep each and every one of its employees' names secret. It could become an entirely secret organization.

I think the intent of it, which I think is valid, is to say if people are likely to be assigned to covert activities in the future, then their identity could be protected. That's why we've chosen to say "designated". When someone is hired and is being trained as an agent who's going to work in the field, you designate them as that, and then you can protect their identity, instead of having this overly broad statement that simply allows protection of the identity of everyone who has ever worked or who might in future work for CSIS.

The Chair: Mr. Falk.

Mr. Ted Falk (Provencher, CPC): I can't support that amendment because that would limit career potential for anyone employed with CSIS. Once they're identified, that removes the anonymity they may have in the field if ever they choose to move from a position within their administration into covert activities.

The Chair: Madam Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you.

I think the amendment is quite reasonable. In fact, the words used are the following: "An employee who was, is or has been designated as likely to become [...]"

That is very broad when we are talking about the employees of the Canadian Security Intelligence Service, but I think that it is still in the spirit of how we should consider a future employee.

In English, the terms are the following:

[*English*]

"likely to become".

[*Translation*]

There again, the wording is quite broad. A lot of identities could be protected with that.

That is all I wanted to mention.

[*English*]

The Chair: Mr. Easter.

Hon. Wayne Easter: Mr. Chair, I do support this amendment. I think Randall's arguments are valid.

This does not place a big burden on CSIS or on the government. It is basically asking for designation. Almost daily we're seeing this, even in the RCMP accountability act, with this gag order for life that in many cases is being placed on public servants.

In this case, I know, it's CSIS, and that is an issue that's involving national security, but there are cases, whether it's a review body or whatever, where an individual may need to talk about some of the problems in terms of the operations without impacting on specific information that should be kept secret. It creates a fear factor within the public service, such that people are scared to say anything even if it is in the legitimate public interest.

This is not a big burden on CSIS, and I fully support it. It just requires them to designate certain individuals rather than a blanket treatment for everyone.

• (1605)

The Chair: Ms. James, then Mr. Carmichael, and then Ms. Ablonczy.

Ms. Roxanne James: I'll try to be very brief. I just want to say that I'm not supporting it either. I agree with what Mr. Falk said about someone who is within CSIS and is moving within the administration. This would actually prevent them from doing so. What would happen? Would you have to fire someone and rehire them under a designated title?

I think you would also find that CSIS would simply, as a matter of a contract, designate everyone as having the potential to be in that capacity at some time in their career. I don't see the point of this. I think it's almost like a moot point to put an extra word in there, and I'm not going to support it.

The Chair: Mr. Carmichael.

Mr. John Carmichael: Mr. Chair, I support Madam James' comments.

To my colleague opposite, Madam Doré Lefebvre, who suggested the amendment was reasonable, I don't disagree with that, but I think it's restrictive. I think what it does to a corporation is it puts handcuffs on that corporation that limits them in their ability to move people as they so designate in a timely manner. I think this amendment would do just that. It would restrict the corporation in its activities.

The Chair: Ms. Ablonczy.

Hon. Diane Ablonczy: I was just going to say, not to be a conspiracy theorist, but to maintain its flexibility, why wouldn't CSIS just designate all of their employees as possibly going to be engaging in covert activities? So the whole thing becomes meaningless. That's what I would do if I were handcuffed by this. I don't want to put any bad thoughts in anybody's mind, but.... I think the intent of this is somewhat laudable, but I think that in practice it's probably not going to work anyway.

The Chair: Okay, point made.

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

The Chair: There was some good discussion. Thanks, colleagues.

Hon. Wayne Easter: Mr. Chair, the government never listens to us, no matter how good the discussion.

Some hon. members: Oh, oh!

Hon. Wayne Easter: Sorry, Mr. Chair. That wasn't even a point of order.

(Clause 6 agreed to)

(On clause 7)

The Chair: Colleagues, we have a number of amendments on the clauses that are left. We'll just move forward.

On clause 7, we have amendment NDP-3.

Mr. Garrison.

Mr. Randall Garrison: This is very similar to the Green Party's amendment earlier which amended a different section. We found what we thought would be a better place for it. We felt there should be an express commitment to protecting the identity of a human source given in advance of providing the information.

We have this protection which allows CSIS to sort of go out and offer a blanket protection to everybody who tells them anything, instead of what I think is the intention and actually the practice, which is to say that in pieces of important and significant information where there's a threat to someone, you offer that protection. That is what this says, that you would make an express commitment, not necessarily written, but in advance of receiving the

information. That's what the sources are looking for in order to cooperate with CSIS, rather than a kind of broad "everybody who tells us anything gets protected", which I think the courts will find difficult to deal with if the legislation is left as it is. This actually protects the integrity of the process by saying that there will be an express commitment in advance of the information having been given.

•(1610)

The Chair: Ms. Ablonczy.

Hon. Diane Ablonczy: Sorry, I can't help myself here. Isn't the blanket protection the best protection that you can give? It's kind of like knowing that journalists are going to protect their sources, because why would anyone talk to them otherwise? This is the same thing. Why would anyone talk to a security agent if there were some doubt about whether there was explicit enough protection.

If you go into a seedy bar and someone sidles up to you and says, "Guess what one of my buddies did? And by the way, if I tell you this, do I have explicit protection?" I just don't see this working in practice. Everybody has to know that if you help out a security agency of Canada, you are going to be protected, just like journalists will protect their sources. Then everybody knows where they're at. There's no question about whether this protection is explicit enough, or maybe it isn't, and do they have to worry about that.

I think you're getting into a really unworkable situation.

The Chair: Mr. Carmichael.

Mr. John Carmichael: I think Mr. Garrison is up first. He's been up for a while.

The Chair: I missed you, Mr. Garrison, so carry on then.

Hon. Diane Ablonczy: If Mr. Garrison would agree with me, then there's no problem.

Mr. Randall Garrison: I was actually going to say that I think the problem—and I probably should have said it more explicitly—is at the other end. If you offer this blanket protection, then when you try to use the information and to test it in court to try to prosecute someone who is a terrorist and is guilty of that, you're going to run into problems. The courts will take a very dim view of being unable to check the sources and will allow the defence to challenge that information.

The courts have said before that a case-by-case basis works, and from the few witnesses we had, we didn't hear any evidence that the case-by-case protection was not working. This is really trying to embed that very same idea back into the bill.

The Chair: Now, Mr. Carmichael.

Mr. John Carmichael: [*Inaudible—Editor*] the consistent arguments here, but it may be that it's in a not-so-seedy bar that this information is secured, as opposed to that of my colleague.

Hon. Diane Ablonczy: We talk about what we're familiar with.

Mr. John Carmichael: It may not be as bad as she implies.

The important thing, though, is human trust. Clearly, in order for somebody to come forward, they have to have trust, and the trust has to be explicit and consistent. I don't think a written solution to that is the appropriate way to go in this business.

Thank you.

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

The Chair: Now we have amendment NDP-4.

Mr. Randall Garrison: Mr. Chair, this is dealing with the same issues. We're putting back in the authority of the court or the person in charge of a body to require the disclosure, and taking out the discretionary parts if the CSIS director agrees with this. We're putting the decision-making back where it belongs, which is with the court or the head of any tribunal that's investigating, to decide if the disclosure of a human source's identity is necessary for the proper administration of justice.

The Chair: Ms. James.

Ms. Roxanne James: I disagree. I think that Bill C-44 already includes the provisions that would allow for the disclosure of the identity information if it's essential. I think that decision is left to the judiciary, and I disagree with it being added to this section. It's already there.

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

The Chair: Now amendment LIB-2.

I presume you would like to say a word, Mr. Easter.

• (1615)

Hon. Wayne Easter: Yes.

Mr. Chair, I'll not read the amendment, but it is to broaden the protection provided to human sources. The legislation proposes an amicus curiae. I wondered what that meant at one time, but in simple terms it's an appointed lawyer, as I understand it. This amendment provides that human sources would have access to a lawyer whom they choose themselves to represent them.

I think it gives the human sources better satisfaction that they are getting the legal counsel they believe can protect their interests.

The Chair: Mr. Garrison.

Mr. Randall Garrison: I think this is the same intent as NDP-7 where we are dealing with a slightly different part of the bill.

I think it's a very important point. It expands what is a traditional right in Canadian courts, which is to have the right to choose your counsel. When we get to NDP-7 we go slightly farther by saying that there's a right if they've received a previous security clearance to participate in these, but it's heading in the same direction, so we'll be supporting the amendment,

The Chair: Ms. Ablonczy.

Hon. Diane Ablonczy: I hate to keep talking—actually I don't—but remember I am also speaking instead of Mr. Norlock in some cases. My observation is this: there's already a mechanism in the bill for a human source to instigate the disclosure of his or her own identity. Why would this amendment be necessary? The human source can already say they want to be identified. I don't know why they'd want to, but they can bring in a friend of the court or some other lawyer to do that. When the source can already do it themselves and can hire a lawyer if he or she wants to do that—and being a lawyer I'm sure he would want to do that—I don't see why this amendment is necessary.

The Chair: Thank you very kindly.

Hon. Diane Ablonczy: I was looking for an argument from Wayne.

Hon. Wayne Easter: I think I've made my point. I don't need to re-argue the point. I think if they want to hire their own lawyer, they should have the right to do so, but they have to pay for it. That's the difference.

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

The Chair: We will go to NDP-5 under clause 7.

Mr. Randall Garrison: Mr. Chair, this is probably the most important amendment we placed to this bill. The bill rightly creates an exemption that would allow disclosure of identities if it's necessary to prove the innocence of the party, but it limits that exemption to the right to prove innocence.

What we're saying here is that it should apply to other parts of the criminal process, including detention or bail hearings, any place where life, liberty, or security of the person is involved. This would also extend it to actions under the immigration act in terms of removals from the country and things like that.

The exemption heads in the right direction but is inordinately narrow and this would broaden it out to any process whereby the life, liberty, and security of the person is likely to be endangered by the proceedings, without declaring the disclosure necessary.

The Chair: Mr. Carmichael.

Mr. John Carmichael: Just to add on the other side of that argument from Mr. Garrison, the amendment would increase the proceedings where the innocence at stake exception could be raised, and yes it would apply to immigration proceedings, security certificates, etc., and other instances where an individual could be deprived of his liberty or in prison. The amendment would reduce the scope of the protection of CSIS human sources. The point of Bill C-44 is to deal with situations where innocence and freedom are at stake, and not every administrative tribunal available should be considered for this. So on those points alone I would disagree with Mr. Garrison on this.

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

• (1620)

The Chair: Mr. Garrison, on amendment NDP-6.

Mr. Randall Garrison: Mr. Chair, this is one that was similar in intent to LIB-2 so I'm not expecting any better reception from the government side.

What we're saying is that in any proceedings under this section the judge must allow for special counsel of the defence who holds a security clearance. So we're not saying again, as I believe Mr. Easter is saying, that any counsel for the defence must, but in this case we're somewhat narrower. We're saying any counsel who is already security cleared could be allowed to participate. I do think that's a reasonable requirement and it draws on the parallel special advocate process in immigration, which we already have well established.

The Chair: Ms. Ablonczy.

Hon. Diane Ablonczy: I shouldn't keep doing this. I would just say only if you could clone the director.

The Chair: Mr. Easter.

Hon. Wayne Easter: I would just say that Randall articulated the argument so much better that I think the government members would certainly come in on this one and support this amendment. It makes a whole lot of sense.

The Chair: Thank you, Mr. Easter.

Mr. Falk.

Mr. Ted Falk: I think that this amendment would actually limit the discretion of a judge, and as such, I don't think that's a direction we would want to go in. A judge can always appoint an amicus curiae to address important decisions that are questions of law and to help ensure the fairness—

Hon. Diane Ablonczy: [*Inaudible—Editor*] Are we on NDP-7?

The Chair: We're on NDP-6, so hold that comment about “only the director” for the next one.

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

(Clause 7 agreed to)

(On clause 8)

The Chair: Mr. Garrison, I believe we're going to amendment NDP-7 on clause 8.

Mr. Randall Garrison: What we're saying here is that by limiting the requests for these warrants to the director, it would help prevent them from becoming routine, and it also provides a clear person to be accountable for those warrants. What this does in effect, for those who are trying to read through these, is it deletes other designated officials and keeps the responsibility squarely on the director. Ms. Ablonczy says that means cloning the director. It does not mean that the director has to do all of that work as an individual, but he or she has to put their signature on it and remain accountable for those warrants. That's the import of this amendment, to keep this from sliding down the chain of command, if you like, and making sure the director is aware and that these are exceptional use of warrants.

The Chair: Ms. Ablonczy, followed by Ms. James.

Hon. Diane Ablonczy: If you have to get the director's signature on every single warrant application, do you know how many there might be?

Mr. Randall Garrison: Violating the [*Inaudible—Editor*].

Hon. Diane Ablonczy: I just don't think that's at all reasonable. He could be a very busy person.

The Chair: Ms. James.

Ms. Roxanne James: It's okay, my colleague has said it perfectly.

The Chair: Mr. Easter.

Hon. Wayne Easter: Can you read that into the clause, Randall? I'm lost. Where does that “if the director” come in?

Mr. Randall Garrison: What it takes out is wording about others designated for that purpose. We are deleting words by this amendment rather than adding words.

Hon. Wayne Easter: All right.

Mr. Randall Garrison: That's my point. It allows delegation of this authority down the chain where the director might not be aware of these warrants being requested.

Hon. Wayne Easter: Okay.

The Chair: Thank you very much.

Hon. Diane Ablonczy: That's not what it says, is it?

• (1625)

The Chair: I don't believe so.

Hon. Diane Ablonczy: Randall, if I got this correctly, it specifies that only the director may make an application for a warrant.

Am I wrong? I'd hate to think I was wrong twice in a row.

Mr. Randall Garrison: What the text in the bill says is:

If the Director or any employee designated by the Minister for the purpose believes, on reasonable grounds, that a warrant...is required...

It doesn't have to say that the director believes that. The wording that we're taking out says “or any employee designated”. That requires the director's signature in order to do this. It does say here quite clearly “or any employee designated...believes, on reasonable grounds”. We're trying to make sure that authority remains lodged in the director.

Hon. Diane Ablonczy: Does the director have to make all these applications himself?

Mr. Randall Garrison: The director doesn't have to do the paperwork or fill out the forms. It has to pass in front of the director who has to believe on reasonable grounds that this is necessary.

Hon. Diane Ablonczy: Okay, but aren't you saying “the Director...may...after having obtained”? It says the director is the guy or the gal who has to do this.

Mr. Randall Garrison: Your bill says “the Director or employee may, after having obtained the Minister's approval, make an application”.

I believe we are taking out both of those other employees and making sure it's the director. I'm now getting a bit lost in the legal drafting technicalities. I believe that's what we've done. That's our intent.

The Chair: I'm prepared to table that and come back to it if you wish, or we can carry on with it right now.

Mr. Garrison, go ahead.

Mr. Randall Garrison: I believe we're correct.

If the government needs further advice on that, it should ask for it. I believe they're going to vote against it anyway.

Hon. Wayne Easter: That's more than likely.

I'll comment on Diane's question about whether this is going to create work for the director.

If the director is doing his job on these kinds of issues, the director is going to have to be informed in any event. This is pretty serious stuff. In my view, it's not a matter of the director's being overly busy as a result of this amendment. The director is going to have to know in any event. That's his or her responsibility.

The Chair: Ms. James.

Ms. Roxanne James: I'm not sure if we're discussing the actual...

The clause is very specific. It talks about making an application. Removing "or any other employee designated by the minister" limits it only to the director of CSIS. The reason stated by Ms. Ablonczy is that obviously the director cannot be working 24 hours a day, 7 days a week, and every day of the year. I think that's unreasonable.

I can't support this amendment. There are other reasons as well, but to me that's the most obvious one. You cannot just limit it to the director only.

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

The Chair: We move on to amendment PV-4.

Go ahead, Ms. May, briefly.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Thanks, Mr. Chair.

Clause 8 of Bill C-44 is very troubling. I'm even more troubled to hear Diane suggest that we'll have a lot of instances where we'll want to have warrants that may be used in other countries. We're explicitly setting out in this law that Canada's agents can operate knowingly in violation of the sovereignty and rule of law in another country. This was already drawn to the committee's attention as a source of concern by two different branches of the Canadian Bar Association, the immigration law section and the criminal justice section. They advised us, "we urge caution in adopting an approach that could suggest Canada is disregarding its obligations under international law." I think definitely, as the Canadian Bar Association also pointed out, it could also undermine mutual cooperation.

With this amendment, Green Party 4, I've attempted to ensure that at least within the federal cabinet, the director, before applying to the court for a warrant that would apply extraterritorially, will be required to also consult with the Minister of Foreign Affairs. This way we'll be certain that if there are other diplomatic considerations, other trade considerations, at least the Minister of Foreign Affairs is in the loop before the director, in this case, goes and seeks a warrant from a Canadian court to allow CSIS agents to break the law overseas.

• (1630)

The Chair: Mr. Garrison.

Mr. Randall Garrison: While I welcome Ms. May's intention here, I'll just point out that her version of this clause contains the very problem we were trying to remove in the last one. It says that a director or an employee may do this. On our side, we will not vote for this amendment, because we're trying to make a very firm point here that the director of CSIS has to be accountable for all of these warrants.

While it may be kind of a flaw in the drafting—I guess that's what I'm saying here—and I don't disagree with your approach, we will

vote against anything that allows the director of CSIS to pass that responsibility to others in the organization, because that makes accountability very difficult.

The Chair: Ms. James.

Ms. Roxanne James: This particular clause is dealing with applications for warrants within or outside Canada. I think putting in a stipulation that the Minister of Public Safety or departments have to speak with the Minister of Foreign Affairs is obviously not necessary when we're dealing with issues within Canada.

I also want to stress that in terms of these departments and ministers, there is already consultation going on. Putting it in here would make it a requirement even for warrants within Canada.

For those reasons I cannot support this amendment.

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

The Chair: We will go to amendment LIB-3, please.

Mr. Easter.

Hon. Wayne Easter: Mr. Chairman, this is somewhat similar to the last amendment. The purpose is quite simply to ensure that the Minister of Foreign Affairs is informed. I'll put it this way, I guess; if the ministers are sharing this information, and the approval of Foreign Affairs is required, then it's less likely to jeopardize the government's agenda in other areas. Ms. May named some of those: trade, diplomatic issues, etc.

I think it's important to keep in mind that these operations in a foreign country could be in violation of the law of that country. As such, if that activity is covered, it could have serious repercussions on Canadian interests in that country, be it trade, diplomatic, or otherwise.

Professor Wark, when he was before this committee, made reference to what he felt was an oversight that was lacking in Bill C-44. At the very least, if a CSIS operation that is in violation of the law in another country is discovered, and there may be repercussions, at least the Minister of Foreign Affairs, if informed ahead of time, would better be able to respond.

I think it's an absolutely necessary part of this bill to ensure that there is consultation with the Minister of Foreign Affairs on this kind of issue. That's what the amendment spells out.

The Chair: Ms. James.

Ms. Roxanne James: I actually didn't raise my hand this time.

The Chair: Madam Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

It will be my pleasure to vote in favour of this amendment. I know it is similar to what was presented by the Green Party, but I think it is important to mention that we do not wish to diminish the responsibility of the director of CSIS.

And so we will vote in favour of this amendment. In my opinion, it is quite reasonable.

•(1635)

[English]

The Chair: Mr. Easter.

Hon. Wayne Easter: This is the one the government came through on, Mr. Chair.

The Chair: Thank you very much. I appreciate your concern, Mr. Easter.

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

The Chair: Mr. Easter, you can try again on amendment LIB-4.

Hon. Wayne Easter: Mr. Chair, LIB-4 is simple as well. It's to provide clear and unambiguous language with respect to what will trigger the seeking of a warrant for activity to be conducted in a foreign country that may be in violation of the laws of that country.

I think it's important to keep in mind that some of the language in this bill is language that we do not see in any of our Five Eyes partners in relation to security agencies.

It's basically just to clear up the language.

The Chair: Ms. James.

Ms. Roxanne James: I will not be supporting this amendment. I think that by adding proposed paragraph 21(1.1)(b), "that could be inconsistent with the rules of international law...", you're forcing CSIS to actually be aware of and make a judgment against 170 other states, other countries, countries that in some cases—obviously in many cases—are not governed by the same principles, human rights, and so on that we have in Canada.

I think we also heard from a witness who specifically talked about tracking individuals overseas and the chance that they would cross borders, which would also be a serious problem if we were to adopt this amendment because it would require CSIS to determine whether it would be inconsistent in that particular country as well.

I'm not going to support it. I think the legislation is very clear in this respect. I don't see the necessity for it, and I think it would be overly cumbersome for CSIS to have to prove that something is consistent with other countries...

The Chair: Mr. Garrison.

Mr. Randall Garrison: Mr. Chair, this is very similar to NDP-9. In fact, if the government defeats this, we will not be moving NDP-9 because they're essentially identical in their intent.

I completely support Mr. Easter's arguments.

I find it strange that both the minister and the parliamentary secretary have raised this question that somehow in dictatorships there is some process you'd have to go through to get warrants, and of course, the point of most dictatorships is that there is no such process. So I don't think you have to unnecessarily worry about CSIS having to comply with the law of dictatorships on intercepting communications or those kinds of things, because those kinds of protections don't exist. I find it a peculiar objection.

On the other hand, CSIS does have to know the laws of the countries in which it's operating in order to be effective. I would be very concerned if we were arguing that CSIS can simply ignore international law and ignore the laws of all those states.

We'll be supporting Mr. Easter's amendment, and as I said, if this is defeated, we will not be moving NDP-9.

The Chair: Ms. James.

Ms. Roxanne James: I'm not sure whether I mentioned it, but CSIS already requires a warrant. Regardless of whether the laws of another country are inconsistent to what activities they want to partake....

They already have to get a warrant, so regardless of whether you agree with it or not, it's really not essential for the bill. They already require a warrant.

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

The Chair: We're on amendment NDP-8.

Mr. Garrison, I'm presuming you're moving this.

Mr. Randall Garrison: Yes.

The Chair: If so, amendment LIB-5 and amendments PV-5 and PV-5a are identical amendments and will not be dealt with.

Mr. Randall Garrison: This amendment would delete the wording about this being without regard to the law of another state or international law, and I think that comes to the heart of the disagreement around the table here. While CSIS has to operate clandestinely, it's not required to operate illegally, and this implies that, even in friendly nations where we often conduct espionage activities or might be required to obtain information, we could violate the laws of the United States, the laws of France, the laws of our allies.

This amendment simply deletes the whole of that wording. I think that's why you've seen the same amendment submitted by the Green Party as well as the Liberal Party.

This seems unnecessary and seems to be creating a dangerous situation whereby we encourage people to ignore the laws of our allies.

•(1640)

The Chair: Ms. James.

Ms. Roxanne James: I'm not jumping ahead, but you mentioned amendment NDP-9. The amendment you're proposing here is actually removing the whole issue. It states: "Without regard to any other law, including that of any foreign state...". Again, the test is here in Canada, with our law, Canadian laws. By removing that—and I know that you're going to either go forward with amendment NDP-9 or withdraw it—you would need to, in your amendment NDP-9, spell out what's required, which we will not be supporting.

That's obviously and fundamentally a difference between this side and that side. We believe that the real test of whether CSIS' kind of work should be done is here in Canada, based on our Canadian laws, which are in most cases way above and way stricter, with better human rights and so on than in most of the countries where the warrants would be used.

The Chair: Ms. Ablonczy.

Hon. Diane Ablonczy: I thought the whole point of this bill, or at least one of the points, was to clarify a question that the Federal Court raised about this, because the Federal Court basically... I'm trying to find the decision. Maybe other people know. The Federal Court basically said that it was not sure if it could issue warrants for CSIS activities overseas, which I think we all agree are necessary because security risks are highly mobile.

The court said that it was just not sure if it had the jurisdiction to do that, so I thought the whole point of the bill was to clarify that, yes indeed, it has jurisdiction to authorize our intelligence services to pursue sources in other countries. Also, some of these countries may not share Canadian values and Canadian human rights norms, so we're saying that it's our law, which I think we all agree is probably the gold standard in protecting people and in being concerned about rights, that will be the operative law.

If we pass this amendment, we would be obviating one of the key points of having the bill to begin with, which is to clarify for the courts what their jurisdiction is in issuing warrants.

Am I wrong about that?

The Chair: We'll hear first from Mr. Easter and then from Mr. Garrison.

Hon. Wayne Easter: Well, in terms of the warrant issue, you are correct. The court has determined that there need to be warrants issued for the activities in which CSIS involves itself abroad, but with the wording here, basically what we're proposing is to get rid of the wording "Without regard to any other law, including that of any foreign state...". We've looked, and we've had the Library of Parliament look, and none of our Five Eyes partners has similar wording or similar legislation that would legitimize that illegal activity in another country.

The director of CSIS, when he was before the committee, confirmed that, saying, "I'm not aware of any other countries, partners, that would have the same type of legislation."

The British Columbia Civil Liberties Association stated this for the committee:

We believe that asking Canadian courts to authorize violations of foreign law simply invites reciprocal conduct by foreign courts and erodes Canada's reputation for respecting the rule of law.... Nor is it clear whether such warrants can completely shield CSIS from accountability here in Canada if illegal actions undertaken by a foreign agency working in coordination with CSIS results in the violation of a Canadian's rights abroad—

It's wording that is basically saying that we are going to violate the laws abroad, and other countries don't have that.

• (1645)

The Chair: Mr. Garrison.

Mr. Randall Garrison: Mr. Chair, in response to Ms. Ablonczy, whom I do take very seriously on this issue, we're not amending to take out the warrants. Again, we're simply amending the bill to take out a piece of overreach that I don't believe is necessary for those warrants to operate. The warrants will still be there and the requirement for CSIS to get a warrant and the Canadian standards will still be there. I simply don't believe it's necessary to have the wording without regard to any other law of a foreign state or international law. That creates problems down the road for Canada's

international reputation, as Mr. Easter has just pointed out. Again, I did ask the same question when the officials were here, if this were seen as necessary by any of our partners who have such warrants, and it's not. None of them use this, so I believe it's a case of overreach once again in the bill.

The Chair: Ms. James.

Ms. Roxanne James: I know the NDP and the Liberals like to compare Canada to our Five Eye partners and like-minded countries, but they do it selectively. In this particular case, they're saying no other country that we're compared to has a similar text in their acts, but I just wonder if any of those other countries has had recent court decisions that have called into question the authority of CSIS to be able to operate overseas.

The reason we're here, as Ms. Ablonczy indicated, is we need to clearly specify that they have that ability. We want to make sure that Canadian law takes the highest precedence, and that warrants are issued here in Canada. With regard to comparing us to other countries, it's unfortunate they do it selectively, because when we voted on standing up with our allies and air strikes against ISIL, they didn't consider that same argument. So again Canada is Canada. We're a unique country. We don't necessarily need to be compared to every other country, but we're also in a unique situation here. We're not immune to terrorism. This bill is extremely crucial at this point in Canadian history. We need to get these changes in, and I firmly believe that this text before us puts Canadian human rights, Canadian courts, the judiciary, and the Charter of Rights and Freedoms ahead of some other foreign state. It is absolutely essential and will ensure that the courts will not have the same decisions in the future.

The Chair: Ms. Ablonczy.

Hon. Diane Ablonczy: I will make three points. One is that just because no other country has done it doesn't mean we can't. Two, I don't think any of us truly believes that no other country conducts security operations in other countries in possible contravention of their laws. We're just going to be more honest about it, so good for us, I would say. Three, there will be countries that would never want Canadian security agents operating in their territory and would be quite happy, if this amendment passed, to pass a law saying no Canadian or no foreign intelligence agencies can go in there, and then our courts' hands would be tied. If there's such a provision in any country—and terrorist producing countries would have a lot of incentive to put that in place—then we have to stop at their border. How does this help keep Canadians safe?

I don't think it's a very practical amendment. I don't think it serves a useful purpose.

The Chair: Mr. Easter.

Hon. Wayne Easter: I think what Diane is talking about is really an operational decision: that a judge can authorize CSIS to do what I think we all feel CSIS needs to be able to do to do its job. But that specific wording, I submit to you, Mr. Chair, is wording that is going to come back time and time again to haunt Canada in international forums, whether it's in the United Nations or wherever, to have the wording in legislation “without regard to any other law including that of any foreign state”. I can see that being used in legislation. I can see that being used time and time against us.

I agree with the fact that CSIS, and they have been doing that... We're putting in legislation, to a great extent in accordance with the court rulings, what CSIS has already been doing. Yes, they need to operate in a foreign state, and yes, sometimes they may have to violate the law of that country, but that happens operationally in CSIS. To have those words in legislation, I submit, will haunt Canada down the road. You don't need it for them to do their job.

• (1650)

The Chair: The only comment the chair would make is the court has said, yes, we do.

Ms. Ablonczy.

Hon. Diane Ablonczy: Yes, you do, because if a warrant can't be given and if there's a law in another country that says foreign intelligence operatives can't come into that country, then we're contravening their law. Why would we tie the hands of our intelligence people that way?

Hon. Wayne Easter: I disagree sincerely.

The Chair: Mr. Garrison.

Mr. Randall Garrison: With respect, Ms. Ablonczy, I think there's a difference between saying we're going to grant the ability to ignore every law of a foreign state every time and the responsibility of a judge to take into account existing laws of other countries. That's why I'm calling it an overreach.

We're not saying that in the scenario you raised a judge might not go ahead and issue a warrant for a very good reason. But what you're saying with this wording, again, as Mr. Easter says, I think will come back to haunt us because it says that you may at all times ignore international law. What the court did is it invited Parliament to create such warrants. It did not have any such wording like this in its decision. I still regard it, as I've said, as overreach.

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

The Chair: Amendment LIB-5 Liberal and amendments PV-5 and PV-5a will be removed as they are identical.

I believe Mr. Garrison has—

Mr. Randall Garrison: I withdraw NDP-9. We've already dealt with the same substance of this amendment.

The Chair: Okay. Thank you.

My understanding now is if the NDP motion is removed, PV-6 and PV-6a can now be moved should you wish to.

Ms. May.

Ms. Elizabeth May: Thank you.

As a matter of fact, the bizarre procedures with which I find myself here created by 20 identical motions in committees more than a year ago don't actually allow me to move anything. My amendments are all deemed moved, as I understand it, and then I'm allowed to speak to them before they're destroyed before my very eyes. It's an exciting possibility for me that some day, one of them might pass.

In any case, this one is dealing with the same problem the previous few amendments have attempted to deal with, which is Canada's responsibilities in the world, our reputation, and our ability to ensure that in dealing with our partners around the world they see us as respecting the rule of law. This amendment was suggested by one of the witnesses who was before this committee, Professor Craig Forcece. The proposal is to have a stand-alone section that will be inserted right after proposed subsection 21(3.1). As you can see, it would be within clause 8:

(3.2) For greater certainty, a warrant under this section is required for any investigation outside of Canada that

(a) involves an investigative activity that, were it conducted inside Canada, would require a warrant by reason of the *Canadian Charter of Rights and Freedoms*; or

(b) may be inconsistent with international law or the law of the foreign state in which the investigative activity is conducted.

This will clarify ambiguities. It will ensure that our actions are consistent with the Charter of Rights and Freedoms when occurring overseas. I do take the point that Ms. James made earlier; that is, earlier attempts to try to fix clause 1 in my Green Party amendment 4, lumped in both inside and outside. I just want to stress that this is only for those warrants that will be put forward to a court for an investigation taking place outside Canada. It certainly will make all of clause 8, if not perfect, at least more palatable.

• (1655)

The Chair: Thank you very much, Ms. May.

(Amendment negated)

The Chair: Now to Mr. Garrison and NDP-10.

Mr. Randall Garrison: Mr. Chair, what we've done now in this bill is we have created these new warrants. We've given them exceptionally broad scope by leaving in the language, “without regard to” any other foreign state's law or international law.

What this amendment proposes is if we're expanding the power of CSIS to get these warrants, there should be additional accountability to go along with that new power. What we're proposing here is that SIRC, which does this in confidence, would receive a report every year on what warrants were applied for, were they granted, what actions were taken, and what results were achieved, so that we have some prospect of seeing whether this process is working from a body independent from CSIS, who have a tendency to say sure, they did it and therefore it must be good. We'll have an in camera process in the Security Intelligence Review Committee to look at how these warrants are working and see if we're running into problems. I think it's essential if we're going to expand the powers and create this new warrant that there be oversight and accountability for the use of those warrants.

The Chair: Mr. Easter.

Hon. Wayne Easter: This is a question to Randall on this.

Are you suggesting that this information be made public, in terms of names of countries, etc., or are you suggesting that it be kept entirely in camera? Or are you saying that in terms of its reporting to the public, SIRC, in its annual report, would say that this section of the act was authorized so many times? I think for a report to be public, in terms of what countries this was authorized to be used in, would be problematic.

Mr. Randall Garrison: It is not specified that any of this information becomes public. It's up to SIRC to decide what things are appropriate to make public and not in its annual report.

It only requires the report to the review committee, so that we have independent expertise looking at the use of warrants and any possible problems: what's the value of these; what's achieved by these. Should we keep doing these, is really the question that I'm inviting SIRC to answer.

The Chair: Mr. Carmichael.

Mr. John Carmichael: Mr. Chair, as I listened to Mr. Garrison's explanation, I'm uncertain.

As you proposed reviewing these once a year, the amendment appears to be unnecessary to me. SIRC already has the authority to review all of the activities of CSIS, including its annual reporting on the number of warrants issued and the type of activity that I think you're capturing or attempting to capture in your amendment. I think it's redundant and unnecessary.

The Chair: Ms. James, and then Mr. Garrison.

Ms. Roxanne James: I'm okay.

The Chair: Mr. Garrison.

Mr. Randall Garrison: Well, I think it's the same as the amendment that the Conservatives voted against earlier, where we asked the service to provide complete and accurate information in a timely manner. It creates a legislative obligation for the director to prepare such a report for SIRC every year. That becomes the duty of the director, and therefore, it takes some of the onus off SIRC to have to ask about each one of these. They will receive a report from the director. Again, it's creating an obligation on CSIS to be accountable to SIRC in a way that facilitates the review.

The Chair: Thank you.

Mr. Carmichael, for a response back.

Mr. John Carmichael: To that end, and I hear you on it, SIRC is already responsible, as the governing agency, to go and get that information and expect that it's going to be delivered at an appropriate time as they lay it out. To my thinking, it's already established. I think we're just creating redundancy in the system. As opposed to demanding that CSIS feed the information up, SIRC is already demanding of CSIS that it be provided. I think it's already covered.

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

(Clause 8 agreed to)

The Chair: New clause 8.1 has been deemed inadmissible.

A voice: Let him move it.

The Chair: You may move it first, if you wish, sir.

● (1700)

Mr. Randall Garrison: Thank you very much, Mr. Chair. There is some progress in the committee.

I'd like to move NDP-11.

The intent of this amendment is that given that we have assigned greater responsibility and more technical responsibilities to SIRC implicitly in this bill, we should increase the expertise and the all-party agreement in the appointments to SIRC. Historically we've had a tradition that was followed, in which senior members, former cabinet ministers or public servants, were appointed to SIRC, with the agreement of the Leader of the Opposition and any other party.

What has subsequently happened is that names are sent to other party leaders, and their response is ignored. We've had some appointments to SIRC of people with questionable qualifications. Again, the purpose was to match the expansion of the powers of CSIS and the responsibilities of SIRC with an increase both in the expertise of those appointed and then the necessity to get consensus on the appointments.

Ms. Roxanne James: I'm sorry to interrupt, but on a point of order, Mr. Chair, if this has already been deemed to be out of scope or inadmissible—

The Chair: I'm sorry, but the chair erred. I should have given Mr. Garrison the opportunity to make his motion first—

Ms. Roxanne James: So you spoke ahead? Okay, sorry.

The Chair: The chair made an error.

Please carry on, Mr. Garrison.

Mr. Randall Garrison: I think that concludes it.

The Chair: Thank you very much.

I thank our staff here on this issue, and I will read the ruling of the chair.

Obviously, the amendment seeks to amend section 34 of the Canadian Security Intelligence Service Act.

As *House of Commons Procedure and Practice*, second edition, states on pages 766 and 767, “an amendment is inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent Act, unless the latter is specifically amended by a clause of the bill.” Since section 34 of the Canadian Security Intelligence Service Act is not being amended by Bill C-44, the amendment is inadmissible.

That is the ruling, of course, from our clerk and analyst, who have researched this, Mr. Garrison.

Mr. Randall Garrison: May I ask a question, Chair?

Is it not the case that sometimes amendments require consequential amendments to other sections? In essence, I regard this as a consequential amendment, given the increased technical powers and responsibilities.

Is there any provision for amendments that are necessary as a consequence of amendments to other sections?

The Chair: Actually, this amendment is not up for discussion. The decision cannot be overturned.

Mr. Randall Garrison: I'm not attempting to overturn your decision; I'm asking a question. Is there any provision in our rules to allow consequential amendments? In other words, the ruling you've given says that if a section is not physically there, you can't amend it. Are there no provisions in our committee rules that would allow considering consequential amendments to other sections of the bill?

The Chair: I don't know. The chair will certainly inquire.

The chair is satisfied that the ruling stands as it is. All I can suggest is that if you wish to go down another road at another particular time on another area, that's fine, but the chair will stand by this decision. Your only option at this point would be to challenge the chair.

Mr. Randall Garrison: Thank you, Mr. Chair. I don't wish to challenge the chair today, because I have a pretty good crystal ball as to the outcome. Since the government has not chosen to include anything about increased accountability or oversight in the bill, I think I know what would happen, so I will not challenge the chair.

The Chair: Mr. Easter, this is not debatable.

Hon. Wayne Easter: This is just a procedural question, Mr. Chair, and perhaps the clerk can tell us this.

On a ruling from the chair—and I'm not concerned about this one, because I think you're right—is there any way that a committee member can appeal, other than through a challenge to the chair?

• (1705)

The Chair: The clerk has advised, and I do not know at this particular point if there is. I can suggest that the chair will certainly look into that, and if there is any other opportunity, at the next meeting, sir, I will bring that back to you.

Mr. Easter, I have also been further advised that you can challenge the ruling of the chair. That is the only way we're aware of at this particular point.

Hon. Wayne Easter: But, I mean, we're—

The Chair: I understand where you're going, but let's just leave it at that right now. Thank you very much.

Hon. Wayne Easter: We'll never win a challenge to the chair, and I'm worried about precedent here, knowing where this government has already gone in undermining democracy. But that's another point.

The Chair: Certainly, Mr. Easter, I can assure you that the chair will be diligent and will investigate this. If there is any change or any suggestions that would be helpful to both you and the committee, I will certainly bring them forward.

Yes, Madam Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: I really don't want to challenge the chair. My question is about the procedure.

We have already added clauses sometimes when studying private members' bills. Are things different when we are considering government bills?

The purpose of my question is to put things in perspective.

[*English*]

The Chair: We are discussing this bill right now. If we're going to get into committee business or other discussions, that will be for another time, but right now, we are going through this bill. If you want clarification from our clerk and analyst on procedure, we will certainly deal with that.

Ms. Rosane Doré Lefebvre: Thank you.

The Chair: We'll now go to clauses 9 to 13.

(Clauses 9 to 13 inclusive agreed to)

The Chair: We have a new clause 14, amendment NDP-12.

Mr. Garrison.

Mr. Randall Garrison: Mr. Chair, once again, when the government introduced this bill, they said that they were hoping to get all-party agreement, and that we'd have complete and full discussions in committee. Of course I'm very disappointed at this time that none of the amendments we put forward were considered.

Setting that aside, I still think it would be useful to, within two years after the coming into force of this act, go back to this act and look at what we've done, and make sure these expansions of powers have not limited the ability of SIRC or any other review mechanism to deal with providing proper oversight for national security activities in Canada.

We've had the abolition of the position of inspector general within CSIS. We had some concerns, which were ruled out of order today, about the expertise and appointment process for SIRC. All this amendment would do is say that if the government insists on pressing ahead with this, in two years we'll come back, look at the impacts of the changes the government had made both to CSIS and to other aspects of the review process, and see where we are. I think it makes sense.

We have not specified the mechanism. We've left that to the government at that time to specify. But it would be very useful for the committee to look back at what we've done because we're making piecemeal changes here.

To me, both the integrity and the credibility of CSIS, and other national security operations depend on them protecting both national security and civil liberties at the same time. Therefore, oversight is essential to the way they do these jobs.

• (1710)

The Chair: Ms. Ablonczy.

Hon. Diane Ablonczy: I think that's very reasonable.

The question I have is whether that amendment is within the scope of the bill. The bill amends the CSIS Act, but what you're talking about, Randall, are activities of SIRC. It's a different thing, right?

The Chair: Mr. Easter.

Hon. Wayne Easter: I fully support this amendment.

I've always maintained that it was a mistake to do away with the office of inspector general. Actually, having been there myself, it was a great protection, even for the minister.

We are the only one of the Five Eyes—New Zealand, Australia, the U.K., and the United States—that does not have parliamentary oversight.

This would at least provide a sensible review in two years, basically a forced review, if I can put it that way, of our current oversight agencies to ensure there's a balance between national security and civil liberties, and that the current oversight agencies are, in fact, adequate to do the job. I don't believe they are, but this, at least, would incorporate it into an act, where there is at least some kind of parliamentary review that would come up within a couple of years' time, which I think would be helpful for public policy.

The Chair: Ms. James.

Ms. Roxanne James: First of all, this is way out of the scope of the CSIS Act and what the bill before us is about. What you're asking for, Mr. Garrison, is that the CSIS Act actually dictate that at some future point in time the Senate, the House of Commons, or committees of both, should come back and review this legislation. Regardless of whether it's out of the scope, and I'm pretty sure it is, both committees, whether the Senate or the House of Commons, can review this legislation at any time. They could review it next week if they wanted to. They make those decisions. The CSIS Act should not dictate to the House of Commons or to the Senate of Canada when and by what means they need to review a piece of legislation.

I can't support it.

The Chair: Is there further discussion?

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

The Chair: Now we are going to the short title.

Shall clause 1 carry?

Hon. Wayne Easter: “Common sense” isn't in there. It is in an awful lot of them. Maybe we should put “common sense” in.

The Chair: Mr. Easter, let's....

Shall clause 1 carry?

Some hon. members: Agreed.

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill carry?

• (1715)

Ms. Roxanne James: Call for a recorded vote.

Mr. Randall Garrison: Was that, “Shall the bill carry?”

The Chair: Yes.

Mr. Randall Garrison: I'd like to speak.

The Chair: Do you wish to speak to “Shall the title carry?” Is that what you wish to speak to?

Mr. Randall Garrison: No, you said, “Shall the bill carry?”

I don't intend to make a long, drawn-out statement, but going through the amendments we've seen, I think the problem we have in this bill is that it does not touch on the question of oversight and accountability while expanding the powers of CSIS at the same time. That's very disappointing.

Also, we've raised some questions about how effective the bill will be. If it turns out to be unconstitutional, we will have wasted a lot of the time of Parliament and the courts and the agency if the bill is eventually thrown out. We had testimony from witnesses who felt that it was clearly unconstitutional. We asked the minister to table his advice on constitutionality, and I guess it would be too strong to say he refused, but he ignored the question.

We have problems with oversight. We have problems with effectiveness, and especially constitutionality. We've had a severe problem with the process here on a bill that we offered to work with the government on. We tried to get consensus, tried to have a full discussion. We were limited to, really, one day of opposition witnesses—two for us and one for the Liberals—and we ignored even officers of Parliament who wanted to appear before the committee with concerns they had about the bill.

None of those people were opposed to this bill; they were all trying to make this a better bill. At the end of today you're leaving us in a situation where we supported the bill at second reading, and you've made it very difficult for us. I'll go back to my caucus, and we'll have a serious discussion about whether we can continue to support this bill, based on those grounds that we laid out in the ways we tried to amend the bill: oversight, effectiveness, constitutionality.

I think we could have had a much better bill that would have served the country with regard to national security. It would have served CSIS in terms of effectiveness. And it would have stood the test of time.

I'm not sure we have that in the bill as it stands now.

The Chair: Thank you, Mr. Garrison.

Madam Doré Lefebvre.

[*Translation*]

Ms. Rosane Doré Lefebvre: Thank you, Mr. Chair.

I don't want to spend too much time on this either, but I want to express my disappointment regarding our study of Bill C-44.

First of all, we tried to present several amendments to ensure a good balance between public safety and civil liberties in Bill C-44. Following the events of last October 22, and after the introduction of this bill by the Minister of Public Safety and Emergency Preparedness in the House, the importance of the balance between public safety and civil liberties was very much in the forefront, in the questions asked and the debate that took place.

Immediately after the events, it was also pointed out that it is important for parliamentarians to work together to ensure our national security.

The first test was the study of Bill C-44. Insofar as working with the official opposition is concerned, this was a total failure. We worked in the same way as with all of the other bills we have studied. Our amendments were systematically refused by the government. A time limit was placed on the debate, be it in the House or in committee where we were only entitled, unfortunately, to four hours with witnesses, and two of those hours were with officials, whereas only two were allotted to witnesses who were potentially opposition witnesses.

Moreover, the government refused to invite the Privacy Commissioner to come and testify, a rather surprising fact in the case of Bill C-44. As I mentioned, none of the amendments we presented, and none of the suggestions we made with regard to this bill, were accepted by the government.

This has all been a huge disappointment, all the more so since Bill C-44 is a crucial bill for the government, as the parliamentary secretary mentioned earlier. So, why not study it properly in committee? If it is such a crucial bill, why only allocate four hours to witnesses ?

Mr. Chair, amending the Canadian Security Intelligence Service Act is an extremely serious matter. I think this bill should have been examined in much greater depth.

What is worse is that several witnesses raised extremely important points during their testimony before the committee and they were not listened to properly. I think we have not carefully considered what was mentioned in committee during the study of this bill.

I would like to say one last thing: we were not even able to find out whether the bill is constitutional. Did we do all of this work—or the small amount of work we were allowed to do, unfortunately—for nothing? The minister was not even able to confirm that the bill was constitutional.

Honestly, in light of what we had been promised, that is to say to see to it that all parties work together to ensure our national security, I must say that I am extremely disappointed with the government's handling of Bill C-44.

• (1720)

[*English*]

The Chair: Thank you very much, Madam Doré Lefebvre.

Mr. Easter.

Hon. Wayne Easter: I made a point on this at the beginning of committee, Mr. Chairman, but just to add to and to support what my NDP colleagues have said, in my view we are not giving time at this committee or others to properly vet legislation.

This is an important piece of legislation. We have, I think, the time to take more time. With the stacking of witnesses at committee in a fairly tight timeframe, we really don't get the time to question witnesses. We bring these people in. These people are experts in their field. I think all parties pretty well agreed on the witness list that we had here. We didn't hear from the Privacy Commissioner and we should have.

I really believe that what we're seeing here is an erosion of our parliamentary system. That worries me. That's not a partisan comment. I think we all should be concerned about that. It undermines, I believe, the safeguards in our democracy to vet legislation, to hear witnesses, and to use their expert testimony to improve legislation for the benefit of all Canadians. I think we're seeing that undermined.

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

Is there further comment?

Seeing none, shall I report the bill?

Ms. Roxanne James: A recorded vote, please.

The Chair: It's a recorded vote on shall the bill carry.

(Bill agreed to: yeas 6; nays 3)

The Chair: Shall I report the bill?

Some hon. members: Agreed.

The Chair: We don't need a reprint, so that's it.

Colleagues, thank you very kindly. We have a few minutes to zip to committee business should there be anything. If there is an issue to be dealt with today we will go in camera; otherwise we will adjourn for the day.

Wednesday we have the minister coming in on the estimates.

Mr. Randall Garrison: Sorry, because I was in the chamber I wasn't aware that it had been announced to the committee that the minister is coming.

The Chair: This meeting is adjourned.

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