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Chair

Mr. Daryl Kramp

Standing Committee on Public Safety and National Security

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•(1855)

[English]

The Chair (Mr. Daryl Kramp (Prince Edward—Hastings, CPC)): Okay, colleagues, welcome to meeting number 56 of the Standing Committee on Public Safety and National Security. Of course today we are following up on our study of Bill C-51.

We are starting a little late. We certainly apologize to the witnesses who have come here today, but we are held hostage by the timing of Parliament, votes, and so on. It is the intention of the chair to spend the full two hours with our witnesses here today. Should there be anything different, the chair would certainly like to know it. Otherwise, we will go from now until—

Excuse me, yes, Madam Doré Lefebvre.

[Translation]

Ms. Rosane Doré Lefebvre (Alfred-Pellan, NDP): Mr. Chair, I would like to ask the committee for unanimous consent to adopt the following motion:

That the Standing Committee on Public Safety and National Security add one hour to its study of Bill C-51 and invite to appear the Quebec Minister of Public Security, Lise Thériault, the Quebec Minister of Justice and Attorney General, Stéphanie Vallée, and the Minister responsible for Canadian Intergovernmental Affairs and the Canadian Francophonie, Jean-Marc Fournier.

[English]

The Chair: Unanimous consent is required to present the motion.

Is there unanimous consent of the committee?

An hon. member: No.

The Chair: There's not.

As I was saying, we will go from now until 8:55 p.m.

We will start with our first round of witnesses. Today we have, as an individual, Mr. Salim Mansur. Welcome, sir. From Protect Our Privacy Coalition, we have Mr. Stephen Anderson, executive director of OpenMedia. We also welcome Ms. Sukanya Pillay, executive director and general counsel of the Canadian Civil Liberties Association. We have Ms. Connie Fournier, founder of Free Dominion. Thank you all very kindly for coming here today. We also have, as an individual, Mr. Garth Davies, associate professor at Simon Fraser University.

We will start off with up to 10 minutes for up to three of our witness panels. At the invitation of this committee, you can separate your time as you wish, but of course, the chair will follow the standard operating rules of this committee.

Mr. Mansur, you have the floor, sir.

Dr. Salim Mansur (As an Individual): Mr. Chairman, I want to begin by thanking you and the members of the committee for this invitation to provide you as an independent expert my views on Bill C-51. I will express these from the perspectives of political philosophy and history, and from that of a lifelong devotion as a Muslim to the study of Islam, Muslim history and society, and comparative religion. I want to stress this point since criticisms of Bill C-51 are unhelpful when abstract notions of freedom and their impairment are discussed narrowly or exclusively from a legalistic point of view with insufficient attention to the contemporary reality in our world.

The preamble of Bill C-51 states the purpose of this proposed anti-terrorism legislation. There is the need to equip Canada to deal adequately and effectively in terms of security threats from violent Islamist jihadists that loom larger and larger in our post-9/11 world, and that Canada is not insulated from this threat-filled reality.

The third paragraph of the preamble in Bill C-51 reads, “there is no more fundamental role for a government than protecting its country and its people”. This is a succinct statement of what has been amply discussed in classical liberal political philosophy from Hobbes and Locke to Raymond Aron and Hans Morgenthau.

From the perspective of classical liberalism, it is understood that the freedom we enjoy in a society such as ours is the fruit of security, or that there can be no freedom in the absence of weakness in security. This relationship between security and freedom was expressed by the founding fathers of the United States in terms of life, liberty and the pursuit of happiness, and the same was expressed by Canada’s founding fathers in terms of peace, order, and good government. The central concern of liberal democratic order is in keeping the balance right between security and freedom.

The authors of Bill C-51 are cognizant of this naturally given tension between security and freedom. They acknowledge that measures such as sharing of information within government of activities that undermine Canadian security are to be consistent with requirements of the Canadian charter. Bill C-51 in my reading is not designed to turn Canada into some version of Hobbes’ *Leviathan* or Orwell’s *1984*, despite at times the fevered imagination of its critics.

Bill C-51 is directed against Islamist jihadists and to prevent or pre-empt them from their stated goal to carry out terrorist threats against the west, including Canada. The threats are real, not hypothetical, and they have multiplied ever since 9/11 brought Islamic terrorism into North America.

The most recent worldwide threat assessment of the U.S. intelligence community presented by James Clapper, director of U.S. national intelligence, informs us of the growth of multiple threats to our security, and the most ominous is that of violence emanating out of the Middle East following the rise of ISIS in the midst of the Syrian conflict that erupted in 2011. This U.S. intelligence report states, "Since the conflict began in 2011, more than 20,000 foreign fighters—at least 3,400 of whom are Westerners—have gone to Syria from more than 90 countries". According to Canadian government sources, in 2014 there were some 130 individuals with Canadian connections who were abroad and who were suspected of terrorism-related activities. These numbers have likely increased during the past 12 months.

In terms of the debate on Bill C-51, some 130 individuals with Canadian connections involved in jihad-related terrorism might not seem much to justify the measures being proposed. In my view, however, these numbers are going to grow as the situation in the Middle East and the surrounding region worsens, as the IS, or Islamic State, expands its control of territories in the Levant and attracts more Muslims from the west to assist in building the newly declared caliphate.

As the number of jihadists increases, so will the threats of violent terrorism, and the likelihood that despite the best efforts of our security intelligence agencies, the jihadists will succeed in striking us, as in the case of the bombing at the Boston Marathon in April 2013, or the massacre at Charlie Hebdo in Paris in January 2015.

We are at war, a war dramatically and radically different from past wars, and this war was declared against the liberal democratic west by Islamists well before 9/11.

• (1900)

The reason that the United States was taken by surprise on 9/11, as were subsequently Spain, Britain, and France, and as we Canadians were taken by surprise last October, is that we did not take this Islamist declaration of war against the west seriously.

From the perspective of the Islamists, both Sunni and Shiite Muslims, there are two fronts, the near and the far, and these are linked. Consequently, the conflicts of the Middle East, or the Muslim world, are global and therefore they reach us.

Canada is not insulated from the madness, barbarism, or savagery of a war that Canadians might not comprehend or deny having anything to do with. But we Canadians are affected, whether we like it or not, because of the nature of our open society, of the flow of immigrants from the Middle East and the larger Muslim world, and the history of our relationship with that part of the world.

It would be naive on our part not to take seriously the reality of the jihadist sleeper cells and Islamist fifth columns in our midst. Long before 9/11, the Islamists of the Muslim Brotherhood planned and put into place their operatives within the public institutions of western democracies. Documents detailing the *modus operandi* of Muslim Brotherhood operatives were found by intelligence agencies and submitted as evidence in some of the terrorist trials held in the U.S. after 9/11.

I will end by pointing out that the bitter Shia-Sunni conflict in the Middle East, which is more than a millennium old, will intensify and

worsen. The theology and politics of the IS are exterminationist, and its Sunni-driven Shia hatred will invariably elicit similar Shiite response with far reaching consequences.

This conflict will reach the west and will spark sectarian tensions within western democracies, as has occurred as a result of the Arab-Israeli conflict. We only need to read *Dabiq*, the official magazine of the IS, as they revive nostalgia among a segment of Muslims with the appeal of the caliphate, and thereby deepen the nature of the declared war between the IS version of the house of Islam and the rest of the world.

They are driven by visions of the end time, of apocalypse, and their fanaticism will crash over their heads eventually. In the meantime, however, we need to take them seriously, for we know from history that politics driven by eschatological visions end dreadfully.

In this context, the measures proposed in Bill C-51 to deal with the nature of threats that Canada faces, I believe, are quite rightly and urgently needed to protect and keep secure the freedom of our citizens.

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

We will go to Mr. Anderson, the executive director of OpenMedia.

Mr. Stephen Anderson (Executive Director, OpenMedia, Protect Our Privacy Coalition):

Good evening. My name is Steve Anderson. I am here today on behalf of OpenMedia, a non-profit digital rights organization. Last year we helped start the Protect Our Privacy Coalition, which is the largest pro-privacy coalition in Canadian history with over 60 organizations. You know we've hit a common Canadian value when groups ranging from the Canadian Taxpayers Federation to small businesses to labour organizations join together.

I'm happy to be joined today by the Canadian Civil Liberties Association and the principled conservative forum Free Dominion, who will speak on behalf of their organizations

To help ensure that the majority of Canadians are heard, I have brought with me a petition signed by over 100,000 people against this bill, which was gathered by OpenMedia and Leadnow. I've also reached out online to get input for this testimony and I will reference it from time to time.

• (1905)

The Chair: Mr. Anderson, I will just interrupt you for one second.

It is standard procedure that committees may not receive petitions. Petitions have to be presented in the House. That is according to the Standing Orders of the House. It's under routine proceedings under the rubric of presenting petitions. Petitions may not be presented at committee. However, what you may do, sir, is present them as an exhibit, should you wish to leave them with the committee. As such, they are there for the consultation of the clerk. Under those conditions, they need not be translated.

I just leave that with you, sir. If that is your preference, you may certainly leave them with the clerk at the end of the day.

Mr. Stephen Anderson: I'm happy to do so.

Support of C-51 is plummeting, as we see from recent polls. The more Canadians know about C-51, the less they like it. They're coming to know a lot about it.

Canadians believe that C-51 is reckless and dangerous. That is going to be the main part of the start of my talk, in part because it exhibits a blatant disrespect for our right to privacy. C-51 provides spy agency CSE with an offensive domestic mandate, thereby setting loose the eavesdropping agency on Canadians. By empowering CSE to take disruptive measures, the bill provides the agency with open-ended powers to act against Canadians on our own soil. CSE will now be able to make false attributions to individuals, take down legitimate websites, and implant malware on individual devices. Considering C-51 also facilitates the distribution of information of Canadians without their knowledge or consent to no fewer than 17 agencies and institutions, along with foreign governments, I think Canadians agree with Allen Ramenberg who wrote on Facebook that if we "surrender our privacy and liberties to unaccountable central authorities, the terrorists have won".

I've heard a representative from the government claim that our sensitive data will not be stored in one big database, but I wonder why the legislation then explicitly states that the data will be "collated". That said, even if the data is flowing between multiple databases, that might leave Canadians even more open to victimization of data breaches and cybercriminals. I'd like to add that more than 200 Canadians have come forward in recent months to say that their personal or professional lives have been ruined due to information disclosure. Privacy is security in its most basic and individual sense.

I'd like to note that not only is C-51 reckless and dangerous, it's also, frankly, ineffective in achieving its own stated aim.

As Professor Roach pointed out to this committee, C-51 will drown the government in information rather than providing actionable data points. Furthermore, with zero added oversight or accountability, there's no way to even know if these powers are working as intended. Experts agree that we need targeted tools for the digital age, not mass disclosure of personal data. Additionally as a concern, many elements of the bill are not even focused on terrorist threats, but rather apply broad security-oriented powers to a range of other less serious contexts.

Careless drafting of this legislation will muddy the waters of investigations, taint the work of security officials, and make Canadians less safe. Sadly, for a bill that purports to take on terrorism, it also lacks any measures to address the root cause of radicalization.

Bill C-51 is reckless, dangerous, and ineffective both in content and process. The bill is deeply flawed and must not be made law.

I'll close with this comment submitted to me by a young Canadian on reddit. He said:

As a Canadian citizen I feel that our country fosters and promotes values that encourage upcoming generations to voice their opinions and outlook without fear of

repercussion or consequence. This is a Canadian value that, in my view, should be perpetuated....

Thank you. I'll turn it over to my colleague now.

Ms. Sukanya Pillay (Executive Director and General Counsel, Canadian Civil Liberties Association, Protect Our Privacy Coalition): Mr. Chair, Mr. Clerk, honourable committee members, I am grateful for the opportunity to speak with you today.

Ms. Roxanne James (Scarborough Centre, CPC): Mr. Chair, how much more time is left in the 10 minutes?

The Chair: There are five minutes.

Ms. Roxanne James: Thank you.

Ms. Sukanya Pillay: I thank my colleagues and OpenMedia for sharing their time. I appear on behalf of the Canadian Civil Liberties Association. We are an independent national non-governmental organization which for 50 years has effectively protected civil liberties in this country. You have our detailed submissions, and in the interests of time I will restrict my comments to four minutes and two points.

Let me state at the outset that the CCLA understands that the government requires effective tools to protect Canada and its people from terrorist threats and acts. What we do not understand is why this bill is needed, given the existing robust, and in some cases exceptional, tools at our disposal and the success rate of law enforcement and courts, most recently demonstrated with the VIA Rail terrorist convictions. It has not been shown that Bill C-51 provides any necessary new tools, and we are concerned that it will increase powers without any commensurate increase in accountability mechanisms. My two points are as follows.

First, I am going to turn to the security of Canada information sharing act, which I will refer to as SCISA. SCISA expansively allows for unprecedented sharing of information across at least 17 state agencies with foreign governments and foreign and domestic private actors without enforceable privacy safeguards and without clearly limiting the information to terrorist activities or threats. This is overbroad. The legislative objective of SCISA to keep Canada safe from terrorist threat is beyond dispute, but the drafting of SCISA is not. Without enforceable safeguards, information sharing will result in error. The surnames of Arar, Almalki, Nureddin, Elmaati, Abdelrazik, Benatta, and Almrei are serious, terrible reminders of the devastation wreaked by misuse and mistake in information sharing. Failure to properly share information also resulted in the failure to prevent the Air India tragedy when flight 182 was bombed, killing all 329 people aboard.

SCISA does not heed any of the recommendations of the Arar commission for integrated review of the integrated operation of agencies, nor for statutory gateways to facilitate such review, nor does it benefit from the lessons and in-depth study of the Air India commission. Existing mechanisms for national security agencies are simply inadequate in the context of SCISA. The reference to the caveats in the guidelines is undermined by subsequent provisions which allow for further sharing of information with any person for any purpose, and also by civil immunity for information mistakenly shared in good faith. In the national security context, information sharing requires proper legal safeguards of necessity, proportionality, and minimal impairment, and requires written agreements and caveats with respect to reliability, use, dissemination, storage, retention, and destruction. All of this is wholly absent in SCISA.

Next, I will talk about the CSIS Act amendments, and I have three brief points.

First, the amendments transform CSIS from the recipient, collector, and analyst of intelligence into an agency with powers to act. There is no explanation for this radical transformation at odds with the findings of the McDonald commission, which heralded distinction between intelligence and law enforcement.

Furthermore, there is no limit on what CSIS' disruption powers will be, other than the outer limits of bodily harm, obstruction of justice, and violation of sexual integrity, thereby indicating a very large sphere within which CSIS can operate. These new powers will blur the lines between intelligence and law enforcement and may further increase tension between the mandates and practices of CSIS and the RCMP, which can undermine security. Blurring the lines between intelligence and evidence may in fact undermine terrorist prosecutions.

We are also concerned by the judicial warrant that would enable CSIS to contravene the Canadian Charter of Rights and Freedoms. This is a shocking prospect to the CCLA, given that Canada is a country committed to constitutional paramountcy in rule of law, not to mention independence of the judiciary. Furthermore, the process would be conducted *ex parte* and in camera.

In conjunction with Bill C-44, Bill C-51 permits CSIS to act at home and abroad without regard to foreign domestic law and international law. In our view, this contravenes Canada's binding legal obligation and is a dangerous signal to send to foreign governments and agencies.

We close in respectfully reminding the committee that, across the board, safeguards and accountability mechanisms are not meant to be impediments to national security; rather, they ensure that we do not, however unintentionally, violate or impair constitutional rights of innocent law-abiding people in Canada, that we do not waste or misdirect precious national security resources, that we do not tarnish, harm, or ruin the lives of innocent individuals, and in turn that our national security actions are efficacious.

●(1910)

As the Supreme Court stated in *Suresh*, it would be a pyrrhic victory if we defeated terrorism at the cost of sacrificing our commitment to the values that lie at the heart of our constitutional order.

●(1915)

The Chair: Ms. Pillay, I'm very sorry. You're well over the time for everybody, on your suggestion, so—

Ms. Sukanya Pillay: Thank you. I'm done.

The Chair: —now we will go to our third witness, Mr. Davies, appearing as an individual.

You have the floor, sir.

Prof. Garth Davies (Associate Professor, Simon Fraser University, As an Individual): Good evening.

Thank you very much for inviting me to speak here today. It's truly an honour to be here. Out of respect for the work of the committee, I will try to make my comments brief.

I'm not a lawyer. I will leave the nuances of Bill C-51 to people who are far more qualified than I. What I am is a researcher. I've been studying terrorism for over 20 years now, and it's in my capacity as a researcher that I come before you today to offer my thoughts.

There are just a few points that I would like to make.

The first and the most important is that the danger posed by violent extremism and terrorism is real. The threats to Canada and to Canadian lives are real. I've been following the discussions in the House, and lip service is often paid to these being real, but I'm not certain that we are actually embracing the realities we're facing.

The challenges we face are unprecedented. Those challenges would include, for example, living in a hyperconnected world where borders are meaningless to terrorists. They would include the rapidly expanding use of the Internet for recruitment and for other nefarious purposes. They would include a rise in the kinds of behaviours that have not been experienced at the level we're seeing now, such as, for example, homegrown terrorism, lone actor terrorism, and the potential violence that might be attributed to returning foreign fighters.

These are all examples of the kinds of things that have changed the context of terrorism and our conversations around it. The nature of these threats suggests that we need to modernize our thinking about our approach to counterterrorism. I would argue that Bill C-51 is necessary as part of a larger process that recognizes the new dynamics in this new context, in addition to, for example, Bill C-44 and others that will inevitably follow.

Second, in studying terrorism, one of the things that I think has been most striking and particularly challenging over the years, for as long as I've been studying it, is the speed with which terrorists adapt to detection techniques. They are constantly changing tactics and constantly coming at us with new ways of thinking and doing things.

Many of the methods that we are currently trying to use to deal with these threats have become outmoded. For example, increasingly, there is no group to infiltrate. Increasingly, there is no head of the snake to cut off. There is no one with whom to negotiate. The tools that we've traditionally relied on as standard ways of trying to disrupt terrorism are not as useful to us in these contexts.

At present we are faced with a rather extreme version of Louis Beam's idea of leaderless resistance, where we've gone beyond autonomous cells and simply have individuals who at any particular moment might pop up and commit heinous acts. Also, this will inevitably change, so we are perpetually playing catch-up. It's difficult to determine what will come next. It has been suggested, for example, that the next wave of terrorism may be more technological, so that we're dealing with people and what they can do with technology, and they may not have any kind of ideological purpose other than that. Then we try to embrace and conceptualize what difficulties that might bring.

What we do know is there is learning taking place on the part of these individuals and groups, and that in all likelihood the next attacks will be different. The next attack will likely not involve storming Parliament. The next attack will be something else. We need tools, such as those proposed in Bill C-51, that are adaptable and that allow for some flexibility in responding not just for now, but for the future.

A third point is that the upshot of all this is that we need to get as much information as we can. Accurate, complete, and real-time information is needed to keep up with ongoing potential plots. This means that in certain circumstances we're going to need to use those scary words of "coalition", of "integration" from different sources, to fill in pictures, to fill in gaps, and to give us the information we need. It also means living up to our obligations as international partners in terms of the sharing of information.

There are of course potential concerns. I'm not blind to them; nobody who has been following them can be. They have been catalogued at length in front of this committee, but I don't believe that they are insurmountable, nor that they should be insurmountable.

It has been argued that we cannot arrest our way out of the problem of terrorism, and that it would be preferable to dissuade people from this path before they've gone too far down the path to violent extremism. This is most certainly true, but we're playing catch-up again.

• (1920)

We don't have good profiles of who is likely to turn violent. We have many theories and many ideas. We are developing many models and we're working on many projects, but right now we simply don't know. In the interim, we need the ability to act quickly, decisively, disruptively when necessary, in part at least in response to changing conditions on the ground.

We're not talking about acting haphazardly. We're not talking about acting randomly. We believe that with any luck our tools will continue to evolve such that we can be more targeted in how we collect information. As an example, colleagues and I are working at SFU to develop a series of algorithms that allow us to parse

information on the Internet in a much more effective way so that we're not just targeting out there, but trying to actually use a series of key words and phrases, and trying to be more specific in how we look for information. With any luck, the same technology that terrorists are using to recruit our young people can also be used to minimize ad hoc intrusions into privacy.

We need to be creating a framework for the future, one that's flexible enough to deal with the nature of the threat that we may not even be aware of yet. This bill, I think, reflects the times that we live in and casts an eye towards threats that may not be that far down the road.

Thank you for your time.

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

We will now go to our first round of questioning for seven minutes.

Ms. James, you have the floor first.

Ms. Roxanne James: Welcome, and thank you to our slate of witnesses.

I noticed a common thread in the testimony of both Professor Davies and Mr. Mansur with regard to stating that terrorism is real and that there are some who do not see the same danger as maybe some other people do, and I think it was you, Mr. Mansur, who said it was actually unhelpful.

Last week I did a couple of call-ins to radio stations. I find it extremely unfortunate that there's been such misinformation put out about this bill, specifically with regard to the information sharing act. This is new. It's stand-alone. It does not connect to the other parts of this particular bill. There are five parts. There are some claims that this is somehow an attack on personal freedoms and information sharing, that it's going to infringe on the rights of Canadians. If you actually read the bill, that is simply not the case.

We heard earlier from the B.C. civil liberties group. They are actually a group that had problems going back 30 years, I believe, to the original CSIS bill. Some of the same claims that we're hearing today are some of the same claims we heard with the original 2001 Anti-terrorism Act, and quite frankly it is unhelpful, because what we're dealing with right now is the national security of this country and the protection of Canadian citizens.

I just want to let you know that you made a comment that some of us don't get it. I get it, and that's one of the reasons that this is the number one priority of our Conservative government, to get legislation passed that is going to improve the safety of Canadians.

I just wanted to talk about the information sharing act. It's clearly defined in the act. There's another section in there, which is proposed section 5, and it talks about disclosure of information, and that it can only be shared if it is relevant to the national security jurisdictional responsibilities of the recipients. There are multiple parts in this bill that protect the civil liberties of Canadians. It's also interesting that I've yet to hear someone actually pinpoint what clause of this bill would actually impact a law-abiding Canadian. We hear that there's this case and this case, and that someone was wrongly convicted, but that's why we have the court system. People can take action and get retribution. That's what happens in a democratic and free society.

I'm just wondering if you could comment on the unhelpful information that's out there and the fact that it has taken away from what is actually important, which is the national security of Canada.

We'll start with Professor Davies.

Prof. Garth Davies: Thank you for the question.

I think the comment I would make back, madam, is individual cases and tragic cases that we've seen don't necessarily make good policy. While we certainly don't want to minimize the danger that it comes from, I think there is a reciprocal danger of developing policy that is based on one or two, or three bad cases. As you argue, it's much better, I think, to think more broadly about the applicability of these things and try to deal with deviations from them as they pop up. That would be my argument.

• (1925)

Ms. Roxanne James: Mr. Mansur, we heard from other witnesses about the need to modernize the tools and capabilities that we provide to our national security agencies.

I'm going to read something that appeared in the *National Post*, from a criminal prosecutor for the Ontario Ministry of the Attorney General. He talks about the separation between CSIS and the RCMP, done at a time when cellphones were a luxury, the Internet didn't exist, and Canada had never been the target of a terror attack, and when that separation had made sense. He said:

It does not make sense any longer. Virtually all of Canada's allied countries give their spy agencies powers to prevent terror attacks. Requiring CSIS to report their findings to the police, who then review that evidence and decide what to do with it, adds layers of unnecessary bureaucracy to their investigations. Worse, it causes delay—and in a time when terror suspects can co-ordinate across continents in a matter of seconds, that can mean the difference between prevention and a successful attack against Canada.

Do you agree with these concerns that this prosecutor wrote in this letter to the editor?

Dr. Salim Mansur: I do, more or less, yes.

Ms. Roxanne James: With regard to the bill itself, at the very first meeting we heard from the national security agencies that there were legislative gaps here in Canada. This bill speaks directly to what have been identified as gaps for our national security agencies.

Surely we must recognize that those who need the tools are the best people to tell us what needs to be done. Again I'm going back to the fact that it's very unhelpful that we're hearing misinformation being put out. It's interesting that there were protests not too long ago, and funnily enough, none of those protests would fall anywhere under the guise of this bill.

Unfortunately, those people who were protesting don't know that. They think that protesting is going to somehow be illegal and that they're going to be thrown in jail or labelled as terrorists. Those protests were actually an example of what is not covered under this bill.

I'm hoping that message gets out.

We heard as well, when we talked about borders being meaningless—I think it was you, Professor Davies, who talked about that.... I think this is what is different between now and 30 years ago, when the CSIS Act was first created.

We heard from prior witnesses about modernizing and about the fact that the terror threat is ever-evolving. I'm glad you mentioned the fact that there's no longer an organization to infiltrate or the head of a snake to cut off and that we have to be flexible and be able to adapt—I believe you used the words “adaptable legislation”—so that as things change, we don't have to come back here next month or next year and rewrite this legislation again.

Is that what you were referring to?

Mr. Garth Davies: Yes, absolutely. We don't know what will be coming. We know the situation has changed and is different from what it was 30 years ago, but it's changing much more quickly than it did in the interim. We had a sort of lull period, if you will, and now things seem to have picked up speed. Yes, I think we need to be cognizant of how much things have changed.

Of late, I have seen a lot of discussion of 30 years ago. Everybody in this room is aware of the history explaining why CSIS was created and what led to it. I'm not sure, always, why we hold onto that, as a way of looking back rather than looking forward.

The Chair: Thank you very much. The time is up now.

[*Translation*]

Ms. Borg, go ahead for seven minutes.

Ms. Charmaine Borg (Terrebonne—Blainville, NDP): Thank you, Mr. Chair.

I'd like to thank you for your testimony, Mr. Anderson. Everyone at this table recognizes that terrorism is a threat and that resources are needed to fight it. However, we also believe that rights and freedoms are not negotiable. They go hand in hand, so it is vital that both be respected.

Mr. Anderson, I am happy to have you with us. In fact, you are the only witness who can talk about how this bill might affect the digital lives of law-abiding Canadians. I'd like to give you an opportunity to comment on that.

[English]

Mr. Stephen Anderson: I'm going to pass this off to Connie on our panel here, but first I want to say that I found the comments a second ago from MP James to rather insinuate that Canadians are not informed and are stupid. I find that really distasteful for a public office holder.

• (1930)

Ms. Roxanne James: Mr. Chair, on a point of order, I want to correct the record.

I did not say that. I said I was concerned about the misinformation that had been put out about this bill. These are completely separate.

The Chair: Thank you very much.

And I believe that comment was just over the edge. I would appreciate your just staying to the topic that you have at hand.

Mr. Stephen Anderson: Okay.

I think we should encourage Canadians to take part in these debates. I think they are amazingly informed and engaged, and that is something that we want to honour and encourage and not disrespect.

Now I'll pass it off to Connie.

Ms. Connie Fournier (Founder, Free Dominion, Protect Our Privacy Coalition): All of the Conservative members of this committee who were elected at the time voted to repeal section 13 of the Canadian Human Rights Act a couple of years ago. This was done at the strong urging of the grassroots conservative base. We asked you to repeal it because the wording was broad and vague, it lacked due process, and it was being abused and applied to people who did not post hate speech, such as us.

Bill C-51 is also broad and vaguely worded. Even “terrorist” is not defined. Instead of the flawed tribunal system in section 13, it completely lacks due process, allowing for secret hearings at which the accused can't present a defence or even face his accuser. With even less oversight than section 13, it's inevitable that it will also be abused and applied to non-terrorists.

If you voted to repeal section 13 to protect the rights of Canadians, the only principled thing to do would be to also vote against Bill C-51.

[Translation]

Ms. Charmaine Borg: Thank you, Ms. Fournier.

Your answer to my question is not very relevant. I understand that you didn't have an opportunity to say what you had to say. I am very aware of that. However, I will ask you another question, if that's okay with you.

[English]

I want to come back to the point about information sharing between the various government agencies, because there is concern that it could be abused, with great repercussions upon the privacy of Canadians.

I wonder whether you could comment on that, Mr. Anderson.

Mr. Stephen Anderson: Bill C-51 clearly facilitates the distribution of information on law-abiding, innocent Canadians without a warrant and without their knowledge or consent to no fewer than 17 agencies, along with foreign governments. That is what is in the legislation and that is why Canadians are so concerned.

Having our information stored in those databases is naturally of concern to any law-abiding Canadian. People who are going about their day-to-day activities are going to be swept up in this naturally, because they engage with the government. To say that's not the case, that if you're abiding by the law you will not be swept up in this, is I think disingenuous.

If you add in the added provisions that would enable the CSE to monitor the lives of Canadians, it's a dangerous combination.

That's why Canadians think this bill is reckless and dangerous. People are going to continue to be upset until there are safeguards put in place.

Ms. Charmaine Borg: Thank you.

We have this bill in front of us. People took to the streets in protest, and there is a petition of 100,000 signatures, or probably more, and I'm sure more are coming in as we speak. As someone who works really hard at the grassroots level to speak to digital rights—you are having conversations with Canadians—why do you think that opinion is shifting so quickly? What is the precursor?

We saw the statistics coming out saying that 80% of people supported this, but now 50% don't support it. Could you speak to that?

Mr. Stephen Anderson: I think it's the combination of the eroding of our privacy rights, the monitoring of law-abiding Canadians and the reckless nature of that approach, with the danger there is in turning CSIS essentially into a secret police force, despite the kind of recommendations made to create more oversight and restrain that kind of activity.

When you combine this with the fact that this legislation is vague and is being rushed through, that combination of its being reckless, dangerous, and ineffective makes Canadians really disappointed, to the degree that they'll go out into the streets, sign petitions, and educate their family and friends. That's what we're seeing here. We're seeing grassroots education on a massive scale that I personally, having been involved in these issues for awhile, have never seen.

• (1935)

Ms. Charmaine Borg: Thank you.

Here is one last question for you. Perhaps your colleagues may want to jump in on it too.

You said in your opening statements that new CSE digital disruption activities could also include such measures as false attribution to individuals, the takedown of legitimate websites, or the planting of malware on individual devices. Could you perhaps elaborate on those comments?

Ms. Sukanya Pillay: We're very concerned about the abilities of the CSE and the fact that there isn't any proper review, in our view, of the CSE. Just today there's an excellent op-ed in the *National Post* by Christopher Parsons that will answer a lot of the questions that you've just asked. The capability for mass surveillance, for mass digital surveillance, exists today to capture that on innocent, ordinary, law-abiding Canadians and to share that, and also for that information to be shared abroad. There are no halts on that, and that is what is of concern to us.

We have examples of individuals whose private information has been shared abroad where that has caused problems for them. These are real-life examples today that we are concerned about.

The Chair: Fine. Thank you very much.

We will now go to Mr. Payne for seven minutes, please.

Mr. LaVar Payne (Medicine Hat, CPC): Thank you to the witnesses for coming today.

This is a really important bill that we're talking about, affecting the security of Canadian citizens and the country of Canada as well. Obviously, that's the prime importance of the Government of Canada, to make sure that, in fact, Canadians are protected and our borders are secure.

Professor Mansur, you did say there is no freedom without security. I'm sure I have that right.

Dr. Salim Mansur: Yes, you have that right. Thank you, sir.

Mr. LaVar Payne: Okay, thank you.

I know it's an important aspect of what's happening and I believe both you and Professor Davies talked about how things are changing rapidly in terms of what we're seeing from these jihadists, these terrorists.

Professor Mansur, you're a Muslim and a known supporter of those who want to tackle radicalism and make sure it doesn't sneak its way into Canada. Although these people, we know, are already here in some cases, we also know that the radicals from abroad have ways of impacting Canadians and having influence in convincing them to become radicalized. We're in the Twitter era now for spreading evil propaganda to the world.

I wonder if you could say why CSIS is necessary to address these realities we face in our globalized world.

Dr. Salim Mansur: Well, sir, as I understand it, CSIS is a security agency and by definition therefore, as a security intelligence operation it has to be able to monitor and engage in surveillance of those who are, as I define them, sleeper cells or fifth columns in our society, in our community.

From my perspective, we have been penetrated, and we have been penetrated over many, many years. There are organizations, legacy organizations, such as the Muslim Brotherhood, Jamaat-e-Islami, the Islamic Republic of Iran that find at their disposal established organizations of Muslims in the community, the religious organizations, mosques, quasi-religious organizations, and community associations, and within them they have been able to recruit or they try to recruit members to advance their own agenda. We know that.

So we need an agency like CSIS to be able to apprehend them, preempt them, interdict them, monitor them, and so on and so forth.

Mr. LaVar Payne: Do you see Bill C-51 as being able to assist CSIS to protect Canada, then?

Dr. Salim Mansur: As I read it, yes, absolutely. This is a problem that we are facing. This is a problem that has grown immensely since 9/11, but this problem was around before 9/11 and now we are living in a post-9/11 world with this. We have to deal with it and we have to find that our agencies are well equipped to deal with the problem that we are facing.

Mr. LaVar Payne: Thank you.

Professor Davies, I know you've made a number of comments as a researcher that the terrorists are real and we're not facing that reality. I'm not sure if you meant Canadians or globally. You also mentioned that borders are seamless. You talked about the Internet, lone wolf, a number of these things, and returning foreign terrorists. With all of this in mind, do you believe CSIS and the RCMP would have time or a desire to have government agencies provide them with information about protesters, and that they would act upon it if there was no reasonable grounds to investigate?

• (1940)

Mr. Garth Davies: No, I don't. I think the phrase "drowning in information" has been used. I think there is an attempt to try to filter, as it comes in, what information is relevant. Obviously, we run the risk of overriding the system, as it were, and I would like to believe that some of those filters are in place. I don't believe the perception of CSIS running around and just grabbing every single thing they could is accurate. It certainly doesn't reflect my experiences with various members from that agency, and from the RCMP in terms of how they approach information. In my experience, they have always been very, very cognizant of legal limitations in what they can and can't do. In fact, they would argue that is their daily reality, but by the same token, they're trying to get as much information as they can about what matters and fill in gaps and pieces.

So, no, I don't believe there's a desire to add more to their plate than they already have.

Mr. LaVar Payne: Thank you for that.

You also talked about the terrorist technology and their learning. We need to be able to act decisively and tools continue to adapt. I believe you said you were working on some program.

Mr. Garth Davies: Yes.

Mr. LaVar Payne: I don't know how far along you are in that, but how do you see that as being able to assist Canadians, CSIS, RCMP? Also, I don't know if that program you're talking about would be available to our law enforcement.

Mr. Garth Davies: The program is in its infancy. The kind of thing we're talking about, its primary intent is essentially to be able to parse large bits of information from the Internet and break it into digestible chunks. To answer your question about its utility, we have been in discussions with INSET. I'm from Vancouver, way out there at the other end of the world. We've been in conversation. They've been very interested in trying to understand, again for the reasons you might expect, that they're trying to maximize what they can get. We won't get into the issue of resources here—I don't think it's necessary—but they don't have unlimited access to computer power, to people. They are interested in trying to get information that's as relevant as possible. They're also very interested in the approach of how we get this information without casting such a broad net that it raises concerns about the privacy of who's been referred to as the average Canadian citizen.

The Chair: You have 30 seconds, Mr. Payne.

Mr. LaVar Payne: Quickly, part 4 talks about threat disruption for CSIS. I wonder if you could give us your thoughts on how important that is in terms of also being judicially authorized.

Mr. Garth Davies: It's absolutely critical in judicial authorization, but we could also imagine circumstances where exigencies would exist. The example that is being used perpetually now is the idea of being able to say to somebody's parents that their son or daughter has been radicalized and make them aware of it and whether or not that would be an example of disruption. We could think of far more serious cases where disruption might be necessary, and we'd certainly want to see judicial authorization for those kinds of instances to the extent that it was possible.

The Chair: Fine, thank you very much.

Thank you, Mr. Payne.

Mr. Easter, sir, you have the floor.

Hon. Wayne Easter (Malpeque, Lib.): Thank you to all the witnesses for coming.

The hearings, especially tonight, are almost the two solitudes, if I can put it that way. Mr. Davies, you said that the danger and the threats to lives are real. I agree with you. I think there is a real threat out there. I think it has increased more greatly than we have seen it since 9/11, and it is in a different context. I also have to express with Mr. Anderson, Ms. Pillay, and Ms. Fournier that their concerns in some of the areas that this bill is moving into are real too. How do we connect the two? That's my question for all of you.

I've been saying that we need oversight, we need sunset clauses, and we need a statutory, mandatory review for this legislation in three years. Threats ebb and flow. We certainly need amendments. Everyone's concern expressed here is real. The parliamentary secretary may say that some of the things the demonstrators and protesters out there are saying are exaggerated. They may be. I've been in protests. I faced the protests in my position in P.E.I. and I firmly believe that legitimate dissent in a democracy is healthy. That's a good thing.

My question for each of the spokesmen is, how do we bring those two solitudes together? I believe we need certain aspects of the bill, but I believe it can be fixed and can be a bill that Canadians could welcome if this committee is allowed to operate the way the

founding fathers designed Parliament to operate, to amend a bill and make it better.

Could I have a response from each of you?

• (1945)

Dr. Salim Mansur: Mr. Easter, from my perspective, I don't see the government as those on the treasury bench only and on the other side. I see the whole thing as a government. Where I'm coming from as a common citizen we expect our government to do what is necessary as you recognize the threat. From my perspective, the threat is immense and it is growing and we cannot afford to be lax, given what is at stake and what harm can be done.

Yes, the government has recognized—all of you have recognized—that there's a necessity and that is Bill C-51. Now the question is, how do you go about improving it? I agree with you that the effort should be made to see the flaws and improve on them. If you agree that the instrument is needed, we are heartened because we feel the threat is immense.

Hon. Wayne Easter: I'll let you come in and answer the others in a second, but let me give you one example. The bill states:

For greater certainty, it does not include lawful advocacy, protest, dissent and artistic expression.

That same clause was in the 2001 bill. I was one of the ones inside caucus opposing that clause. We amended it out.

Do any of you, the promoters of the bill, Mr. Mansur or Mr. Davies, feel that if we took the word "lawful" out it would impact on this bill in any way to do the job it's intended to do?

Mr. Garth Davies: No.

Hon. Wayne Easter: No. Okay, thank you.

Does anybody else want to comment on my first question?

Mr. Stephen Anderson: Yes. I agree with all the amendments you said there, and I think there's almost national consensus on those points. I think that's one thing that has people so upset. Why don't we look at these reasonable amendments, at the very least? I haven't heard any good answer to that, and I would love to hear it at any point.

Our position at OpenMedia is that it's so flawed we need a restart.

Hon. Wayne Easter: That's fine.

Ms. Pillay.

Ms. Sukanya Pillay: Thank you for your question. My response is that the way this law is drafted, it's imprecise and it's overbroad. What that means is that we do not dispute the objective of the law, but the impact will be beyond what the law is meant to target. That is the problem.

Just for the record, we do not dispute that there is a terrorist threat. What we question is why this bill is necessary, and we are very concerned about the overbroad impact. There is not a rational connection to some of the impacts that will result as a result of the drafting.

The last thing is that we cannot just hope that it won't be applied in a way that it could reasonably be applied reading the provisions as drafted.

Hon. Wayne Easter: Ms. Fournier, do you want to add anything?

Ms. Connie Fournier: Yes. I think it's really important when you're looking at any legislation to try to imagine what is the worst possible case scenario as to how it can be applied and assume that you need to close those loopholes. I think it's completely reasonable to look at this bill, see the flaws, and try to correct them. But I also don't argue that there is a terror threat. I think we're all on the same page there.

Hon. Wayne Easter: Okay, thank you.

Mr. Mansur, I did read the presentation you made to the Senate, and I'm concerned about what you said on the public outreach program. You basically questioned public outreach to deal with homegrown radicalization or whatever.

Is that still your position? I firmly feel that the RCMP and security agencies need to be doing outreach to those who are being radicalized over the Internet or by whatever means. I think that can go places that the law cannot go.

What's your current thought?

• (1950)

Dr. Salim Mansur: My concern, sir, is not about the public outreach, but with whom the public outreach is done—the RCMP or other police agencies, security agencies, working with organizations about which we have great concerns.

The thing I was referring to at that hearing was the RCMP working together in cooperation with, for instance, the NCCM, the National Council of Canadian Muslims. It's an organization that from our perspective is hugely suspect. This is an organization... slash CAIR-CAN, the Council of American-Islamic Relations Canada—

Hon. Wayne Easter: [*Inaudible—Editor*]

Dr. Salim Mansur: No, but that was the concern—

The Chair: Mr. Easter, we're over time.

Hon. Wayne Easter: That was refuted at this committee.

The Chair: Mr. Easter, we are well over time now. I'm sorry, but thank you very much.

At this time we will bring our first hour to a conclusion. I'm sorry we have no time for a response. Please feel free to discuss during the quick little changeover with any of our members. Certainly your thoughts would be welcome.

On behalf of the committee, I'd like to thank all of you for coming here today and expressing your thoughts and your opinions. As the story goes, it all matters. Thank you very, very kindly.

We'll suspend for five minutes while we change witnesses.

• (1950)

_____ (Pause) _____

• (1955)

The Chair: I would ask the media to respect the committee's time, please.

We will now go to our second hour of testimony and Q and A.

We have with us three individuals: the Honourable Hugh Segal, a Master at Massey College; Louise Vincent; and Christian Leuprecht, associate dean and associate professor at the faculty of arts, Royal Military College of Canada.

Thank you all for attending here today to give us your thoughts on what is obviously a very important piece of legislation that we're deliberating. Your comments are certainly welcome.

We will start with Mr. Segal.

Hon. Hugh Segal (Master, Massey College, As an Individual): Thank you, Mr. Chairman.

Throughout recent post-war history, rapidly drafted and on occasion knee-jerk new laws, or quickly deployed old laws during times of apparent or possible emergency are often flawed. This is not because of any inappropriate intent by the government of the day, but a rush to engage because of apprehended risk, be it one of terrorism or insurrection. This approach often produces robust court challenges.

The worst of these events in recent past was the deployment of the War Measures Act by the Trudeau administration in October 1970. Hundreds of Quebecers were arrested and held in custody for many days. The core principles of Magna Carta, habeas corpus, were tossed aside. This was the worst violation of Canadian civil liberties in the post-war era. Nothing we have seen since in any way compares. None of the risks associated with this bill in any way compares to what happened in 1970.

My concerns, and that of what was then the Special Senate Committee on Anti-Terrorism in 2011, about the absence in Canada, as compared to key NATO allies—the United States, the United Kingdom, France, Germany, the Netherlands, Belgium, Italy—of any legislative oversight capacity, predates by several years the provisions of the bill before you.

Nothing in Bill C-51 has changed my own personal view on the need for oversight and nothing in the bill makes that requirement more pressing.

Accountability on the part of our security services to the whole of Parliament is not needless red tape or excessive bureaucracy. In fact, it is the democratic countervail to the kind of red tape and bureaucracy which might unwittingly lose sight of the security mission appropriate to a parliamentary democracy, where laws and constitutional protections such as the presumption of innocence and due process must protect all citizens without regard to ethnicity or national origin.

In the spirit of breaking down silos and maximizing the efficiency of prophylactic data sharing to prevent bad things from happening before they happen, and in the spirit of Mr. Justice Major's report on the Air India tragedy, the special Senate committee recommended that CSIS be allowed to lawfully disrupt terrorist plans or conspiracies. That was a bipartisan recommendation.

The term “lawfully” did not reflect any view on the part of the special committee that interruptions could operate outside the provisions and protections of the Charter of Rights and Freedoms. Any provisions that seek to obviate the charter would likely be struck down by the courts in any event.

When the government of Prime Minister Chrétien brought in anti-terror legislation after the horrors of 9/11, its promoters, including ministers and senior bureaucrats, in the best of faith believed the law to be charter-proof. When the legislation was renewed, members of all parties on the Senate committee on anti-terrorism spent many meetings considering and putting into effect those amendments necessitated by a series of court decisions in order to bring the law into line with the Canadian Constitution. The law was far from charter-proof.

I have little doubt that whatever decisions this distinguished committee may choose to make about amendments or the lack of same, within a short period of time will see us finding another committee doing the same sort of constitutionally-driven and court-ordered refurbishment of the legislation before you, should it pass.

My general view of the law before you, despite some excesses and slightly overwrought provisions, is that it is a law that is, on balance, helpful and appropriate, given the new technologies, recruiting strategies, and asymmetric threats which form the basis of new threats to national security in Canada and other open society, non-police state democracies.

I wish to offer one very respectful, considered word of caution about the important work before you. Attempts to keep Canadians safe, the number one job of any government, should not include provisions that make us resemble those we are struggling to defeat.

• (2000)

The Chair: Thank you for your presentation, Mr. Segal. That obviously will give us a little bit more time for Q and A.

Ms. Vincent, you have the floor, please.

[*Translation*]

Ms. Louise Vincent (As an Individual): Thank you very much, Mr. Chair.

I want to thank the committee for giving me this opportunity to share my point of view and that of my brother, my sisters and my mother.

Why am I appearing here before you? My name is Louise Vincent, and I am the older sister of Warrant Officer Patrice Vincent, who was murdered on October 20, 2014, five months ago, by Martin Couture-Rouleau. That man, in the name of a religion he completely misunderstood, ran my brother over from behind with his car, robbing him of an opportunity to defend himself.

I am here to talk about what I see as the positive aspects of Bill C-51. What I notice and what everyone has probably noticed is that information is now moving extremely quickly. That's not necessarily a positive thing. It's probably too quick, leading to tremendous risks of radicalization. People probably have a propensity for, or a sensitivity to, something we have not yet understood. For the time being, I think that an initiative like

Bill C-51 is necessary if we want to maintain our country's democratic values.

Another significant problem must be pointed out. Various government organizations must stop operating in silos. Major companies have understood that. The successful ones have stopped working in isolation. It's an important management concept. I believe that information sharing is important.

From what I understand, Bill C-51 would facilitate cooperation among various police forces and would help identify individuals who may be trying to hurt our country more quickly. Moreover, the threshold of evidence must be changed. According to Bill C-51, focus should be shifted from “will commit” to “could commit”, and I think that's very important. That's why the RCMP could not obtain a warrant from the attorney general, despite all the information it had gathered and all the testimony from Martin Couture-Rouleau's family. The RCMP did its job and built a case, but unfortunately, the burden of proof was not met. That's unacceptable.

It should be much easier to obtain monitoring tools, such as electronic bracelets. The authorities should also be able to freeze financial assets. That way, the assets of someone who may be planning to finance terrorist activities could be frozen.

Had Bill C-51 been in force on October 19, Martin Couture-Rouleau's family would have still informed the RCMP, but the organization would have had more information. The RCMP received information much too late. It would have known that radical imams had visited the mosque attended by Martin Couture-Rouleau. It would have probably been able to prepare even more material for the attorney general who, with a lower burden of proof, would have agreed to issue a warrant. On October 20 of last year, Martin Couture-Rouleau very likely would have been in prison, and my brother would not be dead.

I am hearing many people say that they are worried about freedom of expression. I also want to keep my freedom of expression. I would absolutely not be in favour of something that would take away our freedom of expression. Considering that there are 40 million Canadians, does it make any sense to say that every one of them would be spied on?

I have spoken to officials, and they told me that, last October, 90 radicalized individuals had their passports confiscated. They were supposedly being monitored, as were another 130 people who still had their passports. That's 220 people. But when I asked why Martin Couture-Rouleau had fallen through the cracks, I was told that not everyone could be monitored 24 hours a day.

To those who are worried this kind of legislation would increase monitoring, I would say that would be impossible, as the numbers don't really add up. All I ask is that police forces—the RCMP and the SQ—could at least monitor. That is what makes sense.

• (2005)

I have noted a few things. I feel that, when people read a text like Bill C-51, which is lengthy, they often skip over the “whereas” parts. They may seem to be a bit boring, but they are important.

Advocacy, protest, dissent and artistic expression are not affected. In fact, lines 29 to 31 on page 3, state the following, and I quote: "For greater certainty, it does not include lawful advocacy, protest, dissent and artistic expression."

Bill C-51 does not impede freedom of expression. That right is protected by the Constitution of Canada. I have no doubt that the Quebec charter would still apply and would protect my privacy. I myself am a Quebecker.

I will skip some of the bill. On page 6, it is stated that Bill C-51 does not affect the disclosure of information under other acts of Parliament. I feel that disclosure of information and freedom are there. That's clear. I don't think our leaders would impose on us something they would not like to have imposed on them. I am sure that all of our leaders and ministers care about freedom of speech and want Canada to have certain values when it comes to that. I think they're the first to defend that right. If they were to take it away, they would be the first to pay the price.

For those who have concerns, there is something else I have noted. Nothing has changed in terms of what happens after the investigation, once a police force submits certain information. The judge must ensure that the recommended measures are proportional to what the individual is accused of.

On page 49, we can see that there are watchdogs everywhere. Nothing is easy or automatic. If a situation is encountered, the minister has to be asked for permission and then a judge has to be asked for a warrant. An order is always required.

On page 50, it is specified that the judge must assess the threat before issuing a warrant.

Nothing is easy. A case has to be prepared and presented. I find that the process is still very cumbersome in this regard, but I am prepared to accept it.

In closing, I will quickly show you some documents to give you an idea of what a hate crime that stems from radicalization can do. I have not brought all the documents, as there are too many. There are many signs, boards and tributes across Quebec. I have brought only a small number of them.

We have received some letters written by hand and some in other formats. The Royal Canadian Legion wrote to us, the Saint-Jude parish wrote to us in French and in English—they absolutely have to be bilingual—the President of RTO/ERO wrote to us, as have schools and students.

We have a lot of hand-made cards. I have here a card from a school. Schools have written to us, but I did not bring everything. We have heard from students and teachers. There have been little inscriptions. Mothers have written to us. We have 22 books like this one, hand-made.

There are lists with hundreds of people's names. Police officers and firefighters have written to us. We have been invited to participate in various events organized by firefighters. People from Saskatchewan, Quebec and Manitoba have written to us.

My mother insisted that I be very careful with this document, and you will see why. Prince Charles wrote to her. I have his signature.

He wrote the letter in French. He also sent my mother flowers. His assistant also wrote to my mother. People from Westminster Abbey, the Association nationale des femmes de militaires, the United States Army National Guard, the U.S. Army Reserve, the Michigan American Legion and AMVETS of Michigan have written to us. It's very simple, but it's there.

• (2010)

In addition, Al Cameron, who takes care of veterans through the organization Veterans Voices of Canada sent us a flag. He called it a flag of remembrance. He will always remember Patrice.

[English]

The Chair: Madam Vincent, excuse me, I'm going to ask you to close, if you would.

Madam Louise Vincent: I was finished, but what I wanted to tell you is that it didn't touch only a family. It didn't touch only a province. It touched the whole of Canada. It touched the world. We received comments from Thailand, Australia, everywhere, so Bill C-51 is important.

[Translation]

Patrice Vincent must not have died in vain.

[English]

We need that.

Thank you.

The Chair: Thank you very much for your personal testimony and for being here today. It is deeply appreciated.

We will now go to Mr. Leuprecht, for 10 minutes.

Dr. Christian Leuprecht (Associate Dean and Associate Professor, Faculty of Arts, Royal Military College of Canada, As an Individual): *Monsieur le président, merci de l'invitation.*

Security is like the air we breathe: you don't realize that it's gone until it's too late. I think part of the discussion that we have about security policy is so difficult because we've all been to schools so we think we understand the education policy and we've all been to the physician so we think we understand health care policy. For most of us, the worst that's ever happened to us is that we got a speeding ticket from someone on the highway. I think people have a very profound and inchoate misunderstanding of how our security agencies operate, their legislative framework within which they operate, and the accountability and the review structures that are in place. Having this discussion is so important because it elevates the level of the debate.

I'd like to point out some of what is the hypocrisy of some of the critics, perhaps some of the ignorance of some of the professionalism of our security agencies and those who work in our national security system, and the accountabilities that are in place. By hypocrisy I mean that it is those people who complain bitterly about the bill who will also be the first ones to ask why the state did not do more when it is their kid that leaves for abroad, or it is their kid that is injured or killed in an attack. We need to strike a balance here.

I think there is also a naïveté about the rapidly changing security environment, because in Canada for a long time we've lived far away from the shores of instability and political violence. I think that has profoundly changed as a result of globalization and two revolutions. One is the transportation revolution. The other is the communications revolution that brings all this instability immediately to our shores. The propositions that have been put forward in this bill many of our allies already have in one instantiation or another in their systems. We can show that democratic countries can handle these types of powers and reconcile freedom and security. The Nordic states have not turned into police states simply because they adopted certain disruption provisions for their security police, as they call them.

The institutions of the modern state are not well matched to the flows and to the movements of a globalized 21st century world, in particular, the illicit ones. The flows and movements are global and yet they have institutions that are still in a 1648 statute of Westminster type of framework. One of the challenges is how to reconcile the institutions we have with the flows and challenges we face. I would submit that we would need to ask, as in any type of security environment, three basic questions.

Who is it that is threatening our existence or that we are trying to address with regard to these laws?

What is our goal? Do we want to eliminate terrorism? Do we want to contain terrorism? Do we want to destroy groups that use terrorism tactics, or do we want to reduce the vulnerabilities and the effects of terrorism? I think it is this latter one that we are trying to aim for.

How much are we willing to spend?

I think there are a couple of answers here. One is that we are celebrating the 800th anniversary this year of the Magna Carta. What we all appreciate is living in a limited state where we clearly put constraints on state intervention. The state, under the preamble of section 91, also has an obligation for peace, order, and good governance in this country. We need to reconcile the limited state and the freedoms that it provides with the ability of the state to protect its citizens. We also need to make sure that the treasure that we spend is appropriate. In that regard, I much prefer to ensure that our security agencies have the right tool kit than simply putting more money into agencies that we have without giving them the appropriate tools to deal with what's.... I think making sure that our agencies have the appropriate tools is less of a threat than putting more money into these agencies, because ultimately, these are powerful agencies. I think we need to have the right balance here.

I would like to draw a clear distinction between anti-terrorism and counterterrorism, two concepts that are confounded in this debate. Anti-terrorism is about actions taken to prevent, deter, or reduce the impact of terrorism and terrorist acts. Counterterrorism is the kinetic actions taken directly against terrorist acts. I think we fall short in this country with regard to the latter. Let me give you some examples. You've already heard some. We have youth leaving this country to go fight with ISIS, and apparently we have a security intelligence service that cannot even under strict reading of the current legislation tell the parents that their children or their child might be up to no good. We have innocent lives lost, as we've just

heard. We have individuals who can board planes and are on the terrorism watch list because they do not under current legislation pose an immediate and direct threat to airline safety. You might have already flown next to a terrorist. We cannot stop foreign terrorist fighters from boarding planes back to Canada. This bill would address that by allowing some security agents to be placed on planes with them and other measures.

• (2015)

Concerning consular officials, when somebody shows up at our embassy in Beirut saying, "I have lost my passport and I need a travel document back to Canada", well, Canadians regularly lose their travel documents. When somebody shows up at the embassy in Beirut with a bullet hole through their shoulder and is looking to return to Canada, well, Canadians often fall sick on their travels and they go to their consular officials, but when we have somebody who apparently has lost their passport and shows up with a bullet hole through their shoulder and the consular official is asked to provide an emergency travel document and that consular official can't even call CSIS to tell CSIS that somebody who might be a suspected foreign terrorist fighter is returning to Canada, that in my view is wrong. We need to share that type of data.

We need to protect Canadians, but we also need to protect Canadian interests, and we need to protect Canadians from themselves. These youths are some vulnerable individuals in our country. I have teenage children. We know that teenage children at times make poor decisions. The state has a certain obligation, I think, towards individuals to make sure that they don't harm themselves.

We also need to make sure that we don't inadvertently export terrorists or provide terrorist financing or material support from Canada to other countries because we don't have the adequate means to contain them.

I hope I have made a case for there being operational requirements to have a more diverse and a more nuanced tool kit than we have now, which is essentially surveillance on the one hand and powers of arrest on the other hand.

I also think that Bill C-51 makes an important contribution to Canada's meeting its obligations under United Nations Security Council Resolutions 1373, 1624, 2178, and 2195. These are resolutions that are adopted under chapter VII of the United Nations charter. That means they are legally binding on all member states. These resolutions include such things as preventing radicalization leading to politically motivated violent extremism, prohibiting incitement of terrorist violence and recruitment for such purposes, disrupting financial support for terrorism and foreign terrorist fighters, and interdicting travel by foreign terrorist fighters. I hope I've demonstrated that we fall short on at least some of those.

I want to make two very short propositions as to what I think might be changed in this bill.

I think we need to expand the remit of SIRC to be able to follow intelligence once SIRC hands that intelligence over to one of, depending on how you count them, the about 15 other security agencies. The problem with SIRC right now is that once the intelligence is handed over, SIRC can call the RCMP or CBSA and tell them they would like to know what happened with that intelligence, but it turns out that SIRC does not have jurisdiction, and so the RCMP and CBSA just tell SIRC that unfortunately they are not going to answer that particular question.

I think that SIRC needs to be able to follow the intelligence. I'm not proposing a super-SIRC. I'm not suggesting that SIRC should have remit over national security investigations. But I do think SIRC needs to be able to follow the bread crumbs and make sure that intelligence is being handled by other agencies, once it is handed off, within the confines of the law in which it was collected and under the mandates and conditions under which that intelligence was shared with other agencies.

The other proposition I have is that review in and of itself I think is not the problem. CSIS is the most reviewed intelligence security service in the western world and therefore, I think we can safely say in the world as it is. I think the challenge is that Canadians are asking what the government can do to assure them that their rights and freedoms have not been violated. That means that it's not the challenge of review; it's the challenge of demonstrating to Canadians that the review mechanisms that we have in place are effective at making sure that agencies operate within the confines of law and within the constitutional and charter constraints that are being placed upon them.

To that effect, I would submit to the committee to consider adopting a version of the British system, whereby opposition parties can put forward a list of members and the Prime Minister can pick from that particular list. Those individuals would then be security cleared to a top secret clearance. They would be sworn in as privy councillors. We would set up a separate parliamentary committee that would allow the members of that committee to read the commissioner of CSE's report, to read the SIRC report, and to debrief with SIRC and with the commissioner.

I know that some members of the government will say that this is not a good idea because loose lips sink ships, but I think we have very experienced, very mature legislators among the people who sit in Parliament, and by Parliament I mean not just the House of Commons but also the Senate, so I would enlarge the list to be able to include members from both Houses of Parliament.

I think that this type of debriefing with the commissioner and with SIRC in an all-party committee is the sort of conversation that Canadians need to see happen in order to be assured that their rights and freedoms are not being violated. By virtue of their being cleared and sworn in as privy councillors, these people wouldn't be able to talk about anything that happens within that committee anyway.

● (2020)

In closing, let me say that these propositions are not costly, and they would require only minor legislative changes.

I would also like to remind the committee that we are not just making legislation for today, because inherently, as a result of the

globalizing dynamics that I described, I would submit that both our legislative framework and the way our agencies operate are already behind the times. The bad guys are always quite happy to exploit vulnerabilities. We saw this amply during the late 1980s and early 1990s with the way Sikh extremists exploited vulnerabilities in Canada's security system.

I would say that we are also making legislation here for tomorrow. We are also making legislation for circumstances in which, in the unlikely event that Canada should find itself faced with a major calamity, we would not need to operate by orders in council, but would have robust legislative frameworks in place for agencies to deal with the calamity.

Let me end with this particular quote: the terrorist only has to be lucky once; the counterterrorist must be lucky every time.

● (2025)

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

We will now go to our rounds of questioning.

Mr. Norlock, you have the floor for seven minutes, sir.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Mr. Chair, and through you to the witnesses, thank you for attending today.

Mr. Leuprecht, the powers that are provided to CSIS in this legislation are not uncommon among our allies. I wonder if you could comment on the value of CSIS having these additional tools or powers, with the understanding that their main role will continue to be information gathering, but with the additional power to disrupt a threat, provided they have the permission of a judge.

When you are answering that, I would like you to compare, and I think you alluded to this in your preliminary remarks, the extent of the powers CSIS already has compared with those among our allies. You mentioned the Nordic nations. In other words, if the average Canadian out there listened to some of the witnesses, this act, if enacted by Parliament, would be the end of freedom as we know it in this country, and so I'd like you to compare this act with similar acts in Europe, because I know that you are aware of the legislation in western European countries.

Dr. Christian Leuprecht: I think Canadians have a profound misconception of what disruption constitutes. CSIS being able to talk to parents to tell them that their child is up to no good is a disruption power. It's something that CSIS is currently not allowed to do. CSIS trying to find a way to cancel the plane ticket of someone who is looking to leave the country is a disruption power. This is not a fundamental undermining of collective freedoms and whatnot.

On the disruption powers that are so controversial, essentially the ones that require judicial authorization, I have two remarks to make.

One is that CSIS will, I think, be very apprehensive and reluctant to use them to begin with, because CSIS knows full well that these are controversial, and the last thing CSIS wants is lots of national attention, some national inquiry about the way it used these particular powers. I think it will use them as a measure of absolute last resort when there is no other way to avert an incident.

I might also point out that I think Canadians have a rather imperfect understanding at times of the mechanisms already in place. When CSIS goes out to get a warrant, first it has to get approval within CSIS. Then it goes to an interdepartmental committee, which vets the particular warrant. Then it goes to the minister, who has to sign off on the warrant, which is important, of course, because of ministerial responsibility and responsible government. Then it goes to the judge.

Before the judge signs off, in many cases the judge will send it back saying, "I want certain changes made", "I want more evidence", or whatnot. The judge can impose certain conditions on how the operation is carried out. In many cases the judge will even ask CSIS to report back on how things were done, to assure the judge that everything was done in accordance not just with the law but with exactly what was authorized by that particular judge. We now have some very competent judges in this country with regard to the national security framework that is in place.

I would also say with regard to our European allies that one of the challenges here is that we have been very privileged in not having had to live with the challenges we are discussing and are facing, and that they have had to do so for decades, if we look at Germany, France, Spain, or the United Kingdom. From a policy analysis perspective, I think there is some policy learning that can be done from the experiences our allies have had with some of the powers we are adopting here, which they already have in legislation and with which they have ample experience.

Mr. Rick Norlock: Thank you very much.

Law enforcement has indicated that lowering the threshold for recognizance with conditions will be of assistance to them when attempting to prevent terror attacks from happening.

You mentioned the judicial authorization that is required. Can you comment on the lowering of the threshold for preventative arrests, once again comparing it to other legislation that you may be aware of?

Dr. Christian Leuprecht: Let me preface this by saying that I am no lawyer and I am no law professor. There's a reason I decided to study political science instead.

The challenge right now is that between surveillance and arrest, we don't have a whole lot of in between, because for powers of detention and recognizance and peace bonds, in the way the legislation is currently written, the evidentiary threshold is very similar to that of powers of arrest, that is to say, it is a very high bar to cross.

What's being proposed is to do what our European allies have done, which is to provide a tool kit that, with a lower threshold of evidence, would allow us to impose conditions and limit people's mobility, limit the ability to go on the Internet and whatnot, limit the ability to communicate with others, without actually having to lay a charge and then hope to convict them.

There's another reason I think this is important. What this does is it gets us into the preventative realm. I think we need to do a lot more on prevention than simply charging people. There's another reason we need to do that. A national security investigation is very expensive and lengthy. Then we have an expensive and lengthy trial.

If we lock people up, it costs us somewhere between \$40,000 and \$100,000 a year.

Wouldn't we all be better off if we were to save some of that taxpayer money and impose conditions on individuals who may be up to no good without actually having to charge them? Then once that recognizance or once that peace bond expires, allow them, provided they realize their actions may not have been particularly prudent, to go free, hopefully having learned from their mistakes.

• (2030)

Mr. Rick Norlock: Thank you very much.

It's very much as we do in domestic disputes in this country with peace bonds between partners who may not be getting along too well. We make them keep the peace and be on good behaviour.

I wonder if you could make a comment on the legislation as it relates to.... You mentioned the interruption provisions of the act, but it does state clearly in the act that the activities would have to be "activities that undermine the security of Canada".

We have heard, and we're going to hear some more, from organizations in Canada whose members believe because they go out and demonstrate against someone cutting down a virgin forest, a white pine, or something else, they're going to be arrested and thrown in jail, under this act.

The Chair: Sorry, but the time is up now. Your response potentially could go to another member of the committee at some particular point, but we'll have to see where that takes us.

We will now go to Madam Doré Lefebvre, *s'il vous plaît*.

[Translation]

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

I want to thank the three witnesses we have heard from during the second hour of this meeting. Their testimony has been a major contribution to Bill C-51.

I would like to thank Ms. Vincent in particular for joining us today.

I'm sure things have been difficult for you and your family since the events of October 19. That's why I wanted to extend my sympathies to you.

Madam Louise Vincent: Thank you.

Ms. Rosane Doré Lefebvre: The events that took place in Saint-Jean-sur-Richelieu have touched us all. We have talked about them a lot. I am very touched by the fact that you are here and that we are able to meet with you. Rest assured that, regardless of our political opinions on Bill C-51, we are all aware of the terrorist threat and we are all trying to come up with the best possible response.

Thank you for sharing your story and your point of view with us. I think that was really important.

Madam Louise Vincent: Thank you.

Ms. Rosane Doré Lefebvre: If I may, Mr. Chair, I will yield the floor to my colleague Mr. Scott.

[*English*]

Mr. Craig Scott (Toronto—Danforth, NDP): Thank you.

I'd like to add as well, Madam Vincent, that I think some of your analyses of the bill is in the spirit of exactly what this kind of committee should be doing, and I hope that continues at the amendments phase.

I want to double-check a couple of things quickly with Professor Leuprecht.

You brought up oversight and review issues towards the end. In your testimony in November on Bill C-44, which is a bill that goes much less further than this bill does in terms of new powers, you said it committed "one sin of omission". That was your language. "Many more expansive powers for security intelligence should be balanced with robust parliamentary accountability...".

I was there in that committee with you. Certain questions were asked about the Belgian model. I just want to make sure so that everybody is clear that you're as concerned about the need for the balancing of expansive powers with robust parliamentary accountability for this bill as you were for Bill C-44. It's more or less a yes or a no.

Dr. Christian Leuprecht: Yes, with one qualifier that we should not confound review and oversight. Oversight is the politicization that we get from the United States with active involvement in ongoing cases. I think Canada is well served not to get involved in that.

Yes, a more robust review indeed is something that I support.

• (2035)

Mr. Craig Scott: Great, and the Belgian model is something that people can look at because you described it quite well at the time.

The second thing is that you indicated very well in the information sharing provisions of the new act within Bill C-51 about how important it is for there to be no silos for review agencies. Let's mix oversight and review here too, but review agencies, whether it's SIRC, the CSE commissioner, or the RCMP review body, I'm not sure if you're aware but the CSE commissioner wrote to say that he does not understand why of the 17 agencies listed in this new act he, as in his office of the commissioner, is the only review agency that is written in as allowing to share information.

I am wondering if you have the same concern. Is there any reason that this sharing of information would be written in as these 17 agencies plus whatever the minister adds by regulation, but only the CSE commissioner has been written in, so that in fact, the opportunity has not been taken to add sharing of information among review agencies.

Is that a concern for you?

Dr. Christian Leuprecht: It concerns me, but perhaps for a slightly different reason than it concerns you.

We always think about review as simply trying to make sure everything is on the up and up and everybody does everything right, but as the commissioner and SIRC will tell you, it's like peer review; it's trying to make people better at what they do, looking at their methodology, looking at their professionalism, and looking at their training. That, I think, is a matter that is regularly missed in this discussion.

Mr. Craig Scott: I agree with you. I've made that point many times in the last few weeks. It's not just about protecting civil liberties. It's about actually making services more effective in what they do. I do agree.

I assume you're concerned that those agencies have not all been added in in information sharing.

Dr. Christian Leuprecht: There certainly are improvements to be made.

Mr. Craig Scott: Great.

Turning to Master Segal, in your presentation you indicated that you felt there may be some excesses and slightly overwrought provisions. I am wondering if there are any you might want to identify. I'll mention a couple. One is that the information sharing act precludes anybody engaging in civil proceedings if in fact information has been shared in good faith and has resulted in harm. The cases that we know, the Arar case and the current case being brought against the government might well be excluded under that provision.

Would you consider that an excess?

Hon. Hugh Segal: It wouldn't have been my most serious excess in the bill.

My most serious excess is the provision that would allow a judge with respect to lawful interruption to set aside the Charter of Rights and Freedoms. That is a principle which I think is overdone. It's excessive, it's unconstructive, and it violates a core Canadian value. Were there an amendment on that, it would be constructive. If there were not an amendment on that, I think the courts would strike it down very soon under any circumstance.

The notion that we would give any judge the ability to, in a less than public context, set aside the Charter of Rights and Freedoms to facilitate a security agency being involved in lawful disruption strikes me as a core contradiction and deeply problematic.

Mr. Craig Scott: Thank you for that.

With specific respect to that, I totally agree with Professor Leuprecht that the kinds of disruption that involve talking to parents and the community, etc., no reasonable person is going to have a problem with those. The problem is the bill is written very broadly to say the only absolute exclusions are causing death or bodily harm, some kind of affronts to sexual integrity and obstruction of justice. Everything else is potentially warrantable by a judge.

When we've asked in the House a couple of times if this potentially includes secret detention, and it's important to know that overseas activities of CSIS are included here, the government has specifically refused to say, "No, no, no, of course it doesn't include that". This gives me cause to worry that, yes, it could go to that extent. Bodily harm does not include detention.

Is this a reasonable concern even though we might want to think that it would at the outer limits of anything ever considered by CSIS?

The Chair: I'm sorry, but as of our last witness, the question has eaten into the response time rather significantly, so we will now go to Ms. Ablonczy, please.

Hon. Diane Ablonczy (Calgary—Nose Hill, CPC): Thank you, witnesses.

Mr. Leuprecht, my colleague asked you a question about whether Canadians need to be concerned that if they protest a pipeline or protest a bill, engage in protests, they could be shut down under the provisions of this bill.

• (2040)

Dr. Christian Leuprecht: Again, I'm no lawyer, but I think there are sufficient thresholds built in not just with regard to the security of Canada, but also for demonstrating intent with regard to committing political violence. I think this intent provision is very important. I am not concerned. I can understand some of the concerns that individuals might have, but I think we also need to look at past practice, and that both CSIS and the RCMP have way more important things to do with their lives.

I am sufficiently satisfied that the provision that is written would not give either a security intelligence or a criminal intelligence service licence or ability to interrupt or criminalize lawful protest activity.

Hon. Diane Ablonczy: Thank you.

Ms. Vincent, we appreciate your being here. We know that you've had some very difficult weeks. Our thoughts and prayers have been with you, as you mentioned.

I'm also impressed with your technical understanding of this bill. You obviously are not here to share just your sorrow, but also, I think, a very deep understanding of what may have prevented this tragedy from occurring, which could protect others, other family members.

I wonder if you would just tell us why you think this bill would now allow the terrorist act against your family member by the perpetrator from occurring. What would be different under this bill that might have protected Mr. Vincent?

Madam Louise Vincent: My understanding now is exactly as Mr. Leuprecht said, that they would be doing surveillance. They would be able to talk to the parents. They would be able to stop it. They

could put them in preventive prison, I think, for seven days, and that way they could make them stop.

There's another important thing. After Bill C-51 has been done, I think there's another step that needs to be done, which is to understand what's going on. We need to understand why this is happening. Bill C-51, to me, is to control what is going on and make it stop as much as possible. But at some point we'll need psychologists, sociologists. We'll need people to try to figure out what the heck is going on there, because this is not normal. There's something really wrong. Why are these young people, even young girls...? I'm so shocked. I'm a mother myself. I have three adult daughters, and it's incredible to see that. We're going to have to do that.

So Bill C-51 has to do that to stop them, to manage them, to control, and after that we're going to have to do some thinking all together to stop this.

Hon. Diane Ablonczy: Thank you.

Mr. Segal, I want to be an equal opportunity questioner here. As you know, I have huge respect for you. I sought your advice on occasion and appreciated it. I'm glad to see that you in general feel that the bill is helpful and appropriate.

I have to say I was a little surprised by your criticisms of the bill and I'd like to give you a chance a talk about that. You talked about the bill being possibly rapidly drafted as new law. I joined this committee in September. At that time we were told that a bill to give better tools to our security agencies to protect against terrorist acts was in the works. Here we are now, six months later, on committee study of the bill. There has to be a third reading of the bill in the House, and as you know as a former senator the whole process is repeated in the Senate. We'll be fortunate to have the bill passed into law by summer. It will be almost a year, so it seems to me this is hardly a knee-jerk reaction by any means.

You also mentioned that the interruptions by the security forces could operate outside the provision and protections of the Canadian Charter of Rights and Freedoms. Isn't that what warrants always do? If you want a wiretap, for example, you have to get a warrant because it's not normally a lawful activity. It's also fair to say that the protections of the charter are not unlimited. Did you know that section 51 talks about charter protections that are subject to the limits that can be demonstrably justified and demonstrated in society? We already have activities by security that deal with charter rights and how they can be properly balanced to ensure security.

You talked about provisions that might make us resemble those we are struggling to defeat. We're struggling to defeat an entity that slaughters entire communities based on their religious affiliation, that takes women and sells them as chattels, that believes that enslavement of populations is legitimate, that indulges in crucifixions by the hundreds and thousands, and that taxes the remaining survivors to the point where they lose all of their personal property and their ability to provide even the most basic necessities of life for themselves and their families.

I'm curious as to how you believe that any provisions of this bill might in any way make us resemble the entities we're struggling to defeat. It seems to me there's such a lack of proportionality in that comment that I struggle with its relevance.

● (2045)

The Chair: Very briefly, Mr. Segal.

Hon. Hugh Segal: Very briefly, after that vicious personal attack.

Some hon. members: Oh, oh!

Hon. Hugh Segal: Let me say three things. I don't view this as a piece of legislation or that it's about ISIS or al Qaeda. It's about providing the capacity for our security agencies to do their job. It's my fundamental view that wherever that can be done within the context of the Canadian Charter of Rights and Freedoms, it strengthens our democracy and protects our democracy.

I buy the view that was advanced by Mr. Churchill during World War II when he reported on the status of the war effort—at a time when they faced a risk, if I may say so, more substantial than ours—to the entire British Parliament in a secret session because he believed that the core premise of British democracy had to be sustained so that they did not become like the enemy they were facing across the sea, namely, the Nazis.

I would argue with you, with the greatest of respect, that any time we set aside any freedom if we don't have to, any time we set aside any core constitutional protection if it's not absolutely necessary, we're going down the wrong road and we should do our best not to do that.

It is true that in Canada the Supreme Court and other courts have decided that the charter is not absolute. There are reasonable circumstances during which it has to be set aside. Having that process take place in our courts is part of what makes us a society of laws and not just people with individual views that are deployed any particular time.

I said to you the War Measures Act was the worst violation of any individual security and freedom of assembly and speech that we've ever seen. Nothing in this legislation troubles me to that extent. It's important to keep historical perspective when we go through these kinds of undertakings.

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

Mr. Easter, you have the floor now, sir.

Hon. Wayne Easter: Thank you, Mr. Chair. That was an interesting discussion.

I want to thank all three witnesses for coming forward and stating their case. I'll start with you, Senator Segal.

I want to first of all congratulate you for your years in the Senate. Just as we've seen in this discussion between you and Diane, you're not fearful to say what's on your mind. I think that has done you well and did the Senate well over your time there.

You do say in your point 6 that in your general view of the law before us, despite some excesses and slightly overwrought provisions, it is a law that is helpful and appropriate, etc. Can you list any of those excesses and slightly overwrought provisions?

Hon. Hugh Segal: We all have a hierarchy of concerns. The one that troubles me the most is the one that allows a judge to set aside the provisions of the Charter of Rights and Freedoms. I think that's the kind of fundamental excess that can lead to other difficulties.

I'm not troubled by the agency sharing information with others, because Mr. Justice John Major in his report on the Air India tragedy talked about how, despite CSIS' efforts in detecting folks who were at the time Sikh extremists and were blowing up bombs to see if they worked, that information never got from CSIS to the RCMP fast enough. When it did get to the RCMP, the action was lethargic enough that hundreds of our fellow Canadians were blown up on an aircraft and died.

The notion of breaking down the silos, as Madam Vincent suggested, I think is absolutely essential. I think a balanced approach to the legislation where we look at some of the excesses and hope they get addressed, while letting some of the more constructive processes go forward as quickly as possible, is very much in the national interest.

● (2050)

Hon. Wayne Easter: Thank you.

I know you were one of the big promoters in your experience in the Senate on the need for oversight. You do mention that in your brief as well. Mr. Leuprecht also mentioned that.

I might mention to Ms. Vincent that I, too, on behalf of my party, want to pass on my regards. I know that you read out a lot of words of support and sympathy from around the world. I did attend the funeral, or the celebration of life, and it was quite an experience in terms of the coming out of the community from right across Canada, and Prime Minister Harper spoke on a very, very cold day. I just want to pass that on as well.

Madam Louise Vincent: Thank you.

Hon. Wayne Easter: The oversight committee relates to Warrant Officer Vincent to a certain extent, and to what happened there and how we do things in Canada.

I guess I'd say in the beginning that for the life of me, I can't understand the resistance from the government side to oversight. The Minister of Justice in fact didn't say very kind things about the British Intelligence and Security Committee of Parliament when he was here, and yet he sat on an all-party committee of both the House and the Senate that recommended oversight similar to the British.

When we think of oversight we just think of what they do in security, but I have here the report into the death of fusilier Lee Rigby, which is something I didn't realize that the oversight committee did. Before the court case was anywhere over, that committee of parliamentarians was looking into the actions of what happened there. I'll just read this one statement:

The Committee is conscious that it is the only body that can investigate intelligence matters on behalf of Parliament and the public. The responsibility is considerable and we therefore have sought in every instance to ensure that we are able to disclose as many of the facts as possible.

The important point there in terms of a shooting or death is that they can meet with security agencies, look at classified information, and try to determine what went wrong internally. They can't make that public, but they can certainly recommend some changes so that security agencies can do better in the future.

I say all that to raise the question, how important is it that we have oversight similar to other Five Eyes countries from your folks' perspective?

I'll start with you, Mr. Leuprecht.

Dr. Christian Leuprecht: It's inherently important, I think, in a way, to reassure Canadians that the systems we have in place are working as they should.

I might also submit that we need to perhaps have a bit more of a nuanced conversation about the type of review and the type of oversight that is appropriate for different agencies. With regard to CSIS and CSE, I think we need a much more robust review

mechanism, because of the activities in which they are engaged, as opposed to intelligence agencies—we don't often think of them as intelligence agencies—such as the RCMP, CBSA, and the Department of Foreign Affairs. They of course are also engaged in intelligence collection, but not in a context that is as...perhaps has the potential for constitutional or legal violations in the same way that CSE and CSIS are.

I think we need to have a discussion or conversation about CSIS and CSE that is separate from the discussion of what I would say are the core five members of national security, that is separate from the discussion of the 15 or so security agencies that look after national security, and that is different from the discussion that we need to have with the Department of National Defence.

● (2055)

The Chair: Thank you very much, Mr. Leuprecht. The time has now expired.

On behalf of the entire committee, the chair certainly would like to thank our witnesses for appearing today. I can assure you that your thoughts and your testimony before us today are not only welcome, but will be warmly received and certainly given sincere consideration. Thank you very, very kindly.

To our colleagues on committee, I'll see you bright and early tomorrow morning for the restart of this committee for the next session.

The meeting is adjourned.

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