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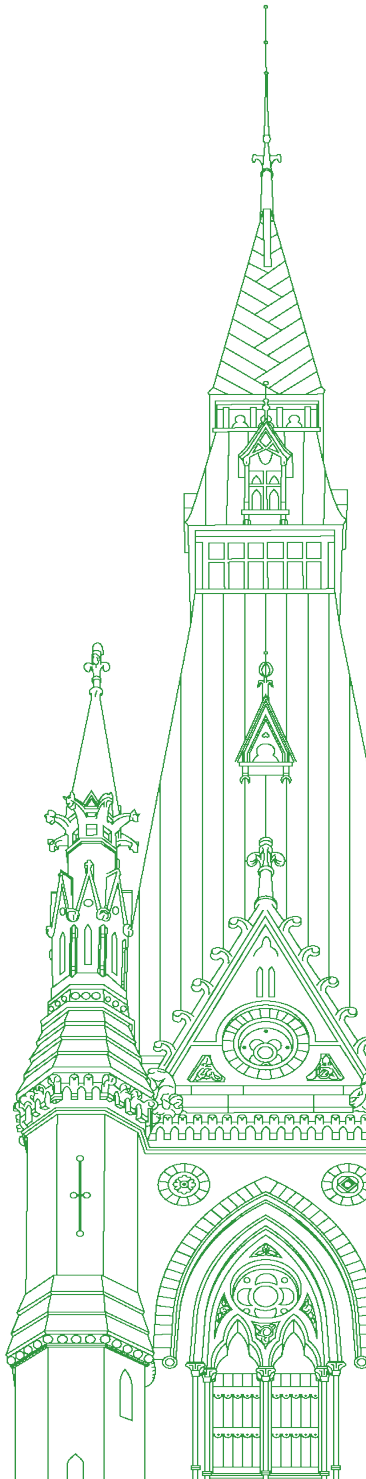

Chair: Mr. Peter Schiefke

Standing Committee on Transport, Infrastructure and Communities

Wednesday, December 13, 2023

● (1645)

[*English*]

The Chair (Mr. Peter Schiefke (Vaudreuil—Soulanges, Lib.)): I call this meeting to order.

Welcome to meeting number 96 of the House of Commons Standing Committee on Transport, Infrastructure and Communities.

Pursuant to the order of reference of Tuesday, September 26, 2023, the committee is meeting to resume consideration of clause-by-clause on Bill C-33, an act to amend the Customs Act, the Railway Safety Act, the Transportation of Dangerous Goods Act, 1992, the Marine Transportation Security Act, the Canada Transportation Act and the Canada Marine Act and to make a consequential amendment to another act.

Today's meeting is taking place in a hybrid format, pursuant to the Standing Orders. Members are attending in person in the room and remotely using the Zoom application.

We left off at clause 122 of Bill C-33.

To help us with clause-by-clause consideration, we have joining us, once again, representatives from the Department of Transport, as well as our legislative clerks.

(On clause 122)

The Chair: To address clause 122, I will open the floor.

Mr. Muys.

Mr. Dan Muys (Flamborough—Glanbrook, CPC): We'll pick up where we left off on that.

I have a question for the witnesses.

One of the things we heard quite frequently from numerous witnesses on this bill—going back to the end of September—was the concern about the expansion of ministerial powers under this bill, which many viewed as unwarranted and concerning.

Would the addition of this subsection after line 28 on page 78, in your view, put a limitation on ministerial powers?

Ms. Rachel Heft (Manager and Senior Counsel, Transport and Infrastructure Legal Services, Department of Transport): I'm sorry, but are you referring to the BQ amendment?

Mr. Dan Muys: Yes.

Ms. Rachel Heft: Okay, thank you.

The proposed amendment wouldn't change the threshold with respect to what the minister would have to determine prior to making an order. Ultimately, given that it's a ministerial order, it would not change the views of the court on whether that threshold has been met. The one line itself does not significantly affect the use or potential for the minister to exercise the power.

Mr. Dan Muys: What you're saying, then, is that in your opinion this does not address the concerns that were raised.

Ms. Rachel Heft: I would say that the line itself does not change the use of the power.

With regard to the standard of review that is proposed in the amendment, whether that is required to be reasonableness or correctness, the standard in Canadian judicial review courts is that ministerial orders are typically reviewed on a standard of reasonableness. It's looking at whether the minister's decision to exercise the power—given the facts known at the time, the evidence and the thresholds in the law, as well as the power set out in the law—was reasonable or was one of the reasonable decisions that could be made under the circumstances.

Mr. Dan Muys: Is the language in this particular addition consistent with language in other Transport Canada acts?

Ms. Rachel Heft: The language in the proposed amendment would not be consistent with other Transport Canada acts. The ministerial order power proposed in Bill C-33 is generally consistent with other ministerial order powers found in other legislation.

Mr. Dan Muys: Is that other legislation in other federal departments?

Ms. Rachel Heft: No, that's within Transport Canada.

Mr. Dan Muys: I'm sorry, but could you repeat what you said previously? It's not consistent with—

Ms. Rachel Heft: The language in the bill is consistent with other ministerial order powers. The proposed amendment would result in a provision that is different from what is found in other transport legislation.

Mr. Dan Muys: From your perspective, is that a concern?

Ms. Rachel Heft: I don't think I'm in a position to take a view on that.

Mr. Dan Muys: All right, so there's an inconsistency, then.

Is there anything in the language here that should be modified or amended to make that clearer or to make that consistent?

Ms. Rachel Heft: With respect to the amendment for the ministerial order power itself, the power is consistent as it is now. The amendment would not lead to further consistency and would only serve to make it a novel or different exercise of power and a standard of review that would be different from how courts would traditionally review the exercise of a ministerial order power.

● (1650)

Mr. Dan Muys: Okay.

We're talking here about judicial review. Has there been precedent or case law that has led to the need for this amendment?

Ms. Rachel Heft: The case law is voluminous on standard of review of ministerial orders or of any exercise of administrative discretion. It's very extensive at the Supreme Court as well as at other appeal courts and the Federal Court of Canada. Significant analysis goes into the determination of whether to exercise a judicial review on a standard of correctness or a standard of reasonableness. In general, a ministerial order power would be reviewed on a standard of reasonableness but for a legislative provision that says otherwise, and this would do that.

Mr. Dan Muys: The language refers to a few different circumstances: “national security, national economic security or competition”. Do those make sense, from your perspective?

Ms. Rachel Heft: The threshold found in the proposed ministerial order power is really one of imminent harm. There has to be imminent harm to the subject matters you've listed: national security, national economic security or competition. That is a relatively high threshold, all things considered. It's not just in the interest of these subject matters, but there has to be, in fact, “imminent harm” caused by the circumstances to national security, national economic security or competition. It also has to constitute a “threat to the safety and security of persons, goods, ships or port facilities or the security of supply chains”.

There is already a relatively high threshold in the proposed provision in Bill C-33 that the minister would have to believe would be established or met by the circumstances—that is, the facts and the law—before any order could be issued.

Mr. Dan Muys: You mentioned a high threshold. We're talking about three different factors. Are there other factors that maybe should have been considered that are, in your view, missing from this and that we should consider adding to the language of this clause?

Ms. Heather Moriarty (Director, Ports Policy, Department of Transport): We added those three elements. The ministerial order power is effectively part of a broader suite, I would say, which we've called the “investment framework”. The Minister of Transport released a policy statement at the same time that the legislation was tabled, which really sought to ensure that supply chains were protected.

Really, on the investment framework as it relates to port investment, there are three elements to it. The first one is that the financial thresholds under which transactions are reviewed under the CTA would be amended for certain trading partners. That would give the Minister of Transport and the department a greater line of sight into what was happening at ports. We then also looked at data and at making sure there was greater data availability so we could understand what was happening. There was a process by which the department could request data. Also, we would look at things from a gateway-level perspective. On the west coast, say, it wouldn't just be the Port of Vancouver; it would be, for example, the Port of Vancouver, Nanaimo, Prince Rupert, etc.

Part of this investment framework was also the ability to.... I call it “In case of emergency, break glass.” This is one of those situations where, if all of those other protections that have been added in a part of the investment framework are unable to protect the economy, competition or that other factor we considered, this would be a mechanism that the minister could use.

For example, in the early COVID days, the government didn't know what it would actually need, so this is meant to be that safeguard in case of extreme urgency, or in case of concern or issues with respect to protecting Canada's supply chain—for those three reasons. They were well thought out. On competition, obviously, Canada port authorities need to be competitive. It's part of their raison d’être. Also, there's national security. That's something the government considers all the time, but then there's also national economic security, which is something that obviously over the past couple of years we've been making sure of: that we're protecting supply chains and making sure there's fluidity and there are no impacts to the Canadian economy.

Those three elements were carefully considered. That was, again, a part of that broader suite. That was why those were brought into and are a part of this legislation.

● (1655)

Mr. Dan Muys: On that “break glass in case of emergency” suite, is that something that is required in legislation? Would there not be tools that exist in other forms, whether that be through regulation, a ministerial order or policy directives from Transport Canada? There must be other tools that exist, so is this necessary?

Ms. Heather Moriarty: The answer to that is actually yes. We went through and did our work. We evaluated what was available and what currently would address any concerns. There are certain protections, and what is here is what we've assessed is actually needed to ensure Canada has a great line of sight into port infrastructure investment and has the ability to step in should it need to.

For example, I mentioned that financial thresholds exist under the Canada Transportation Act. One of the amendments under the CTA that is a part of this bill is about reducing those thresholds from $93 million to, in some cases, a lower threshold of $10 million, unless we're prohibited by our trade agreements. What that does is.... It exists, but we need to make a refinement to it so that we can see more, so that we're able to understand what happens at ports, because of the fact that they're critical infrastructure and they're important to Canada to make sure goods flow freely.

There are some. That's an example of what currently exists and a tweak that's needed. This is an example of something that's new. All this together is that suite of things that we're seeking to undertake.

Mr. Dan Muys: You mentioned earlier that at the beginning of COVID there was obviously great constraint in our supply chains. That had impacts on consumers, businesses, trade and all sorts of things. Is this an attempt to remedy that? Given the experience of what you saw in 2020 and what has transpired since, is this sufficient?

Ms. Heather Moriarty: This stems a lot from the ports modernization review, which was initiated before the pandemic. I think what we can say is that the measures contained in this bill were definitely time-tested during the pandemic and made us realize that, yes, these are important and needed.

We hope that these measures together will protect us in the future. I unfortunately can't say for certain, because we don't yet know what's going to happen, but we hope that these measures together will ensure the supply chain is protected and give us the tools we need.

Mr. Dan Muys: How would this work with things like the supply chain office and some of the other recommendations coming out of the national supply chain task force to address those issues?

Ms. Heather Moriarty: That's a good question.

I believe we've already tabled some information in terms of how Bill C-33 seeks to address some of the measures contained in the supply chain report.

I like to say that Bill C-33 is a bit of a down payment on what's to come from the supply chain office and from that report. This helps to protect supply chains and ensure fluidity, but we're not sure where the supply chain office is going. It's on its feet. There may be more coming from a ports perspective, but it may be more integration.

This will certainly help our colleagues in the supply chain office as they seek to move forward with their work, because it will give them a lot of what they need to advance and to ensure ports are those intermodal hubs that connect all other modes of transportation, to make sure they can do what they need to do.

● (1700)

Mr. Dan Muys: This is a bit of a down payment, and a lot of that still needs to be fleshed out. Is this putting the cart before the horse?

Ms. Heather Moriarty: That is another great question.

What I would say is that the time to advance the ports elements is now. The review concluded that ports were working well but more was needed to strengthen the governance of ports to make sure we had what we needed to prepare them for the future.

We don't know what other measures will be needed as part of the supply chain office or the report. These are a step in the right direction, and I'm sure that anything else will not only complement this but build on what we have here.

Bill C-33 obviously is more port-specific, whereas the supply chain office is very much multimodal, and I understand that there will be other elements coming from that as well.

Mr. Dan Muys: Given that testimony—and I know this is an amendment from Mr. Barsalou-Duval and he may wish to comment on that—I'll stop there.

The Chair: Thank you, Mr. Muys.

I'll turn it over to Mr. Kurek, and then Mr. Badawey.

Mr. Damien Kurek (Battle River—Crowfoot, CPC): Thanks very much, Chair.

It's good to be back before the transport committee.

I appreciate what my colleague Mr. Muys had to say about this clause.

I would just note that as soon as this clause is over, Chair, I would ask for a brief intervention. Thanks.

The Chair: Is that all, Mr. Kurek?

Mr. Damien Kurek: Yes.

The Chair: Okay. Thank you.

Mr. Badawey.

Mr. Vance Badawey (Niagara Centre, Lib.): I'm good.

The Chair: Seeing no other debate, I'll go to a vote on BQ-6.

(Amendment negatived: nays 6; yeas 5 [*See Minutes of Proceedings*])

The Chair: BQ-6 does not carry.

We will now go to NDP-16.

Mr. Kurek.

Mr. Damien Kurek: Thanks, Mr. Chair.

I'm just looking for the appropriate moment, but when it comes to NDP-16, I'm looking at the possible impacts this might have on the economy.

I wonder if Ms. Heft or Ms. Moriarty would be able to comment on some of the changes. I know there's a bill before the House right now, Bill C-58. I'm wondering if there's been any consideration about possible impacts between that legislation and what is being proposed here by Mr. Bachrach.

The Chair: Ms. Heft.

Ms. Rachel Heft: We would have to examine that legislation to look for any correlation or impacts between this amendment and what's proposed in Bill C-58.

Having said that, I'm not aware of any conflict that would arise on account of amendment NDP-16 with respect to an order not being used for the purpose of terminating a strike or lockout.

I'll turn to my colleague for a policy perspective.

● (1705)

Ms. Heather Moriarty: What I think I can offer in this regard is.... Looking at NDP-16, it says, “for the purpose of terminating a strike or lock-out or imposing a settlement in a labour dispute.” The intent of the ministerial order is not to be invoked in any of those scenarios. First of all, the order can only be issued to a Canada port authority or a person in charge of a port facility. The order power would not enable the minister to compel a striking labour group to return to work.

I would offer this, as well: Because this is under the CMA, the purpose is more related to shipping and navigation within navigable waters. A CPA is a natural harbour. I would offer that the relevance as it relates to a strike or lockout doesn't apply under the CMA. It was never the intent for this to apply in any sort of labour situation.

The Chair: Thank you.

Next is Mr. Bachrach.

Mr. Taylor Bachrach (Skeena—Bulkley Valley, NDP): Thank you, Mr. Chair.

Partly to respond to Mr. Kurek's question, I think this addresses something that is somewhat different from Bill C-58, which deals with the use of replacement workers in the case of a strike or lockout. This has to do with the minister's use of discretionary powers provided for in this act. I take Ms. Moriarty's point that the intention of the government is not to use this section in those cases.

The reason we brought forward this amendment was to provide greater clarity. When union members and union leadership read the bill.... Labour actions are sometimes construed as risks to national economic security or competition, etc. It gets exaggerated in all sorts of different ways. The concern was that this may cast a wide net. It's worth articulating very clearly that it is not intended to be used in the case of a labour disruption.

I hope that answers the question around whether this is similar to Bill C-58. As was noted earlier, I think the risk is that it would be used to order people back to work, which is not something Bill C-58 deals with. Bill C-58 deals with the continuation of activities by using replacement workers. It is related, I guess, in terms of the fact that they both relate to labour, but with different aspects.

I hope that helps provide a bit of the thinking behind why we brought this forward.

The Chair: Thank you, Mr. Bachrach.

Next is Mr. Badawey, followed by Mr. Lewis and Mr. Muys.

Mr. Badawey.

Mr. Vance Badawey: Mr. Bachrach just basically said what I was going to say, so we're good.

The Chair: Thank you, Mr. Badawey.

I'll turn it over to you, Mr. Lewis.

Mr. Chris Lewis (Essex, CPC): Thank you, Mr. Chair, and thank you again to the witnesses for joining us here this evening.

I want to see if I can tie it in here. I know that we're already done with BQ-6, but I think this is very relevant to the conversation. If I'm reading this correctly.... I'm looking for clarification, please. NDP-16 says, “under such an order, must not be exercised or performed for the purpose of terminating a strike or lock-out or imposing a settlement in a labour dispute.” What if there was an imminent threat or imminent harm to our port terminals? Would the minister still be able to use his powers to force workers back?

● (1710)

Ms. Heather Moriarty: The order power can be used in the case of, as you said, “risk of imminent harm to national security, national economic security or competition that constitutes a significant threat to the safety and security of persons, goods, ships or port facilities or the security of supply chains”. However, the order can be issued only to a Canada port authority or a person in charge of a port facility. Just coming back to what I stated earlier, that in itself wouldn't enable the minister to issue it to anyone other than the port authority or whoever is in charge of that port authority. If you were looking at it from the perspective of a labour group, it would not be applicable in those terms.

Mr. Chris Lewis: Thank you, Ms. Moriarty.

Just to build on that a little, if I could, please, can you just give me a couple of examples, or just one example, of what would be an imminent threat? What might an imminent threat look like at our ports?

Ms. Heather Moriarty: As I said earlier, this is a part of a suite of tools to make sure that the minister has the ability to protect the safety and security of supply chains.

In terms of a threat, it could be anything. Remember, it's a threat to safety and security, competition or national economic security, so it's one of those three factors. A threat could be, for example, that a port shut down or that a terminal operator decided that—I believe my colleague used this example when she was here last week—it was no longer going to accept goods from a country, or something like that.

I think back to COVID and protective equipment and those sorts of things. Is that a threat? I don't know, but there are lots of threats that could happen in the transportation space. I could come back to you with one. We haven't yet encountered anything in that regard.

Again, I think about natural disasters on the west coast. There could be the pandemic itself. Depending on what the threat is, again, this is a measure of last resort and not something that would be meant to be implemented or used in a light fashion; it would be used in case of an emergency.

We would need to look at the situation and the instances, the factors at the time, do the assessment, work with our colleagues to see whether or not the threat is real, assess it and give the best advice to the minister, and then take it forward. This is something that neither the department nor the minister would be advancing lightly.

Mr. Chris Lewis: Okay, that begins some clarity.

I'm glad you brought up the COVID pandemic. I would assume that would potentially be an imminent threat. Whatever it's called in the future, that certainly could be determined to be an imminent threat, I'm sure.

Are there other ministries that have similar powers to what's being proposed here?

Ms. Rachel Heft: Certainly, there is federal legislation with ministerial order powers such as these to deal with urgent circumstances. The degree to which they are similar or different usually depends on the subject matter that they regulate. Generally, ministerial order powers are used for situations that are somewhat unpredictable in order to ensure that the federal government has the appropriate tools to respond when there are urgent threats.

Mr. Chris Lewis: Thank you.

I know that I am, somewhat, putting the cart before the horse, but I think it's important for this conversation. We know that we have Bill C-58 in front of us in the House as we speak, at least on the floor of the House. Again, just for clarification, would this supersede Bill C-58, if Bill C-58 did, indeed, get through the House without amendments?

I don't expect you to be looking at a crystal ball. However, would the minister's powers, so to speak, supersede what Mr. Bachrach is proposing here?

● (1715)

Ms. Heather Moriarty: I can't comment on Bill C-58. What I can share with you is that this applies only to Canada port authorities or those in charge of a port authority. It is very limited in terms of to whom it could apply. The scope of this is very narrow. I understand that Bill C-58 is on replacement workers in terms of legislation and those sorts of things. It's possibly quite different.

In terms of whether it would supersede or not, as I said, this is quite narrow. I don't believe there's anything in Bill C-58 for the Minister of Transport as it relates to protecting supply chains.

Mr. Chris Lewis: Thank you.

Are there other groups that have expressed concerns with the broad nature of this proposed subsection? If so, how will they be protected, or how might any future group not listed here, like labour, soon be enjoying the same level of protection?

Ms. Heather Moriarty: I think this committee has heard from some who were unsure of the process or what it actually meant. As part of our work, we didn't really hear anything in terms of concerns with respect to the ministerial order.

Once it is implemented, should the legislation pass, there will be quite a bit of rigour in terms of whether or not this actually gets used or implemented and in terms of the scenarios and situations and under which conditions it would actually be used. As I said, it won't be taken lightly. There are a number of factors and due diligence that would need to be undertaken before the minister would even consider whether or not they would even want to entertain the use of such an order.

Mr. Chris Lewis: Thank you.

I would be very curious with regard to what the unions, such as the ILWU, would be saying about this. Has there been consultation with any of the unions with regard to this?

I do believe that it's going to kind of contradict Bill C-58 to some extent. However, I do realize that it's very important that we have backstops in place if we have another COVID-19 or if we have a natural disaster, to your point. We still have to make sure that we have commerce coming in and out of Canada. That's important.

Have there been any discussions at all with the unions and/or skilled trades workers as to how this implementation could affect them?

Ms. Heather Moriarty: We did not have any conversations with the ILWU or any trade unions. I believe the committee has heard from that group.

What I can share with you is that, within the federal government, we have consulted with the labour department, the organization that really is responsible for working with labour groups and taking care of any sorts of labour actions. There were no concerns raised. I would say that, from our perspective, we did consult broadly across the federal sphere, and there were no concerns raised in that regard.

Mr. Chris Lewis: Thank you.

Also, I really want to say thank you for your very thoughtful answers. I appreciate it.

I have one final thought. In your opinion, should there be more consultation done with the unions, if they haven't had a chance to specifically be at the table? If I'm wrong that they haven't had a chance to be at the table, then I apologize, but do you think we should have more time to discuss this?

Ms. Heather Moriarty: I'm sorry. I'm here to answer questions related to the bill in front of us. I do not express an opinion at this time.

Thank you.

Mr. Chris Lewis: Thank you.

The Chair: Thank you, Mr. Lewis.

I have Mr. Muys, followed by Ms. Koutrakis.

Mr. Muys.

● (1720)

Mr. Dan Muys: Thank you for your testimony.

I'm trying to determine, from what I heard in your testimony.... I mean, we had a strike at the Port of Vancouver, and we had a strike at the St. Lawrence Seaway recently, both of which had a significant impact on our economy and our supply chains, which are of course what Bill C-33 is purported to help address—although, I would argue, insufficiently. I think what you're saying is that this provision would not actually apply in those two recent examples.

Ms. Heather Moriarty: That is correct.

Mr. Dan Muys: Why is that?

Ms. Heather Moriarty: This order is only for a Canada port authority or somebody who is in charge of a port facility. In the relationship that exists from a labour perspective, Canada port authorities are not the direct employer of unions or anything like that. They don't have the ability to step in and intervene. It is the way the structure and the governance have been set up as it relates to Canada port authorities.

Again, this was never intended to address any sort of labour action. If anything, it was entirely competition, national economic security and national security as it relates to supply chain fluidity, and making sure that the minister has this in his or her tool kit as a measure of last recourse to protect supply chains and anything resulting from that, and not in any sort of a labour context.

Mr. Dan Muys: Does this duplicate or how does does this work in congruence with other pieces of federal legislation that already deal with strikes and lockouts, notwithstanding Bill C-58, which we still have to...?

Ms. Heather Moriarty: I can't speak to other federal legislation that deals with strikes and lockouts, but what I can say is that given that this is for CPAs, or for those who are in charge of those facilities, it applies only to them and it is not in any way related to or intended to address strikes or lockouts in any scenario.

Mr. Dan Muys: You just mentioned that it's not intended to address those situations. You've talked about various situations and scenarios and not taking this lightly. Maybe we can get granular and you can tell us how and why this is different from other limits that already exist on strikes and lockouts at ports.

Ms. Rachel Heft: The ministerial order power for proposed section 107.1 only allows the minister to make an order to require a port authority or a person in charge of a port authority to take any measure. In situations where there's an ability to order workers back or to order some form of arbitration, it would apply to those individuals, or even potentially to any person, if it were that broad.

This particular formulation states that the minister can only, by order, require a port authority or a person in charge of a port facility to take any measure. It's really not targeted at workers at all. It doesn't allow the minister to order unions or workers back to the table or to binding arbitration. It wouldn't relate to strikes or lockouts in any way. From that perspective, it is distinct from labour legislation, including Bill C-58.

Mr. Dan Muys: If that's the case, what's the point? What's the point of this provision?

Ms. Rachel Heft: I'm not in a position to comment on the intent of the proposed amendment.

Mr. Dan Muys: In your opinion, is this necessary? Are there not other pieces of legislation that already deal with this?

● (1725)

Ms. Heather Moriarty: Could I ask for clarification?

The Chair: I'm sorry, Ms. Moriarty. I have Ms. Read, who has her hand raised. My apologies.

Go ahead, Ms. Read.

Ms. Sonya Read (Director General, Marine Policy, Department of Transport): Thank you, Mr. Chair.

I am probably going to say exactly the same thing that my colleague was going to ask.

That is, could we get clarity on the question in terms of what the member was trying to ask about what it was intended to deal with?

I'm not clear on what the question is.

Mr. Dan Muys: We've heard a couple of times that this is “break glass in case of emergency” language.

How likely is such a scenario to arise? Is this even necessary at all?

It sounds like we're being overly prescriptive with this.

Ms. Sonya Read: I think, as my colleague has noted numerous times, that there are a number of scenarios that could possibly arise where such a provision would be used outside of the context of a labour dispute. It's not intended for labour disputes. I think we've noted that a couple of times in the context of the responses that were provided. However, there are a number of scenarios outside of that where a provision such as this may, in fact, be necessary.

It's impossible to predict what situations may arise in the future. This is designed to deal with emergency situations and ensure that the Government of Canada has tools at its disposal when necessary to prevent that imminent harm from happening to the supply chains or to the national security of the supply chains in case those situations do arise.

Mr. Dan Muys: You've just indicated that it's impossible to crystal-ball scenarios where this may be necessary in the future. If we harken back to the beginning of the pandemic, March 2020, and the supply issues, you just referred to the fact that this provision would have been used.

Do you think that having this in place in federal legislation at that time...? What benefits would we have seen in the years 2020, 2021 and 2022 as those supply chains were in crisis?

Ms. Sonya Read: In the context of previous actions, we would have to go through an analysis of the situation and the evidence at that time and then try to apply what the provision would look like. I don't have all of the evidence and all of the information at hand so that we could go through that whole assessment in terms of how or when this would be applied to various situations.

We've been looking at scenarios, for example, in the context of geopolitical unrest. A terminal operator, for example, may refuse to accept certain shipments or refuse to load certain shipments. It would ensure that we are able to continue to preserve the security of Canada's competition and prevent that kind of harm from occurring. That would certainly be one example.

Another example may be in the event of a climate disaster or some other event that would require certain actions to be taken by port authorities or terminal operators in a very short period of time.

Those are the types of events that we are looking at. It is a twofold test, and there is a high threshold. It is meant to be a high threshold. It is not meant to be an order that is used lightly or without appropriate due diligence, urgency and a risk of significant harm.

Mr. Dan Muys: Do you feel, then, that this is a tool that would be helpful to have in your tool box? When you look back or forward at scenarios that may develop, would this be helpful in addressing that?

● (1730)

Ms. Sonya Read: This is put forward as a legislative proposal to be part of the suite of tools that can be used to address the possibility of imminent harm to national security or the supply chain.

Mr. Dan Muys: Looking forward, you mentioned geopolitical tensions. Obviously, the world is a much more dangerous place than it was even a year ago. Would you see this as a good tool to have in the event the government is required to use this provision to protect national security?

Ms. Sonya Read: I'm sorry. I may have misspoken.

I meant national economic security or the security of the supply chain.

Mr. Dan Muys: All right. I'll leave it at that for now.

The Chair: Thank you, Mr. Muys.

Next, I have Ms. Koutrakis and Mr. Rogers.

Ms. Koutrakis.

Ms. Annie Koutrakis (Vimy, Lib.): Thank you, Mr. Chair.

My question has been answered. I received the clarification I needed.

The Chair: Okay.

We'll vote on NDP-16.

(Amendment agreed to: yeas 11; nays 0)

(Clause 122 as amended agreed to: yeas 11; nays 0)

(On clause 123)

The Chair: Go ahead, Mr. Kurek.

Mr. Damien Kurek: Thank you very much, Mr. Chair.

I appreciate the opportunity to get into debate on this bill and how important it is, especially when it comes to national transportation infrastructure.

I would, however—

The Chair: Go ahead on a point of order, Mr. Bachrach.

Mr. Taylor Bachrach: It's just so I'm not interrupting him when he's in the full glory of his remarks.

In the past, when we've done line by line, we first introduced the amendment we were going to be debating. Before Mr. Kurek gets into debating the many merits of NDP-16.1, I would add that I believe it's been dealt with. I don't know if that's indeed what he was going to be debating, but I think that's the next amendment coming up.

The Chair: No, we're actually on clause 123. Then there is clause 124, and then clause 125 is NDP-16.1.

We're discussing whether or not clause 123 will carry.

I believe Mr. Kurek has the floor for clause 123.

Mr. Damien Kurek: Thanks very much, Chair.

I appreciate this, because in light of our transportation infrastructure, it is certainly an important issue to many Canadians. That's in part what leads me to move a motion that was put on notice on December 1, 2023. I have a copy here for the clerks. Chair, it's an important issue that certainly we hear about very often. I look forward to being able to discuss this at length, because certainly when it comes to the issue of the carbon tax, a carbon tax impacts the people of this country from coast to coast to coast. I appreciate the clerk's distributing that, and I will move this motion in due course.

I have heard from constituents, from Albertans, and from other Canadians about the impact of the carbon tax on their livelihood and truly their ability to make ends meet. I want to share a number with you that is very telling. According to Statistics Canada, there are 189,874 farms in this country. I share that number because this past weekend it actually changed. It changed by one. Now, that may not seem like a lot, but as that number goes from 189,874 to 189,873, it is a story that I hope the committee will indulge my sharing.

It is the story of Dawn and a multi-generational farm that she, up until this past weekend, ran. That farm was Shirley's Greenhouse, named after her late mother. What is so very tragic about this story is that she was forced to sell her operation. This multi-generational farm is finished. In my conversation with her this past weekend, she asked me to speak up on her behalf and on behalf of the many other farmers across our nation who are suffering the consequences of the carbon tax.

In due time, Chair, I will in fact move this motion—which I believe everybody now has a copy of in both official languages—because that is so very important, because of stories like Dawn's and the fact that her multi-generational farm operation saw its end because of the policies of this Liberal government.

Chair, what I intend to do here, just so the members of the committee know fully, is to speak for a few minutes and then move the motion and look forward to further discussion on this.

There were two parts of this conversation I had with Dawn that I believe were very noteworthy and that spoke to something that is—

● (1735)

The Chair: Mr. Kurek, the motion is already deemed to have been moved. Otherwise, you can't speak on anything. You are speaking to the motion that you moved, just to be clear.

Thank you, Mr. Kurek.

Mr. Damien Kurek: I appreciate the clarification.

As I was sharing, the story that Dawn told me was very clear about how, over the last number of years, she ran a successful small business. A lot of the work she did was in a greenhouse and in a 10- or 15-acre garden. I asked her if I could share this story, and she encouraged me to do so.

Over the last number of years, in the midst of resiliency planning for her farm operation, she found herself in a situation where there were some unexpected things that happened in her personal life. As a result, there were some unexpected costs that called into question some of that long-term planning that so many farmers work diligently to undertake, and just a few small life things.... What ended up happening was that she was able to make it work, and she worked very diligently to try to continue the farm that she was so proud to have been carrying on in the name of her mother.

However, what she found, over the last number of years, was that it came to the point where there were two factors that made it untenable for her to continue her operation. She outlined to me how, despite her efforts and the work that she put in, the extra hours, to endeavour to make the math work on being able to continue her family farm operation, she just couldn't, in fact, do it.

She described two specific factors that added to the costs of her monthly operations. There were two line items that had grown almost exponentially. The first was interest rates. Because of some of the personal circumstances she had found herself in, she ended up having to take on some additional liabilities in terms of debt. Over the time since she did that, the rising interest rates made it so that the cost of borrowing increased dramatically. Although I could certainly talk at length about that situation and the reasons for that, I want to ensure that we're relevant to the discussion at hand.

The second item she shared with me was how the carbon tax had increased the cost of her farm operation to the tune of thousands of dollars a month. In the summer, she could make it work. She was able to ensure that she kept things at a minimum, and whatnot. Chair, I'm not sure if you've noticed this, but what has generally been the case in our country is that it gets cold in the winter. In order to have high-quality food grow in a cold climate, which we face here in our country, you need to have greenhouses, and greenhouses have to be heated. The natural gas costs associated with Dawn being able to heat her greenhouses became untenable, to the tune of thousands of extra dollars a month.

Despite her best efforts, and despite the fact that she had done everything that she could to make her operation work, because of the carbon tax and higher interest rates, we saw the demise of this operation that she was so very proud of.

I want to talk about the Minister of Agriculture's involvement in this, because it is very key, but before I jump into that, I would like to emphasize something that I found really moving as I was hearing this story. As I chatted with Dawn on the phone, I could hear the emotion in her voice, and how much she cared about the work that she had done for years, providing high-quality food. For those around the table who might not be aware, direct sale often means that she would attend farmers' markets, so people got used to seeing Dawn at farmers' markets in the Didsbury area, the community that her greenhouse was located near.

What ended up happening was that, although she was incredibly proud of the greenhouse that was named after her mother, instead of putting her own farm's logo on her trailer and vehicle, Dawn put a statement on her vehicle and on the trailer she pulled. It said, “No farmers, no food”. That speaks to how seriously Dawn takes feeding the world and, in her case, the folks in central Alberta.

● (1740)

I talked about the number of farmers in Canada, and I'll get into more specifics around the Alberta circumstances. Of course, there is a lot I can say about Battle River—Crowfoot and the good people I represent in east-central Alberta.

What I would like to emphasize here is that part of this story has a real tragic twist.

The Minister of Agriculture has been asked a whole host of questions about Bill C-234 and its impact on agriculture and agricultural production, and about the needed carve-out. Certainly, Conservatives—and most parliamentarians, actually, including a number of Liberals at different points in time—support this important exemption from the carbon tax to ensure Canadians have affordable food. I have heard the Minister of Agriculture, as I'm sure we all have, stand up and say that he talks to farmers all the time and hasn't heard concerns related to Bill C-234, which, Mr. Chair, I've known to not be an accurate statement the whole way along.

Here's what I find truly tragic. Only a few days before I spoke with Dawn, she was on a Zoom call with the Minister of Agriculture. She shared her concerns directly. She outlined the impact of the carbon tax. As opposed to being empathetic and understanding.... At that point in time, Dawn shared with the Minister of Agriculture how she was speaking not only for herself but also on behalf of so many others she cares for deeply: those who provide the high-quality food we need as Canadians, the food that our people from coast to coast to coast need. There was a lack of empathy. There was an unwillingness to understand, to the point where she got frustrated with the Minister of Agriculture. At the point where it was acknowledged that there was a problem, he offered to reach out to help her situation. It was in that moment that Dawn said, “No, I don't want help just in my situation. We have to help all farmers. We have to help all Canadians.”

Mr. Chair, the reason why I share Dawn's story about the one farm that no longer exists because of the carbon tax is that it speaks to how, as Canadians, we have the opportunity to be leaders, whether it's for the other 189,873 farms that are left, for approximately 41,500 farms in the case of Alberta, or for approximately 4,715 farms in the case of Battle River—Crowfoot. My family and I, for five generations now, are proud to be a part of that farming legacy.

We talk about how frustrating it was that the senators were delaying. What ended up being the case was gutting the passage of Bill C-234 and taking out some of the most valuable aspects of that. They made the amendments. This motion is so very relevant, because, as the bill goes back to the House, there will likely be changes and it will go back to the Senate.

Mr. Chair, we need this carve-out. We have the potential as a country to feed our people with high-quality, affordable food, yet we have politics that seem to get in the way.

I want to get into some of the details, in a moment, of what exactly the situation is on farms. However, Mr. Chair, I think it's important to mention something. This is not the first conversation around carbon tax carve-outs we've had, even this fall.

● (1745)

Coming into the fall sitting of Parliament, we were only a few weeks into it when we saw the Prime Minister doing what seemed to be a hastily arranged press conference up on the third floor of this very building, where he announced that a few Canadians—just a few—would receive a break from the carbon tax. He proposed that there would be an exemption granted to Canadians who heat with home heating oil. Home heating oil is the reality, especially in certain parts of the country more than others. I know that in Alberta, where we have an abundance of clean, green Canadian natural gas, we don't have as much heating oil, although there is some. However, what we saw the Prime Minister undertake was to give a carve-out to a small group of Canadians who were impacted by the carbon tax. It worked out to be about 3% of households in this country that got that carve-out.

Now, when one looks at the cruel, crass politics of the situation, one sees that the Prime Minister's poll numbers were in an absolute nosedive, specifically in Atlantic Canada, where so many of the Liberal MPs were, in some cases—and I have no doubt because they said very publicly that this was the case—facing immense political pressure. As the Prime Minister's poll numbers were falling through the floor, action had to be taken. We heard some just astounding statements. For example, Minister Hutchings said, if you don't vote Liberal, don't expect an exemption. My goodness, how absolutely embarrassing that you would only serve people who vote for you. Certainly, I would hope that members around this table wouldn't, if somebody came up to their office door, turn that person away because that person didn't cast a ballot or didn't put the X beside the right person. It's an absolute embarrassment.

We heard the Minister of Northern Affairs say in this conversation that he had never heard that this was a concern. Minister Boissonnault, the only minister from Alberta—and one of only two Liberal MPs from Alberta—said that he simply wasn't concerned about the costs that were associated with the carbon tax. We saw that as the government was desperate because of the costs being imposed because of the carbon tax, it created this carve-out for 3% of the population. The other 97%, Mr. Chair, were not so lucky.

As we came into the fall session, there was this understanding that the Prime Minister was willing to engage in carve-outs because it was a de facto admission that his carbon tax was costing Canadians. When it came to home heating oil, it was costing Canadians significantly to be able to heat their homes.

What's interesting is that, in the conversation surrounding the carve-out, we had a political firestorm that ensued. In fact, we had economists from across the country saying publicly that it's obvious that this is an admission that the carbon tax and pricing is not working, an admission that it costs Canadians more than it's worth. In fact, there was one headline that even suggested, “The carbon tax is dead”. It's just a matter of time now.

What is interesting is that, in the follow-up to that initial carve-out, we saw the environment minister, convicted climate activist Steven Guilbeault—and I say “convicted” because he was convicted of a crime while he was a climate activist in a previous career—make the statement that if there were any more carve-outs, he could expect to resign. Although some of us certainly wouldn't be disappointed if that was the case, I found it very interesting how, all of sudden, we saw a doubling down on a whole host of things, specifically the carbon tax. Now that there was a 3% carve-out, the Prime Minister was unwilling to go any further and was unwilling to see that there would be a willingness for some common sense when many Canadians are...at this point in time when what we have is an affordability crisis. I hear about it all the time. We had so many examples of where there was just a tone deafness, an unwillingness for there to even be a conversation that maybe the carbon tax was, in fact, simply not worth the cost.

● (1750)

When it comes to the conversation around home heating, of course that is a key part of this larger conversation, but then we had Bill C-234. This bill would provide practical relief for farmers. I mentioned that I will get into the on-farm dynamics of this, because there's a lot of misinformation or what I would suspect is simply a misunderstanding, and I'll use some examples from question period and what the Prime Minister referenced here today. We saw how the environment minister was so quick to demand that the Prime Minister and the rest of the Liberal Party follow his lead by not allowing any further what have come to be known as carve-outs.

Conservatives believe fully that we need to axe the carbon tax, and we are calling for that to be the case. Pierre Poilievre, as leader of Canada's Conservatives, has made it very clear that we look forward to being able to fight a carbon tax election, when Canadians will be able to make that choice.

However, when it comes to practical relief that could be provided now, my colleague Ben Lobb—a member of Parliament who's been around here for a little while, not too long, but a little while—put forward Bill C-234. It was not the first time that this had been introduced. In fact, when the Prime Minister called the unnecessary election in 2021, when he had promised he wouldn't, we were still in the midst of the COVID-19 pandemic, and that basically ended up returning Parliament almost exactly to the way it was prior to that point in time—

Ms. Leslyn Lewis (Haldimand—Norfolk, CPC): I have a point of order.

The Chair: We have Dr. Lewis on a point of order.

Ms. Leslyn Lewis: I have two conflicting notices with respect to the duration of this meeting, how long we're going to be in this meeting for. I'm sorry. It may be my office that misinterpreted, but I would like clarification on the correct start time, which I presume was 4:30, because that's what time I showed up here, so I think they got that right, and they're very, very competent.

I just think that, because we were served notice.... I think I only received notice that the time changed from 7:30 to 4:30 about one hour before, so there was a little bit of confusion.

I would like clarification on what time we expect to be here until and if everything is in order for us to be here for that duration.

● (1755)

The Chair: Thank you, Dr. Lewis.

To answer the first question, how long we stay here for is at the discretion of the members. How long we are able to stay here with regard to resources is 11:30. The notice was sent out from 4:30 to 11:30.

Thank you, Dr. Lewis.

I'll turn it back over to Mr. Kurek.

Mr. Damien Kurek: Thank you very much, Chair.

I appreciate that clarification. Thank you, Dr. Lewis.

As I was mentioning before, my colleague Ben Lobb has been a Conservative MP for a number of years, including serving in Parliament under former prime minister Stephen Harper. He took what was a bill that had been put forward in a previous Parliament, the previous Parliament to this one, because it had seen a great level of support. Although it's been politicized now to the point that the environment minister threatened to resign, there was, in fact, cross-partisan support at different points in time for this bill. When it was introduced in the previous Parliament, I believe it was my colleague John Barlow who brought it forward. It made it through the House of Commons and went to the Senate but then died on the Order Paper when Justin Trudeau called that unnecessary election in 2021.

Chair, when my colleague Ben Lobb was able to—

Mr. Vance Badawey: I have a point of order.

The Chair: I'm sorry, Mr. Kurek.

Yes, go ahead, Mr. Badawey.

Mr. Vance Badawey: Mr. Chair, I was giving the member the benefit of the doubt in terms of where he was going to go with this, but as I listen to his intervention and look at the motion—I've done it three or four times now—I can't see how this motion is relevant to this committee.

I know that another committee brought this up sometime this week, whereby the same attempt was brought forward by the Conservatives to bring this motion. I believe it was at the international trade committee, and there they ruled it as not being relevant to the committee. Now that I see it being brought here, I have the same concern that this is not, in fact, relevant to this committee.

Therefore, I'm asking, Mr. Chair, that we rule it not relevant, move forward and get back to Bill C-33.

Mr. Damien Kurek: I have a point of order.

The Chair: Thank you, Mr. Badawey.

I would have to agree. I will rule it out of order.

Mr. Damien Kurek: Thank you, Chair.

I look forward to being able to move the other motion that Mr. Strahl had put on notice, I believe, on December 1. I do have a copy of that. Being able to ensure that—

The Chair: Mr. Kurek, now that it's out of order, you no longer have the floor.

I will go to a vote.

Shall clause 123 carry?

Mr. Damien Kurek: I have a point of order, Chair.

You didn't actually allow me to respond to the point of order as I did and I believe the record would show—

The Chair: I conferred with the clerk and I do not need to do that.

Therefore, we are now going to a vote.

Shall clause 123 carry?

Mr. Damien Kurek: On a point of order, I challenge the chair.

The Chair: We're going to a challenge of the chair.

(Ruling of the chair sustained: yeas 7; nays 4)

The Chair: Thank you, Madam Clerk.

We will now go to a vote on clause 123.

Mr. Mark Strahl (Chilliwack—Hope, CPC): I have a point of order, Mr. Chair.

The Chair: My apologies, Mr. Strahl. I already went to a vote. You can get your point of order after that.

Mr. Mark Strahl: You didn't even call for debate on the clause.

The Chair: There was nobody on the speakers list.

Mr. Mark Strahl: That's because you cut off the motion and went straight to a vote.

● (1800)

The Chair: I'm sorry. I called the vote. I'm going to have to send it over to the clerk.

Mr. Mark Strahl: I look forward to taking the floor after this vote to move another motion, just so you don't call another motion for a vote before I have an opportunity to speak.

(Clause 123 agreed to: yeas 7; nays 4)

(On clause 124)

The Chair: Thank you.

I want to recognize Mr. Strahl on clause 124. I promised I would give him the floor on that.

Mr. Damien Kurek: Put me on the speaking list, Chair.

The Chair: Now for clause 124, I have Mr. Strahl and Mr. Kurek.

Mr. Mark Strahl: Mr. Chair, simply because you call a number at the start of this, I guess you're trying to prevent us from exercising our right to move motions that have been duly put on notice.

That's what just happened. Mr. Kurek was not given an opportunity to address the arguments of Mr. Badawey, who was able to move a motion on a point of order, which I think in and of itself is out of order.

We can talk about clause 124 for some time, I guess, if that is the way the chair wishes to proceed, or he can recognize the rights of members of Parliament to move motions that have been duly noted.

Mr. Angelo Iacono (Alfred-Pellan, Lib.): I have point of order, Mr. Chair.

The Chair: Mr. Iacono.

Mr. Angelo Iacono: If I hear well virtually, we were on clause 123. The opposing colleague was speaking, and my colleague Vance asked for a point of order on relevance. Following that was the challenge of the chair's position to go forward.

That matter has been decided. It's been voted on and we need to move on to the next. I don't think we need to go backwards and get more explanation if the chair has already taken a position, his position has been challenged and a vote has been held. That clarifies that matter and it's time to move forward.

Mr. Chair, I would like you to see to it that we move forward and not reiterate what happened in the past.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Iacono. I would tend to agree.

We're now at the issue of clause 124.

Mr. Strahl, you have the floor, followed by Mr. Kurek, who has also expressed interest in speaking to clause 124.

Mr. Mark Strahl: Mr. Chair, I believe that my privileges were actually violated by your not giving me a chance to speak to a clause of a piece of legislation that we are debating by simply calling a vote on it and saying there's no speakers list. By not even calling for debate and simply moving to a question.... How are we to know that we were going to go back into the legislation, when Mr. Kurek was in the middle of debating a motion?

By failing to allow for a debate on a clause of a piece of legislation, you have violated the privileges of all members of this committee. I would like to move a motion that we debate whether or not my privileges were violated by the chair when he refused to call for debate on the previous clause before calling for a vote.

That is the motion that I would move. It's that you have violated my privileges by not allowing us to discuss a clause of this bill by simply slamming the door and moving to a vote.

That is not how we have operated for the entirety of this debate. That is not how we operated for the entirety of our consideration of Bill C-33. To get rammy now and start to push this through in a way that we have not operated in.... I recognize that the chair and the government don't like when members of Parliament in the opposition exercise our rights, use the tools at our disposal to hold the government to account, and move duly accepted and duly moved motions at the time of our choosing, as is our right as members of Parliament. They want to simply end that discussion and move on to something that they would rather talk about.

That is not what the rules allow for. The rules call for members of Parliament to have the opportunity to discuss, debate, consider, amend, propose changes from all sides and then make decisions. It is not for the chair to suddenly say “I call the vote” the very second that Mr. Badawey gets his way and a motion gets shut down.

Mr. Chair, I've always respected your commitment to fairness. I've always respected how you have been neutral in that position, but I can't quite believe what is happening here tonight, where there is a departure and a decision to simply ram these motions through without giving us an opportunity to debate.

You've ruled Mr. Kurek's motion out of order. There is another motion that deals specifically with the transport component of Bill C-26. That motion is in order and does specifically deal with this issue.

It is very clear that the rights and privileges of members of Parliament are protected by our Standing Orders. They are protected, quite frankly, by the Constitution. They are to be limited only in very extreme circumstances.

A privilege motion actually takes precedence. We know this in the House. A privilege motion takes precedence over all other matters. When a privilege motion is moved, all other legislation—anything else before the House—is set aside because the rights and privileges of members of Parliament are to supersede the rights and privileges of the government, which might not want them to be exercised. They are sacrosanct. They are, quite frankly, something that we should be very concerned about when any member, not just those who wear our team colours, is impacted by it.

● (1805)

This is the sort of thing, you can bet, that Liberal members of Parliament, when they were in opposition, would have raised hell about. They would never have accepted this sort of thing, clauses being rammed down our throats without the ability to even discuss them for a minute, or to have a single word brought forward before it was voted on. That supersedes, quite frankly, whether or not the chair is sustained by a vote. This is something that is bigger than that. It is something that touches the very core of what we do in this place.

I know the government is frustrated that there have been concerns raised with Bill C-33. We've heard it in the numerous meetings that we've had with testimonies, none of which spoke about the benefits of the legislation. They were all very critical of the legislation. I know the Liberals didn't like that. They didn't like that we were going clause by clause through the bill. They didn't like that a member of Parliament might want to speak about issues related to the cost of living and the cost of transporting goods. That's the sort of thing that Mr. Badawey shut down with the assistance of the chair.

Standing Order 116(1) states:

> In a standing, special or legislative committee, the Standing Orders shall apply so far as may be applicable, except the standing orders as to the election of a Speaker, seconding of motions, limiting the number of times of speaking and the length of speeches.

It specifically talks about the end of debate. Standing Order 116(2) states:

> (a) Unless a time limit has been adopted by the committee or by the House, the Chair of a standing, special or legislative committee may not bring a debate to an end while there are members present who still wish to participate. A decision of the Chair in this regard may not be subject to an appeal to the committee.
>
> (b) A violation of paragraph (a) of this section may be brought to the attention of the Speaker by any member and the Speaker shall have the power to rule on the matter. If, in the opinion of the Speaker, such violation has occurred, the Speaker may order that all subsequent proceedings in relation to the said violation be nullified.

Mr. Chair, this is a very serious section. It says very clearly, "while there are members present who still wish to participate", not who are on a list that didn't exist before debate was closed, before it was shut down. This is a very serious issue, and one that we will take very seriously, because, in attempting to get a bill passed by an artificial deadline, there is now clearly a violation of the rights of the members of this committee.

All of the members on the Conservative side of this table were prepared and willing to speak to the clause upon which debate ended artificially. Again, it says, "A decision of the Chair in this regard may not be subject to an appeal to the committee." Quite frankly, it doesn't matter that once I stop talking there's an attempt to have the chair's ruling sustained, because, again, this is not a matter for a majority vote of the committee. Members' privileges are not subject to the tyranny of the majority. Members' privileges are protected by our Standing Orders, and they are protected by our role to represent the people who sent us here.

It would be quite something if we could, instead of having our rights protected, have our rights dictated to us by the majority of committee members, who find them to be inconvenient tonight. That is, quite frankly, something that we can't tolerate. This is something that should supersede any of the other things that we were going to talk about here tonight.

● (1810)

We have seen time and time again how there has been an attempt to shut down debate. We know that shutting down debate has been done in the House of Commons a record number of times.

There is a process in place for shutting down debate. In their election campaign in 2015, the Liberals promised they would never use the rules of the House to shut down debate. We've seen them break that promise time and time again, both in a majority and with the help of the NDP in a minority government. They've done that on numerous occasions. Hundreds of times they've shut down debate, but that is by a motion. That is using a process that is in place. The Speaker doesn't simply get up and say, "Debate is over. We're having a vote right now." That is all—

The Chair: Thank you, Mr. Strahl.

I appreciate your comments on this. You have raised that you feel this is a point of privilege.

My ruling is that it is not a point of privilege.

Mr. Damien Kurek: I have a point of order.

The Chair: I am ruling right now, Mr. Kurek. I'll finish my ruling and then I can turn the floor over to the next person who raises their hand.

Mr. Damien Kurek: Point of order.

The Chair: I am responding to Mr. Strahl and ruling on his point of privilege.

Mr. Damien Kurek: Yes, but you're not able to do that.

The Chair: I am able to do that according to the clerk, who is next to me and who shares the rules with me.

I am ruling—

● (1815)

Mr. Damien Kurek: Point of order, Chair.

The Chair: —that it is not a point of privilege.

As the chair of this committee, I manage the speaking list. On over 122 clauses so far—

Mr. Damien Kurek: Point of order, Chair.

The Chair: —I have been very diligent to ensure that the list has been followed. In this particular instance, I had no names on that list and I went to a vote.

Mr. Damien Kurek: Point of order, Chair.

The Chair: Immediately following that, I turned the floor over to Mr. Strahl to address clause 124 because he had raised his hand to address clause 124.

That is the ruling, and I now turn it over to committee members on that ruling.

Mr. Damien Kurek: Point of order, Chair.

The Chair: Go ahead, Mr. Kurek.

Mr. Damien Kurek: Thank you, Chair.

With the utmost respect to you as the chair occupant, and of course to our exceptional clerks who operate in the House, I would refer you to page 154 in chapter 3 of Bosc and Gagnon, 2017, which talks about privileges and immunities:

> Unlike the Speaker, the Chair of a committee does not have the power to censure disorder or decide questions of privilege. Should a Member wish to raise a question of privilege in committee, or should some event occur in committee which appears to be a breach of privilege or contempt, the Chair of the committee will recognize the Member and hear the question of privilege, or, in the case of some incident, suggest that the committee deal with the matter. The Chair, however, has no authority to rule that a breach of privilege or contempt has occurred.

Chair, with all due respect to you in that role, Mr. Strahl was still speaking, and I believe you have a speaking list on the point of privilege that he has raised. To ensure that we are operating in accordance with the rules and procedures of this place and the privileges and immunities associated with us as duly elected members of this caucus, the debate should be allowed to continue, as is very clearly articulated in the rules that help make sure that all members, including members of the government, backbench party members, opposition and otherwise, are able to do the job we've been sent here to do.

[*Translation*]

Mr. Xavier Barsalou-Duval (Pierre-Boucher—Les Patriotes—Verchères, BQ): I have a point of order, Mr. Chair.

[*English*]

The Chair: I'll recognize Mr. Barsalou-Duval, but I'm just conferring with the clerk really quickly.

I'll turn it over to Mr. Barsalou-Duval on a point of order.

[*Translation*]

Mr. Xavier Barsalou-Duval: Thank you, Mr. Chair.

In fact, I noticed that there are five Conservative MPs at the committee today. I know that there is nothing to prevent there being more MPs present than the quota that must be adhered to, to ensure equitable representation of the parties when it comes to votes. However, it is important for us to know which of the MPs around the table are entitled to vote and which are not. Otherwise, it could cause confusion for committee members.

The Chair: Thank you, Mr. Barsalou-Duval.

I am going to ask Mr. Strahl to confirm that the Conservatives who are voting are Mr. Strahl, Dr. Lewis, Mr. Lewis and Mr. Muys, and that Mr. Kurek is not voting.

Is that right, Mr. Strahl?

[*English*]

Mr. Mark Strahl: I think the clerk has the list of our members.

[*Translation*]

The Chair: The clerk confirms that it is right, Mr. Barsalou-Duval. Thank you.

[*English*]

Mr. Damien Kurek: I have a point of order, Chair.

I believe Mr. Strahl still had the floor.

● (1820)

The Chair: I made my ruling, so nobody can speak to the ruling of the chair at this time.

The members can challenge the chair.

Ms. Leslyn Lewis: I have a point of order.

I'd like to speak to that matter.

The Chair: You can't speak to a ruling of the chair. You can challenge the chair, Dr. Lewis.

Ms. Leslyn Lewis: Then I'd like to challenge the chair.

The Chair: Thank you, Dr. Lewis.

I'll turn it over to the clerk.

The Clerk of the Committee (Ms. Carine Grand-Jean): If you vote yes, then you sustain the decision of the chair. If you vote no, you are appealing the decision of the chair.

(Ruling of the chair sustained: yeas 7; nays 4)

Mr. Damien Kurek: I have a point of order, Chair.

I'd like to be on the speaking list. Just to ensure that it does in fact happen, I am raising a point of order so that we don't move into that.

The Chair: I actually have Mr. Strahl on the speakers list for clause 124 already, Mr. Kurek. If you'd like to add your name to the speakers list, it would be a pleasure to do so.

Mr. Damien Kurek: That's why I raised a point of order, to make sure that it didn't get missed.

The Chair: That's perfect. It's always good to be diligent.

Mr. Strahl, the floor is yours.

Mr. Mark Strahl: Thank you very much, Mr. Chair.

Just to get some clarification there, when am I able to move a motion? There seems to be a moving target as to when members of Parliament can exercise their rights to move motions that have been duly submitted—with notice, translated and distributed to members.

At what point in the discussion...? Can I do so now, or do I need to...?

The Chair: The rules state, Mr. Strahl, that you can do so in between the clauses, not when I've already called for debate on a clause.

Right now we're discussing clause 124, but as was the case with Mr. Kurek, whom I recognized and who was able to put forward a motion, you can do so, as he did, in between clauses.

Right now, Mr. Strahl, just for clarification, we are on clause 124. The floor is yours.

Mr. Mark Strahl: I appreciate that.

I would just let you know, Mr. Chair, that I will be moving a motion at the end of this clause, after the vote takes place, just so there's no ambiguity as to whether or not I'd like the floor before the debate on clause 125 takes place.

The Chair: Thank you, Mr. Strahl.

I encourage you to raise your hand so that I can recognize you and see that you, indeed, want to speak, as members do change their minds once in a while.

The floor is yours.

Mr. Mark Strahl: Well, I'm not going to change my mind this time, Mr. Chair. I will try to keep that raised hand up. It does automatically go down after a while, which is unfortunate, because I do want to ensure that I am able to speak.

I'm happy to speak to clause 124. As we have been doing throughout this bill, we've been pointing out the importance of the need to consider what we heard from the witnesses who came forward to discuss this piece of legislation, which, as we heard, is one that many have significant concerns with. There were concerns with every section of this legislation. Every clause had concerns raised by different groups, from unionized workers at the ports all the way to the port authorities. We heard from terminal operators. We heard from the Chamber of Marine Commerce and from the railways. They all had concerns with the scope and focus of this bill.

Clause 124 is just another example of the government failing to take what they heard and apply it to this legislation. We heard time and time again that this was all about supply chain efficiency, that this was all about making Canada's supply chains more reliable. Clause 124 talks about when this bill receives royal assent and how the sections are to come into force. We've had many different discussions about how that should be done. When should the provisions of this bill come into effect? When will the royal—

● (1825)

Mr. Damien Kurek: I have a point of order.

The Chair: Mr. Kurek.

Mr. Damien Kurek: Thank you.

I believe that Mr. Strahl is the vice-chair. I know that he's not in the room, but I would just take this opportunity. There seems to be a trend as of late that committee chairs may have taken lessons, or something to that effect, to tread a very fine line, where it seems that members' privileges can be violated without regard, and that by using a coalition of left-leaning parties the rights and privileges of members can be trodden upon without discretion.

Certainly, we've seen that at the natural resources committee, where there were such egregious violations of members' privileges that it seemed to truly disrupt and delegitimize the democratic process that we have—

The Chair: Mr. Kurek, is this debate? Are you referring to anything in particular?

Mr. Damien Kurek: I'm on a point of order, and I have before me Bosc and Gagnon. Again, I think it is absolutely key that we keep the context of the very foundation of where we are in the context of how we are able to most effectively do our jobs in this place, and the basis of that is the rights and privileges of members.

Now, many people watching will not understand some of the context and nuances surrounding what this looks like, but what we have witnessed, Chair, before this committee—I mentioned natural resources, and there are other examples as well—and how it seems to me is that, with the observances of many who are watching, there is—

The Chair: Mr. Kurek, your point of order is debate. I do not deem it in order.

I made a ruling and therefore I'll turn the floor back over to Mr. Strahl—

Mr. Damien Kurek: Mr. Chair, with respect, you made a ruling on an item that specifically you are not given the ability to make a ruling on.

The Chair: Mr. Kurek, that item has been dealt with, and therefore we will be moving on to Mr. Strahl.

Mr. Damien Kurek: Which is a violation of our privileges as members—

The Chair: You are out of order, Mr. Kurek.

Mr. Strahl, the floor is yours.

Mr. Mark Strahl: Thank you, Mr. Chair.

I suspect that we'll be dealing with that matter in the House of Commons at our earliest opportunity, which is when privilege motions will be raised.

To go back to section—

Ms. Leslyn Lewis: I have a point of order.

The Chair: Yes, Dr. Lewis, go ahead.

Ms. Leslyn Lewis: I just need some clarification. I'm a little bit confused here as to what is happening. I do understand that with Standing Order 116, when debate is ended.... It seems like we've invoked Standing Order 60 to adjourn debate, somehow. If you look at Standing Order 67(1)(o), it is clearly in conflict with that, because Standing Order 60 says that you can only adjourn "unless otherwise prohibited in these Standing Orders". When you look at Standing Order 67(1)(o), it clearly states that debate is permissible. It gives the elements of when debate is permissible. If you go to Standing Order 67 and look at "Debatable motions", (o) says it's "for the suspension of any standing order unless otherwise provided".

If you take that into context, and we then say that Standing Order 116 is being suspended by your order—

The Chair: Dr. Lewis, thank you very much.

Ms. Leslyn Lewis: —that means we would be able to debate—

The Chair: I'm sorry, Dr. Lewis. I have to cut you off there.

There has been a ruling on the point of privilege. The matter has been dealt with. Therefore, I'm turning the floor back over to Mr. Strahl.

Thank you very much.

● (1830)

Ms. Leslyn Lewis: I'm just seeking clarification. As a member—

The Chair: Mr. Strahl, the floor is yours.

Ms. Leslyn Lewis: —I think I am entitled to clarification.

The Chair: I have responded to your question. I made a ruling on the matter. The matter is now closed.

I am turning the floor over to Mr. Strahl.

Ms. Leslyn Lewis: So there's no reason we're suspending that. Standing Order 67—

The Chair: Dr. Lewis, debate on this has concluded.

The floor now belongs to Mr. Strahl.

Mr. Mark Strahl: Thank you, Mr. Chair.

In this bill, there is a coordinating amendment—if the copy of the legislation I have is correct—that states:

> If Bill C-26, introduced in the 1st session of the 44th Parliament and entitled An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Acts, receives royal assent, then, on the first day on which both section 18 of that Act and section 123 of this Act are in force, subsection 2(3) of the Transportation Appeal Tribunal of Canada Act is replaced by the following:
>
> Jurisdiction in respect of other Acts
>
> (3) The Tribunal also has jurisdiction in respect of reviews and appeals in connection with administrative monetary penalties provided for under sections 177 to 181 of the Canada Transportation Act, sections 127 to 133 of the Critical Cyber Systems Protection Act, sections 43 to 55 of the International Bridges and Tunnels Act, sections 129.01 to 129.17 of the Canada Marine Act, sections 16.1 to 16.25 of the Motor Vehicle Safety Act, sections 39.1 to 39.26 of the Canadian Navigable Waters Act, sections 130.01 to 130.19 of the Marine Liability Act and sections 32.1 to 32.28 of the Transportation of Dangerous Goods Act, 1992.

I'm hoping that either the legislative clerk or perhaps some of the witnesses can indicate for me what the status is of Bill C-26. Has it received royal assent? If not, where is it in the process? This is just so we know how likely it is that this coordinating amendment will be utilized with Bill C-33.

Perhaps they could just tell me what the status of that bill is.

The Chair: I'm not sure which one of our witnesses wants to address that.

Go ahead, Ms. Heft.

Ms. Rachel Heft: It appears that Bill C-26 completed second reading on March 27, 2023.

Mr. Mark Strahl: That bill is clearly still before the industry committee, I would assume. With cybersecurity, perhaps it could be with public safety.

I know that we had some serious concerns with that piece of legislation. I think we want to ensure that the rights of Canadians are always protected. When we're considering Bill C-26, which deals with cybersecurity, we know that this is an evolving field and there's an evolving threat level that comes with that. We know that the government, quite frankly, has failed to protect the rights of Canadians when it comes to their security—both personal security and in our communities. When it comes to the online environment, they've been lax. They've turned a blind eye, quite frankly, to threats to cybersecurity. I think we've seen that again and again.

We saw it when this government refused to ban Huawei from the 5G network for years in spite of overwhelming evidence that the communist regime in Beijing was using that technology in the Huawei network as a way to gain access to personal information. That was a security vulnerability.

We saw that our Five Eyes partners in the security establishment—our international partnerships with Australia, New Zealand and the United States—all took action to protect their citizens and their networks from cybersecurity threats. That's something this government did not do. It took them years and they fought it and fought it before they took the decision—much too late—to exclude Huawei from our cybersecurity networks. That resulted, quite frankly, in embarrassing situations where Canada was excluded from high-level meetings of the Five Eyes.

We saw it very recently, when Australia had its deal with the United States to purchase submarines, for instance. There was an exclusion of Canada because Canada's networks were not deemed to be secure enough to allow us to participate in those very important, high-level meetings. These are examples where the government has failed to take cybersecurity seriously.

As I said, we have grave concerns with Bill C-26. It's troubling to see that this bill would cede power to another piece of legislation or have this coordinating amendment, so there would be two pieces of legislation that we believe are flawed coordinating with one another. I think this is the sort of thing where we should be considering what is in Bill C-26 as we discuss this. We can't simply agree holus-bolus to something in another act if we haven't considered that fully, here at this committee.

I think that this particular clause is one where, perhaps as the evening goes on, we will find a way to bring about an amendment or to look at ways we can make sure that the concerns we had with Bill C-26 are addressed.

The summary of Bill C-26 states:

● (1835)

> Part 1 amends the Telecommunications Act to add the promotion of the security of the Canadian telecommunications system as an objective of the Canadian telecommunications policy and to authorize the Governor in Council and the Minister of Industry to direct telecommunications service providers to do anything, or refrain from doing anything, that is necessary to secure the Canadian telecommunications system. It also establishes an administrative monetary penalty scheme to promote compliance with orders and regulations made by the Governor in Council and the Minister of Industry to secure the Canadian telecommunications system as well as rules for judicial review of those orders and regulations.

It continues:

> Part 2 enacts the Critical Cyber Systems Protection Act to provide a framework for the protection of the critical cyber systems of services and systems that are vital to national security or public safety and that are delivered or operated as part of a work, undertaking or business that is within the legislative authority of Parliament. It also, among other things,
>
> (a) authorizes the Governor in Council to designate any service or system as a vital service or vital system;
>
> (b) authorizes the Governor in Council to establish classes of operators in respect of a vital service or vital system;
>
> (c) requires designated operators to, among other things, establish and implement cyber security programs, mitigate supply-chain and third-party risks, report cyber security incidents and comply with cyber security directions;
>
> (d) provides for the exchange of information between relevant parties; and
>
> (e) authorizes the enforcement of the obligations under the Act and imposes consequences for non-compliance.

Cybersecurity, as I've said, is a growing concern for Canadians. It remains a national security concern. It remains an economic security concern. We know we lose when things like patents, trademarked information and secrets are lost because of a failure to ensure we have adequate cybersecurity in place. We know the government doesn't have a legal mechanism to compel industry action to address cyber-threats or vulnerabilities in the telecommunications sector.

Bill C-26 is another example of the Minister of Industry being given sweeping powers, as we heard with Bill C-33, where the minister is given sweeping powers to enact orders that, in his opinion, are necessary to protect port infrastructure, port operations, etc. We just dealt with that in a previous clause. I think this is another example where we need to ensure that the powers given in Bill C-26 are proportional—that there are checks and balances, and that the rights of Canadians are always protected when the minister is exercising the rights and powers given to him or her in the legislation. It's another example of giving the minister broad powers to enact the legislation.

● (1840)

Now, cybersecurity is something that Conservatives have been raising the alarm about for a long time. We did it when we first created, under a conservative motion, the Canada–China special committee. That was an issue that was raised there. In the context of Huawei, it is something we raised time and time again: our concerns that our 5G network was not being protected.

There are opportunities to strengthen our cybersecurity protocols. We need to ensure that not only are the privacy rights of Canadians respected, but that there's also no attempt at censorship for Canadian citizens when they are operating in the cyber-environment. We've seen the government go down that road as well, with Bill C-18 and with Bill C-10. They want to control what Canadians see, and control the algorithms of what will show up in their social media, for instance.

We have a hard time trusting the government when it comes to anything to do with cybersecurity or Internet regulations. They've proven time and time again that they're willing to sacrifice the rights of Canadians in order to promote their own narrow agenda.

Bill C-26, unfortunately, increases regulation and red tape, often, we believe, without adequate oversight and without votes in Parliament.

We've seen, even here today, that the rights of members or parliamentarians, the supremacy of Parliament, are things that this government does not put as the highest priority. If Parliament gets in the way, they simply try to bypass it.

I think Bill C-26 is another example of where that has happened. We have grave concerns with that, as I outlined briefly. There is also—

● (1845)

The Chair: Mr. Strahl, if you will permit—I will give you the floor back immediately following this—I'm looking around the room at the witnesses, and perhaps some of the other members here, who would very much appreciate a five-minute break to be able to go to the restroom.

I will turn the floor immediately back to you to continue your dialogue in five minutes.

● (1845)

_____(Pause)_____

● (1855)

The Chair: I call this meeting back to order.

As promised, I turn the floor back over to Mr. Strahl.

Mr. Strahl, the floor is yours.

Mr. Mark Strahl: Thank you very much, Mr. Chair.

I hope everyone feels—

Mr. Damien Kurek: I have a point of order.

The Chair: I'm sorry, Mr. Strahl. I have a point of order from Mr. Kurek.

Mr. Damien Kurek: To ensure that we don't end up in the same situation where members' privileges are called into question, I'd ask, Chair, if you could outline who is on the speaking list so we can understand fully what that—

The Chair: That is a great question, Mr. Kurek. The last thing I would want is for a member to question privilege.

I have Mr. Badawey, Mr. Kurek, Dr. Lewis, if that is not a legacy hand, Mr. Muys and Mr. Lewis.

Mr. Taylor Bachrach: Am I on the list from way back when?

The Chair: You're not on this, Mr. Bachrach; however, if you want to be on the list....

Mr. Taylor Bachrach: Can we recess, Mr. Chair, so we can...? Do we have a tape that we could go back to listen to to see...?

The Chair: I can tell you this, Mr. Bachrach. At 7:30, we will have to take a five-minute recess in order to ensure that the translators and the team supporting us can be switched over.

Mr. Taylor Bachrach: It was less about having a recess so I could have yet another break, because we just had a break. It was more about whether I was on the list. I thought that I had put up my hand earlier to try to get on the speakers list.

I know that things are fluid, so maybe I'll put my hand up now to try to get on the list.

The Chair: Your name is now on the list. I can confirm that.

Mr. Taylor Bachrach: Wonderful. I look forward to speaking.

The Chair: Thank you, Mr. Kurek.

We'll go back over to you, Mr. Strahl.

Mr. Mark Strahl: Thank you, Mr. Chair.

As we were talking about Bill C-26, which is referenced here, I want to quote from a source called OpenMedia.org, which, on November 28, 2023, had an article called “New report by Citizen Lab finds serious Charter concerns with proposed federal cybersecurity legislation, Bill C-26”. I'm going to read it here. It says:

> Civil liberties groups welcome call to make Bill C-26’s impact on equality, freedom of expression, and privacy a central consideration of Parliamentary committee study

It goes on to say:

> The federal government’s draft cybersecurity legislation, Bill C-26, contains serious deficiencies and risks impacting the Charter rights of people in Canada to equality, freedom of expression, and privacy.
>
> That’s according to a new report by the Citizen Lab at the Munk School of Global Affairs & Public Policy at the University of Toronto, which highlights that Bill C-26’s Charter implications “should be a central consideration for this Committee, and throughout the Parliamentary process ahead.”
>
> The report has been submitted to the House of Commons Public Safety and National Security Committee which is expected to commence its scrutiny of Bill C-26 shortly.

Again, this is from a few weeks ago.

> Among the significant Charter concerns identified by the Citizen Lab report’s authors, Kate Robertson and Lina Li, are:
>
> Equality: The absence of key transparency, accountability, and proportionality requirements in Bill C-26 raises equality risks surrounding its implementation. Bill C-26’s lack of safeguards increases the risk that equality-undermining measures will not be adequately prevented or addressed. For example, adverse impacts could undermine efforts to redress disparities in Internet access between rural and Indigenous communities and the rest of Canada; result in mandated rules that impede access to assistive technologies for persons living with disabilities; or expose certain groups, including journalists, lawyers, and dissidents to a heightened threat of hacking and espionage.

There are also concerns with freedom of expression:

> Freedom of Expression: Bill C-26’s excessive secrecy jeopardizes the freedom of expression rights of the public, the media, and commercial entities. Courts and government should be open and accessible or risk impeding meaningful discussion on matters of public interest. Such discussion is especially important in the cybersecurity sphere, and greater transparency in Bill C-26 is required to ensure this.
>
> Privacy: Bill C-26’s new information collection and sharing powers are insufficiently bounded or defined, posing a potential privacy risk exacerbated by the absence of key accountability and oversight mechanisms. The bill permits the government to collect the personal information of Canadians, creates criminal offences which incentivise over-sharing, and its extensive secrecy undermines the ability of courts or oversight bodies to assess whether such information collection is proportionate and necessary.
>
> Civil society—

● (1900)

Mr. Jeremy Patzer (Cypress Hills—Grasslands, CPC): I have a point of order, Chair.

The Chair: Go ahead, Mr. Patzer.

Mr. Jeremy Patzer: Thank you very much.

I understand there have been a few questions in regard to the speaking order. Since I was just subbed into the committee, I'm curious as to who's next on the speaking list, but I'm also wondering, Mr. Chair, if there's a way I could get myself on the speaking list, since I understand there are some issues that would potentially be of great interest to the people I represent.

The Chair: Mr. Patzer, it would be my absolute pleasure as chair to add your name to the list. You will be following Mr. Bachrach.

Mr. Taylor Bachrach: On a point of order, Mr. Chair, pardon me if I'm wrong, but don't members who are subbing in have to spend the requisite 30 minutes getting up to speed on the topic of debate and getting comfortable with the local environment before they're added to the speaking list?

Mr. Jeremy Patzer: On that point of order—

Mr. Taylor Bachrach: You have to be recognized, Mr. Patzer.

Mr. Jeremy Patzer: On that point, maybe you want to spend the half-hour to enlighten me on what's happening.

The Chair: I'm sorry, Mr. Patzer, but I didn't recognize you.

Mr. Taylor Bachrach: I'm just trying to contribute in any way I can.

The Chair: In direct response to your inquiry, Mr. Bachrach, he is an official replacement for one of the members, so he can add himself to the speaking list.

Mr. Taylor Bachrach: That's interesting.

The Chair: Once again, Mr. Patzer, you will be following Mr. Bachrach.

Mr. Strahl, I sincerely apologize. I don't like to break your train of thought. The floor is yours.

Mr. Mark Strahl: No, I appreciate the clarity. We've had some issues here—

[*Translation*]

Mr. Xavier Barsalou-Duval: I have a point of order, Mr. Chair.

The Chair: The floor is yours, Mr. Barsalou-Duval.

Mr. Xavier Barsalou-Duval: Thank you, Mr. Chair.

In fact, I am raising a point of order because I am trying to understand whether raising a point of order to add one's self to the list of people who wish to speak is a new norm. Is this a recommended practice or are there other more appropriate ways of doing this?

● (1905)

The Chair: Thank you, Mr. Barsalou-Duval.

I think there are two parts to the member's point of order. First, he wanted to know who was on the list of speakers, and I answered his question. Then he asked me to put his name on the list, and I did.

You may now continue, Mr. Strahl.

[*English*]

Mr. Mark Strahl: I'm just going to continue with the article that expressed some concerns about Bill C-26. It says:

> Civil society organizations campaigning to fix Bill C-26 have welcomed Citizen Lab's findings, stating that they reinforce long-standing concerns, and that significant amendments are required to uphold civil liberties and strengthen public confidence in the resulting cybersecurity framework. These organizations recently submitted detailed recommendations to make sure the legislation "delivers strong cybersecurity for everyone in Canada, while ensuring accountability and upholding our rights."
>
> These recommendations reflect the findings of a previous Citizen Lab report, entitled Cybersecurity Will Not—

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

The Chair: The floor is yours, Mr. Iacono.

Mr. Angelo Iacono: I am having trouble hearing the French interpretation.

The Chair: Thank you for letting us know. Please wait a moment and we will check it.

[*English*]

I'll speak in English to see whether or not the French translation works.

Can you hear me, Mr. Iacono, with the French translation?

[*Translation*]

Mr. Barsalou-Duval, is the French interpretation working properly for you?

Mr. Xavier Barsalou-Duval: I am at a disadvantage, Mr. Chair, because I was listening to the floor channel, with no interpretation.

[*English*]

The Chair: Can you change it so we can see whether or not the French translation works, Mr. Barsalou-Duval?

[*Translation*]

Mr. Xavier Barsalou-Duval: It is working for me now. I heard the interpretation of what you said.

The Chair: Thank you, Mr. Barsalou-Duval.

I see that it is working properly for you now too, Mr. Iacono. Thank you.

[*English*]

I'm sorry again, Mr. Strahl. You're being interrupted far too many times, and I want to apologize for that.

I'll turn the floor back over to you, sir.

Mr. Mark Strahl: It continues:

> These recommendations reflect the findings of a previous Citizen Lab report, entitled Cybersecurity Will Not Thrive in Darkness, by Dr. Christopher Parsons which was published last October.

[*Translation*]

Mr. Xavier Barsalou-Duval: I have a point of order, Mr. Chair.

The Chair: The floor is yours, Mr. Barsalou-Duval.

[*English*]

I apologize once again, Mr. Strahl.

[*Translation*]

Mr. Xavier Barsalou-Duval: Mr. Chair, can you explain this for me, but I am wondering whether Mr. Strahl's speech and comments really relate to the content of Bill C-33.

In my opinion, everything he has referred to since he started speaking concerns Bill C-26. If I am not mistaken, that bill is at a later stage. It may even have been enacted.

I would therefore like some reassurance and I would like to know whether the member's comments are in order, according to your interpretation.

The Chair: Thank you, Mr. Barsalou-Duval.

[*English*]

I'll ask that Mr. Strahl make the link in the continuation of his remarks between what he's discussing and clause 124.

I'll turn the floor back over to you, sir.

Mr. Mark Strahl: Thank you very much, Mr. Chair.

I'll go back, just to make sure that people listening can follow along with the train of thought in the article here:

> These recommendations reflect the findings of a previous Citizen Lab report, entitled Cybersecurity Will Not Thrive in Darkness, by Dr. Christopher Parsons which was published last October. The legislation has been subject to fierce criticism for its impact on civil liberties since it was first introduced by former Public Safety Minister Marco Mendicino in June 2022.
>
> The groups and expert individuals campaigning to fix Bill C-26 are: the Canadian Civil Liberties Association, the Canadian Constitution Foundation, the International Civil Liberties Monitoring Group, Ligue des Droits et Libertés—

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

The Chair: Mr. Iacono, you have the floor.

● (1910)

[*English*]

I'm sorry, Mr. Strahl. I have a point of order from Mr. Iacono.

[*Translation*]

Mr. Angelo Iacono: What our colleague is talking about is very interesting, but I am unfortunately having trouble following it, because I do not have any document to which I can refer so that I can better understand what he is saying. Personally, I prepared for a discussion this evening on Bill C-33. What he is talking about is a different bill.

If the member wishes to talk about a different bill, I will perhaps ask him to provide committee members with a few details and the relevant documents, so we are able to follow what he is saying properly. I want to feel useful this evening at the committee. I do not want to be here just to listen to someone else talk. If someone is referring to something else, it would be nice to have the documents in question. That would give us the same information about the subject as the member has so we could follow his comments better, and would give us some guidance for our own thinking.

So I am feeling a bit lost, because I have no document to refer to. I do not know all the details of the bill to which the member is referring.

I will leave it in your hands. We need a little more guidance. When we are speaking in a vacuum, we will get equally empty results.

The Chair: Thank you, Mr. Iacono.

I would just note that your microphone seems not to be working properly, because the sound is causing a problem. It may be because of where your mic is.

Just to check, can you talk for a few seconds, please?

Mr. Angelo Iacono: Of course, I will be happy to.

I have moved my microphone and put it closer to my mouth.

The Chair: That's perfect, Mr. Iacono.

Mr. Angelo Iacono: Can you hear me better now?

The Chair: Yes. Thank you for thinking of our interpreters.

Mr. Angelo Iacono: Thank you, Mr. Chair, for the good work you are doing this evening.

The Chair: Thank you, Mr. Iacono.

[*English*]

Mr. Strahl, just following up on Mr. Iacono's intervention, if you do have any documents that your team perhaps can share with committee members, who are very interested in what you are currently sharing, please pass those along to the clerk, and the clerk can perhaps pass those along to members.

With that, I'll turn the floor back over to you.

Mr. Mark Strahl: Thank you, Mr. Chair.

Of course, if we wanted to.... Perhaps during one of the adjournments this evening I can share some information, including Bill C-26, which is clearly referenced here. This is a coordinating amendment, so we need to be having a discussion about what we're coordinating with and the concerns that have been raised.

I'll just continue on here:

> The groups and expert individuals campaigning to fix Bill C-26 are: the Canadian Civil Liberties Association, the Canadian Constitution Foundation, the International Civil Liberties Monitoring Group, Ligue des Droits et Libertés, the National Council of Canadian Muslims, OpenMedia, the Privacy and Access Council of Canada, Professor Andrew Clement, and Dr Brenda McPhail.

It ends with a quote here. It says:

> "Today's report should set alarm bells ringing on Parliament Hill. As written, Bill C-26 gives the government and its spy agencies a blank cheque to intrude on our private lives and endanger our—

[*Translation*]

Mr. Xavier Barsalou-Duval: I have a point of order, Mr. Chair.

The Chair: The floor is yours, Mr. Barsalou-Duval.

Mr. Xavier Barsalou-Duval: In fact, I had the chance earlier to raise the fact that my colleague was not talking about Bill C-33, he was talking about Bill C-26. He told us that he intended to get around to explaining the connection between the two, but I see that he is still telling us about Bill C-26, not Bill C-33 or the clause we are now considering.

I don't know whether you have the authority to intervene, Mr. Chair, for him to get around to making a connection with the bill now being considered.

The Chair: Thank you, Mr. Barsalou-Duval.

[*English*]

Mr. Strahl, I am going to have to ask you to perhaps be more diligent about linking what you're currently speaking about and clause 124. Please ensure you are explaining to members how what you are speaking about right now is related to clause 124, or I will have to pass the floor on to another member. I strongly encourage you to do that.

Thank you, sir.

● (1915)

Mr. Mark Strahl: Mr. Chair, I would strongly object to anyone suggesting that they get to choose for another member what they bring to the table in terms of background information that should inform us on how we address a specific clause. The first three words.... If my copy of the bill is correct, the title of clause 124 is "Bill C-26". There's the link for you.

Clause 124 says, "If Bill C-26", and it continues on. I am talking about a bill that is specifically referenced in Bill C-33, and this is a coordinating amendment. I will raise my concerns with Bill C-26 and the idea that if we pass this clause, we are endorsing Bill C-26 with all of its problems.

Quite frankly, it's not my job to convince other members of Parliament that they, too, should be concerned about that if they're not listening to what I have to say, but I will continue to address the concerns related to this bill, which is specifically referenced in clause 124.

I will just go back to this particular thing that I was reading from. I will start the quote again:

> "Today's report should set alarm bells ringing on Parliament Hill—

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

[*English*]

The Chair: I'm sorry about that, Mr. Strahl.

I have a point of order from Mr. Iacono.

[*Translation*]

Mr. Angelo Iacono: Mr. Strahl has just said that he was reading something. If that is the case, then he simply needs to provide us with what he is reading.

Mr. Chair, he made a comment about my colleague Mr. Barsalou-Duval and myself that I find a bit out of line. Both of us have raised points of order to say essentially the same thing, but the member is starting over again.

He says he is reading something. Could we have a copy of what he is reading, so we are in a better position and are better able to follow what he is saying? He has said that Bill C-26 is referred to in Bill C-33. If that is the case, why not simply provide us with the document he is referring to?

The Chair: Thank you, Mr. Iacono.

For reference, I think he is reading what is on page 79 of Bill C-33, which we are now discussing.

Am I mistaken, Mr. Strahl?

[*English*]

I just want to confirm that for Mr. Iacono, so that he knows what Mr. Strahl is referencing.

Mr. Mark Strahl: I'm sorry. I'm referencing the clause we are currently debating.

The Chair: Yes. You're referencing Bill C-26, which is on page 79 of the piece of legislation we are currently looking at.

I'm just sharing that with Mr. Iacono, so he can follow along.

Mr. Mark Strahl: I appreciate that. I'm looking at a digital version of the bill, so I'm afraid I don't have a page number.

The Chair: I hope that answers your question, Mr. Iacono.

I apologize, Mr. Strahl. The floor is yours.

Mr. Mark Strahl: It's okay. I'll get this quote read eventually.

It reads:

> Today's report should set alarm bells ringing on Parliament Hill. As written, Bill C-26 gives the government and its spy agencies a blank cheque to intrude on our private lives and endanger our fundamental Charter rights. Frankly, as currently drafted it is little more than a spy agency wish list. MPs need to fix this risky and deeply-flawed legislation so that it delivers the cybersecurity we need, while protecting the freedoms we hold dear. Canadians deserve nothing less.

That's from Matthew Hatfield, executive director, OpenMedia.

One of the groups he referred to in that article is the Canadian Civil Liberties Association. They have also provided some detailed information on their concerns with Bill C-26, "an act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other acts".

They made a submission that I'd like to share with the committee as well, because when we're talking about civil liberties and how this bill will be coordinated into Bill C-33, I think it's important that we consider whether or not we believe that we should—

● (1920)

The Chair: My apologies once again, Mr. Strahl, but I want to confirm whether that raised hand by Dr. Lewis is a point of order or whether she has something she would like to share.

Go ahead, Dr. Lewis.

Ms. Leslyn Lewis: No. I'm sorry. My video wasn't even on. I'm sorry about that. That's probably why you thought that. No, not at all. I'm waiting for my turn to speak.

Thank you.

The Chair: Thank you, Dr. Lewis. I wanted to make sure we didn't miss you.

Your name is on the list, Dr. Lewis.

Ms. Leslyn Lewis: Thank you for calling on me. I probably didn't turn my video back on after the break. My apologies to my colleagues for that.

Thank you.

The Chair: You're very welcome, Dr. Lewis.

Mr. Strahl, the floor is yours once again.

Mr. Mark Strahl: Thank you.

As I was saying, the Canadian Civil Liberties Association has raised significant concerns with regard to Bill C-26, which, again, is as referenced in clause 124. I'll just read their submission here so that we can consider it in our deliberations on whether or not we believe that we want to approve this coordinating amendment clause in the legislation. They state:

> The Canadian Civil Liberties Association...is an independent, national non-governmental organization that was founded in 1964 with a mandate to defend and foster civil liberties, human rights, and democratic freedoms of all people across Canada. Our work encompasses advocacy, research, and litigation related to the criminal justice system, equality rights, privacy rights, and fundamental constitutional freedoms. Working to achieve government transparency and accountability with strong protections for personal privacy lies at the core of our mandate.
>
> In this submission, CCLA speaks to Bill C-26, the Government of Canada's telecommunications and cybersecurity legislation. This submission addresses the concerns Bill C-26 raises for human rights and civil liberties, with a particular focus on privacy. Cybersecurity is an essential part of national security, and the digital ecosystem in which we increasingly live our lives needs to be safe, reliable, and secure from threats. Cybersecurity is also crucial for our democratic institutions, the economy, critical infrastructure, national defence, and the privacy of our online life. It is important that Canada take steps toward protecting the digital foundations on which modern life is built. However, in its current form, Bill C-26 risks undermining our privacy rights, due process and the principles of accountable governance—all of which are part of the very fabric of our democracy. [Bill] C-26 must not pass without substantial revisions to protect fundamental rights and due process.
>
> This submission makes recommendations for how Bill C-26 can improve the way government and telecommunication companies define, handle, and protect individuals' personal information and thus protect individuals' right to privacy. Privacy is, after all, an essential component of individuals' personal sense of security, both off- and online, and stands to be positioned more centrally in [Bill] C-26. CCLA believes that our recommendations enable the legislation to better fulfill its stated objectives: bolster cybersecurity across the financial, telecommunications, energy, and transportation sectors, and help organizations better prepare, prevent, and respond to cyber incidents.
>
> The amendments outlined in this submission echo the Joint Letter of Concern that CCLA sent with civil society partners in September 2022. In addition, our recommendations are consistent with those contained within the “Fixing Bill C-26 Recommended Remedies Package”, of which CCLA is a signatory, as well as with the recommendations in Christopher Parsons' report, “Cybersecurity Will Not Thrive In Darkness”.

It's the second time that's been referenced. I think we'll be bringing that up again shortly.

The next section is “Defining Personal Information”.

> As it stands, Bill C-26 undermines privacy by empowering the government to collect broad categories of information from designated operators, at any time, subject to any conditions, or even no conditions at all. This may enable the government to obtain identifiable and de-identified personal information and subsequently distribute it to domestic, and perhaps foreign, organizations.

● (1925)

> Given the sensitivity of the information people in Canada provide to designated operators, this provision poses an extraordinary risk to individuals’ privacy. Measures must be established to constrain the government’s collection, use, and distribution of individuals’ sensitive information.
>
> In general, the privacy of personal information is one of the keys to strong cybersecurity protections. Building privacy into cybersecurity legislation will go a long way toward ensuring the cybersecurity protections proposed in Bill C-26 are successful. Some degree of monitoring is required to protect telecommunications infrastructure from attack, but this should not come at the expense of personal privacy. There is no excuse for governments to surveil and analyze online activity without clear safeguards for personal privacy and individuals' fundamental rights.
>
> One way to reasonably restrict the government's capacity to collect information is to refine how Bill C-26 conceives of information worth protecting. This would involve codifying personal and de-identified information as confidential. Personal information is any information that can be used to identify an individual through association or inference. Many kinds of information qualify as personal in their capacity to identify an individual; these, according to the European Union's (EU) General Data Protection Regulation (GDPR), include names, ID numbers, location data, online identifiers, or “factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity” of a person.
>
> Further, personal data can be anonymized or de-identified, but de-identified information requires additional protections. Anonymization involves permanently deleting identifying data—

The Chair: Mr. Strahl, accept my apologies for cutting you off.

We have to suspend in order to ensure that we can transfer over to a new crew of interpreters and support staff, so we'll suspend for 10 minutes and you can pick up where you left off following the suspension.

● (1925)

_____(Pause)_____

● (1935)

The Chair: I call this meeting back to order.

I just want to verify that we do indeed have Mr. Strahl.

There he is—perfect.

Mr. Strahl, I'll turn the floor back over to you.

Mr. Mark Strahl: Thank you, Mr. Chair.

Continuing from the Canadian Civil Liberties Association's submission on Bill C-26—which, just to remind colleagues, is referred to in clause 124—we are deciding whether or not we believe that there should be a coordinating amendment with Bill C-26 in Bill C-33.

I am building the case for why I have concerns with that, and I'll just continue reading. Perhaps I'll go back just to make sure that information wasn't missed. It says:

> Further, personal data can be anonymized or de-identified, but de-identified information requires additional protections. Anonymization involves permanently deleting identifying data, while de-identification involves stripping away and separating different bits of identifying information from one another or protecting identifying information through encryption or key (but not permanently deleting it). Anonymizing data is irreversible, while de-identified data can be re-identified. De-identified data requires greater protection than anonymized data, so Bill C-26 should ensure de-identified information is explicitly acknowledged as confidential.

> As it stands, Bill C-26's proposed amendments to the Telecommunications Act do not designate personal and de-identified information as confidential under section 15.5(1). Nor for that matter does the Critical Cyber Systems Protection Act (CCPSA), which under section 6(1) does not flag personal or de-identified information as confidential. In order to protect this information, both Acts contained within C-26 need adjustment to better align with our privacy rights, freedoms, and democratic values.

"Handling Personal Information" is a new section.

> Bill C-26 gives the Minister overbroad powers for handling personal information. Telecommunication companies, and companies likely to be designated under the CCSPA, collect, process, and store vast amounts of personal data and metadata, including call logs, messages, financial data, and location data. But as worded, Bill C-26 allows the Minister to share this type of personal information with anyone they designate...or who is prescribed by regulations..... It is one thing for government to ask designated operators for information about themselves and how they are complying with orders, but there needs to be a significantly higher standard when ordering companies to hand over information about their customers. This is especially important for telecommunication companies, given the high volume of personal information they hold about the public, and how telecommunications data can be used to identify individuals, track their movements, and monitor their communications. Bill C-26 should better protect the privacy of personal information and communications by creating a more effective stopgap between this information and the Minister's ability to disclose it. The legislation should be amended so that the government must first obtain a relevant judicial order from the federal court before it can compel a telecommunications provider to disclose personal or de-identified information.
>
> Further, Parliament should strengthen the Bill's privacy protections when it comes to telecommunication providers and designated operators sharing information with foreign parties. In the proposed new section 15.7(1) of the Telecommunications Act:
>
> "Any information collected or obtained under this Act, other than information designated as confidential under subsection 15.5(1), may be disclosed by the Minister under an agreement, a memorandum of understanding or an arrangement in writing between the Government of Canada and the government of a province or of a foreign state, an international organization of states or an international organization established by the governments of states, or any institution of any such government or organization, if the Minister believes that the information may be relevant to securing the Canadian telecommunications system or the telecommunications system of a foreign state, including against the threat of interference, manipulation or disruption."

● (1940)

> The provision's breadth and vagueness would allow not only for tremendous ministerial overreach, but it could also lead to privacy risks that cross provincial and national borders, resulting as well in potential risks to life and security for affected individuals and groups. CCLA strongly urges the amendment of the Bill to preclude the Minister from sharing personal or de-identified personal information to foreign governments or organizations, and that the Minister should inform telecommunications providers and designated operators when—and to whom—information may be disclosed when the receiving party is a foreign state, agency, organization, or party.
>
> Finally, Bill C-26 lacks strong provisions around data retention periods. Data should only ever be kept for as long as they are useful, and storing data indefinitely can increase the risks and harms of potential data breaches. Data retention periods are crucial for ensuring that any information obtained under either the Telecommunications Act or the CCSPA would be held only for so long as is necessary to make a legislative order, or to confirm compliance with such an order. CCLA recommends that the legislation be amended to make this data retention period as limited in duration as possible, and that the legislation include—to the extent that the legislation permits any data sharing—a requirement to attach data retention and deletion clauses in agreements or memoranda of understanding that are entered into with foreign governments or agencies.

The next section is "Ensuring Accountability for Mishandled Information":

> Bill C-26 lacks key accountability measures for privacy issues. Accountability is a core principle of effective government and should similarly be a core principle of Bill C-26.
>
> A key accountability concern pertaining to privacy is that Bill C-26 does not allow individuals to seek relief if the government mishandles personal or de-identified information. Allowing for this recourse is an important step toward accountability for privacy violations. CCLA recommends that Bill C-26 be amended to enable individuals to seek relief if the government or a party to whom the government has disclosed their personal or de-identified information negligently loses control of that information and where that loss of control impacts the individual.

Their conclusion states:

> In its current form, Bill C-26 undermines personal privacy and violates due process. Privacy and due process are not only essential to cybersecurity and the protection of our critical infrastructure but are also part of the very fabric of our democracy. The Bill gives government the power to collect broad categories of information about people, without adequate protections for information that should be deemed confidential. The Bill also threatens personal privacy and creates other serious risks and dangers to people by allowing government to distribute this sensitive information to domestic and foreign organizations without proper checks and balances. And the Bill contains inadequate mechanisms for people to seek appropriate redress in cases where their private information has been mishandled and abused.
>
> In this submission, CCLA has recommended remedies to address these concerns while still enabling the legislation to fulfill its stated goals: bolstering cybersecurity across the financial, telecommunications, energy, and transportation sectors, and helping organizations better prepare, prevent, and respond to cyber incidents. We urge the Committee Members to adopt these proposals for strengthening Bill C-26.

● (1945)

The Canadian Civil Liberties Association has very grave concerns and has proposed some significant changes to Bill C-26.

Once again, for the purposes of clause 124, the first words are that if Bill C-26 receives royal assent, then on that day.... We go into whether or not there should be changes to Bill C-33. I think it's very important that we discuss whether or not we believe this clause should be passed, given the incredible concerns there are with Bill C-26.

IT World Canada is another one. If Mr. Iacono wants to go to that website, it's itworldcanada.com. I'll be reading a bit from that.

They have an article here, under their Industry Voices section, entitled "The Bill-C-26 Regulation and Its Implications for The Critical Infrastructures' Cybersecurity in Canada". It's by Frank Lawrence and Eric Jensen of Fortinet.

The article states:

> As the last G7 nation and one of the few G20 nations without a firm regulatory framework around cybersecurity, Canada must act to protect the Nation's critical infrastructure assets.

> In 2016 member states of the European Commission (EU) passed what was called the most comprehensive cybersecurity bill in the history of the EU; the bill was called the NIS Directive. The EU cybersecurity rules introduced in 2016 were updated by the NIS2 Directive, ratified in 2023. NIS2 continues modernizing the legal framework to keep up with increased digitization and an evolving cybersecurity threat landscape. Expanding the scope of the cybersecurity rules to new sectors and entities further improves the resilience and incident response capacities of public and private entities, competent authorities, and the EU as a whole. Most G7 member states are under the umbrella of the EU; the US, UK, and Japan have separately implemented cybersecurity regulations to differing degrees.
>
> Canadian businesses continue to be impacted by malicious cyber activity, ranging from cyberattacks to ransomware. Many attacks, including those on critical infrastructure that account for nearly half, go unreported. Concerningly, the Canadian Centre for Cyber Security (CCCS) has identified attacks against OT networks as "the most pressing [threat] to the physical safety of Canadians" in their biennially published National Cyber Threat Assessments.
>
> In this context, the Ministry of Public Safety acted to introduce new legislation, Bill C-26 An Act Respecting Cybersecurity. Bill C-26 passed its first step in Parliament in November of 2022 and went through its second reading on March 27th, 2023. [The bill]...sits in committee and is believed to go into legislation and law in the calendar year of 2023.

I'd say the article was a little optimistic there.

> The primary focus of Bill C-26 is to add teeth to the governance and compliance of cybersecurity, especially in the much-needed Operational Technology (OT) area where critical infrastructure lies. Although the Bill has not yet received royal assent...between the absence of similar legislation in Canada and the trend towards increased cybersecurity regulation amongst our international peers, Canadian businesses would be wise to prepare.
>
> Canada has yet to pass laws that govern cybersecurity, let alone require reporting vulnerabilities and critical infrastructure breaches; Bill C-26 would empower the regulators to impose fines or issue summary convictions to ensure governance and compliance.
>
> Bill C-26, in its current form, includes four critical infrastructure sectors—Telecommunications, Finance, Energy, and Transportation. The requirement for organizations in these sectors is threefold:
>
> 1. Implement, maintain, and report on a cybersecurity program to address risk across the organization, third-party services, and supply chains.

● (1950)

> 2. Report any cyber incidents involving critical systems to the appropriate regulator and the Canadian Center for Cyber Security.
>
> 3. Use, or discontinue any specified product, service, or supplier.
>
> The intended outcome of these requirements is to improve the standard of cybersecurity amongst critical operators and deepen the level of visibility the federal government has into the security operations of these organizations. It is known today that certain companies that are considered high-risk and vital to national security would become the federal government's focus.
>
> Following the process of the proposed legislation (Bill C-26) and its passing, Federal Government departments will communicate with the companies impacted in the focused sectors with details on how breaches are to be reported and the required timeline for reporting. Furthermore, the companies must "keep records of how they implement their cybersecurity program, every cyber incident they have to report, any step taken—

● (1955)

Ms. Leslyn Lewis: I have a point of order.

The Chair: My apologies, Mr. Strahl, but I have a point of order from Dr. Lewis.

Ms. Leslyn Lewis: Yes.

Chair, could you advise me whether the witnesses are also going to remain here until 11:30? I'm just curious. Because of the way we set up this meeting, I wasn't sure whether or not we have them for the whole time, or if we—

The Chair: They will indeed be here until 11:30, and we are very grateful for their service to this committee.

Thank you, Dr. Lewis.

I'll turn it back over to you, Mr. Strahl.

Mr. Mark Strahl: To this committee and to all Canadians, Mr. Chair, we're grateful for that service. I'm just going to make sure I don't miss any of this important article here.

> Following the process of the proposed legislation...and its passing, Federal Government departments will communicate with the companies impacted in the focused sectors with details on how breaches are to be reported and the required timeline for reporting. Furthermore, the companies must "keep records of how they implement their cybersecurity program, every cyber [security] incident they have to report, any step taken to mitigate any supply-chain or third-party risks and any measures taken to implement a government-ordered action."
>
> Let's be very clear, although only the four key sectors—Telecommunications, Finance, Energy, and Transportation—are considered in scope by Bill C-26, sectors such as agriculture and manufacturing are likely to be included later, as is the case in the EU. The Federal Government of Canada hopes this legislation will serve as a model for provinces and territories to implement similar legislation that regulates cybersecurity requirements for entities under their purview, including hospitals, police departments, and local governments.
>
> To help companies comply with the requirements of Bill C-26—

They're now talking about their services, and I don't need to give them that free plug, Mr. Chair. I think we have an idea of what they think the merits of Bill C-26 are, as well as some concerns about it. You will note that the transportation sector obviously is mentioned as a key part of Bill C-26, which is likely why there is a reference in Bill C-33 in clause 124 to that piece of legislation. Again, we need to fully understand whether or not Bill C-33 should be coordinating amendments with a piece of legislation on which so many concerns have been raised.

I want to raise some other concerns. Obviously any time you're dealing with cybersecurity and so on, a charter analysis is going to be done. I referred to an article by the Citizen Lab in the Munk School of Global Affairs & Public Policy at the University of Toronto, but I also want to get into the details of a submission that was made to the Standing Committee on Public Safety and National Security concerning a charter analysis of cybersecurity and telecommunications reform in Bill C-26. This again was referenced in the previous article. This is the base documentation that gave rise to that article. I want to make sure we're not just hearing an interpretation of a report but also considering it directly.

This report goes on to say that:

On June 14, 2022, Bill C-26, an Act respecting cybersecurity, amending the Telecommunications Act and making consequential amendments to other Acts, was introduced in Parliament for the first reading by Canada's [now former] Minister of Public Safety, Marco Mendicino. Hearings on Bill C-26 are scheduled to begin in SECU on December 4, 2023.

That was very recently, Mr. Chair.

Kate Robinson, a Senior Research Associate and Lina Li made a written submission to the Standing Committee on Public Safety and National Security...regarding Bill C-26.

With an emphasis on privacy in particular, this submission tackles the issues Bill C-26 brings up regarding civil liberties and human rights. The fundamental tenets of accountable governance, due process, and our right to privacy are all at risk of being compromised by Bill C-26 in its current form. In order to better protect people's right to privacy, this submission offers recommendations for how Bill C-26 can be implemented in terms of how the government and telecom companies define, manage, and safeguard people's personal information. The submission suggests that safeguards for the new government powers that the Bill establishes be included in order to address general shortcomings, such as issues with secrecy and transparency.

● (2000)

There is evidence that signaling protocols used by telecom companies for facilitating roaming services also enable networks to obtain incredibly detailed user data. Such extent of access with the telecom service providers poses an unprecedented risk to the privacy of individuals. Owing to the extent of data available with the telecommunications providers, the telecom sector has become a primal target for surveillance actors. In an attempt to address the concerns in the telecom ecosystem, this submission to the Standing Committee on Public Safety and National Security provides a critical response to the federal government's Charter statement on Bill C-26.

The Citizen Lab welcomes the opportunity to submit to the Standing Committee on Public Safety and National Security. Our submission highlights how Bill C-26 will impact equality rights and freedom of expression while providing recommendations to address a series of thematic deficiencies identified in Bill C-26. To ensure that its actions adhere to Canada's democratic values as well as the standards of accountability and transparency, the government must make changes to its legislation.

Below is the Citizen Lab's full submission to SECU regarding Bill C-26.

The next part is called "Part 1. Introduction and Summary".

1. Citizen Lab researchers routinely produce reports concerning technical analyses of information and communications technologies (ICTs), the human rights and policy implications surrounding government surveillance that occurs using ICTs, as well as the cybersecurity threats and digital espionage targeting civil society. Citizen Lab research has also examined the openness and transparency of government and organizations, including telecommunications providers, with respect to the collection, use, or disclosure of personal information and other activities that can infringe upon human rights.

2. This month, the Citizen Lab published "Finding You: The Network Effect of Telecommunications Vulnerabilities for Location Disclosure", authored by Gary Miller and Christopher Parsons. The report provides a high-level overview of geolocation-related threats sourced from 3G, 4G, and 5G network operators. Evidence of the proliferation of these threats shows how the signalling protocols used by telecommunications providers to facilitate roaming also allow networks to retrieve extraordinarily detailed information about users. These protocols are being constantly targeted and exploited by surveillance actors, "with the effect of exposing our phones to numerous methods of location disclosure." Risks and secrecy surrounding mobile geolocation surveillance are heightened by layers of commercial agreements and sub-agreements between network operators, network intermediaries, and third-party service providers. Ultimately, vulnerabilities in the signalling protocols have "enabled the development of commercial surveillance products that provide their operators with anonymity, multiple access points and attack vectors, a ubiquitous and globally-accessible network with an unlimited list of targets, and virtually no financial or legal risks."

3. "Finding You" highlights the importance of developing a cybersecurity strategy that mandates the adoption of network-wide security standards, including a requirement that network operators adopt the full array of security features that are available in 5G standards and equipment. The report's findings also underscore the importance of public transparency and accountability in the regulation of telecommunications providers. As the authors note, "[d]ecades of poor accountability and transparency have contributed to the current environment where extensive geolocation surveillance attacks are not reported."

● (2005)

4. In short, it is long overdue for regulators to step in at national and international levels to secure our network services. However, Canada's approach to the regulation of telecommunications and cybersecurity also needs to be transparent, accountable, and compliant with applicable human rights standards. One year ago, Citizen Lab published "Cybersecurity Will Not Thrive in Darkness: A Critical Analysis of Proposed Amendments in Bill C-26 to the Telecommunications Act".... The report was authored by Dr. Christopher Parsons. Dr. Parsons critically examined the proposed draft legislation under Bill C-26, including identified deficiencies. In doing so, Dr. Parsons provided necessary historical and international context surrounding the federal government's proposed telecommunications sector reform. Canada is not the first of its allies to introduce new government powers as a result of heightened concern and awareness surrounding real and pressing risks to critical infrastructure. However, Dr. Parsons identified that although the draft legislation may advance important goals, its current iteration contained thematic deficiencies that risked undermining its effectiveness. This report is set out in Appendix B, and is the focus of this brief.

The main submissions in this brief are set out in two parts:

a. Part 2: Bill C-26 and the Canadian Charter of Rights and Freedoms ("Charter"):

You will be very concerned about that.

Part 2 of this Brief discusses the nexus between Bill C-26 and the Charter. It—

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

[*English*]

The Chair: I'm sorry, Mr. Strahl. I have a point of order from Mr. Iacono.

[*Translation*]

The floor is yours, Mr. Iacono.

Mr. Angelo Iacono: It is now 8:08 p.m. and the meeting has been going on for quite some time already. I am wondering what time you are thinking of taking a break. We have several people from the Department of Transport with us, in particular. I think they deserve a short break to stretch their legs and have something to eat, for example.

It is past 8:00. What is the plan for the evening, Mr. Chair?

The Chair: Thank you, Mr. Iacono.

We had a break at around 7:30. As Chair, I planned to take another break at around 9:00.

Mr. Angelo Iacono: The break at 7:30 was short, more of a bathroom break. A break to get something to eat is entirely different.

The Chair: Mr. Iacono, if you like, we can take another five- or ten-minute break, but I don't know whether that is what you are looking for.

Mr. Angelo Iacono: It isn't just for me; it is also for the witnesses who are with us. I think they deserve a bit of a break.

You can ask the committee's opinion, but I think we have to take into account the fact that these people are not used to being here so late.

The Chair: Thank you, Mr. Iacono.

I am going to give the witnesses the floor just so they can confirm whether they need a break.

[*English*]

Ms. Heather Moriarty: I think we're okay for now, but thank you for checking.

The Chair: Thank you, Ms. Moriarty.

[*Translation*]

Mr. Iacono, the witnesses say they do not need a break.

So I am going to give the floor back to Mr. Strahl so he can continue his remarks.

● (2010)

[*English*]

Mr. Mark Strahl: Thank you very much, Mr. Chair.

Of course—

[*Translation*]

Mr. Angelo Iacono: In that case, Mr. Chair, what time will the next break you are going to have be?

The Chair: If it is okay with the committee, I propose to have the next break at about 9:00.

Mr. Angelo Iacono: When will there be another break, after that one?

The Chair: It will be at about 10:30. Then we will end the meeting at 11:30.

Mr. Angelo Iacono: Thank you, Mr. Chair.

The Chair: It's my pleasure, Mr. Iacono.

The floor is yours, Mr. Strahl.

[*English*]

Mr. Mark Strahl: Thank you.

> 5. The main submissions in this brief are set out in two parts:
>
> a. Part 2: Bill C-26 and the Canadian Charter of Rights and Freedoms (“Charter”):
>
> Part 2 of this Brief discusses the nexus between Bill C-26 and the Charter. It focuses, in particular, on how Bill C-26 may impact equality rights (Section 15), freedom of expression (Section 2(b)), and privacy (Section 8). The Charter implications of the proposed legislation should be a central consideration for this Committee, and throughout the Parliamentary process ahead.

I'll just put a pin in that, Mr. Chair. That's something that we'll want to discuss going forward as well—whether we want to link to a bill that is implied here could be violating numerous sections of the charter.

It continues:

> b. Part 3: Recommendations for amendment to Bill C-26: “Cybersecurity Will Not Thrive in Darkness” provides substantive analysis and recommendations to address a series of thematic deficiencies identified in Bill C-26. We agree that these recommendations are appropriate in the spirit of addressing overarching deficiencies, including secrecy and transparency issues, and the need to incorporate guardrails for the new government powers that the Bill creates. As a result, Part 3 provides a summary of Dr. Parsons' recommendation, as well as comments and supplementary recommendations flowing from the Charter analysis in Part 2.

The next part is headed “Part 2. Bill C-26 and the Charter: Towards a Human Security Approach to Cybersecurity”. It continues:

> 6. In analyzing the proposed amendments to Canada's Telecommunications Act in Bill C-26, Dr. Parsons identified the following thematic deficiencies in the proposed legislation:
>
> The breadth of what the government might order a telecommunications provider to do is not sufficiently bounded.
>
> Excessive secrecy and confidentiality provisions in the bill threaten to establish a class of secret law and regulation.
>
> Significant potential exists for excessive information sharing within the federal government as well as with international partners.
>
> Costs associated with compliance with reforms may endanger the viability of smaller providers.
>
> Vague drafting language means that the full contour of the legislation cannot be assessed.
>
> There is no recognition of privacy or other Charter-protected rights in Bill C-26 as a counterbalance to the proposed security requirements, nor are appropriate accountability or transparency requirements imposed on the government.
>
> 7. These thematic deficiencies relate to the effectiveness of the government's cybersecurity strategy as well as to potential risks to Charter-protected rights. Like the Canadian Radio-television and Telecommunications Commission (“CRTC”), the federal government must act in a manner that is consistent with the Charter when regulating in respect of the telecommunication services and cybersecurity.
>
> 8. Following the publication of Dr. Parsons' report in October 2022 (including his recommendation that the federal government table a Charter statement in relation to Bill C-26), the federal government tabled its Charter Statement in the House of Commons on December 14, 2022. The “non-exhaustive” statement identifies areas where Charter-protected rights are engaged by Bill C-26. The statement, however, does not fully address relevant Charter-related issues linked to Bill C-26. In the following paragraphs...we raise additional Charter issues to, first, inform the appropriateness of amendments recommended by Dr. Parsons and, second, to underscore the importance of bringing a human rights and human security approach to cybersecurity and the regulation of telecommunications services.
>
> Equality Rights and Section 15 of the Charter

● (2015)

> 9. This section identifies examples of equality-related issues that could foreseeably arise during the government’s implementation of Bill C-26.We raise the potential for adverse impacts in the implementation of orders and regulations under Bill C-26 in order to provide guidance to this Committee about the importance of ensuring that the transparency and accountability mechanisms surrounding Bill C-26 are fit-for-purpose to guard against foreseeable risks. As noted in paragraph 6, accountability and transparency gaps are a thematic deficiency in Bill C-26, which are the subject of recommendations throughout Part 3 of this brief.

> 10. In 2019, the federal government passed the Accessible Canada Act.... The Act recognizes the importance of the economic, social and civic participation of all persons in Canada, and to allow all individuals to fully exercise their rights and responsibilities in a barrier-free Canada. The Act notes equality and non-discrimination rights protected under the Canadian Charter of Rights and Freedoms, and the Canadian Human Rights Act, which are implicated by laws and public policies affecting the accessibility of telecommunications services.
>
> Access to affordable, high-quality telecommunications services is unevenly available in Canada. Government measures that have the effect of exacerbating the "digital divide" for Charter-protected groups may result in discrimination under section 15 of the Charter. If Orders in Council, Ministerial orders, or regulations issued under Bill C-26 are implemented in a manner such that disadvantaged communities are disproportionately exposed to security vulnerabilities, or disproportionately unable to access network services, it perpetuates the disadvantage experienced by Charter-protected groups, thus engaging section 15 of the Charter.
>
> The following are examples of equality-related issues that are foreseeable when considering the types of orders or regulations that may be imposed under the broad powers proposed in Bill C-26:
>
> a. Firstly, barriers to affordable telecommunications services place a particularly heavy toll on low-income communities in Canada. There is a close connection between poverty and the historical disadvantage that is experienced by groups protected by s. 15 of the Charter. As a result, government orders or regulations that impose material costs on telecommunications services may result in heightened barriers to access, which would disproportionately affect historically disadvantaged communities.
>
> b. Secondly, government orders or regulations that hinder efforts to redress regional disparities in access to telecommunications services in Canada, such as disparities between Indigenous communities and the rest of Canada when it comes to accessing high-speed internet services, can also disproportionately affect Charter-protected groups under s.15.
>
> c. Thirdly, persons living with disabilities may also be impacted in unintended but foreseeable ways by orders and regulations issued under Bill C-26. For example, measures that slow the availability of secure network services may slow or impede secure access to assistive technologies enabled by connected homes or communities. As another example, orders or regulations that mandate the deployment of certain cybersecurity measures could bind companies to cybersecurity tools that are not accessible. While physical environments are more traditionally integrated into accessibility and inclusivity frameworks, cybersecurity tools often assume "that users are fully abled (e.g. can see the CAPTCHA), cognitively unimpaired (e.g. can create and retain passwords), have the necessary resources (e.g. time, appropriate technology and internet access in a distraction-free environment), and have the required dexterity to interact with the security system (e.g. can use the mouse and keyboard with ease)."
>
> Fourthly, network insecurity and privacy risks also expose certain groups to heightened threats. Civil society, including dissidents, journalists, opposition politicians, lawyers, and family members are routinely exposed to targeted threats, hacks, and digital espionage. If governments and regulators fail to address persistent vulnerabilities in our network services—including the widespread abuse of telecommunications networks described in "Finding You"—certain groups (including communities protected by section 15) may be disproportionately left in harm's way. As an alternative hypothetical, cybersecurity measures mandated through orders or regulations could lead to the unintended creation of new or worsening security flaws. Dr. Parsons provides the example that "in the process of prohibiting an upgrade, known-good security patches, hardware upgrades, or service offerings in the same update package might also be blocked."

● (2020)

> 13. Ultimately, these tensions highlight the overarching importance of inclusivity in setting security standards, and the corresponding importance of regulating telecommunications in a transparent and accountable way that enables the government's cybersecurity approach—

Mr. Taylor Bachrach: Chair, I have a point of order.

The Chair: Sorry, Mr. Strahl; I have a point of order from Mr. Bachrach.

Mr. Taylor Bachrach: I'm really struggling, Mr. Chair, to follow what my colleague Mr. Strahl is talking about.

I'm looking at clause 124 in Bill C-33, which we're debating tonight. It reads:

> If Bill C-26, introduced in the 1st session of the 44th Parliament and entitled An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Acts, receives royal assent, then, on the first day on which both section 18 of that Act and section 123 of this Act are in force, subsection 2(3) of the Transportation Appeal Tribunal of Canada Act is replaced by the following:

Mr. Damien Kurek: I have a point of order.

Mr. Taylor Bachrach: It seems to me—

The Chair: You can't have a point of order during a point of order. He's in the middle of explaining his point of order, Mr. Kurek.

Mr. Taylor Bachrach: I'm helping your filibuster.

Mr. Damien Kurek: This would seem like it's debate. I would love to hear Mr. Bachrach's interjection, but—

Mr. Taylor Bachrach: I'm just trying to give my colleague Mr. Strahl a chance to take a breath and take a drink of water.

This is actually a serious point of order, because—

Mr. Jeremy Patzer: He has to go to the bathroom.

Mr. Taylor Bachrach: I know. Is he off camera at least? I won't go further down that line of thought—but I digress, Mr. Chair.

Clause 124 just references clause 18 of Bill C-26. I was looking for Clause 18 on my phone, but I'm struggling to make a connection between....

I'm worried you're not going to be able to rule on my point of order, Mr. Chair, if you're not listening. I demand your attention.

An hon. member: Maybe you should challenge him, Taylor.

Mr. Taylor Bachrach: No, but on a serious note, it refers to clause 18 of Bill C-26. I don't think it's in order to refer to the entirety of Bill C-26, but rather only to the portion that is referenced in the clause we're currently debating, which is clause 124. I'm wondering if the clerk or one of the legislative personnel or our witnesses could help me determine—

Mr. Mark Strahl: You can't do this on a point of order, Mr. Chair.

Mr. Damien Kurek: This is venturing into debate, I would fear. I look forward to hearing Mr. Bachrach's points, but he's on the speakers list.

Mr. Taylor Bachrach: No, no. The point of order is around relevance. In explaining my point of order, I believe that the reference would only be relevant if it deals with clause 18. Perhaps it's partly a question to the legislative clerk as to the extent of relevance. If a clause references a specific section of an act, is it therefore relevant to refer to other parts of that act?

I'm listening carefully to Mr. Strahl's contribution, and it seems to me that he's reading at length—

Mr. Damien Kurek: I had six hours of subject matter on Bill C-234.

Mr. Taylor Bachrach: I know. Bear with me.

It seems like he's reading references to the act that don't pertain to clause 18.

Man, it's hard for me to maintain my train of thought here.

I'm quite fixated on clause18 of Bill C-26. I wonder if the witnesses could help us understand what is in clause 18 so that the chair may determine whether what Mr. Strahl is contributing is relevant to that clause, seeing that Bill C-26 is referenced in clause 124 in Bill C-33.

An hon. member: Why don't we read Bill C-26 into the record?

● (2025)

The Chair: Thank you, Mr. Bachrach.

Mr. Taylor Bachrach: I wanted to read clause 18 into the record, but I can't find it.

Mr. Damien Kurek: If you get the floor, you can do that.

Mr. Taylor Bachrach: It's my point of order on relevance. I'm waiting for the chair to rule on relevance.

The Chair: I will turn it over very briefly to the witnesses so that I can get an answer to that question before I rule.

I will turn it over to you, Ms. Heft.

Ms. Rachel Heft: Thank you.

Clause 18 of Bill C-26 is a provision that ensures that the Transportation Appeal Tribunal of Canada has jurisdiction to review administrative monetary penalty issues or notices of violation that are issued under the critical cyber systems protection act.

When you can issue an administrative monetary penalty under that act, we have to ensure that when that is issued to a transportation undertaking, the proper tribunal has jurisdiction. That's what clause 18 does.

Mr. Taylor Bachrach: Mr. Chair, on my point of order, I would be happy to discuss and debate that aspect of clause 124, but it feels like the debate we're currently having does not relate to clause 18. Clause 18 is the only section of Bill C-26 that is referenced in clause 124.

I want to bring it back to the core. This is a very important clause and obviously worthy of detailed debate. I'm hoping you can encourage Mr. Strahl to come back to this very important clause, clause 18, which deals with administrative monetary penalties.

The Chair: Thank you, Mr. Bachrach.

I will do just that. I will kindly ask Mr. Strahl to try to keep his remarks, which have been quite informative, to the topic at hand and make reference to clause 124, which we are indeed discussing. I will remind Mr. Strahl of that and turn the floor back over to him.

Mr. Mark Strahl: Thank you, Mr. Chair.

I think this is important. Again, the title in Bill C-33 says “Coordinating Amendment”, and then the subtitle is “Bill C-26”. If Bill C-26, which was introduced in the first session of the 44th Parliament and is entitled “An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments other Acts”, receives royal assent, that is what I am talking about. The title does not say, “if clause 18 of that act receives royal assent”, but it talks about the bill, and clause 18 cannot be considered in isolation from the rest of the bill.

I'm sorry. Perhaps, Mr. Bachrach, when he gets the floor in a more extended way, can indicate why he thinks we should focus solely on a certain section. It's very clear in my reading of Bill C-33 that we are discussing whether or not we believe there should be coordinating amendments with a piece of legislation, Bill C-26, which, as the witness just said, is about cybersecurity. Clause 18 is about cybersecurity and it's about how we deal with threats to cybersecurity in the transportation space.

I've highlighted numerous briefings that referenced the transportation sector as being one of the key sectors that are impacted by Bill C-26. Certainly, I don't think we can consider one section of a bill. It's not a private member's bill that amends one section of a bill that we're considering here; this is the entire bill, as is said in the title, “Bill C-26”. If Bill C-26 receives royal assent, then these following issues happen.

I'm expressing, and putting on the record, some very serious concerns about Bill C-26. I remain hopeful as I continue to read these things from people who are very concerned about things like the implications on the rights of Canadians under the charter.

I know Mr. Bachrach is a fan of the charter. Certainly he would want to ensure, in any clause he voted on, that the concerns of individuals who spend their lifetimes defending charter rights are considered. He would want to have knowledge of the impact that this bill, which is referenced directly—the entire bill, not just one section, but the entire bill—could have on the charter rights of Canadians.

I will continue to talk about Bill C-26 in its entirety, because that is a piece of legislation that includes the relevant section that he's talking about. It's not a stand-alone clause that has been introduced by the government. This does not specifically indicate that if clause 18 remains unamended or if it's taken on its own, it could receive royal assent. It talks about Bill C-26 receiving royal assent.

I appreciate the latitude given to members of Parliament to raise their concerns and to share the concerns of Canadians when we're considering a piece of legislation as important as Bill C-33, which cross-references specifically, purposely, Bill C-26, which is also currently before the House.

I appreciate the spirit in which Mr. Bachrach's comments were made. However, I simply don't believe that you can consider clause 18 in isolation when considering Bill C-26. We would do Bill C-26 and what it means to Canadians a disservice if we simply talked about clause 18. I will get to that part when we break down the detailed analysis of the clause, but this is the information that I believe is relevant when considering whether or not we can support clause 124.

● (2030)

I will continue, because I know that it would be extremely out of order to rule that we weren't allowed to talk about a bill in our deliberations here that is specifically referenced by title in the first part of this clause,.

I will hopefully not omit any of the information that I had here. If so, I apologize to Citizen Lab for not getting all of their words in there.

I'll start back again at the text under Freedom of Expression and Section 2(b) of the Charter", which states that:

> 14. The current draft of Bill C-26's excessive secrecy and confidentiality provisions jeopardizes the right to freedom of expression under section 2(b) of the Charter. The government's Charter statement focuses on the speech of the commercial entities who will be directly regulated under Bill C-26. The Charter statement posits that because restrictions on commercial speech do not tend to implicate the core values of section 2(b), restrictions can be more easily justified. However, this analysis fails to account for how individuals' Charter rights may be impeded under the current drafting of the legislation. The excessive secrecy and confidentiality provisions in the bill also restrict the public's and media's expressive freedom in Canada.
>
> 15. The principles of open courts and open government are derivative components of section 2(b) of the Charter (the freedom of expression). The open court principle requires that court proceedings, including judicial reviews in federal court, presumptively be open and accessible to the public and to the media. Access to information about government actions can also arise as a derivative right to section 2(b), if a denial of access to government information effectively precludes meaningful public discussion on a matter of public interest. Where restrictions on access substantially impede meaningful discussion and criticism about matters of public interest, the government must reasonably justify its infringement of the freedom of expression.
>
> 16. Telecommunications and cybersecurity law and policy is undoubtedly a matter of public interest. There is a close nexus between human rights and public policy concerning the regulation of telecommunication services. Canada's telecommunications policy is intimately linked with the "social and economic fabric" of Canada and its regions. Equitable access to telecommunication services is sometimes described as a mechanism for "digital self-determination", which speaks to the need to protect the potential for human flourishing in the digital era.
>
> 17. The recent Citizen Lab report, "Finding You", highlights several ways in which excessive secrecy surrounding telecommunications oversight has itself endangered the public. The authors note historical deficiencies in oversight and accountability of network security, which have led to geolocation-related threats associated with contemporary networks. Excessive secrecy has contributed to the persistence of the "low-hanging geolocation threat" identified in "Finding You":
>
> Decades of poor accountability and transparency have contributed to the current environment where extensive geolocation surveillance attacks are not reported. This status quo has effectively created a thriving geolocation surveillance market while also ensuring that some telecommunications providers have benefitted from turning a blind eye to the availability of their network interconnections to the surveillance industry.
>
> 18. The geolocation surveillance threats discussed in "Finding You" disproportionately jeopardize human rights defenders and other individuals who face heightened risks of targeted security threats (e.g. corporate executives, military personnel, politicians and their staff, senior bureaucrats, etc). Industry has historically charged large amounts of money to receive information about well-known industry threats, with the effect of impeding non-industry groups such as security researchers and civil society from obtaining and disseminating information about the nature of the threats faced by at-risk individuals, or from advocating for the remedies that would benefit the security and privacy of civil society. The authors note that, in many instances, individuals cannot determine whether their own telecommunication provider has "deployed and configured security firewalls to ensure that signalling messages associated with geolocation attacks, identity attacks or other malicious activity are not directed towards their phones."

● (2035)

> 19. Citizen Lab's research highlights the substantial public interest—

The Chair: I'm sorry, Mr. Strahl. I have a point of order from Mr. Bachrach.

Mr. Taylor Bachrach: My apologies, Mr. Strahl. I am going to ask the chair to rule on the relevance of your intervention, mostly because I feel like we've lost the room and people are no longer hanging on your every word, important as the text is that you're reading from—

Mr. Damien Kurek: On a point of order—

Mr. Taylor Bachrach: —may be.

Further to my previous point that I don't feel this really speaks to clause 124, I'm going to ask the chair to rule on my point of order on relevance.

Mr. Damien Kurek: On the point of order, Chair—

The Chair: Go ahead, Mr. Kurek.

Mr. Damien Kurek: Thank you, Chair.

Whether or not people are paying attention, I certainly have been riveted by the information that Mr. Strahl has been sharing, and I think he outlined very specifically after the previous intervention how this does in fact have relevance.

Of note, it was not Conservatives who wrote this bill: It was the government. It is a fact that the principles of relevance speak to some latitude that can be given, but I would suggest that is not even necessary in this case, because Mr. Strahl has been very articulately bringing forward a series of points that had been presented related to a bill that Bill C-33 refers to in its widespread application.

Chair, I would urge that this is not only relevant but very prescient of the larger conversation that we have here before us.

● (2040)

The Chair: Thank you, Mr. Kurek.

Thank you for that point of order, Mr. Bachrach.

I see no reason to stop Mr. Strahl mid-discussion. He is addressing an aspect that is included in this bill and is bringing up a concern that he feels is legitimate, so I will give him the floor.

Mr. Taylor Bachrach: It pains me greatly to do this, because I have such deep respect for you as a chair, but I'm going to have to challenge that ruling, because I really feel that we've strayed from the topic at hand and I would love to talk about clause 124 and these administrative monetary penalties under the Canada Transportation Act—

Mr. Mark Strahl: Mr. Chair—

Mr. Taylor Bachrach: —the Critical Cyber Systems Protection Act, the International Bridges and Tunnels Act, the Canada Marine Act, the Motor Vehicle Safety Act, the Canadian Navigable Waters Act, the Marine Liability Act and the Transportation of Dangerous Goods Act.

Mr. Damien Kurek: On a point of order—

Mr. Mark Strahl: —on that point, I don't think, Mr. Chair—

Mr. Taylor Bachrach: It's not debatable.

Mr. Damien Kurek: But had the chair ruled?

The Chair: I did. I ruled that he had the right to continue speaking, and I was overruled.

Mr. Taylor Bachrach: I've been debating my own challenge—

Mr. Mark Strahl: You can rule on whether I get to continue to speak? You can overrule the chair on that?

Mr. Taylor Bachrach: Yes.

Mr. Damien Kurek: I think you have to have the floor to do that.

Mr. Mark Strahl: I don't think so.

The Chair: I ask for your indulgence, colleagues, while I confer with the clerks.

Mr. Bachrach, with regard to that, unfortunately, what has been explained to me by the clerks is that challenging the chair on this would essentially equate to your putting forward a motion to impede another member from being able to speak.

There's a direct way of doing things and an indirect way of doing—

Mr. Taylor Bachrach: That's certainly not my intention.

The Chair: I didn't think it was, but that would be the conclusion. That would be the result of allowing you to challenge the chair on this.

Mr. Taylor Bachrach: It would be result of challenging the ruling on relevance?

The Chair: Yes.

Mr. Taylor Bachrach: Oh.

The Chair: That's unfortunate.

I will turn the floor back over.... Well, fortunately, you were overruled. I will turn the floor back over to Mr. Strahl, whom I look forward to, once again—

Mr. Taylor Bachrach: May I get clarity so that I don't make this same grievous error in the future? Can the chair's ruling on relevance not be challenged?

The Chair: The chair can rule that a member is out of order because there's no relevance. However, for a chair to say that they are allowing a member, because it is relevant, to be challenged gives the power to the committee to put forward a motion—a quasi-motion, if you will—to deny another member's right to speak.

Mr. Taylor Bachrach: You are saying that we can challenge a ruling, but it de facto prevents Mr. Strahl from speaking further.

The Chair: Yes.

Mr. Taylor Bachrach: It's just sounding very attractive.

Some hon. members: Oh, oh!

Mr. Jeremy Patzer: You can't move a motion on a point of order.

The Chair: It's not a motion, but the result of it would be the same as if you put forward a motion to adjourn debate or stop Mr. Strahl from speaking, which we're not allowed to do.

● (2045)

Mr. Taylor Bachrach: You're not allowed to do that. Okay. Well....

The Chair: I've already ruled that what he is saying is linked to this piece of legislation.

Unfortunately, from what I've gathered from the clerk, you cannot challenge that, because by challenging it, if it were to win, the committee would be denying this member the right to speak, which is something that only the chair has the power to do if the chair decides that what he is saying is not relevant to the topic at hand.

Mr. Taylor Bachrach: I'm just a little bit unclear on that, Mr. Chair.

We can put forward a motion that a member be heard, but we can't put forward a motion that a member not be heard. It seems asymmetrical.

The Chair: According to the clerk, motions have to be worded in the affirmative, which currently is not the case.

Does that clarify things for you?

Mr. Jeremy Patzer: We can't move a motion on a point of order.

Mr. Taylor Bachrach: Could we adjourn debate on clause 124?

Mr. Jeremy Patzer: You should figure this out so that we can stop wasting our time.

Mr. Damien Kurek: When you get the floor, you can.

Mr. Taylor Bachrach: Okay, I just wanted clarity. I was surprised by the inability to challenge the chair's ruling on certain things.

The Chair: Thank you, Mr. Bachrach.

I'll turn the floor back over to you, Mr. Strahl.

Mr. Mark Strahl: Thank you very much, Mr. Chair.

Of course, I believe it's quite fortunate that the rights of members to speak are being upheld in this case by the chair and by the clerks. I certainly understand, as has been said, that I'm no longer capturing Mr. Bachrach's attention or offering him something that he feels is compelling, but it's not really my job to keep him entertained. My job is to speak to the bill.

As you said, there is a direct link, whether or not the government now regrets putting it in there, because we're now talking about it. Maybe they hoped that this would be breezed past or that Bill C-26 would be considered irrelevant, even though it's the title of the clause we are debating and even though it specifically refers to what will happen if Bill C-26 receives royal assent.

To somehow believe that it's irrelevant to be talking about a bill that is specifically named and specifically referred to as having an impact on this piece of legislation is truly unfortunate. I appreciate the chair recognizing the relevance of the discussion, despite the fact that Mr. Bachrach and some others clearly might not enjoy the conversation. I don't operate for Mr. Bachrach's enjoyment, entertainment, captivation or any of the other things he's talked about. I will continue to read from the relevant information about the relevant—

Mr. Taylor Bachrach: Mr. Chair, on a point of order, I feel that Mr. Strahl is misrepresenting my remarks.

I did not indicate that he was not entertaining me. I did not indicate that what he was saying was not important. I indicated that it was difficult to follow the relevance and that it was difficult to hear.

I appreciate that Mr. Strahl isn't in the room with us, but it was difficult to hear his presentation, because people in the room were talking about other things, like the Christmas party and the different things that are happening that are perhaps of greater interest to people.

That was my main contention and why I felt as though it was no longer relevant to what we were talking about. It was not meant as a critique of his entertainment value or of the importance of what he was reading. I will listen on with great interest.

The Chair: Thank you for the clarification on that, Mr. Bachrach.

I will try to do my part as chair to keep the chatter down in this room to ensure that members are able to speak and that we can hear them, even if they're joining us virtually.

Mr. Strahl, the floor is yours.

Mr. Mark Strahl: Thank you, Mr. Chair.

If there is a technical issue in the room—if the volume is not being brought up to the appropriate level—I would certainly hope the chair and others would correct that matter with IT staff, who are very capable. I know they do a great job of ensuring that members can be heard and that members who are speaking are—

[*Translation*]

Mr. Xavier Barsalou-Duval: I have a point of order, Mr. Chair.

[*English*]

The Chair: I'm sorry, Mr. Strahl. I have a point of order from Mr. Barsalou-Duval.

[*Translation*]

Mr. Barsalou-Duval, the floor is yours.

● (2050)

Mr. Xavier Barsalou-Duval: Thank you, Mr. Chair.

It has been an hour now, if not more, that Mr. Strahl has been reading the documents he considers to be related to the bill, although we all have our own opinion on that. For the committee's benefit, could the member tell us how long he intends to read the documents, so we know whether the other committee members will also have an opportunity to speak before the end of the meeting? I think that would be useful for everyone.

The Chair: Thank you, Mr. Barsalou-Duval.

[*English*]

The list right now is Mr. Badawey, Mr. Kurek, Dr. Lewis, Mr. Muys, Mr. Lewis and Mr. Bachrach.

I'm sure the members would like to know whether....

Oh, I also have Mr. Patzer, who just indicated to me once again that he wants to speak.

Mr. Jeremy Patzer: Yes, I did—about three hours ago, actually.

The Chair: Thank you very much for reminding me.

I guess the question is a relevant one for Mr. Strahl, so members are aware of when they can expect to have the floor—if at all.

Mr. Strahl.

Mr. Mark Strahl: I am just getting started, Mr. Chair.

I will read this document to the end. Then I will probably have some other briefs that are very important and give some great insight into Bill C-26, which is extremely relevant. I will speak until I believe my point has been made. Evidently, I still have some work to do to convince some members of the committee that we should be concerned about this bill and its link to Bill C-33.

I'll continue reading this document until it ends. At the end of every brief that I submit to the committee and read into the record, I kind of take stock then and determine whether I believe the point has been received or whether there is further relevant information.

I'm sorry, but I can't give a more specific answer. I know we're eight minutes away from Mr. Iacono's next break. I will continue reading this particular document, because I know many of my colleagues are interested in my picking that back up.

The next section of this brief talks about privacy impacts and section 8 of the charter.

> 20. Bill C-26 proposes several new information collection and sharing powers, and may include the collection or sharing of personal information. Many of these powers are insufficiently bounded or defined. The potential privacy risks posed by the powers are heightened by the absence of key accountability and oversight mechanisms. The breadth of the unsupervised information collection and sharing powers heightens the risk that the legislation, if passed as drafted, could unreasonably interfere with section 8 of the Charter in at least three [or] four ways.
>
> 21. First, the federal government's Charter statement posits that Bill C-26 does not interfere with section 8, in part, as a result of the fact that the "the information being gathered and shared in this context relates to the technical operations of TSPs, which are commercial entities", as opposed to "personal biographical information that attracts a heightened privacy interest". However, Bill C-26 does not explicitly draw this distinction between technical information or other forms of personal information when defining collection or information sharing powers in the bill.
>
> 22. Instead, Bill C-26 provides authority to compel a broad array of information-holders to disclose a broad array of information. While the Charter statement for Bill C-26 emphasizes the regulatory nature of the scheme in Bill C-26, unlike other statutory inspection powers that have been subject to Charter challenges historically, there is no reason to interpret the statutory powers in Bill C-26 as applying only to information in which there is a low expectation of privacy. Rather, section 15.4 would provide authority to compel "any person" to provide "any information" under "any conditions that the Minister may specify," so long as the Minister believes it is relevant to its order making powers. The persons and entities subject to this provision in many circumstances play an integral role in the lives of people in Canada, and may well be information-holders in respect of highly sensitive or personal information.
>
> 23. Second, while some aspects of Bill C-26 are regulatory in nature, Bill C-26 also creates criminal offences punishable by imprisonment for non-compliance with specified orders or regulations. Statutory powers authorize collecting and sharing information for the purposes of "verifying compliance or preventing non-compliance" with those orders or regulations. The legislation therefore creates risks that information will be compelled or shared during investigations pertaining to the criminal offences created by Bill C-26, or other offences. Furthermore, the breadth of the order making powers under Bill C-26 mean that the collection of information for the purposes of making such orders may cause serious consequences that are separate and apart from any regulatory or criminal prosecution.

● (2055)

> 24. Third, section 8 also protects privacy by requiring adequate accountability and review mechanisms to accompany information collection powers, even in administrative or regulatory contexts. The Supreme Court states that "[w]hile less exacting review may be sufficient in a regulatory context, the availability and adequacy of review is nonetheless relevant to reasonableness under s. 8." Canadian constitutional law has long recognized that without clearly defined safeguards (often including prior judicial oversight), legislation that authorizes intrusions on reasonably held expectations of privacy is inconsistent with s. 8 of the Charter. In some circumstances involving searches that are not subject to warrant requirements, the Court still expects that additional safeguards will be established to ensure the requisite level of transparency and accountability, and to help ensure that such powers are not abused. For example, requiring notice to the persons whose information is affected allows the affected individuals to identify and challenge invasions of their privacy, as well as seek a meaningful remedy. Appellate courts have recognized a range of accountability measures when assessing the reasonableness of search and seizure powers, such as: notice requirements (including after-the-fact notice); reporting obligations (to independent institutions or Parliament); the availability of clear mechanisms for review of the exercise of collection powers; clear rules limiting collection powers to what is necessary, reasonable, and proportionate; and record-keeping requirements.
>
> 25. Part 3 of this brief will identify several mechanisms that are necessary to improve accountability surrounding the proposed powers in Bill C-26. For example, the draft legislation proposes broad information sharing powers with no notice requirements. This would mean that individuals and organizations whose information has been collected would have no way of knowing of the fact that information has been shared, thus thwarting review and challenge. Individuals who have private information held by, and collected from, third-party organizations would also not be aware that their information has been collected in the first place, let alone shared with other government entities.
>
> 26. Fourth, the extensive confidentiality provisions in Bill C-26 may actually further undermine accountability mechanisms surrounding the bill's proposed information collection powers in ways that would be difficult to reasonably justify under s. 8. Section 15.4 of the proposed Telecommunications Act authorizes the Minister to require "any person" to provide "any information" under "any conditions that the Minister may specify." These conditions would foreseeably include conditions to extend confidentiality obligations to the Minister's use of collection powers. The secrecy provisions in Bill C-26, and the authority to extend those secrecy obligations through further "conditions", could effectively chill or silence individuals or entities from notifying other persons that their personal information has been collected, or from challenging the exercise of government power. Furthermore, excessive secrecy surrounding existing—

● (2100)

The Chair: Mr. Strahl, I don't want you to go on to "furthermore" just yet.

As I promised some members, we will break now. It's 9 p.m. We will ensure everybody has a 10-minute break for the benefit of all members, as well as our witnesses.

This meeting stands suspended for 10 minutes.

● (2100)

_____(Pause)_____

● (2110)

The Chair: I call this meeting back to order.

I will turn the floor over, once again, to our esteemed member of the committee, Mr. Strahl.

Mr. Mark Strahl: Thank you, Mr. Chair.

Thank you for giving me a reference point to begin my comments again, which start with:

> Furthermore, excessive secrecy surrounding existing orders or regulations would further undermine accountability, as courts or oversight bodies wouldn't be able to assess whether collection or sharing of information was reasonably necessary and proportionate in furtherance of those secret orders or regulations. In short, it is unclear how the proposed confidentiality and secrecy provisions align with the need for accountability measures to ensure there is not an inappropriate intrusion into s. 8 Charter rights.
>
> 27. The Charter statement notes various information sharing agreements that are contained in the legislation. However, there are broad information sharing powers in Bill C-26 that are not subject to any information sharing agreements, or limitations on how the information may be used once shared. Furthermore, the majority of the Supreme Court has previously noted (in the context of other information disclosure powers accompanying supervised warrant provisions in the Criminal Code), that information sharing agreements are not "a panacea", given that there is "always a risk that a foreign law enforcement agency may misuse the information disclosed."
>
> Part 3. Towards More Secure, Transparent, Accountable Governments and Telecommunications Networks in Bill C-26
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> 28. This Part 3 summarizes recommendations identified in Cybersecurity Will Not Thrive in Darkness, as well as supplementary comments and recommendations flowing from the Charter analysis set out in Part 2. The report, including its specific textual recommendations, is enclosed as Appendix B. Where recommendations are identified in this brief for the first time, they are numbered with letters (i.e., Recommendation 1A) to maintain the original numbering of the report.

Here are some recommendations:

I. Limiting powers to order modifications to organizations' technical or business activities

29. To include appropriate safeguards surrounding compulsion powers under Bill C-26, Cybersecurity Will Not Thrive in Darkness makes the following recommendations:

a. Recommendation 1: Orders in Council and Ministerial Orders Must be Necessary, Proportionate, and Reasonable. Currently, the legislation allows the government to issue an order when necessary to secure the Canadian telecommunications system. However, necessity is an insufficient curb on the government's power; Bill C-26 should impose more conditions regarding the specific circumstances under which the government can exercise its power.

b. Recommendation 2: Orders Should Include a Reference to Timelines. The draft legislation should be amended to include a requirement that telecommunications providers must implement cybersecurity demands or orders within a reasonable period of time in situations where compliance with a demand or order would require significant or material changes to the recipients' business or technical operations.

c. Recommendation 3: Government Should Undertake Impact Assessments Prior to Issuing Orders. Government assessments of its orders should identify secondary- or tertiary impacts that would have the effect of worsening an organization's cybersecurity practices or stance. These assessments should be presented to telecommunications providers along with any demands or orders or regulations that are based upon these assessments. Such assessments should be included in any and all proportionality analyses of government demands or orders.

d. Recommendation 4: Forbearance or Cost/Cost-Minus Clauses Should Be Inserted. The government may issue a direction that could severely alter how a telecommunications provider is able to offer a service to customers. The legislation should be amended such that telecommunications providers can seek forbearance of certain orders where implementing them would have a material impact on the providers' economic viability. Alternatively, if an order or regulation would have a deleterious effect on a telecommunications provider's economic viability and the government demands that the order be fulfilled regardless, the provider should be compensated on either a cost or cost-minus basis.

● (2115)

e. Recommendation 5: The Standards That Can Be Imposed Must Be Defined. Without a clear definition of what a "standard" in the draft legislation entails, it becomes difficult to assess what kinds of standards the government is seeking to implement and whether it is adopting them safely. The legislation should be amended such that it is clear what kinds of standards are within and outside of the scope of the legislation. The evidence and analysis in Finding You underscore that urgent action is needed to establish mandatory security and privacy standards for telecommunications providers to require security postures that address the vulnerabilities in signalling protocols that enable mobile geolocation surveillance threats.It should also be made explicit that an order or regulation compelling the adoption of particular standards cannot be used to deliberately or incidentally compromise the confidentiality, integrity, or availability of a telecommunications facility, telecommunications service, or transmission facility. The intent of this recommendation is to prevent the government from ordering or demanding that telecommunications service providers deploy or enable lawful access-related capabilities or powers in the service of "securing" infrastructure by way of adopting a standard.

II. Secrecy and Absence of Transparency or Accountability Provisions

30. As noted above, Bill C-26 has "extensive and overly onerous secrecy and confidentiality requirements." Laws that impose meaningful limits on the freedom of expression must be balanced and reasonably justified. While some confidentiality will be appropriate to ensure that unresolved security vulnerabilities are effectively brought into control, certain powers in Bill C-26 go further than what is required to accomplish cybersecurity and national security objectives. Furthermore, certain powers proposed are unaccompanied by reasonably available measures to protect the public's interest in access to information concerning an important area of government action. In light of identified deficits concerning excessive secrecy or the absence of accountability provisions, we reiterate the following recommendations from Cybersecurity Will Not Thrive in Darkness:

a. Recommendation 6: Orders Should Appear in The Canadian Gazette. In Bill C-26, orders are required to be published in the Canadian Gazette, but the Minister has the authority to "direct otherwise in the order." As such, "the result is that the government might issue orders that never appear in the Canadian Gazette, and there is no requirement for the order to ever be published in a complete and non-redacted format." The potential effect could unjustifiably restrict meaningful public debate on a matter of public importance and, as a consequence, the freedom of expression. The legislation should be amended such that orders must be published within 180 days of issuing them or within 90 days of an order being implemented, based on whichever condition is met first. The legislation should also expressly define circumstances that justify secrecy.

b. Recommendation 7: The Minister Should Be Compelled To Table Reports Pertaining to Orders and Regulations. To better safeguard the public interest, privacy, and the freedom of expression, the legislation should further be amended such that the Minister of Industry is required to annually table a listing of:

the number of orders and regulations that have been issued

the kinds of orders or regulations that have been issued

the number of telecommunications providers that have received the orders

the number of telecommunications providers that have partially complied with the orders

the number of telecommunications providers that have completely complied with the orders

a narrative discussion of the necessity, proportionality, reasonableness, and utility of the order-making power

● (2120)

c. Recommendation 8: Non-Disclosure Orders Should Be Time Limited. Bill C-26 also proposes gag provisions with respect to Orders in Council or Ministerial Orders, which are not limited either temporally (i.e., how long is secrecy necessary?) or substantively (i.e., what circumstances justify secrecy?). As noted at paragraph 15, non-disclosure orders affect not only the recipient of the gag order, but, also, the public's right to information that informs democratic debate. The legislation should be amended to include time constraints surrounding non-disclosure orders.

d. Recommendation 8A: The Circumstances Purporting to Justify Confidentiality in a Non-Disclosure Order Should Be Defined In The Legislation.

e. Recommendation 9: The CRTC Should Indicate When Orders Override Parts of CRTC Decisions. The legislation should be amended to, at a minimum, require that the CRTC post a public notice attached to any of its decisions where there is a contradiction between its decision and an Order in Council or Ministerial Order or regulation that has prevailed over part of a CRTC decision.

f. Recommendation 10: An Annual Report Should Include the Number of Times Government Orders or Regulations Prevail Over CRTC Decisions. The legislation should be amended to require the government to annually disclose the number of times it has issued orders or regulations that prevailed in the case of an inconsistency between a given order or regulation and a CRTC decision, as well as denote which CRTC decision(s) were affected.

g. Recommendation 11: All Regulations Under the Telecommunications Act Should Be Accessible to The Standing Joint Committee for the Scrutiny of Regulations. The legislation should be amended such that the Standing Joint Committee for the Scrutiny of Regulations is able to obtain, assess, and render a public verdict on any regulations that are promulgated under the proposed draft reforms to the Telecommunications Act, as well as on regulations pertaining to the Telecommunications Act and that are modified pursuant to s. 18 of the Statutory Instruments Act.

III. Deficient Judicial Review Process

31. Bill C-26 contemplates that telecommunication providers may initiate judicial review proceedings in respect of orders or regulations issued under the proposed legislation. In pages 22-24 of his report, Dr. Parson identified problems that would arise if Bill C-26 is passed without amending section 15.9. As drafted, section 15.9 would permit a series of mandatory limits on open court principles, which would prevent judges from exercising judicial discretion in balancing the need for secrecy or confidentiality with the public's interest in disclosure. As noted at paragraph 15 in this submission, the Charter protects open court principles that apply in the context of judicial review, including Charter protections for the freedom of expression.

32. Cybersecurity Will Not Thrive in Darkness recommends (Recommendation 12) that Bill C-26 should explicitly enable appointment of amicus curiae or a special advocate during judicial review. The legislation should be amended such that, at the Court's pleasure, amicus curiae or a special advocate can be appointed to contest and respond to information provided by the government in support of an Order in Council, Ministerial Order, or regulation under s. 15.8 in when evidence is sufficiently sensitive to bar a telecommunications provider's counsel from hearing it.

33. We also recommend:

a. Recommendation 12A: Section 15.9 Should Be Amended To Ensure The Judge Retains Authority To Balance The Public Interest In Disclosure Against The Interest In Confidentiality: In general, mandatory limits on open courts (which prevent the judge from balancing the public interests at stake), are generally viewed as excessive infringements on section 2(b) rights. For example, even in analogous provisions of the Canada Evidence Act (permitting secrecy in judicial proceedings for matters injurious to international relations, national defence or national security or endanger the safety of any person), the judge retains the authority to determine that "the public interest in disclosure outweighs in importance the public interest in non-disclosure". The same safety valve should be incorporated into section 15.9 of Bill C-26, in order to ensure that any limits to openness minimally impair freedom of expression.

● (2125)

b. Recommendation 12B: Where Summaries Are Provided Of Evidence And Information Received By The Court, Pursuant To Section 15.9(1)(C), These Summaries Must Also Be Available To The "Applicant and the Public". As noted at paragraph 15, the open court principle protects the public's and the media's interest in the openness of court proceedings. Practically speaking, the public's right of access to judicial summaries of this nature is typically accomplished by marking such summaries as an exhibit to the proceedings. The public's right of access to exhibits is a corollary of the open court principle.

c. Recommendation 12C: The Triggering Threshold Justifying Limits On The Openness Of The Proceedings Should Not Be Higher Than That Which Is Already Contained Under Analogous Provisions Of The Canada Evidence Act. In that regard, we recommend mirroring the language from the Canada Evidence Act through the following amendment:

Section 15.9(1)(a) "…if, in the judge's opinion, the disclosure of the evidence or other information would [changed from "could"] be injurious to international relations, national defence or national security or endanger the safety of any person".

IV. Extensive Information Sharing Within and Beyond Canadian Agencies

34. Bill C-26 proposes to create broad information sharing powers within and beyond Canadian government agencies, without accompanying those powers with necessary limits, oversight, or accountability mechanisms. As noted at paragraph 24, the absence of reasonable procedural safeguards to review government powers that infringe upon privacy interests can render legislation invalid under section 8 of the Charter. To impose more appropriate guardrails on the proposed powers to share information within and beyond Canadian agencies, Recommendations 13-20 of Cybersecurity Will Not Thrive in Darkness are the following:

a. Recommendations 13 and 14: Relief Should Be Available If Government Mishandles Confidential, Personal, or De-Identified Information. The legislation should be amended to enable individuals and telecommunications providers to seek relief should the government or a party to whom the government has disclosed confidential, personal, or de-identified information loses control of that information, where that loss of control has material consequences for the individual, or for a telecommunication provider's business or technical operations.

b. Recommendation 15: Government Should Notify Telecommunications Providers How It Will Use Collected Information, and Which Domestic Agencies Information Will Receive The Information.

c. Recommendation 16: Information Obtained from Telecommunications Providers Should Only be Used by Government Agencies for Cybersecurity and Information Assurance Activities. Information should not be used for the purposes of signal intelligence and foreign intelligence activities, cross-department assistance unrelated to cyber-security, or active or defensive cyber operations. These restrictions should apply to all agencies.

d. Recommendations 17 and 18: Data Retention Periods Should Be Attached to Telecommunications Providers' Data and to Foreign Disclosures of Information. The legislation should be amended to highlight that confidential information will be retained only for as long as necessary to make, amend, or revoke an order under section 15.1 or 15.2 or a regulation under paragraph 15.8(1)(a), or to verify the compliance or prevent non-compliance with such an order or regulation. Similarly, an amendment should also require that the government attach data retention and deletion clauses in agreements or memoranda of understanding that are entered into with foreign agencies. Retention periods should be communicated to the affected telecommunications providers.

● (2130)

e. Recommendation 19: Telecommunications Providers Should Be Explicitly Informed Which Foreign Parties Receive Their Information. Given that foreign parties can use information to launch investigations and bring non-penal charges against providers, the government should provide some notice when telecommunications providers' information is being, or has been, shared for cybersecurity purposes.

f. Recommendation 20: Legislation Should Delimit the Conditions Wherein a Private Organization's Information Can Be Disclosed. As drafted, section 15.7(1) appears to set an excessively low threshold for disclosing information, and could enable significant sharing of private, if not confidential, information, to address unspecified threats that are not set out in the legislation. Proposed textual amendments are found on page 30 of Cybersecurity Cannot Thrive in the Darkness (Appendix A to this brief).

V. Costs Associated with Security Compliance

35. As noted above, imposing substantial costs of compliance on telecommunications providers may have the potential to impact upon the accessibility of telecommunication services, the digital divide, and Charter-protected rights or interests. To address concerns surrounding the costs associated with security compliance, Cybersecurity Will Not Thrive in Darkness makes the following recommendations:

a. Recommendation 21: Compensation Should Be Included for Smaller Organizations. There should be a mechanism whereby smaller telecommunications providers (e.g., those with fewer than 250,000 or 500,000 subscribers or customers) that have historically been conscientious in their security arrangements can seek at least some temporary relief if they are required to undertake new, modify existing, or cease ongoing business or organizational practices as a result of a government demand or order or regulation. Such relief may be for only a portion of the costs incurred and, thus, constitute a "cost-minus" expense formula.

b. Recommendation 22: Proportionality and Equity Assessments Should Be Included in Orders or Regulations. The results of these assessments should be taken into consideration by the government prior to issuing an order or regulation, should be provided to telecommunications providers alongside associated orders or regulations, and should be included in any evidentiary packages that may be used should a telecommunications provider seek a judicial review of any given order or regulation.

c. Recommendation 23: Government Should Encourage Cybersecurity Training. The government should commit to enhancing scholarships, grants, or other incentives to encourage individuals in Canada to pursue professional cybersecurity training.

VI. Vague Drafting Language

36. The last set of recommendations pertain to ambiguities in Bill C-26. Notably, Bill C-26 does not specify the kinds of security threats that might be addressed by orders or regulations; fails to define key concepts like “interference”, “manipulation”, and “disruption”; provides the Minister with unnecessarily open-ended powers; and lacks clear guidelines as to how personally identifiable information that is obtained from telecommunications providers is to be treated. As a result, Cybersecurity Will Not Thrive in Darkness makes the following recommendations:

a. Recommendation 24: Clarity Should Exist Across Legislation. The government should clarify how the envisioned threats under the draft legislation (“including against the threat of interference, manipulation or disruption”) compare to the specific acts denoted in s. 27(2) of the CSE Act (“mischief, unauthorized use or disruption”), with the goal of explaining whether the reformed Telecommunications Act would expand, contract, or address the same classes of acts as considered in the CSE Act.

b. Recommendation 25: Explicit Definitions for “Interference,” “Manipulation,” and “Disruption” Should Be Included in the Legislation or Else Publicly Promulgated.

c. Recommendations 26 and 27: Ministerial Flexibility Should Be Delimited (i.e., remove open-ended language around powers such as “among other things”). In the event that a corresponding amendment is needed for Ministerial powers constrained to emergency circumstances, those powers should be subject to judicial review in Federal Court, including assessment for necessity, reasonableness, and proportionality. Decisions emergent from review should be published by the Federal Court.

● (2135)

d. Recommendation 28: The Legislation Should Make Clear That Personal Information and De-identified Information is Classified as Confidential Information. As noted above, the federal government's Charter statement appears to conclude that it is not the intent of Bill C-26 to authorize the collection and sharing of personal information. If that is the case, the legislation should expressly say so. Alternatively, personal and de-identified information should be treated as confidential.

e. Recommendation 28A: Individuals Should Be Explicitly Informed If Their Information Has Been Collected Or Shared. If the federal government does not expressly state that personal and de-identified information should not be included in collection and sharing powers, it should ensure that notice obligations are extended to individuals whose information is impacted by the collection and sharing powers under Bill C-26.

f. Recommendation 29: Prior Judicial Approval Should Be Required for the Government to Obtain Personal or De-identified Information from a Telecommunications Provider. The information is further to be used exclusively for the purposes of making, amending, or revoking an order under s. 15.1 or 15.2 or a regulation under paragraph 15.8(1)(a), or of verifying compliance or preventing noncompliance with such an order or regulation.

g. Recommendation 30: The Government Cannot Disclose Personal or De-identified Information to Foreign Organizations.

Part 4. Concluding Remarks

37. We urge this Committee to take seriously the recommendations that were identified in Cybersecurity Will Not Thrive In Darkness. We note that most of these recommendations have been either reiterated or expanded upon by the Joint Submission to this committee submitted by civil society organizations and individuals. In detailing these recommendations for this Committee's study, we also urge the Committee to consider the additional Charter interests that are engaged by Bill C-26, including equality, non-discrimination, freedom of expression, and privacy, as described in Part 2 of this Brief. We echo Dr. Parsons' view that “cybersecurity efforts through Bill C-26 should seek to build trust between the government and non-government entities, including the general public,” and that independent bodies (including the Privacy Commissioner of Canada, National Security and Intelligence Committee of Parliamentarians, or National Security and Intelligence Review Agency) should be integrated into the government's assessments of the necessity, proportionality, and reasonableness of Orders in Council, Ministerial Orders, or regulations.

38. Citizen Lab's recent report, Finding You (enclosed as Appendix C), documents continuing vulnerabilities at the heart of the world's mobile communications networks. The report's findings underscore that cybersecurity has not thrived in darkness. Historical and continuing deficiencies in oversight, transparency, and accountability of network security have led to serious geolocation-related threats associated with contemporary networks. The report notes that the “failure of effective regulation, accountability, and transparency has been a boon for network-based geolocation surveillance.”

39. While Canada needs to move forward in combating threats to its telecommunications and critical infrastructure, it should not do so at the expense of democratic norms and safeguards, public transparency and accountability, or respect for the Charter and human rights. Rather, a human security and human rights approach to cybersecurity requires the recognition of the importance of accessible and inclusive cybersecurity, public accountability, and public transparency when regulating telecommunications and cybersecurity.

The rest of it is just a bit of a biography of the individuals who were involved in putting that together.

● (2140)

I think I've given you a fairly comprehensive.... It's a lot for the committee to think about when we want to go back to clause 124, which deals specifically with Bill C-26.

I certainly recognize that there are some who didn't want to have this conversation, but I think this provision, with Bill C-26 being such a key part of this clause.... We need to consider whether or not we should support a clause that contains linkage to a bill that clearly has so many glaring errors. So many critical civil society organizations have come forward and said this is something we need to amend. We need to make changes, because there are significant concerns about the impact on privacy, data sharing and government reporting when they collect information from individuals or other entities. I believe we should give strong consideration to voting against this particular clause. The information I provided should formulate part of that discussion, but I know other members have some concerns they want to share with the committee.

Therefore, Mr. Chair, I will turn the floor over to the next speaker. However, while I still have the floor, I would indicate that I would like you to put me at the end of the speaker list, as well. I'd like to hear what my colleagues have to say, and then have the opportunity to follow up. Could you add me to the list and perhaps give us all a reminder, as I turn the floor over, what that list looks like, to make sure I have a place at the end of it?

Thank you, Mr. Chair.

● (2145)

The Chair: Thank you, Mr. Strahl.

The list, as it stands right now, is Mr. Badawey, Mr. Kurek, Dr. Lewis, Mr. Muys, Mr. Lewis, Mr. Bachrach and Mr. Patzer.

Oh, Mr. Lewis is no longer here.

Mr. Mark Strahl: We can add Mr. Strahl at the end of that.

The Chair: Yes.

With that, I will turn the floor over to Mr. Badawey.

Mr. Taylor Bachrach: Mr. Chair, I have a point of order.

I'm wondering if you might consider rationing time, given the length of the speakers list and the fact that, as of now, we only have an hour and 45 minutes. There are breaks built into that. I'm worried we're not going to hear from every member on the list.

In the interest of sharing time equitably among speakers, could we discuss rationing the time?

The Chair: Unfortunately, Mr. Bachrach, that is inadmissible.

I look to Mr. Badawey for the following remarks.

The floor is yours, sir.

Mr. Vance Badawey: Thank you, Mr. Chairman.

Thank you to Mr. Strahl for the opportunity, after his riveting two-hour intervention. With that, I have to say, Mr. Chair, that we will be supporting clause 124.

However, I'm sort of perplexed over the process right now, all of a sudden, when we're down to our last three or four clauses to pass, including the amendments attached. I say “perplexed” simply because we went through clause-by-clause on clauses 1 to 124 out of, I believe, about 126 clauses, not including the schedule, short title, title, the bill as amended, and reporting the bill to the House. The last very important motion would be on whether or not we would order a reprint. I'm sure that will be a two-hour discussion as well.

With that all said, I'm perplexed because, Mr. Chair, we've had a great deal of discussion and debate on all of the clauses. That discussion was very important, because those clauses included amendments. That brings me to my point. If there was such a concern with what the process included.... I have to give a lot of credit to both the NDP and the Bloc, who brought many amendments forward. The Conservatives brought a few forward as well.

I'm perplexed Mr. Chair, because if there's concern, then why, for clauses before 123 and 124—which we're speaking about right now and we're going into clause 125, on which I'm sure we're going to have another two-hour discussion—were no amendments brought forward by the Conservatives? You would think there would be something on clauses 1 to 124. The concerns brought forward are valid. I respect that. Amendments that I would only assume were put forward to deal with those concerns were voted on, after debate. We have been moving forward in a very expeditious manner, only to now come to the last two or three clauses. Of course, we've been discussing those last two or three clauses for the past four meetings.

Mr. Chair, I'm actually a bit confused. I've been here for eight years.

Mr. Chair, again, I can't understand Mr. Strahl and members of the Conservative Party. To expedite this bill—as we have done with other bills in the past—if in fact there are concerns and thoughts given to the different clauses, I would actually recommend that we not spend two hours reading a document that's been around for quite some time. Let's get some work done by bringing some amendments forward and polishing up some of the clauses that in fact some of the members might have a concern with.

Thank you, Mr. Chair.

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

I know Mr. Kurek has been waiting patiently. Therefore, it is a pleasure for me to turn the floor over to him.

Mr. Kurek, the floor is yours.

● (2150)

Mr. Damien Kurek: Thank you very much, Chair.

I appreciate the remarks that my colleague Mr. Strahl made, especially in light of the interconnectedness of Bill C-33 and Bill C-26 and how, in light of those connections, it becomes incredibly relevant.

To address a few of Mr. Badawey's previous points, I find it perplexing myself how the Liberals seem to have this tendency to find concern with anyone who is unable to buy what they're selling hook, line and sinker.

Certainly when I hear from constituents, which I do on a very regular basis, they encourage me to do everything I can to ensure I am being their voice in the nation's capital. When it comes to some of the legislation that may not always garner the headlines it deserves—and certainly Mr. Strahl mentioned it in the brief he presented before this committee—I think it is important for Canadians to know how, with the discussions we have, whether before the transport committee or the various other duties that all of us undertake on a regular basis in the nation's capital, there are important connections that do in fact take place.

Just to note, if you would permit me, Mr. Chair, I endeavoured to have a discussion—and I even had an object lesson—on 2019 rural Alberta special areas wheat. I looked forward to discussing that in the context of Bill C-234. Now, I wouldn't want to be off topic from the conversation around the bill we have before us today, but certainly I would express my disappointment that we didn't have the opportunity to discuss that common-sense Conservative bill that would have brought needed relief to families and support to our great farmers from coast to coast.

I want to ensure that I stick to the conversation we have before us when it comes to the way that the bill this committee is studying and the impact that some of the.... As Mr. Strahl stated, when you have a bill that references a previously passed bill, one of the concerns that were highlighted—and certainly it's not limited to this one—is that when briefs are submitted, sometimes they don't get the due opportunity to be engaged in. The fact that Bill C-26 is currently being studied at committee, I think, speaks to this interconnectedness. I know that Conservatives have endeavoured to—

[*Translation*]

Mr. Xavier Barsalou-Duval: I have a point of order, Mr. Chair.

The Chair: Mr. Barsalou-Duval, you have the floor.

Mr. Xavier Barsalou-Duval: We are seeing some things on the monitor, on the back of what may be the computer, the Surface device or the tablet belonging to the Conservative member who had the floor just now, that refer to the Conservative Party. Would these things not be regarded as partisan signage?

I would like to know your opinion on that, Mr. Chair, to know how it should be handled in the committee.

Thank you, Mr. Chair.

The Chair: Thank you, Mr. Barsalou-Duval.

I think Mr. Kurek has just covered up the things in question. No, in fact, it is still visible.

[*English*]

Mr. Damien Kurek: Thank you, Chair.

If the camera points back, I do in fact have a sticker. I know specifically that the member for Kingston and the Islands as well as a number of other members of the House of Commons seem to put stickers all over the sides of their laptops and iPads and whatnot that reference different messages. Certainly I would hope they would indulge me, but if it bothers my colleague—

The Chair: Mr. Kurek, unfortunately, I will have to ask you to cover that.

Mr. Damien Kurek: I have done so. It's now out of the line of the camera.

However, there is another sticker there that speaks to Noah's law, which I'd be happy to discuss. It certainly is not partisan in nature, but I know it would be somewhat off topic that—

● (2155)

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

[*English*]

The Chair: The clerks are asking for the symbols to be removed. Perhaps you can put your name tag in front.

This is a rule that applies to all members in all committees.

Mr. Damien Kurek: Thanks very much, Chair. I believe now if you look at it....

I find it fascinating, especially the fact that—

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

The Chair: The floor is yours, Mr. Iacono.

Mr. Angelo Iacono: Could we focus on Bill C-33? I don't understand how the member's comments relate to it. He is going around in circles and we are wasting time.

The Chair: Thank you, Mr. Iacono.

[*English*]

I would ask the member to address his comments in relation to the law at hand.

Mr. Kurek, the floor is yours.

Mr. Damien Kurek: I do find it interesting sometimes when there are interventions and points of order—we see this in the House on a regular basis—on the idea of talking in circles and some spurious suggestions about subject matter and whatnot.

I am happy to address—

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

The Chair: The floor is yours, Mr. Iacono.

Mr. Angelo Iacono: I don't think Canadians want to hear the member going around in circles.

[*English*]

He's talking in circles.

[*Translation*]

Canadians want substance. I invite the member to stick to the bill, or else we will continue to interrupt. What he is telling us has no connection with the bill under consideration. I would therefore ask him to focus strictly on this bill.

The Chair: Thank you, Mr. Iacono.

[*English*]

The floor is yours, Mr. Kurek.

Please do keep your remarks addressed toward the bill we are discussing.

Mr. Damien Kurek: Absolutely, Mr. Chair.

I find it fascinating how when one endeavours to bring points, someone will point out stickers on their laptops. I would encourage that member in particular to speak to his colleagues who do put stickers on their laptops, even in the House of Commons, because—

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

[*English*]

An hon. member: He has red paint on the wall behind him. I think that's—

[*Translation*]

The Chair: Mr. Iacono, you have the floor.

Mr. Angelo Iacono: I don't have any stickers, so I don't have to worry about that.

It is important that we be a bit serious about our work tonight. I hope the member knows that Canadians are watching us and are going to see what he and his colleagues are bringing to this debate.

At 10:00 tonight, I am not interested in hearing him advise me to start looking at the sticker situation and to speak to my colleagues about it. I do not think I have any lessons to learn from him or anyone else.

We are here to debate a bill, so I would like us to focus on that and stop going around in circles. I can go around in circles too, you know. I have all night. I can start playing games like my colleagues want to play games.

The Chair: Thank you, Mr. Iacono.

[*English*]

Mr. Kurek, I believe the issue in relation to the logos and stickers on your computer has been dealt with. We thank you kindly for that.

I would ask you to begin your discussion with regard to the bill and the matter at hand.

Mr. Damien Kurek: Thank you very much, Chair.

It's interesting that the member says to keep it serious. I would suggest that when he shut down my earlier conversation about Bill C-234 and the impact that has on my constituents, that was of the utmost seriousness. That member refused to allow that discussion to take place, about the impact that has on my constituents. He should look in the mirror if he thinks it is simply a joke that there are farmers going bankrupt in my constituency and across Canada because of the imposition of that party's carbon tax upon Canadians.

When it comes to the issue at hand and specifically how Bill C-26 has a clear relevance in relation to the—

● (2200)

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

The Chair: Mr. Iacono, the floor is yours.

[*English*]

Mr. Angelo Iacono: I'd like that member to look at himself in the mirror and to realize what he did on the weekend, with all those votes that they opposed, which could have helped Canadians in many different ways. If anybody should be embarrassed, it should be him.

The Chair: Thank you, Mr. Iacono. I think that's debate. Thank you very much.

I'll turn it back over to you, Mr. Kurek.

Mr. Damien Kurek: Certainly, it's not only Conservatives who don't have confidence in those Liberals, but also an increasing number of Canadians who don't have confidence in the Liberals' ability to manage the country. I hear that on a regular basis. Again, if that member wants to be serious, I'm happy to have that conversation.

When it comes to Bill C-26, I'm glad to have the opportunity, after that member's push towards talking in circles, to get back to the matter at hand.

I have an article from the business law section of the American Bar Association that I think bears particular relevance to the conversation we are having. Chair, if you would indulge me, I believe it has context that is important to the discussions we are having. In particular, I find it interesting—and I'll jump into this article in a moment—how this provides important context.

The way the Liberals wrote the legislation does provide a great deal of latitude. There are two separate bills before Parliament, and certainly, they're taking great liberties when it comes to the assumption that things will pass, especially in a minority Parliament. That issue aside, the way the legislation was written, in particular, speaks to the larger conversation and especially to how it's different committees that study different aspects of these bills.

With Bill C-26, there was certainly some concern brought forward. I am a regular member of the ethics committee. There are some challenges in relation to this, and Mr. Strahl, in some of his interventions, referenced this. There are some specific noteworthy impacts. When it comes to the critical infrastructure being addressed in the context of Bill C-33, and the way the Liberals have taken liberty in writing the bill, which has a wide swath of expectations through to another bill, it certainly creates that context as to why this is so relevant.

This article that I will be referencing, Chair, and that I look forward to making part of this discussion, talks about the critical cyber systems protection act. It goes as follows:

> The CCSPA introduces a new cybersecurity compliance regime for designated operators of critical cyber systems related to vital services and systems ("Designated Operators"). A critical cyber system is defined as a cyber system that, if its confidentiality, integrity, or availability were compromised, could affect the continuity or security of a vital service or system. Currently, the list of vital services and systems is comprised of the Canadian telecommunications system, the banking systems, and other federally regulated industries, such as energy and transportation. However, the Governor-in-Council may add new vital services and systems, and such Designated Operators will be governed by the CCSPA.

I would just take a brief pause there. I think the introductory paragraph of this article, which I am entering into the conversation, speaks to that direct relevance to the larger conversation related to Bill C-33.

The article goes on to say:

> Under the CCSPA, Designated Operators must:
>
> establish a cybersecurity program (details of which are more fully provided in the CCSPA and its regulations) within ninety days of an order being made by the Governor-in-Council;
>
> implement and maintain a cybersecurity program, as well as annually review it;
>
> mitigate cybersecurity threats arising from their supply chains, or products and services offered by third parties;
>
> share their cybersecurity programs and notify appropriate regulators (namely, the Superintendent of Financial Institutions, the Minister of Industry, the Bank of Canada, the Canadian Nuclear Safety Commission, the Canadian Energy Regulator, and the Minister of Transportation) (the "Appropriate Regulators") of material changes related to the business of Designated Operators and their cybersecurity programs—

● (2205)

[*Translation*]

Mr. Xavier Barsalou-Duval: I have a point of order, Mr. Chair.

The Chair: The floor is yours, Mr. Barsalou-Duval.

Mr. Xavier Barsalou-Duval: I am having trouble connecting what my colleague is saying with Bill C-33. Would it be possible for my colleague to enlighten us about the connection between the two, or else to shorten his preamble, in the interests of the efficiency of the committee?

The Chair: Thank you, Mr. Barsalou-Duval.

You may continue, Mr. Kurek.

[*English*]

Mr. Damien Kurek: Thank you, Chair.

I'm happy to address the point of order that was just raised. You know, it was not Conservatives who wrote this bill. When the Liberals did so, they did it with a reference to Bill C-26. If that member has concerns about the wider application of this bill, I would suggest he has an opportunity to get on the speaking list to ask those very questions. When it comes to the way in which there is that cross-application, certainly it bears relevance to it. Because of the way it was written, it provides that very application.

I will continue with regard to Bill C-26, Mr. Chair, as follows:

> report cybersecurity incidents to the Canadian Security Establishment (the "CSE");
>
> comply with and maintain the confidentiality of directions from the Governor-in-Council; and
>
> keep records related to the above.
>
> To enforce these new obligations, the CCSPA grants to the Appropriate Regulators investigatory, auditing, and order-making powers, including issuing administrative monetary penalties ("AMPs") of up to $1 million per day for individuals (such as directors and officers), and $15 million per day for other persons. Additionally, Designated Operators, and their directors and officers, may also be fined—or imprisoned if a director or officer—if either contravene specific provisions of the CCSPA; the amount of a fine is at the discretion of the federal court.

Now, that's the critical cyber systems protection act, but this article goes on to reference, in its summary of Bill C-26, the Telecommunications Act amendments. I found it very valuable in terms of that conversation and how, of course, when we talk about the application to Bill C-33, there is a tremendous amount of overlap when it comes to telecommunications and the critical infrastructure that our country depends on.

It goes on to say the following:

> The amendments to the Telecommunications Act (the "Amendments") establish new order-making powers for the Governor-in-Council and the Minister of Industry (the "Minister") to direct Telcos to take specific actions to secure the Canadian telecommunications system. Specifically, the Governor-in-Council may, by order,
>
> prohibit a Telco from using all the products and services offered by a specified person; and
>
> direct a Telco to remove all products provided by a specified person.
>
> The Minister, after consultation with the Minister of Public Safety and Emergency Preparedness, may, by order,
>
> prohibit a Telco from providing services to a specified person; and
>
> direct a Telco to suspend any service to a specified person.
>
> Additionally, the Amendments grant the Minister the power to direct Telcos to do anything or refrain from doing anything that is, in the Minister's opinion, necessary to secure the Canadian telecommunications system, including the following:

It then includes a number of points there.

I would just note and make the connection to some of the evidence that Mr. Strahl brought into the conversation, and some of the briefs entered into the committee, in the context of some of the concerns, especially from civil liberty and privacy groups. I know that there's been a host of experts. Again, as a member of the ethics committee, which deals with privacy, I know there's been a host of concerns brought forward. We have a great deal of them, especially because of the tech industry that has found its home both in my province of Alberta, where there's a huge boom in the high-tech sector, and in other areas across the country. In fact, I stand to be corrected here, but I believe the Ottawa area was known as "Silicon Valley north" at one point in time.

There's certainly the privacy and also the security related to that. There's a specific tension there. Some of the evidence that Mr. Strahl read into the record I think bears specific relevance to this larger conversation and how that applies to the transportation infrastructure of our nation.

● (2210)

The summary goes on to talk about Bill C-26, and it includes a number of summaries here that really succinctly identify some of what Bill C-26 talks about.

It starts off by saying:

> prohibiting Telcos from using any specified product in or in relation to Telcos' network or facilities, or part thereof;
>
> prohibiting Telcos from entering service agreements for any product or service;
>
> requiring Telcos to terminate a service agreement;
>
> prohibiting the upgrade of any specified product or service; and
>
> subjecting the Telcos' procurement plans to a review process.

Mr. Chair, it goes on to say:

> Interestingly, Telcos will not be compensated for any financial losses resulting from these orders.

As was noted, I believe, in the debate surrounding Bill C-26, they wouldn't anticipate there to be a large number, unless it started getting into the firms.... That's certainly an open question that I trust will be answered as Bill C-26 is further studied at their committee, but I wouldn't want to venture off the topic that we have before us.

It goes on to say:

> The Amendments introduce new enforcement powers for the Minister of Industry to monitor the Telcos' compliance with the orders or future regulations, including investigatory powers and issuing AMPs of up to $25,000–$50,000 per day for individuals (such as directors and officers), and up to $10–$15 million per day for other persons. Moreover, contravention of orders or regulations may result in prosecution whereby the Telcos, and their directors and officers, may have to pay fines (whose amount is at the discretion of the court) or face imprisonment.

The Chair: I'm sorry, Mr. Kurek. I apologize for cutting you off.

I want to make sure that the raised hand that Dr. Lewis has is not a point of order and that she does not have any technical issues that need to be addressed.

Ms. Leslyn Lewis: No, it's not a point of order.

I guess I could take it down now, since my name is on the list. Is that correct?

The Chair: It is. You are next, Dr. Lewis.

Ms. Leslyn Lewis: I thought you said that we should keep it up, just in case. That's why I still have it up.

The Chair: No. I saw that your camera was off. I thought that perhaps you were trying to get my attention for an audiovisual issue, but everything seems fine.

Ms. Leslyn Lewis: Okay. Thank you.

The Chair: Thank you, Dr. Lewis.

I'll turn it back over to you, Mr. Kurek.

Mr. Damien Kurek: Thank you very much, Chair. I certainly look forward to hearing what Dr. Lewis has to say about this. I know she has a great familiarity with this subject matter.

Chair, perhaps I could continue, because I do want to ensure that this is added to the record. I just mentioned how telcos will not be compensated, and I believe I provided a brief interjection about some of the commentary that has been provided at other committees in relation to compensation for financial losses.

Certainly, in the highly regulated telecom environment that Canada finds itself in, that would be a massive conversation that we could have at some point, but that would be venturing into the territory of not being relevant, so I wouldn't want to go there.

I will, however, continue with this summary, which talks about how:

> The Amendments introduce new enforcement powers for the Minister of Industry to monitor the Telcos' compliance with the orders or future regulations, including investigatory powers and issuing AMPs of up to $25,000...per day for individuals (such as directors and officers)....

Chair, that summary relates to a significant ability and discretion, and this summarizes from a legal perspective some of the commentary that was in the brief Mr. Strahl provided. I want to ensure this is part of the record, because they're endeavouring not to take a specific position but rather to ensure theirs is non-partisan. As hard as that is for certain members of the committee to believe, if they have seen my debates in the House, it's important and valuable that such a perspective be included.

It then goes on to say, in regard to information sharing and secrecy:

> The CCSPA and the Amendments require Designated Operators, Telcos, and any other person to share confidential information with the Appropriate Regulators, and Governor-in-Council and Minister, respectively, in furtherance of the objectives of the Bill. This confidential information may be shared with multiple federal government organizations, provincial and foreign counterparts, as well as international organizations, to pursue the objectives of the CCSPA and the Amendments. While these information exchanges will be governed by agreements and memorandums of understanding between the parties, the Minister may disclose the information if [it] is necessary in the Minister's opinion to secure the telecom system.
>
> Given the national security purpose underlying this Bill, the secrecy of the orders is paramount. The orders from the Governor-in-Council and Minister may be subject to non-disclosure requirements. Moreover, for the sake of secrecy and expediency, the orders and directions of the Governor-in-Council and Minister do not follow the complete process outlined in the Statutory Instruments Act, and thus, are not registered, published, or debated in an open manner.

Certainly when it comes to that relationship, it's important to acknowledge—I know we've had a number of discussions, including on one of the clauses we passed here when I think there was a desire for further debate, but it ended up being moved forward—that a tremendous amount of latitude is being given to executive government when it comes to some of the powers that are associated with Bill C-26 as it relates to Bill C-33, and one has to be aware of the granting of power to executive government. That is certainly something that Parliament is able to do under our Westminster system.

However, it's important to keep in mind the larger tension that needs to exist to ensure that we do not forget at the very foundation—and this is incredibly relevant, not only to this but to everything we do here—that the government is only a function of Parliament.

I know that's something that can be a bit lost in the midst of conversation. I know that this very statement has even been deemed controversial at different points in time. Earlier this week we celebrated the Statute of Westminster, the point at which we brought home the Constitution, and I would note that it was an incredibly significant moment in Canadian history. That is relevant to the conversation here today, because it's Parliament that enacts laws that give the government its authority.

● (2215)

I would just note how we have seen various instances throughout our recent history—in particular the last eight years—where there has been more latitude given than I would suggest is appropriate. There are times when we could ensure that Parliament is able to better fulfill its job by a government that respects the fact that whether it's committees, or whether it's the role that the House of Commons and the Senate play in terms of our bicameral Parliament in ensuring that it is the ultimate arbiter of the land....

In fact, our Constitution and the Charter of Rights and Freedoms actually ensure that that is, in fact, the case with the notwithstanding clause, which I know the Liberals have.... In fact, I believe it was Paul Martin in a previous election—I was getting back to that. I couldn't even vote at the time, if members around the committee table can believe that. It was Paul Martin who, during a press conference, announced that he was looking at getting rid of that. I'm not sure that he understood the consequences, both in terms of the constitutionality or the amending ability of Parliament to be able to do that.

However, when it comes to the relationship to the issue before us, we have these wide-sweeping powers being given to executive government. If there is not the appropriate accountability, as the American Bar Association, in this article, is highlighting, it would be the.... We need to have clear direction to every element of what government is, to ensure that there is that check on executive government.

I do find it interesting. I'll get right back into the ABA. This article has a number of recommendations. I would just note that there are two quite distinguished lawyers who put together this article, which gives this overview of Bill C-26, and how it applies in the context of where Bill C-33 is.

Specifically, Chair, one can never assume that one will be in power forever, whether that's the Liberal Party or the Conservative Party. If we have the honour—and I certainly hope we do—we look forward to those days when we'll have the opportunity to govern on behalf of Canadians.

However, I find one always needs to look in the mirror. In fact, I've asked in the House quite a number of times about what the government would think, if they were in the opposition benches, about something that they were doing. It would not necessarily be the policy, because policy is one thing. You can disagree with policy. However, you need to be very mindful about how you approach the ability for a parliament to function in a manner that respects the very basis of what our democratic system is meant to be.

Chair, when it comes to the wide-ranging powers that are given to executive government, we do have to be very mindful that there's certainly a role that executive government needs to play in the administration of infrastructure, the administration of security and intelligence, and all of the aspects of what we're talking about here. However, when it comes down to it, Parliament is supreme in our country. We cannot forget that.

To ensure that I don't venture off into an area that would be deemed not relevant, I certainly won't spend time talking about a few examples of that, but there are some very pressing issues—one of which would be the designation of the IRGC as a terrorist entity.

Parliament spoke on that, yet we have an executive government that refuses to acknowledge.... I use that as an emphasis, not to get into the details of that issue, although it's certainly one that dominates a lot of our time in light of the atrocities that took place against Israel, and how Iran, and the IRGC specifically, funded and supports Hamas as a terrorist entity.... The fact that there's that disconnect is the point I'm making here. That speaks very closely to why we need to be very circumspect in the way we approach the role of executive government. There's that understanding. It has to come back to respecting Parliament.

If I had had the opportunity to talk about Bill C-234, I certainly would have, at length, talked about how that bill saw a great deal of support, including Liberal support by a few brave Liberals who were willing to support that bill.

● (2220)

Unfortunately, it was not able to get the support that it, I believe, should have received from the other place. Again, I wouldn't want to go into the area of not being relevant. When it comes to recommendations, I would—

The Chair: Mr. Kurek, I'm just going to cut you off there. I will give you the floor back, but I promised, when I outlined when we would be taking breaks, that we would take a break at approximately this time, so I will—

Mr. Dan Muys: You're six minutes early.

The Chair: I'm six minutes early. I'm getting looks of discontent that I would like to address.

Mr. Dan Muys: I thought that the break was at 10:30.

Mr. Damien Kurek: I can assure you that I won't move a vote or anything if—

The Chair: *No, but I'll ask everybody to please be back here after five minutes, and then we'll have one hour left before we adjourn for quite a long time.*

We'll suspend for five minutes.

● (2220)

_____(Pause)_____

● (2230)

The Chair: I call this meeting back to order.

I turn the floor back over to Mr. Kurek.

Mr. Damien Kurek: Thank you very much, Mr. Chair.

I hope everybody was able to have a good short break. I know that was seven or eight minutes of freedom that people had, but I'm sure they're thrilled to get back to the important conversation that we have here before us.

Mr. Chair, specifically due to the two-hour time change, of course, back in Alberta and the riding I'm proud to represent, I would note that my wife has probably just finished putting my kids to bed. To my boys, I love you guys; hopefully you're listening to your mama as she puts you to bed. I look forward to connecting with my wife post 11:30, after this committee wraps. That's one of the big things, when our families are back home holding down the proverbial fort.

Mr. Chair, I left off talking a bit about the wide-sweeping powers associated with Parliament when we live in a democracy where the idea of parliamentary supremacy is absolutely paramount. I believe I unpacked it adequately in the context and certainly I have a whole host of other things to say about that but wouldn't want to dive too deep into that in the short time that we have here.

However, I want to make sure that I get to the recommendations that this article references in terms of Bill C-26. It goes on to say...and I'll summarize this and then have a few other important interjections that I look forward being able to make.

The article said: “Given that the Bill has just been introduced,”—this article is a bit dated, but nonetheless very relevant—“its passage is not guaranteed, and additional changes to the draft law”—or in the Canadian context, bill—“may occur. However, and in the interim, if you are a provider of vital services”—which speaks to that vital connection that we have with Bill C-33 here before us—“and systems as described in the Bill, we recommend that you consider taking the following steps to improve your cyber resilience:

The first is:

> Preemptively improve your security posture and processes to conform with the CSE’s best practices and guidance, or industry practices, and ensure that your contracts contain sufficient cybersecurity provisions to protect all parties in the supply chain; and

> given the secrecy and potential immediacy of Government orders and directives, Telcos and Designated Operators should draft contracts to flow down potential cyber security risks appropriately.

That's almost unique in terms of some of the recommendations that have been made in the context of this bill. The authors go on to talk about how, if you are a supplier of products and services related to critical systems of designated operators as described in the bill, we recommend that you take the following steps:

> Preemptively improve your security posture and processes as described immediately above in anticipation of more strenuous cybersecurity requirements requested by Designated Operators; and

I'll make a final point on this one, and then I'll look forward to getting into a few other aspects of debate here. The final point is:

> anticipate shouldering more risk when contracting with Designated Operators and consult with your insurance provider accordingly.

A big thank you to Lisa R. Lifshitz—I believe I'm saying that appropriately—and Cameron McMaster, the authors of this. I believe it provides a good summary and a few very relevant recommendations in terms of the context.

I would note here as well, we're talking about critical infrastructure and, I know, specifically some of the larger conversations surrounding Bill C-33. We have the need for resiliency throughout every aspect of that, whether it's in relation to security, which is very important, or some of the challenges associated with climate. There has to be that security that does exist there, and we have to be mindful of that in the larger context of everything that we are discussing and how relevant that is.

On that note, Michael Den Tandt, if I'm correct on this—and I'm certainly happy to stand corrected—in an opinion piece to the Ottawa Citizen, which I believe is relevant especially for the Bill C-26 aspect here.... Michael Den Tandt ran for the Liberal Party in the 2019 election, if memory serves. He entered on December 4, so it seems like it's been more than a couple of weeks. Just last week, a column by him was published in the Ottawa Citizen.

● (2235)

Although it seems as if it's been more than a couple of weeks, he published this column in the Ottawa Citizen last week. I believe it would be very valuable to this conversation.

Den Tandt said the following in his column, “Canadian government must take the time needed to get its cyber security bill right”:

> Bill C-26, the federal government's stab at shoring up the country's cyber readiness, passed first reading in the House of Commons on June 14, 2022. The legislation has two thrusts: first, to keep hardware from adversarial states out of Canada's telecom networks; second, to ensure our critical infrastructure is hardened against a plethora of new digital threats.
>
> Nearly a year later, in late March of 2023, C-26 limped through second reading. The bill now rests with the Standing Committee on Public Safety and National Security, for review and possible amendment.
>
> That this law continues to languish at committee, 16 months after it first saw the light of day, encapsulates one of its core failings which, in fairness, is not unique to this piece of lawmaking: Despite showing signs of having been written in a hurry, presumably in hopes of keeping pace with technological change, it's emerging too slowly.
>
> By the time it passes third reading, then meanders its way through the Senate to Royal Assent, C-26 may well have been overtaken by events. The threats it is intended to counter are multiplying far more quickly than the glacial pace of the legislative process appears able to match.
>
> What are these threats? The latest National Cyber Threat Assessment from the Canadian Centre for Cyber Security encapsulates them in language that, for a government document, is remarkably direct.
>
> Cyber-criminals are rapidly scaling up, evolving ransomware and other attacks into a trans-national enterprise, while state actors—specifically China, Russia, Iran and North Korea—are deploying vast resources to attack and undermine open economies and societies by eroding trust in public institutions and the factual foundation on which their credibility rests. “You may be tempted to stop reading halfway through,” writes CCSE Head Sami Khouri in the foreword, “disconnect all your devices and throw them in the nearest dumpster.”

As a note, Mr. Chair, I had the opportunity to serve on the public safety committee for a short time in the 43rd Parliament. Hearing briefings from experts was eye-opening, to say the least, when we had examples. I believe it was CSIS, in their public report, that said there are 4 billion attempted attacks on Canadian cyber infrastructure in the course of a year. That's absolutely mind-boggling—the growing sophistication of the enemies of freedom and Canada, and the steps they will take to attack us and our infrastructure.

Den Tandt goes on to say the following:

> To counter this, the draft bill offers two pillars: first, a revamp of the Telecommunications Act, giving the federal minister of Innovation, Science and Industry sweeping powers to order companies to ban certain products, clients or service providers, with possible daily penalties of up to $15 million a day if they don't comply; and second, the Critical Cyber Systems Protection Act (CCSPA), which would allow the minister and an appointed official to order cyber measures in federally regulated parts of the private sector considered essential to national security.
>
> These include telecom, energy and power infrastructure such as pipelines, nuclear plants, federally regulated transportation, banking, clearing and settlement.

For all those questioning the relevance of this conversation, Den Tandt himself speaks about how closely connected this is to the conversation surrounding Bill C-33.

> Seen from 10,000 ft. up, the broad scope of the legislation will appear justified to some; after all, don't significant threats justify dramatic action? But there's a difference between action that is on point, and action so riddled with gaps that it'll need a reboot the day it becomes law.
>
> Christopher Parsons, in a dissection for The Citizen Lab, outlines six major concerns, any of which should be grounds for disqualification. These include an excess of arbitrary power, too much secrecy, inadequate controls on information-sharing within government, potentially prohibitive costs for smaller firms (the legislation draws no distinctions based on scale, or industry sector), vague language, and no recognition of Charter or privacy rights.

● (2240)

> Brenda McPhail, in an October, 2022 analysis for the Canadian Civil Liberties Association, echoes many of Parsons’ criticisms, noting wryly that the law joins “an increasingly long line of legislation that would fill a clear need, if only it were better.”
>
> If the goal, broadly, is governance that promotes prosperity, security, accountability, diversity and equity in a democratic society—then C-26, as drafted, should not pass.

> Is legislation urgently needed? Absolutely. But have its drafters gotten it right? No. Given the blitzkrieg pace of growth in cyber threat vectors, it makes sense to continue to manage these threats on an ad hoc basis, as the minister has been doing, with assistance from The Communications Security Establishment (CSE) and the CCCS, and take the time needed to get the legislation right.

Thank you, Chair, for indulging me in that, because it's important context, and I would just note that the specificity of the criticisms that Den Tandt brings forward and the fact that he ran for the Liberal Party a short four years ago speak to two things I'd like to reference. I'm sure there's more, which maybe my colleagues would be interested in following up on, that references indirectly, first, that disconnect that exists between Parliament and executive government.

I would just note—and I know my colleague Mr. Strahl referenced this in a different context a number of times—that we had the conversation surrounding Huawei. Parliament, in fact, spoke up a host of times, telling the government that it needed to act. It wasn't a recommendation. It wasn't a suggestion; it was demanding action, yet we see still, in relation to the security of essential cyber networks in our country, that lack of action. The unwillingness for that action to take place sets Canada back what would be a... The pace that technology advances has set Canada back very significantly.

I know that it is key to ensuring that government is responsive not only to the demands of what Parliament is in terms of institution.... There's no other place in the country—and this is something that I think bears special emphasis—that every part of Canada is truly represented. I find it interesting that there seem to be a plethora of advisory boards and consultations, some of which have more legitimacy than others, but it's truly Parliament that is that voice for Canadians.

I'm always a bit hesitant, and maybe more than just a bit, when an advisory panel is set up. Specifically, I know that there are other bills that are before Parliament that set up some of these advisory panels, and this speaks to the disconnect that exists between Parliament and executive government. They set up these panels that sometimes are so disconnected from those who are impacted, and again, fearing that I would venture into something that would not be relevant, when it comes to critical infrastructure and specifically when you look at rail.... I have three main line rail lines that run through my constituency, and I represent about 53,000 square kilometres of what I refer to as God's country. It is a beautiful area in east central Alberta. It's a large area; in fact, it's about the same size as the province of Nova Scotia, just for context for those around the table.

I always find it very concerning when these advisory panels get set up, and they certainly don't often have the best interests of my constituents in mind, and we saw that and are seeing that played out in the so-called just transition.

● (2245)

Truly, there's no justice for my constituents, including the thousands and thousands who work in the energy industry. We saw that this was very directly the case when it came to the coal phase-out. The federal government promised to be there, and yet they were not. They failed my constituents. They failed the people who were told the federal government would have their backs.

I think that speaks to a disconnect between the role that Parliament should be playing—that ability to represent the people of our country—and the fact that quite often these so-called advisory panels end up being nothing more than a platform for the government to spout its same talking points. That's a deeply, deeply concerning trend that we have. One doesn't have to look any further than the appointments of these so-called independent panels.

Chair, there's a reason I bring this up. There's a specificity in relation to this. If we want to ensure that we are passing legislation, when it comes to Bill C-33 or some of the criticisms we've levelled at Bill C-26 and how the government clearly references both here....

They're expecting both to pass, although Den Tandt certainly has a host of criticisms to level at Bill C-26. I'm hopeful that my colleagues in the public safety committee will be fully engaged when this debate comes forward, but I would suggest that one needs to take very, very seriously the role that we have to play here.

That's part one of the criticisms I would suggest when it comes to where some of these things are. The second part here comes to how, as we develop an infrastructure, we have to take seriously our responsibility to ensure that this is done not only in terms of the demands of today, which is key, but also in building that for tomorrow.

I would actually reference something that I am quite familiar with. There are two industries that I am very, very proud to represent—and a pretty significant portion of it. Had we had the opportunity to debate the motion that I was so unfortunately shut down on, I would have talked at length about the impact agriculture has in the close to 5,000 farms, most of which are family-owned small operations or small businesses, not the big successful ones that the Prime Minister referenced in question period today. I'm not quite sure what metric he uses for that when they're paying the carbon tax, but certainly it's small operations.

We see how there is this demand for that infrastructure to be secure. That includes the cyber element of that. We've seen attacks that have shut down significant portions and left critical infrastructure in our country at risk.

I believe I was in junior high at the time, so this is going back a little while, when a power outage took place in the northwestern United States. It was deemed to be an accident, but it shut down New York City in terms of the power. It shut down a host of other jurisdictions, including some in Quebec and Ontario. It spoke to some of the interconnectedness that existed in our infrastructure.

More recently, a cyber-attack shut down the pipeline system on the eastern seaboard of the United States. Certainly, I mentioned agriculture before, but I also represent another significant portion: 87% of Canada's crude oil transits through Battle River-Crowfoot. Some of it is produced there, but 87% of Canada's crude transits through Battle River-Crowfoot.

When my colleagues wonder why I'm so passionate about our energy industry, it's because I get it. Unfortunately, we seem to have what my father would suggest is “city ignorance”. I won't venture too far down that path, but it's unfortunate that sometimes there's not a better understanding of how important some of this critical infrastructure is. That's not only in terms of our economy and the billions of dollars. In fact, if I look at the community of Hardisty, for those from Hardisty....

Who knows? They might be watching this right now. I know they're passionate about educating Canadians on the importance of energy infrastructure and how it is so unfortunate that—

● (2250)

The Chair: Mr. Kurek.

Mr. Damien Kurek: Yes.

The Chair: I would kindly ask for relevance and what that has to do with clause 124. You've gone a bit off. I'm just going to try to pull you back to ensure that we're addressing clause 124, sir.

Thank you.

Mr. Damien Kurek: Sure. Thanks, Chair.

You're right, I was getting a little bit off topic there.

I'll tell you, it's easy to be passionate about the billions of dollars in economic impact that my people have—the people I'm proud to represent. It's billions of dollars that they have, yet, unfortunately, the Liberals seem to disregard that. They would toss it away for some dream that certainly is more of a dream than any reality, especially when we could be supplying our partners like Ukraine with clean, green Canadian natural resources.

When it comes to Bill C-26 and its relevance here on the Bill C-33 conversation, we have this connection that exists. Why I went down the path of talking about how proud I am of Canada's energy industry is that it's not always recognized how closely connected physical infrastructure and the security associated with that are to the cyber elements of how that works.

I would provide a local example, Chair.

A pipeline company just opened up a new control centre in Hardisty. This example is very relevant to both the physical infrastructure that Bill C-33 represents and the reference that it has to cybersecurity, which is referenced in Bill C-26. There's this close connection that exists. We cannot dismiss that. It goes further when it comes to our rail systems. It's not out of the realm of possibility to see how there's that close connection that exists between the cyber and physical security side of things.

If we don't see Bill C-26 addressing those things appropriately, if it's not responsive to the economic needs, if it doesn't take into account the privacy concerns of Canadians, if it gives too much power to a few individuals in our nation's capital who may not be responsive, or if, likewise, when it comes to Bill C-33 there's not this appropriate delegation of authority that takes into account.... I often refer to the word “tension” or what could be referred to as the Aristotelian mean. We have to find that correct tension or that mean place where we have that balance. I'm fearful that we simply don't get it when it comes to Bill C-26 and some of the elements that we have discussed at length, although most of the clauses have in fact passed.

There's been a change in who is in charge of the public safety file. I won't get into the host of criticisms that have been levelled by Conservatives against the ministers of public safety. They seem to come and go at an alarming rate.

I would, however, like to read from the Canadian Civil Liberties Association when it comes to some of the concerns surrounding Bill C-26. Then I will be happy to cede the floor to my colleagues, who I know have a tremendous amount to add to this conversation as well.

Although this letter is dated September 28, 2022, there's particular relevance to what we're discussing here today. It's written to the former minister and the leaders of the opposition parties, including Ms. May as the parliamentary leader of the Green Party. I think she's now co-leader of the Green Party.

● (2255)

It is titled, “Joint Letter of Concern regarding Bill C-26”, and I'll read it directly into the record, Mr. Chair:

> Dear Minister,
>
> We, the undersigned organizations, are writing to express our serious concerns regarding Bill C-26: An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Acts.
>
> In your press release announcing this legislation, you were quoted as stating “In the 21st century, cyber security is national security.” We agree, and we share your goal of helping both the public and private sector better protect themselves against cyber attacks.

Isn't this very agreeable up until this point?

The Canadian Civil Liberties Association goes on to say:

> However, in its current form, Bill C-26 is deeply problematic and needs fixing.

I would note—because the stickers on my iPad triggered certain members of this committee, I won't show you—that it's actually bolded. Those previous words are bolded because the CCLA wanted to make sure they were emphasized in the context of this conversation.

It says:

> As drafted, it risks undermining our privacy rights, and the principles of accountable governance and judicial due process which are the fabric of Canadian democracy. The legislation needs to be substantively amended to ensure it delivers effective cybersecurity protections while safeguarding these essential democratic principles.
>
> As you know, Bill C-26 grants the government sweeping new powers over vast swathes of the Canadian economy. We believe these powers need to be strictly delimited and accompanied by meaningful safeguards and reporting requirements to ensure Canadians can hold their government and security agencies to account.

Next, this is in bold again, Mr. Chair, and I reference that because it's obvious that the CCLA wanted to ensure that this was emphasized:

> Put simply, with great power must come great accountability.
>
> With a view to improving this legislation, we share with you the following specific areas of concern:

> Opens the door to new surveillance obligations: Bill C-26 empowers the government to secretly order telecom providers "to do anything or refrain from doing anything." This opens the door to imposing surveillance obligations on private companies, and to other risks such as weakened encryption standards—something the public has long rejected as inconsistent with our privacy rights.
>
> Termination of essential services: Under Bill C-26, the government can bar a person or company from being able to receive specific services, and bar any company from offering these services to others, by secret government order. This opens the door to Canadian companies or individuals being cut off from essential services without explanation. Bill C-26 fails to set out any explicit regime, such as an independent regulator with robust powers, for dealing with the collateral impacts of government Security Orders.

It goes on to mention that it:

> Undermines privacy: Bill C-26 empowers the government to collect broad categories of information from designated operators, within any time and subject to any conditions. This may enable the government to obtain identifiable and de-identified personal information and subsequently distribute it to domestic, and perhaps foreign, organizations.

I would just note, Chair, that when it comes to the de-identified side of things, that's often an excuse that gets used. I know from my role on the ethics committee that we had a study that was undertaken when it was learned that the government had purchased a huge amount of data on movements during the COVID-19 pandemic. Although it was claimed to be de-identified, there were massive question marks associated with the amount of data the government received. I know that there was an overwhelming amount of concern that I certainly heard.

A number of people reached out to us when they did not hear back from Liberal members of the committee who didn't echo some of the concerns about how much information was being gathered: things like people knowing that the government could determine when people were going to the grocery store and liquor stores and other things. Certainly, in a free and democratic society, there were concerns about it. It was unclear. Canadians are pretty trusting, but they want to be respected. I talk about that tension or that Aristotelian mean that needs to be found, and I fear that this government has pulled that tension totally out of whack.

However, I digress. I will get back to what the CCLA has to say.

● (2300)

It goes on to say that there are "No guardrails to constrain abuse".

> Bill C-26 lacks mandatory proportionality, privacy, or equity assessments, or other guardrails, to constrain abuse of the new powers it grants the government — powers accompanied by steep fines or even imprisonment for non-compliance. These orders apply both to telecommunications companies, and to a wide range of other federally-regulated companies and agencies designated under the Critical Cyber Systems Protection Act.... Prosecutions can be launched in respect of alleged violations of Security Orders which happened up to three years in the past.

I would just note that in a late show that I was a part of yesterday—and I know that my colleague was actually there, too—I was shocked that the parliamentary secretary from Winnipeg North talked in support of a policy that actually sent farmers to prison. Now, I wouldn't want to go off topic here, so I won't get into the conversation around the Wheat Board, but my goodness, how concerning is it that the government would support policies that threw farmers into prison for wanting to sell their grain without the government controlling it? It is unbelievable that that's the point that these Liberals would go to, and that they still support it even after it was very clear that Canadians and farmers wanted the ability to sell their grain without the government controlling them. Truly it was an unbelievable level of control, which was specifically targeted at the west. It's quite something to have heard, and I'm sure my colleague here would agree with me that it was unbelievable to hear that be brought up in conversation in the House of Commons yesterday, that they would prefer to throw farmers in prison than to have a legitimate conversation around the impacts of, in that case, the carbon tax.

● (2305)

Mr. Angelo Iacono: I have a point of order.

I find what the opposite member is saying very entertaining and very interesting, but there's no relevance.

The Chair: Thank you, Mr. Iacono.

I would have to agree with Mr. Iacono, Mr. Kurek. I'm going to ask you, once again, to keep your comments directed at the issue at hand.

Mr. Damien Kurek: Sure. Thank you, Mr. Chair.

I think it was this Prime Minister who said that there was a whole-of-government approach needed for many subjects, so I find it interesting that these members would prefer to support policies that imprison farmers rather than give them a break.

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

[*English*]

Mr. Damien Kurek: However, I would get back to the Bill C-26 conversation here, and how it is directly—

The Chair: I'm sorry. I have to go to Mr. Iacono again, Mr. Kurek.

[*Translation*]

Mr. Angelo Iacono: Mr. Chair, we have raised a point of order about this, but the member is starting his remarks over again and is being insulting and showing a lack of respect for this committee.

Can you please call him to order, for him to focus on the bill?

The Chair: Thank you, Mr. Iacono.

[*English*]

Mr. Kurek, there are 25 minutes left in the evening. I would encourage you to stick to the matter at hand. Make sure that your remarks are directed at clause 124.

The floor is yours.

Mr. Damien Kurek: Thank you very much, Mr. Chair.

I find it interesting, the things that seem to trigger these Liberals, when it's their policy that triggers them. When it comes to the issue that we have here before us that speaks to the....

Now members from the other side are heckling, supporting.... Maybe they should try running on bringing back the Wheat Board. That would be quite something. That's certainly not what I'm here to talk about. I look forward to being able to continue this conversation around Bill C-33.

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

[*English*]

The Chair: Mr. Iacono, I give the floor to you for a point of order.

[*Translation*]

Mr. Angelo Iacono: Mr. Chair, I said something in English, but the member did not understand. I repeated it to you in French, but he still seems not to have understood. I don't know what other language to speak in. I hope you can make him understand.

The Chair: Thank you, Mr. Iacono.

[*English*]

Once again, Mr. Kurek, I am going to ask you to please direct your comments to the matter at hand, and perhaps do not take any shots at members of the committee or say things that you know will get that kind of reaction.

Thank you, Mr. Kurek.

Mr. Damien Kurek: Thank you, Mr. Chair.

I do find it interesting that.... It seems like when I'm right about to get back into the real meat of the subject matter, that's when members seem to have these spurious interruptions. I would just note, specifically for the member's benefit, that I have great respect for both of Canada's official languages. He is welcome to address me in whichever language, French or English, that he sees fit. I wouldn't want to deny him that ability, although I didn't have the opportunity because I come from a—

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

The Chair: Mr. Iacono, the floor is yours.

Mr. Angelo Iacono: The language I choose to speak is not relevant here. I am grateful that he does not share the opinion of his colleagues who do not agree to our being able to choose the official language we want, for speaking in the House of Commons. However, I would like him to focus on clause 124 instead of making all sorts of other remarks.

You know, I will continue to interrupt until he focuses on the subject. I think we have a half-hour left, but it will be more like an hour if he keeps on like that.

The Chair: Thank you, Mr. Iacono.

[*English*]

Mr. Kurek, I'll turn the floor over to you and I'll encourage you once again to get directly to the comments you want to make relating to clause 124.

Mr. Damien Kurek: Thank you, Chair.

I appreciate what close attention that member is paying to my comments.

When it comes to the—

[*Translation*]

Mr. Angelo Iacono: I have a point of order, Mr. Chair.

The Chair: Mr. Iacono, the floor is yours.

● (2310)

[*English*]

Mr. Angelo Iacono: To the member's concern, I've been paying attention all night to how ridiculous you are in making your comments and just circling and circling and circling around. Just like you have a right to make comments, I am making my comments now, so please do not insult me, because I do love the challenge.

[*Translation*]

The Chair: Thank you, Mr. Iacono.

[*English*]

Mr. Angelo Iacono: I'd like to proceed with the business of the committee so that we can complete this night on a friendly tone. If not, I will continue interrupting.

[*Translation*]

The Chair: Thank you, Mr. Iacono.

[*English*]

Mr. Kurek, go ahead once again.

Mr. Damien Kurek: Thank you, Chair. I appreciate that and certainly when it comes to the respect I have for all members—they're duly elected—I find very curious the tone that this conversation has all of a sudden taken.

When it comes to the very direct relevance, I will quickly finish reading this because I know my colleagues want to have an opportunity to intervene as well. Let me jump back to where I was, Chair, and look forward to the relevance of this to the matter at hand.

The CCLA goes on to say,

> Secrecy undermines accountability and due process: Bill C-26 enables the government to shroud its orders in secrecy, with no mandatory public reporting requirements. While there is an understandable need for some degree of confidentiality in this sphere, the public needs to have a sense of how these powers are being exercised...and to what effect, if decision-makers are to be held to account. Individuals and services collaterally impacted by Bill C-26 must also be given an opportunity to challenge Security Orders.

The next point is “Unknowable orders trump public regulation”.

> Bill C-26 tilts the balance so far towards secrecy, its orders and regulations may take precedence over decisions previously issued by regulatory agencies, risking confusion where such regulatory decisions are public while the Security Orders are not. This threatens the integrity and accessibility of Canada's regulatory frameworks, and renders the security-related rules currently in effect unknowable for members of the public.

They go on to say in the next point, “Secret evidence in Court” that:

> Even if Security Orders are subjected to judicial review, Bill C-26 could restrict applicants' access to evidence. The legislation does not include any consideration of security-cleared advocates to be appointed on applicants' behalf, as happens in other national security cases. While such provisions are an imperfect solution for due process, they do provide at least a minimal level of protection for applicants' rights. C-26 even empowers judges to make rulings based on secret evidence that is not provided, even in summary form, to applicants or their legal team. It also places the onus on the target of Security Orders to bring legal proceedings, with the associated cost burden.

Next is "Power without accountability for the CSE:"

> The CCSPA would let the Communications Security Establishment—Canada's signal intelligence and cybersecurity agency—obtain and analyze security-related data from companies that Canadians entrust with their most sensitive personal information. This would include federally-regulated banks and credit unions, telecommunications and energy providers, and even some transit agencies. The CSE's use of this information is not constrained to the cybersecurity aspect of its mandate, and any uses would be largely subject to after-the-fact review rather than real-time oversight, resulting in a significant deficit in democratic accountability.

Their final point states that there's a lack of justification.

> Although the government claims that such sweeping and secretive new powers are required it has not published any sufficiently comprehensive data establishing the necessity and proportionality of the proposed powers.

They conclude by saying:

> In sum, cybersecurity is important and we need to get it right: All residents of Canada can agree on the need for cybersecurity. However, civil liberties, privacy, and confidence in the rule of law and accountable governance are foundational for that sense of security. It is imperative that in its efforts to deliver strong cybersecurity for people in Canada, the government also ensures accountability and upholds basic rights.

Mr. Vance Badawey: I have a point of order, Chair. I'd like to know what the speakers list is.

The Chair: We have Dr. Lewis next, then Mr. Muys, followed by Mr. Bachrach, followed by Mr. Patzer and then once again Mr. Strahl.

Mr. Kurek, please go ahead.

● (2315)

Mr. Damien Kurek: Thank you very much, Chair. I appreciate that very timely intervention because I am concluding this letter. I would ask to be put back on the list because I'm sure there will be further interventions that are required later.

This provides valuable insight into some of the connections that exist between the bill that we have here before us and another bill that is before the public safety committee, and certainly finding that correct tension that exists to ensure that we can protect physical transportation infrastructure, the critical nature of that in our country, and to ensure that when it comes to this clause.... The connection it has with the cyber element of that is very closely connected.

Chair, I thank you, and I appreciate the committee's indulgence. I know that sometimes debate can be heated.

I would take this opportunity to wish all members a very merry Christmas. I do appreciate the opportunity to engage on such an important issue.

Just to reassure members of the committee of my engagement on the subject, I ensure you that I take my role very seriously as a representative of that swath of east central Alberta of about 110,000 people I have the honour to represent in this place, many of whom, I would note, put their confidence in me and the work that I do here.

I know there is a Christmas greeting coming their way shortly, but I wish a very merry Christmas to everyone else around this table and offer a big thanks to the clerks, the translators and everyone else who enables the work we do here on Parliament Hill, including those who sometimes aren't recognized. I wish them a big thank you for helping make democracy work.

I look forward to hearing what Dr. Lewis has to say.

Again, Chair, just to note, I'd like to be put back at the end of the speaking list.

Thank you.

The Chair: Thank you, Mr. Kurek.

Dr. Lewis, the floor is yours.

Ms. Leslyn Lewis: Thank you, Mr. Kurek. You ended on the exact note that I'm going to start on.

I want to thank my colleagues for highlighting the interconnectedness between Bill C-33 and Bill C-26. My colleagues covered the importance of parliamentary supremacy, checks and balances and the need to keep the executive branch in check. Mr. Kurek ended on the note of the importance of upholding critical infrastructure and ensuring that bills are conducive to that.

I'm quite concerned at this time about this particular bill and how it impacts on infrastructure and cybersecurity. I read a very good article on infrastructure and cybersecurity. It was by Frank Lawrence and Eric Jensen, published in the Fortinet journal.

When I read the article, what was concerning to me was that it revealed that Canada is among those G7 and G20 nations without a firm regulatory framework around cybersecurity. Canada must act to protect the nation's critical infrastructure assets, and the only way to do that is what we're doing here today—

[*Translation*]

Mr. Angelo Iacono: Mr. Chair, I have a point of order.

The Chair: The floor is yours, Mr. Iacono.

Mr. Angelo Iacono: I apologize for interrupting our colleague, but I am having trouble hearing the French interpretation of her remarks. I don't know whether she is wearing her electronic devices properly.

The Chair: Thank you, Mr. Iacono. We will check.

[*English*]

Dr. Lewis, are you wearing the government-issued headset?

Ms. Leslyn Lewis: Yes, I am.

The Chair: Okay, we're getting the thumbs-up from Mr. Iacono.

My apologies, Dr. Lewis. The floor is yours.

Ms. Leslyn Lewis: As I was saying, what is very concerning is that Canada is one of the few G20 nations without a firm regulatory framework around cybersecurity. It's essential at this point, when we're looking at Bill C-33 and Bill C-26, that we keep in mind the need for Canada to act to protect the nation's critical infrastructure and the interconnectedness of these two bills.

We also know that in 2016, member states of the EU passed what was called the most comprehensive cybersecurity bill in the history of the EU. The bill was called the NIS Directive. The EU cybersecurity rules, which were introduced in 2016, were updated and later ratified in 2023. They continue to modernize and create this legal framework, which I think is quite instructive in the Canadian context. It keeps up and it increases the digitization...and the evolving cybersecurity threat, which is something we are attempting to grapple with in the present bills we are contemplating.

Expanding the scope of cybersecurity rules in the new sectors and entities further improves the resilience. We have dealt with resilience in the infrastructure context in this committee. This is also a very important part of what we're talking about in Bill C-33.

We have seen the problems that a huge infrastructure gap can cause, and one of the problems is the ongoing lack of transparency. We have seen, in our situation with the taxpayer-funded Canada Infrastructure Bank, an unacceptable performance over the last seven years. We want to build mechanisms into Bill C-33 to make sure we're not falling into the same traps and shortcomings we've had with other legislation.

Moreover, we have provisions in Bill C-33 that also raise concerns on cybersecurity and response capabilities of the public and private sector entities and competent authorities. In the case that I was discussing before, the EU as a whole can be used as an example of a model that Canada could adopt. When we're contemplating this bill, I think we should look at enabling legislation from different jurisdictions.

We know that most G7 member states are under the umbrella of the EU. The U.S. and the U.K. and Japan have separately implemented cybersecurity regulations to differing degrees, which I think are also instructive in how we confuse Bill C-33 with Bill C-26.

We also have to look at Canadian businesses and how they continue to be impacted by malicious cybersecurity and cyber-activity. This ranges from cyber-attacks to ransomware, and even things that we are exposed to on an everyday basis.

Many of these attacks include those on critical infrastructure. That accounts for nearly half of the attacks, and many of those go unreported.

● (2320)

This is very concerning. The Canadian Centre for Cyber Security has identified attacks on operations networks. They've also identified attacks on how it would impact the physical safety of Canadians. That was published in their biennial publication, the “National Cyber Threat Assessment”.

Now, in this context, when we look at the Ministry of Public Safety, we know that they acted to introduce new legislation, Bill C-26, an act respecting cyber security. I believe it was at the first stage in Parliament sometime in November 2022, and it went through second reading, I think, on March 27, 2023. Bill C-26 currently sits in committee. I believe it's going into law, if it hasn't done so already. When we look at where it is, going through the committee stage, and we look at the fact that Bill C-33 is contemplating sections of this bill, we know that it's very important for us to focus on it, because it may have the capacity of adding teeth to the governance and compliance structure of cybersecurity in Bill C-33.

It's very important that we look at the interconnectedness of these two bills, especially inasmuch as is needed in the area of operational technology where critical infrastructure lies.

Although we don't know how the bill is going to necessarily impact on Bill C-33, between the absence of similar legislation in Canada.... We don't know what the impact is going to be, because this is new. This is untested territory, but we know there is an increasing trend toward increased cybersecurity regulation among our international peers.

Having practised international law for a number of years, I can see the importance of Canadian businesses being prepared. Contemplation of this aspect of the bill and how it will be infused in Bill C-33 is very important at this time.

Canada does not have an overarching governing cybersecurity legislation, let alone require the reporting of vulnerabilities in critical infrastructure breaches, which is extremely problematic. Bill C-26 would empower some regulators to impose fines or issue some summary convictions to ensure governance and compliance. This is something that my colleague, Mr. Kurek, spoke about. It's critical to turn our minds to that, especially as we contemplate this bill.

Now I'll go back to Bill C-26. In its current form it includes four critical infrastructure sections, which I think are related to the transportation aspect of Bill C-33. When we look at the transportation corridors that are contemplated in Bill C-33, we see, in Bill C-26, that it's very important to look at these four critical infrastructure sectors: telecommunications, finance, energy and transportation.

The requirements for organizations in these sections are threefold.

● (2330)

First is to implement, maintain and report on the cybersecurity program, which will essentially address the risks across organizations. It will address the risk in third party services. It will address the risk in supply chain—

The Chair: Accept my sincere apologies, Dr. Lewis. It looks like we've reached our limit for this evening.

I want to take this moment on behalf of the committee to thank our witnesses, who joined us in person and online. Of course, for the extended hours they provided as well, our thanks go to our clerks, our support staff and our interpreters, who also stayed late and gave us seven hours today.

I also want to take a moment, finally, to thank all of the members of this committee for some good work that I think we did this fall session. I look forward to the good work that awaits us in the new year.

With that, this meeting is adjourned.