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# **Standing Committee on Public Safety and National Security**

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**Tuesday, December 6, 2016**

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**Chair**

**Mr. Robert Oliphant**



## Standing Committee on Public Safety and National Security

Tuesday, December 6, 2016

•(1535)

[English]

**The Chair (Mr. Robert Oliphant (Don Valley West, Lib.)):** Good afternoon, members of the committee, witnesses, and officials who are here to help us as we continue, pursuant to the order of reference of Tuesday, October 4, 2016, our consideration of Bill C-22, an act to establish the national security and intelligence committee of parliamentarians and to make consequential amendments to certain acts.

We welcome Mr. Sutherland, Ms. Sheehy, and Ms. Miles from the Privy Council Office, and Mr. Davies and others who are with us.

Welcome, as well, to Madam May, who is joining us today.

We're continuing consideration of the bill at clause 17. As we did last week, we will proceed relatively slowly. I'm not going to repeat the instructions that I gave at the start of the bill consideration. If anyone needs any time to sort anything out, please do ask the chair for a motion to suspend, and we'll certainly entertain that accordingly.

(On clause 17)

**The Chair:** Are there amendments to clause 17?

Mr. Clement.

**Hon. Tony Clement (Parry Sound—Muskoka, CPC):** I have an amendment, Mr. Chair.

**The Chair:** Mr. Clement moves amendment CPC-9 to clause 17.

Would you like to comment on that?

**Hon. Tony Clement:** Thank you, Mr. Chair.

It's actually kind of funny. I was subbed in to the justice committee last week, and they were doing clause-by-clause study that day for the genetic discrimination bill. There were only two amendments, so I felt lonely and strange.

**The Chair:** That was a very fine bill, I understand.

**Hon. Tony Clement:** We will see after the Senate, I'm sure.

In any event, CPC-9 is a small amendment. This came pursuant to some of the testimony we heard that perhaps there should be some reference to a quorum requirement for the committee. It basically says that at the first meeting it would be up to the committee to establish that.

**The Chair:** Are there any other comments or questions?

Mr. Dubé.

**Mr. Matthew Dubé (Beloil—Chambly, NDP):** Mr. Chair, I support Mr. Clement's amendment, but I would propose a subamendment, if I may.

**The Chair:** Yes.

**Mr. Matthew Dubé:** After the word "schedule", I propose adding the words "and quorum requirements".

**The Chair:** The subamendment is that following the word "schedule" in the third line of the amendment adding the words "and quorum requirements".

**Mr. Matthew Dubé:** That's correct.

**Hon. Tony Clement:** That's actually what I was intending to amend.

**The Chair:** Is there any discussion on the subamendment?

Seeing none, I will call the question first on the subamendment.

(Subamendment negatived)

**Ms. Dianne L. Watts (South Surrey—White Rock, CPC):** Could I just get some clarification? What this is basically saying now is that the chair can hold a meeting all by himself or herself.

**The Chair:** I would ask the officials to comment, or anyone on the committee if you would like to.

**Ms. Nancy Miles (Senior Legal Counsel, Privy Council Office):** Right now, it states that the committee is to meet at the call of the chair. That really just means that the chair will call the meetings of the committee.

**Ms. Dianne L. Watts:** I understand that, but now there's no quorum. If the chair calls a meeting and nobody shows up, the chair can basically have a meeting by himself or herself because there are no guidelines for a quorum or anybody else needing to be there.

**Ms. Nancy Miles:** I thought there was provision later on that indicates they may determine the procedure to be followed in the exercise of their powers, so they do have the ability to set the quorum once they meet.

**Ms. Dianne L. Watts:** What clause would that be under?

**Ms. Nancy Miles:** That's clause 20.

**Ms. Dianne L. Watts:** Mr. Chair, with the greatest of respect, it doesn't have that provision in there.

**Hon. Tony Clement:** I would like to read into the record, Chair, for the purposes of this committee and its record, that the response from Nancy indicates that quorum could be a topic of conversation at the meeting of the committee.

**The Chair:** Okay.

Is there any other discussion now on the amendment?

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

(Clause 17 agreed to [See *Minutes of Proceedings*])

**The Chair:** Moving to clause 18, there are no amendments which have been submitted.

(Clause 18 agreed to)

(On clause 19)

**The Chair:** Mr. Spengemann.

• (1540)

**Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.):** Mr. Chair, I have an amendment to clause 19. I will read it and then move it. We have it in writing in both official languages.

The motion is that Bill C-22 in clause 19 be amended by replacing lines 8 and 9 on page 8 with the following, “only in the case of a tie.” So the amended clause would read, “The Chair may vote at meetings of the Committee only in the case of a tie”.

**The Chair:** I think what that means is that the chair may not vote, except for and unless there's a tie.

**Mr. Sven Spengemann:** Correct.

**The Chair:** Is there any discussion on the amendment to clause 19? That would be LIB-11.1.

**Ms. Dianne L. Watts:** Guys, there you go.

(Amendment agreed to)

(Clause 19 as amended agreed to)

(Clause 20 agreed to)

(On clause 21)

**The Chair:** Clause 21 is a fairly lengthy clause with six parts. We have a number of amendments which have been proposed. The first one we would consider would be LIB-12.

**Ms. Pam Damoff (Oakville North—Burlington, Lib.):** I will move the amendment. It's amending the reporting so it would include the number of times in the preceding year that ministers exercised their discretionary authority to stop a review from proceeding under clause 8.

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

**The Chair:** The next one we will deem moved. It is from the Green Party, amendment PV-6.

Ms. May, would you like to speak to that?

**Ms. Elizabeth May (Saanich—Gulf Islands, GP):** Thank you. I would, Mr. Chair.

My next amendment is also directed to the same thing, somewhat in the alternative.

The intent here is just to remind people when we get to the power of a prime minister in the first reading version of the bill, under subclause 21(5), the “Prime Minister may direct the Committee to submit” to himself or herself as Prime Minister a revised version of the annual or special report.

My amendment is that “the Prime Minister may advise the Committee to submit”. It's an attempt to ensure that the committee, bearing in mind that the committee is empowered to maintain state secrets, is fully confidential in its makeup, and the goal is to ensure that it's the committee, not the Prime Minister, who makes the decision about exactly how the revisions are conducted. The Prime Minister may “advise” as opposed to “direct”. That's the essence of my amendment.

**The Chair:** Just a note that if PV-6 is adopted, then PV-7 would not be moved.

**Ms. Elizabeth May:** Exactly.

**The Chair:** I want to make sure the committee is aware of that.

We're considering PV-6. Would anybody like to comment on it?

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

**The Chair:** Amendment PV-7 would then be in order. It is now deemed moved.

• (1545)

**Ms. Elizabeth May:** Again, this is an alternative approach to the same goal, in that the Prime Minister may advise the committee to submit as opposed to.... It's a change in language with the same purpose, to change from the Prime Minister directing, to the Prime Minister advising.

**The Chair:** Just a note to remind folks if, not for this one, but I was a little worried about CPC-10, but I'm advised it will be eligible, if it's passed or defeated.

**Ms. Elizabeth May:** I think CPC-10 has very little to worry about at this point, but I wait to be amazed.

**Hon. Tony Clement:** Can we clarify once again that if PV-7 passes, CPC-10 is still in order.

**The Chair:** We're going back. Sorry. This has just been brought to my attention. For the record, to bring up an issue with respect to Ms. Damoff's amendment, LIB-12, which has passed, it has as its final point, item (d)(ii) “decided to refuse to provide information under subsection 16(1).” Since clause 16 no longer exists, it would be problematic because the numbering will change. It refers to nothing. We just want to state, on the record, that it refers to nothing.

If I had unanimous consent, I could revert to consideration of LIB-12, or it could be done at report stage, if someone wanted to do it there.

**Mr. Marco Mendicino (Eglinton—Lawrence, Lib.):** Mr. Chair, I'm going to recommend we address the issue at report stage.

**The Chair:** We don't have unanimous consent. We'll simply let that stand. Thank you, clerks, for advising us of that.

Moving on, we have said CPC-10 will be eligible to be moved, even if PV-7 is adopted.

On amendment PV-7, is there any further discussion?

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

**The Chair:** I understand there may be an amendment that we do not have in front of us which is being presented.

**Ms. Pam Damoff:** There is. I'm just wondering if you would like to wait until the end to deal with that. It deals with after line 11, so do you want to wait until we've done the other ones to deal with this one or do you want me to read it in?

**The Chair:** I'm being advised by the clerk that LIB-12.1 should be moved now. I understand that if it is adopted, NDP-9 or CPC-10 could not be moved, so we could discuss LIB-12.1 now.

Ms. Damoff.

•(1550)

**Ms. Pam Damoff:** I move that Bill C-22, in clause 21, be amended by adding after line 11 on page 9 the following:

(5.1) If the Committee is directed by the Prime Minister to submit a revised version, the revised version must be clearly identified as a revised version and must indicate the extent of, and the reasons for, the revisions.

**The Chair:** People have copies of that. Would you like to explain it?

**Ms. Pam Damoff:** I just want to say that it is, in essence, Mr. Rankin's amendment with some minor wording changes. I've spoken to Mr. Rankin, and he is in agreement with the changes that we've made.

**The Chair:** Okay.

Mr. Clement, go ahead.

**Hon. Tony Clement:** That's interesting. I'm just wondering why this was necessary, rather than supporting CPC-10, because you're saying exactly the same thing.

**The Chair:** We do recognize if it does pass, CPC-10 cannot be moved.

**Hon. Tony Clement:** I'm asking the mover the question. Why wouldn't you just support CPC-10?

**Ms. Pam Damoff:** It's not exactly the same.

**Hon. Tony Clement:** How is it different?

**Ms. Pam Damoff:** There is quite a bit at the end of yours, "was involved in authorizing and implementing the revision, as well as the". It's similar. It's just slightly different language.

**The Chair:** What we have on the table is amendment LIB-12.1, which has similar impact but different to NDP-9 and CPC-10. If it is adopted, then CPC-10 or NDP-9 could not be moved, and BQ-6.

Mr. Clement.

**Hon. Tony Clement:** I just want to add a couple of things on the record.

I now understand what the mover was trying to get at. I would just say that in these matters, greater clarity is better than lesser clarity. If you're dealing with a situation when a report has been ordered to be revised by the Prime Minister of Canada, parliamentarians have a right to know which departments are involved in that and not only the nature and the reasons of the decision, but to go behind the veil, as it were, to find out the particulars as they are laid out in my revised subclause 7.

I think that my amendment is superior in many ways to the proposed amendment.

**The Chair:** Okay, seeing no other requests, I'm going to test amendment LIB-12.1.

(Amendment agreed to)

**The Chair:** We will take out amendments NDP-9, BQ-6, and CPC-10. However, amendment LIB-13 is still eligible to be moved, if someone would like to move it.

•(1555)

**Ms. Dianne L. Watts:** What this does is no department is identified or responsible in any way, shape, or form if there are redactions made on a revised report.

**The Chair:** I'm not able to comment on that.

**Ms. Dianne L. Watts:** There would be no transparency.

**The Chair:** Would you like to address that to the officials?

**Ms. Dianne L. Watts:** Through you.

**The Chair:** Do you need that repeated?

**Mr. Allen Sutherland (Assistant Secretary, Machinery of Government, Privy Council Office):** Sure, she can repeat it.

**Ms. Dianne L. Watts:** Just for clarification purposes here, with the piece removed, that removes the openness and transparency from any department that has made suggestions that it be redacted, so there is no accountability by any department in this process.

**Mr. Allen Sutherland:** The accountability is through the PM. It's his decision.

**Ms. Dianne L. Watts:** I understand that, but there would be departments advising the Prime Minister, so that removes any information as to who advised him to do this.

I'm doing a hypothetical case here.

**Ms. Heather Sheehy (Director of Operations, Machinery of Government, Privy Council Office):** The act allows the Prime Minister to direct that certain information that's injurious to national security be redacted from the report.

The act gives the authority to the Prime Minister to request that information be redacted from the report. It is the Prime Minister who would request that, not the departments, and then the committee is responsible for determining how that redaction is made in the report.

**Ms. Dianne L. Watts:** Okay, what I'm hearing then is that.... The Prime Minister isn't going to arbitrarily start redacting stuff without getting advice from a variety of departments. That's just common sense. What I'm hearing is that there are provisions still embedded within this whereby the committee has the ability to get that information as to which department and why that advice was given to the Prime Minister. Is that correct?

**Ms. Heather Sheehy:** The bill is silent on what information, on how that information is communicated to the committee, or what constitutes the information that the Prime Minister gives to the committee in terms of the redaction. It just says that the Prime Minister can indicate to the committee that certain things have to be redacted. The bill does not provide for how that information is considered in that direction nor what analysis has to be provided to the committee.

**Ms. Dianne L. Watts:** Okay, so if the bill is now silent on that, and the committee is an oversight committee, and there have been redactions by the Prime Minister, there is no ability for the committee to get any of that information as to who and why that redaction occurred because the bill is silent on it now. Is that correct?

**Mr. Allen Sutherland:** The proposed revision that was just advanced speaks to “clearly identified as a revised version and must indicate the extent of, and reason for, the revision”.

**Ms. Dianne L. Watts:** Okay, I had just heard that the bill was silent on that, so the committee will have the reasoning behind it as well as which department made that request. Is that correct?

**Mr. John Davies (Director General, National Security Policy, Department of Public Safety and Emergency Preparedness):** May I take a crack at this one?

Clause 21 is about the public report, what the public will see, but the committee will see everything, including what's redacted. I just want to make sure it will be clear which departments are involved in the redactions because you can see everything. This is about what is made public, and the key about the bill is the Prime Minister will make that call. It's not about hiding anything or redacting anything before the committee sees it. This is about what is appropriate to be released publicly.

**Ms. Dianne L. Watts:** I fully get that, because it's not necessary for the general public to have that information. My concern was around the committee having that information, going through the process of redaction and who's doing what and advising whom on what.

•(1600)

**Mr. John Davies:** As with a lot of other public reports, in court proceedings and so on, in the end it's a give and take. It's a back and forth in terms of discussion on what should be released and what should not be released.

**Ms. Dianne L. Watts:** I get all that. I just want to make sure that there's a provision that, before it goes to the general public, the information is given to the committee in terms of why there was a redaction, who was advising to redact it. That was my point.

I heard from Ms. Sheehy that it was silent on that; therefore, the information wasn't there. I just want clarification. I just want to make sure.

**Mr. Allen Sutherland:** I think the why will be clearly stated. The who is the Prime Minister.

**Ms. Dianne L. Watts:** I guess that's my point. The Prime Minister isn't arbitrarily going to start changing documents because he thought so that day. There's a process that's undertaken. There are advisers who would give him that information. My question was around, would the committee not be able to have that information now?

**Mr. Allen Sutherland:** I think I would maybe look at it from the other direction, which is that the Prime Minister won't simply take whatever his advisers tell him either. It's ultimately his decision.

**Ms. Dianne L. Watts:** That's not answering my question.

**Mr. John Davies:** Again, it's the committee's report.

**Ms. Dianne L. Watts:** I understand.

**Mr. John Davies:** The committee is writing the report. The committee sees everything. In the back and forth that goes on with the redaction, it's going to be clear which agency the report is on and where the information comes from. At the end of the day, it's the Prime Minister's decision, but there is not going to be any information hidden from the committee or any discussion that's not going to be revealed on why a redaction did or did not occur. Every review body goes through this as they issue a public report.

**Ms. Dianne L. Watts:** The reason I'm trying to understand this is that an amendment was made to take that language out. I still want to make sure that the committee needs to fully understand why there was a redaction and which organization put that forward, so the committee will have full understanding of what that looks like.

**Ms. Heather Sheehy:** I would also just point out that I slightly misspoke. I want to be very clear that, in Bill C-22, at subclause 21(5), where I said “injurious to national security”, I should have been more accurate in saying:

the disclosure of which would be injurious to national security, national defence or international relations or is information that is protected by litigation privilege or solicitor-client privilege

Then the clause goes on, but I just want to clarify that I had misspoken on that point.

**The Chair:** I want to clarify one thing on process. The amendment that was passed added language and no language was taken out. That would have come in a later amendment, which is now not eligible. Just so people are clear and the public record is clear, what we have done is we have the original subclause 21(5), which has two lines added to it, which will make other motions ineligible; however, it has added the requirement for reasons to be given to the committee.

You still have the floor, Ms. Watts, and then Mr. Rankin, followed by Mr. Mendicino.

**Ms. Dianne L. Watts:** I thank you for that. I do understand that. I just want to make sure that with the redaction, if a committee member asks who advised that this be redacted, whether it's CSIS or whoever it is, it doesn't matter; that information would be forthcoming to the committee.

I get that it would be injurious to public security and all that other stuff, the reasons why. I just want to understand that there is still is a process in place whereby the committee has the information that they need.

**Ms. Heather Sheehy:** To your point, the act is silent on that, including with the amendment. To Mr. Davies' point, one can imagine that they'll be back and forth with the committee in terms of the redactions that are requested, but the act is silent.

•(1605)

**Ms. Dianne L. Watts:** Okay, and that's what I understood it to be, so it's clearly problematic. Thank you.

**The Chair:** Mr. Rankin.

**Mr. Murray Rankin (Victoria, NDP):** No, that's fine.

**The Chair:** Mr. Mendicino.

**Mr. Marco Mendicino:** I appreciate the area of questioning that Ms. Watts is exploring, although I don't agree with her final characterization that the amendment is clearly problematic because

**Ms. Dianne L. Watts:** That's in my opinion.

**Mr. Marco Mendicino:** Fair enough, but I think it should be coloured by what we heard from Mr. Davies. The amendment, which was approved by the committee, in no way prohibits the reasons from including references to the departments which are asserting privilege, so it's because of this that I think this amendment is obviously not in any way going to foreclose reasons that will shed light on the area that you were probing.

**The Chair:** Ms. Watts.

**Ms. Dianne L. Watts:** Actually, it does, because it says if any department was consulted in authorizing the revision, as well as the extent, that that be given to the committee. That was an amendment that we had put forward. That's why I wanted clarification, because this clearly stipulates that the information from whatever department or agency will come to the committee. Now it's silent on that. That can be interpreted a thousand different ways, is my point. To me, that's problematic because it's not clear.

**The Chair:** Okay. We are ready to entertain another amendment. We got into a discussion on the clause itself, which is absolutely fine, and I believe there is another amendment to be moved, LIB-13.

Does someone care to move it?

**Ms. Pam Damoff:** Yes. I move that Bill C-22, in clause 21, be amended by replacing line 14 on page 9 with the following:

of the first 30 days on which that House is sitting after a

In essence, it's just to ensure that the report is tabled as soon as it's practical to do so.

**The Chair:** So you're changing it from 45 days to 30 days.

**Ms. Pam Damoff:** Yes, that's correct.

**Hon. Tony Clement:** Could I just ask, Chair, when was this amendment tabled?

**The Chair:** I would have to ask the clerk.

**Hon. Tony Clement:** Why do I have copies of LIB-14, but not LIB-13 in my package?

**Ms. Dianne L. Watts:** It's right here.

**Hon. Tony Clement:** I have it, sorry. Never mind.

(Amendment agreed to)

**The Chair:** We have another one, LIB-14. Can someone move that?

Ms. Damoff.

**Ms. Pam Damoff:** I'm not going to read all of this into the record, but in essence what it does is the report that is tabled in the House will also be referred to either the Senate Standing Committee on National Security and Defence, or some other name, as it may be named later, and the Standing Committee on Public Safety and National Security of the House. It came up in testimony that it would be advisable for that report to be tabled with the appropriate committee, so it amends the bill to have that done.

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

(Clause 21 as amended agreed to)

(On clause 22)

**The Chair:** I believe there's an NDP amendment, NDP-10.

Mr. Rankin or Mr. Dubé.

• (1610)

**Mr. Matthew Dubé:** Yes, I'll move that, Chair.

We obviously heard a lot about the horizontal integration and the learning curve that comes with such a committee. This amendment seeks to have the existing bodies provide different reports to the committee of parliamentarians. Specifically, we're talking about special reports from the RCMP's Civilian Review and Complaints Commission; reports from the CSE commissioner to the Attorney General on activities that may not be in compliance with the law; and the contents of the special briefings prepared by SIRC, and the special reports prepared by SIRC, two different things worth distinguishing. This was endorsed by Craig Forcece, Kent Roach, Ron Atkey, and Richard Fadden as well, so I hope I will have the support of the committee for this amendment.

**The Chair:** Is there any discussion regarding the NDP amendment to clause 22?

Mr. Clement.

**Hon. Tony Clement:** The Conservative Party supports this amendment.

**The Chair:** Are there any other comments?

Mr. Damoff.

**Ms. Pam Damoff:** I just want to say it appears to me that the wording in clause 22 now allows those bodies to share information with the committee.

**The Chair:** Okay.

Mr. Dubé.

**Mr. Matthew Dubé:** It says the review bodies may provide to the committee, and then under "Exceptions", what it must not, whereas our amendment says that in addition to the information the review body may provide—sorry, am I reading the right thing here? The "appropriate review body must provide to the Committee the following" and it makes those mandatory, as opposed to the more open language that is there. These reports aren't enumerated with a "must" before them in the legislation as drafted.

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

**The Chair:** Continuing on clause 22, we'll move to NDP-11,

**Mr. Matthew Dubé:** I'll move it anyway, I suppose, but it was more as a follow-up housekeeping amendment had we adopted our previous amendment, which would have just made cabinet confidences the only item that cannot be shared between the committee and the review bodies. It's a bit irrelevant now, because it was a complementary piece to the previous amendment.

**The Chair:** You'll hold on to it?

**Mr. Matthew Dubé:** Why not.

**The Chair:** Ms. Watts.

**Ms. Dianne L. Watts:** I'm sorry, I need it again. I'm sorry to my colleague for jumping in.

The passing of the previous clause in the amendment, any agency that we have under review, and correct me if I'm wrong, doesn't have to give us information, if they choose not to.

**The Chair:** I would ask the officials if they would like to comment on that.

**Mr. Allen Sutherland:** Clause 22 refers to review bodies exclusively. It's not any agency.

**Ms. Dianne L. Watts:** Right. Okay.

A review body, such as CSIS, would not have to give the committee any information, if it deemed it didn't want to.

For instance, with the gathering of data that they are holding right at the moment, they don't have to give any of that information as to why they did that. Is that correct?

**Mr. Allen Sutherland:** I think you meant SIRC.

**Ms. Dianne L. Watts:** SIRC, sorry.

**Mr. Allen Sutherland:** That's all right, and you are correct.

**Ms. Dianne L. Watts:** Therefore, as an overview committee, there are other review committees that don't have to give us any information, and that has crippled the committee. They can't do the job, basically, is what this is doing.

I get it. I just want to make sure that in moving forward with this there's a clear understanding that, as an oversight committee, this is not what's being set up, because any other review committee doesn't have to give us information. It is what it is.

**Mr. Allen Sutherland:** Ms. Sheehy will comment on that.

•(1615)

**The Chair:** Ms. Sheehy.

**Ms. Heather Sheehy:** I'd like to do a slight explanation of clause 22.

The clause enables the review bodies to share information with the committee, subject to limitations under what were clauses 14 and 16. The provision is necessary, because the review bodies are otherwise subject to legal prohibitions under their legislation that does not allow them to disclose the information that they have access to.

This particular clause allows them to provide information to the committee, pursuant to anything else that's in the act.

**Ms. Dianne L. Watts:** I think this speaks directly to what the Privacy Commissioner had said about them deciding not to give information around a program that was being undertaken, and it had nothing to do with national security or the fact that they were gathering data and holding data on Canadians.

They still have that ability, and they don't have to give it to us. Okay. I just want to be clear.

**The Chair:** I have Ms. Damoff and Mr. Erskine-Smith.

**Ms. Pam Damoff:** I want to put on the record that it's a difference of opinion on whether this cripples the committee, because in our opinion, it doesn't cripple the committee at all. Clause 22 is still very

permissive in what it allows the committee to receive from the review body.

**The Chair:** Thank you.

Mr. Erskine-Smith.

**Mr. Nathaniel Erskine-Smith (Beaches—East York, Lib.):** Just to answer the concern, as I read the legislation, subclause 15(1) states, "If the Committee is entitled to have access to information that is under the control of a department, the Committee may make a request to the appropriate Minister for that department that the information be provided to the Committee."

Then if you go to subclause 15(3), it states, "After the appropriate Minister receives the request, he or she must provide or cause to be provided to the Committee, in a timely manner, the requested information to which it is entitled to have access."

**Ms. Dianne L. Watts:** It's agencies, not the minister. We're talking about review agencies. It's very different.

**The Chair:** Yes.

**Mr. Nathaniel Erskine-Smith:** Maybe we can have clarification. If a request is made pursuant to clause 15, and it doesn't include information that is related to clauses 14 or 16, then clause 15 would not be an answer. I would appreciate knowing that as well.

**Ms. Dianne L. Watts:** That's exactly what was said by the Privacy Commissioner.

**Ms. Nancy Miles:** The definition of the department under the statute excludes a review body. There is something—

**Ms. Dianne L. Watts:** That's right.

**Ms. Nancy Miles:** —with respect to departments and right to access. There is something with respect to review bodies and the ability to share information between review bodies and the committee.

**Ms. Dianne L. Watts:** Thank you.

**The Chair:** Are there any other comments on NDP-11?

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

**The Chair:** I regret to inform you that CPC-11 is not eligible to be moved.

**Hon. Tony Clement:** It's been that kind of day.

(Clause 22 agreed to)

**The Chair:** We come now to clauses 23 to 30. There have been no amendments received on any of these clauses.

If I have unanimous consent, we could pass one motion adopting clauses 23 to 30. I'm seeing that.

(Clauses 23 to 30 inclusive agreed to)

(On clause 31)

**The Chair:** There are a number of amendments that have been proposed, beginning with PV-8. We can take them one at a time.

There are a few issues because if PV-8 is passed, BQ-7 would be ineligible. If either of them passes, because they are amending the same line, BQ-8 would not pass.



I'm going to mention that both NDP-12 and CPC-12 are inadmissible, as they are attempting to delete clauses. The committee may defeat a clause, but may not remove a clause.

Then we'll have LIB-15 and perhaps a LIB-15.1, if it is so moved.

I'm going to begin with PV-8 which is deemed moved.

Ms. May.

•(1620)

**Ms. Elizabeth May:** Thank you, Mr. Chair.

It's nice to see you, Ruby. I feel like we should be talking about electoral reform. We're veterans, here.

This amendment very clearly attempts to turn on its head what both subclause 31(1) and subclause 31(2) accomplish. At the moment, the effect of subclause 31(1) and particularly subclause 31(2) is to make the decisions of a minister refusing to provide information pursuant to subsection 16(1) not only final insofar as government decision-making goes, but also exempt from normal review through our federal courts.

It's a very straightforward amendment. I am proposing to replace eight lines with four—economy of purpose. We would no longer have subclauses (1) and (2), and the amendment would say:

The appropriate Minister's decision to refuse to provide information under subsection 16(1) is final, except for judicial review under the Federal Courts Act.

I think the purpose is clear. You've certainly heard expert witnesses to the effect that this is the sort of area where too much.... The Federal Court can certainly handle confidential information. The decision-making by a minister of the crown can go to Federal Court, and that process can also be as secure for purposes of public security and the national interests as any other body one could imagine. It would certainly improve the decision-making under this act and the access to information that is critical to a parliamentary committee of both MPs and senators whose job is national security and intelligence. They certainly will not be able to do their job if ministers do not provide information. That should be an exception, and it should be difficult for ministers to make that decision. They should know that their exercise of discretion is open to Federal Court review on tests that have been developed through the ages.

It certainly doesn't open this process to abuse or to leaking secure information from our intelligence services, but it is a check on the inappropriate exercise of discretion by ministers.

**The Chair:** Thank you, Ms. May.

While the motion is admissible, it is actually now referring to a clause that no longer exists.

**Ms. Elizabeth May:** Yes, I know that, but I don't imagine that will be the case as the bill.... I know we're in a bit of a procedural lacuna here.

**The Chair:** Yes.

**Ms. Elizabeth May:** I don't know that this has ever happened before—the accidental removal of an entire section.

I'm in your hands, Mr. Chair. How do I amend a section that no longer exists, but will exist again in the future?

**The Chair:** I am ruling that it is admissible. Because we don't know what could happen at the report stage, it is admissible to be voted on at this stage.

•(1625)

**Ms. Elizabeth May:** Thank you.

**The Chair:** CPC-12 is not—

**Hon. Tony Clement:** —admissible.

**The Chair:** Yes.

Is there any further discussion about PV-8? Seeing none, I'll call a vote.

(Amendment negated)

**The Chair:** We've moved through NDP-12, BQ-7, and CPC-12.

BQ-8 can be moved.

Would anybody like to speak to it?

Mr. Di Iorio.

[Translation]

**Mr. Nicola Di Iorio (Saint-Léonard—Saint-Michel, Lib.):** Mr. Chair, with respect to amendment BQ-8, it's important to point out that disagreements between the government and parliamentary committees are settled in Parliament. Disagreements between the committee specified in this bill and the government should be handled the same way, in other words, they should be settled in Parliament, rather than through legal action.

We are talking about a committee of parliamentarians. With respect to the committee's conduct and governance, despite the provision tying it to the executive branch, the fact remains that the committee is made up of parliamentarians and deals with the government, whose members are accountable to Parliament. Those debates, then, should take place within Parliament.

[English]

**The Chair:** Ms. Watts, go ahead.

**Ms. Dianne L. Watts:** To that point, it isn't a committee of Parliament; it is a committee of parliamentarians. I think the rules are a bit different, in terms of how things should work through. Therein lies the difference. We can't go to Parliament to fix this. It has to be embedded in the legislation.

**The Chair:** The Standing Orders do not apply to this committee as they do to the standing committees of the House of Commons, or even special committees of the House of Commons. It is not a special committee, nor is it a standing committee. It is a statutory committee of parliamentarians.

**Ms. Dianne L. Watts:** Right.

[Translation]

**Mr. Nicola Di Iorio:** Mr. Chair, the committee is made up of parliamentarians. The bill we are studying clause by clause expressly sets out that the committee be made up of parliamentarians, and that carries a certain meaning. It says right in the bill that the committee's membership must be made up of members of Parliament.

Intrinsically, what that means is that those who sit on the committee come from and report to Parliament. Therefore, any discussions, debates, or differences of opinion that need to be settled should be dealt with by the institution to which those individuals are bound, in other words, Parliament.

[English]

**The Chair:** I would ask the officials if they want to comment. The only thing I would say is that it is not just members of Parliament, but members of Parliament and senators. We'll have both houses represented. I am not sure if the officials want to comment on that or not.

No. Okay.

•(1630)

[Translation]

**Mr. Nicola Di Iorio:** Absolutely. When I said members of Parliament, I meant members of both the House and the Senate.

[English]

**The Chair:** We have BQ-8 on the floor.

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

**The Chair:** We are moving now to LIB-15.

**Mr. Marco Mendicino:** Mr. Chair, I would like to move LIB-15.

Did we vote on BQ-8? Just for clarification, did we do BQ-7 and BQ-8?

**The Chair:** These are done.

**Mr. Marco Mendicino:** LIB-15 would simply reflect amended clause 8, which was also moved by me. Liberal amendment 15 would amend clause 31 by replacing line 21 on page 11 with the following language:

review referred to in paragraph 8(1)(b) would be injurious

**The Chair:** The amendment is duly moved. Are there any comments?

Ms. Watts.

**Ms. Dianne L. Watts:** The amendment would be a full stop after “injurious” and all the rest deleted, correct?

**Mr. Marco Mendicino:** Just one moment.

**Hon. Tony Clement:** It's paragraph 8(1)(b), rather than—

**Ms. Dianne L. Watts:** Oh, paragraph 8(1)(b).

**Mr. Marco Mendicino:** Yes. Clause 31 will now mirror our amended paragraph 8(1)(b), which we all voted in support of.

**Ms. Dianne L. Watts:** Okay.

**Mr. Marco Mendicino:** Does that clarify it?

**Ms. Dianne L. Watts:** Yes.

**The Chair:** Are there any other comments?

(Amendment agreed to)

(Clause 31 as amended agreed to)

**The Chair:** On clauses 32 to 46—

**Ms. Pam Damoff:** I think Mr. Rankin or Mr. Dubé was going to consider bringing an amendment here.

**The Chair:** Okay.

Mr. Rankin.

**Mr. Matthew Dubé:** Are we at clause 47 now?

**The Chair:** We just finished clause 31. We have clauses 32 to 46, and then we'd move to clause 47.

**Mr. Matthew Dubé:** We had moved amendment NDP-4.

**The Chair:** Sure, that is admissible.

We will now look at amendment NDP-4, which would provide a new clause. This is on page 17 in your document.

**Mr. Matthew Dubé:** I'm asking for unanimous consent to withdraw that, and I will propose a new amendment, if I have the committee's agreement.

**The Chair:** You don't need to withdraw it, apparently; you just don't need to move it.

**Mr. Matthew Dubé:** Okay. It's not moved, and I would move a new amendment, if that's okay.

**The Chair:** Move a new amendment.

**Mr. Matthew Dubé:** I'll read this carefully:

Duty to inform

31.1 The Committee must inform the appropriate Minister and the Attorney General of Canada of any activity that is carried out by a department and is related to national security or intelligence and that, in the Committee's opinion, may not be in compliance with the law.

**The Chair:** Do we have copies of that? I believe we do.

**Mr. Matthew Dubé:** Yes, we do have copies.

**The Chair:** We're just getting them now. Go ahead.

**Mr. Matthew Dubé:** While those copies are being circulated, by way of an explanation, we did speak with some of the witnesses about what's prescribed in the National Defence Act in terms of the whistle-blowing duty that CSE has to report to the appropriate minister and the Attorney General of any activity that may not be in compliance with the law. This is wording that we were able to agree on to get this amendment through, and it was moved from where I originally placed it, just to keep it more in line with the content of the bill.

•(1635)

**The Chair:** Just to clarify, this then becomes a new clause between clauses 31 and 32. This is new clause 31.1, moved by Mr. Dubé. You're just getting copies now so you can see it.

I believe everybody has that now in front of them. Is there any further discussion?

Ms. Damoff.

**Ms. Pam Damoff:** We're happy to support this amendment that Mr. Rankin has put forward.

**The Chair:** Okay, I see no discussion as being required.

(Amendment agreed to)

**The Chair:** Now we move to clauses 32 to 46. Do I have unanimous consent to consider them together?

**Some hon. members:** Agreed.

(Clauses 32 to 46 inclusive agreed to)

(On clause 47)

**The Chair:** Now we're moving to clause 47, on which we have some amendments.

Because of our action at the last meeting, amendment LIB-16 was already dealt with; therefore, amendments NPD-9 and NDP-13 may not be moved. We will then go simply to clause 47 as amended because of the consequential amendment from our last meeting.

Ms. Damoff.

**Ms. Pam Damoff:** I'm sorry, can none of these four amendments be moved, then? Is that right?

**The Chair:** That's right.

**Ms. Pam Damoff:** All right.

**The Chair:** They were effectively moved at our action when we did clause 14.

Shall clause 47 as amended carry?

(Clause 47 as amended agreed to [See *Minutes of Proceedings*])

(Clauses 48 and 49 agreed to)

**The Chair:** Now we go to the stood clauses.

(On clause 2)

**The Chair:** We go back now to clause 2 at the beginning of the bill, after which we will consider clause 1.

With respect to clause 2, we have amendments LIB-1 and LIB-2, if someone wants to move them.

Mr. Spengemann.

**Mr. Sven Spengemann:** Mr. Chair, I'd like to move amendment LIB-1, that Bill C-22, in clause 2, be amended by replacing line 18 on page 1 with the following:

Governor in Council made under that Act;

(c.1) with respect to a parent Crown corporation as defined in subsection 83(1) of the Financial Administration Act, the appropriate Minister as defined in that subsection; or

The rationale, Mr. Chair, is straightforward. It is simply to broaden the ambit of the act to include parent crown corporations. It's one of the most compelling examples. There aren't many, I should say, in the area of national security. There is CATSA, which is the Canadian Air Transport Security Authority. It's a crown corporation deeply involved in security matters. It is simply the aspiration of this amendment to extend the scope of the act to include parent crown corporations involved in this field.

(Amendment agreed to)

• (1640)

**The Chair:** We have a second amendment.

**Mr. Sven Spengemann:** Mr. Chair, we have amendment LIB-2, that Bill C-22, in clause 2, be amended by replacing line 6 on page 2 with the following:

Schedule II to that Act, a parent Crown corporation as defined in subsection 83(1) of that Act or the Canadian Forces. (*min-*

This is consequential to the first amendment. It's the same rationale.

**The Chair:** It's the same rationale.

(Amendment agreed to)

(Clause 2 as amended agreed to)

**The Chair:** We are at the end of the bill.

**Mr. Sven Spengemann:** Mr. Chair, could I ask a question on status? It was my recollection that we had stood elements, if not all, of clause 15 as well, because at least LIB-10 was consequential to the previous amendment that was just moved.

Can you give the committee a status update on LIB-9 and LIB-10? Were those stood or were those moved at the last—

**The Chair:** They both carried, which is why we stood clause 2 until after that happened.

**Mr. Sven Spengemann:** Thank you.

**The Chair:** We have a schedule, which is attached to the bill on page 17 of the bill.

Mr. Di Iorio.

[*Translation*]

**Mr. Nicola Di Iorio:** I'm a bit puzzled. I was under the same impression as Mr. Spengemann regarding clauses 9 and 15.

**The Chair:** We're talking about clause 15, yes.

**Mr. Nicola Di Iorio:** The two carried?

**The Chair:** Yes.

**Mr. Nicola Di Iorio:** I thought we had put off consideration.

[*English*]

**Mr. Sven Spengemann:** I don't recall moving them, but if you can confirm they were carried, then that satisfies me.

**The Chair:** All our clerks say yes.

**Mr. Sven Spengemann:** Thank you once again.

**The Chair:** We are on the schedule, which refers to the solemn affirmation or oath.

Mr. Clement.

**Hon. Tony Clement:** I have a question about this. Is it typical to omit any reference to the monarch in these oaths?

**The Chair:** I will ask our officials if they could help us.

**Ms. Heather Sheehy:** I don't know the answer to that question. Can you give me one minute? I'm going to confer.

**Hon. Tony Clement:** Take all the time you need, days, weeks, or months.

The Chair: Mr. Sutherland.

**Mr. Allen Sutherland:** This oath was based on something the previous government did, Bill C-81. I don't know what the common practice is.

**The Chair:** Bill C-81 was yours.

**Hon. Tony Clement:** I know, but I don't go around memorizing bill numbers.

**Mr. Allen Sutherland:** It was way back. Sorry. It was several governments back. I apologize, Mr. Clement.

•(1645)

**The Chair:** It was a bill written in the Martin government, and this was taken from that bill.

**Mr. Allen Sutherland:** Yes.

**The Chair:** Okay.

**Hon. Tony Clement:** I would like to add reference to the monarch to this solemn oath.

**The Chair:** You would like to amend it?

**Hon. Tony Clement:** Sure, by adding the Queen, the monarch, or whatever the style is.

**The Chair:** It would be, "I will be faithful and bear true loyalty to Canada"—

**Ms. Elizabeth May:**—"Her Majesty, her heirs, and successors".

**The Chair:**—"to Her Majesty, her heirs, and successors".

I think it's "to its people, and to Her Majesty"—

**Hon. Tony Clement:** Right.

**The Chair:**—"and her heirs and successors", after the word "people".

**Hon. Tony Clement:** What are you guys going to do over there?

**Mr. Nicola Di Iorio:** Vote against it.

**Ms. Dianne L. Watts:** Vote against the monarch. It says "Majesty" throughout the whole document.

**The Chair:** Do we have an amendment with respect to adding the sovereign?

**Mr. Matthew Dubé:** Mr. Chair, can I clarify what part of the bill that is?

**The Chair:** This is on page 17 of the bill, which is the oath or solemn affirmation.

On the second line after "bear true loyalty to Canada and to its people," it would add "and to Her Majesty, her heirs, and successors".

[*Translation*]

**Mr. Nicola Di Iorio:** Mr. Chair, my comment was in no way directed at Her Majesty the Queen. It is simply that legal requirements and considerations around prosecution come into play when an oath is broken. The current wording seems to me to be the most appropriate, given the serious legal ramifications associated with breaking the oath. I would therefore keep it as is.

[*English*]

**The Chair:** Ms. Watts, go ahead.

**Ms. Dianne L. Watts:** When we were sworn in as parliamentarians, we all took an oath that had the language around the Queen, and we took an oath to be parliamentarians for the House of Commons. Perhaps we should look at the language embedded in there. I am not sure what the exact language would be, but we all took the oath, so it might be....

**Hon. Tony Clement:** I would like to add a commentary to Mr. Di Iorio's commentary and say that I know of no legal consequences that are deleterious to the intent of this bill to which he refers.

**The Chair:** Okay, I have a question, if I may, as the chair.

Would the oath that the parliamentarians take when they are sworn into Parliament, either the House of Commons or the Senate, still stand as an oath that would apply? This would be a further oath to the original oath.

"Her Majesty" would have already been in that oath. Am I correct on that?

**Ms. Dianne L. Watts:** Yes, here is the oath of allegiance right here. I'll pass it along, because it's too long to read, but it is reflective of the Queen, the sovereign.

**Hon. Tony Clement:** To your point, Chair—

**The Chair:** It was really a question.

I will read it for the record, if you'd like: "The Act states: 'Every Member of the...House of Commons'"—and I assume the Senate would have something similar—"shall before taking his [or her] Seat therein take and subscribe before the Governor General or some Person authorized by him [or her]...the Oath of Allegiance", which is "I...do swear, that I will be faithful and bear true Allegiance to Her Majesty Queen Elizabeth the Second", or a similar oath.

They would have taken that oath.

**Ms. Dianne L. Watts:** Yes.

**Hon. Tony Clement:** My point is that, since they have taken that oath, if that oath is all that is needed, then there is no need for this oath. If there is a need for this oath, then it should be in the same form and style as our oath as parliamentarians, and in the normal course.... I swore the same oath as a cabinet minister, and I am still bound by that, by the way.

**The Chair:** Mr. Dubé, go ahead.

**Mr. Matthew Dubé:** Mr. Chair, I would actually disagree with that. There is a need for this oath, because it relates specifically to the mandate of the committee, as well as the confidentiality of the information obtained by the members thereof.

I will be opposing the motion, with all due respect to Her Majesty, simply because I feel that it is redundant. We have sworn one oath, and this is complementary to that.

•(1650)

**The Chair:** Ms. Damoff, go ahead.

**Ms. Pam Damoff:** I agree with Mr. Dubé.

We have sworn an oath to Her Majesty, and this is supplemental to that. I am hesitant to start playing with oaths that have been drafted as part of this bill. We have sworn an oath to Her Majesty, and I am confident that we will continue to be loyal to Her Majesty.

**The Chair:** Mr. Clement, go ahead.

**Hon. Tony Clement:** I disagree with the honourable member on a couple of points.

First of all, this deference to the drafters.... We are drafters. We are lawmakers; that's what we do. Drafters can advise us, but we are the lawmakers, so it's our say and there is no reason why we have to defer to them on our adherence to the monarch of Canada.

Second, I would say to you that if that is the logic, that we have already sworn an oath to the monarch.... We have already sworn an oath to Canada, too, and yet the oath to Canada is there. I think that, in order to be consistent, we should swear an oath both to Canada and its people, and to the monarch.

**The Chair:** Seeing no more discussion, I am going to call the question on the amendment.

(Amendment negatived)

**The Chair:** Shall the schedule carry, as is?

**Some hon. members:** Agreed.

**The Chair:** Now we move to the short title, which is clause 1: "This Act may be cited as the National Security and Intelligence Committee of Parliamentarians Act."

Shall the short title carry?

**Some hon. members:** Agreed.

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

**Some hon. members:** Agreed.

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

**Hon. Tony Clement:** I'd like a recorded vote on this, please.

**The Chair:** You'd like a recorded vote? Absolutely.

(Bill C-22 agreed to: yeas 6; nays 3)

**The Chair:** Shall I report the bill as amended to the House?

**Some hon. members:** Agreed.

**The Chair:** Shall the committee order a reprint of the bill?

**Some hon. members:** Agreed.

**The Chair:** That is finished.

I just want to take a moment to thank our officials for bearing with us at two meetings and for being helpful to our process. I also want to thank our legislative clerks who have helped us, as well as our analysts and our clerk.

This meeting is adjourned.

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