

THE SPECIAL COMMITTEE ON THE SUBJECT MATTER OF BILL C-36

EVIDENCE

OTTAWA, Monday, October 22, 2001

The Special Committee on the Subject Matter of Bill C-36 met this day at 6:30 p.m. to examine the subject matter of Bill C-36, to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism and explore the protection of human rights and civil liberties in the application of this Act.

Senator Joyce Fairbairn (*Chairman*) in the Chair.

The Chairman: Honourable senators, this is a continuation of our Special Senate Committee on the Subject Matter of Bill C-36, which we have been studying today for the first time beginning this morning, and during the afternoon and this evening. We have with us a special guest, the Honourable Claude Bisson, who is the Commissioner of the Communications Security Establishment, and with him is the commission's secretary, Joanne Weeks.

We are pleased you could come and give us your time this evening. Your evidence will be of great interest to all members of this committee. Many Canadians do not know much about the communications security establishment, and it will be good to hear your views about this bill, Mr. Bisson, and also about the work you do as commissioner.

(French follows -- Mr. Bisson up in French : Je suis ravi de cette occasion...)

(après anglais)

M. Claude Bisson, O.C. commissaire, Bureau du commissaire du Centre de la sécurité des télécommunications: Je suis ravi de cette occasion qui m'est donnée de prendre la parole devant vous ce soir en tant que commissaire du Centre de la sécurité des télécommunications, poste que j'occupe depuis sa création en juin 1996. Je suis accompagné par Mme Joanne Weeks, secrétaire de la Commission, également depuis 1996, et qui est responsable des opérations de mon bureau au jour le jour. Une version écrite de mes observations de ce soir a été remise au greffier du comité à votre intention.

(Mr Bisson: Thank you for inviting me to appear before this committee. I'll make a few remarks about those sections...)

(anglais suit)

(Following French -- Mr. Bisson continuing)

Thank you for inviting me to appear before this committee. I will make a few remarks about those sections of the anti-terrorist bill that deal with the communications security establishment and the role of the CSE commissioner, and then I will be pleased to respond to your questions.

You will understand that I will limit my comments, both in my opening remarks and in response to questions, to those sections of the draft legislation that deal with CSE and the CSE Commissioner. I have not had the adequate opportunity, nor am I sufficiently informed, to offer carefully considered views on other parts of the bill.

I am well aware of the concerns expressed by others that this legislation has been assembled in haste, that it may be excessive in its effort to strengthen our country's ability to counter the great danger posed by terrorists. Your role in reviewing the many measures proposed is immensely important, given what we know now is a deadly and urgent threat to life.

The drafters of this bill were required to take into account the critical balance between the needs of the state to collect information to protect its citizens and the individual rights of those citizens to privacy and freedom. I know that one of the stated objectives of this committee is to explore the protection of human rights and civil liberties in the application of this act, and I wish you well in your deliberations.

It must be some comfort for you to know that although this package of legislation was drafted on an urgent basis, those parts that deal with CSE and the CSE commissioner have benefited from years of consideration and discussion within the government.

(French follows: Mr. Bisson continuing: Dès 1990, un comité spécial de la
Chambre des communes...)

(après anglais)(M. Bisson)

Dès 1990, un comité spécial de la Chambre des communes examinant la Loi sur le Service canadien de renseignements de sécurité recommandait que le Parlement institue le CST par une législation. Le gouvernement a décidé à l'époque de ne pas suivre cette voie, mais il a indiqué, et je cite :

qu'il envisageait de donner au ministre de la Défense nationale des capacités supplémentaires pour l'examen du CST.

Ceci a éventuellement débouché en 1996 sur ma nomination en tant que premier commissaire du CST. La question d'une loi instituant le CST a refait surface en 1996, alors que le Commissaire à la protection de la vie privée effectuait une vérification de la conformité du CST aux dispositions de la loi sur la protection de la vie privée.

Le commissaire, à l'époque, concluait que dans la mesure où sa vérification pouvait en rendre compte, le CST exerçait ses activités en conformité avec la Loi sur la protection des renseignements personnels et en conformité avec les principes régissant des pratiques équitables de traitement de l'information. Toutefois, en 1996, le commissaire recommandait également l'adoption d'une loi habilitante pour le CST.

(M. Bisson: Later that same year, the Auditor General ... IN TAKE 1840)

(anglais suit)

(Take 1840 Follows with Mr. Bisson in French)

(Following French: Mr. Bisson continuing WAS IN 1840 TAKE)

Later that same year, the Auditor General tabled a report on the Canadian intelligence community in which he called on the government to consider the advantages of an appropriate legislative framework for CSE. The Auditor General reiterated this view in a short, 1998 follow-up report.

Similarly, in 1999, Senator Kelly's Special Committee on Security and Intelligence recommended that CSE should have its own act of Parliament and that legislation should provide for permanent and a separate body for CSE.

I now come to my part. In each of the first four annual reports that I have submitted to the Minister of National Defence -- and that were tabled in Parliament following my appointment -- I raised the matter of legislation for CSE. I then expressed the view, both in my annual report and elsewhere, that legislation would be an appropriate development that would put CSE on a firm footing by articulating its mandate and powers and its relationship with Parliament, the government and the Minister of National Defence.

I am pleased, therefore, that such legislation is now being considered, although I am saddened by the tragedy that has made it a priority.

CSE has managed to exist very well without legislation since it was created back in 1946. It has provided a service to the government over the decades despite the absence of a statutory base. However, the passage of legislation will ensure that the agency continues to meet the needs of Canada in a more transparent way, and is to be applauded. In my annual report, I have noted some of the issues that should be taken into consideration in drafting legislation for CSE. For example, I indicated that the rapid pace of change in the words of security and intelligence and technology would prove a challenge to drafters. Legislation for CSE must be flexible, enough to ensure it does not become dated because of changes in intelligence methods or technology. It should emphasize roles and responsibility and broad principles rather than detailed direction regarding, for example, the use of specific technologies. I believe the draft legislation that will be before you soon accomplished this.

I have also given considerable thought over the past several years to the issue of what will be the most efficient means for reviewing CSE. As you know very well, CSE's mandate has been the collection of foreign intelligence on behalf of the

Government of Canada. Under the proposed legislation, this will continue to be the case. Under Bill C-36, the Minister of National Defence may authorize CSE to intercept foreign communication for the sole purpose of obtaining foreign intelligence under the following conditions: First, it is directed at foreign entities located outside Canada; second, the information obtained cannot presumably be obtained by other means; third, the expected foreign intelligence value of the information derived justifies its collection; and fourth, satisfactory measures are in place to protect the privacy of Canadians and to ensure that private communications will only be used or retained if they are essential to international affairs, defence or security.

Since my appointment as CSE Commissioner in June of 1996, I have acquired an understanding of its activities and practices. I have also reviewed the policies and procedures that govern them. My review activities have included identifying what mechanisms CSE has in place to safeguard the privacy of Canadians and if they are appropriate to the circumstances. To date I am satisfied. However, I have advised CSE that I will continue to examine their use of new technologies to enhance their safeguarding practices. I assure you that I will remain vigilant.

(French follows: Mr. Bisson: J'ai maintenant terminé mes...)

(après anglais)(M. Bisson)

J'ai maintenant terminé mes observations préliminaires et je serai heureux, avec l'aide de Mme Weeks, de répondre à vos questions.

(The Chair: Welcome, sir. It is good to see...)

(anglais suit)

(Following French)

Senator Kenny: Welcome, sir. It is good to see you both here.

Am I correct in my understanding that your role is to review the activities of the establishment in terms of them complying with the law but you do not review them in terms of their effectiveness and their capability in gathering electronic information?

Mr. Bisson: My mandate is to review, in conformity with the law. That is my mandate and will remain my mandate.

Senator Kenny: It would not be appropriate, then, for us to ask questions relating to whether or not their technology is up to speed or whether or not they have the capacity to analyze the information they are receiving. We should save that for someone else, correct?

Mr. Bisson: The operation of CSE is not my domain.

Senator Kenny: When are you collecting electronic information, there is a lot of stuff flying back and forth. First, how do you separate the stuff that is legal to collect from the stuff that is not legal to collect?

Mr. Bisson: I am not in the business of deciding. It is being done by CSE.

Senator Kenny: You are overseeing it, though. You have the responsibility to make sure that they are complying with the law. How do you determine that without asking that very question?

Mr. Bisson: The new legislation will bring a new element to the act, but all the interceptions must come from foreign countries or involve foreign persons or people. In the review, I ensure that CSE has all the mechanisms -- that is, policies first and then mechanism -- to ensure that they do not intercept communications in which a Canadian is involved. If by any chance they do, then I ensure that there are mechanisms to destroy these communications.

Senator Kenny: Could you give us an example of how you can tell or how CSE can tell whether or not they are overhearing a Canadian? When it is an electronic signal flashing through the air, perhaps in code, how do they know whether it started or finished with a Canadian? How do they know it is foreign?

Mr. Bisson: I would prefer you put these questions to CSE. They are the one doing the operations.

Senator Kenny: How do you check them, then? Do you just take their word for it?

Mr. Bisson: We do not pick all the interceptions they make. We go there and, by a program that we established, we go at random to check the interceptions.

Senator Kenny: You do spot checks?

Mr. Bisson: Exactly.

Senator Kenny: What happens when are you doing a spot check? Walk us through a typical spot check. Tell us how it works.

Mr. Bisson: Maybe Joanne Weeks could do that better because she is more involved than I in these techniques.

Ms Joanne Weeks, Commission Secretary, Communications Security Establishment Commissioner's office: We run a program of testing the holdings of CSE, be they voice or image, which is faxed, or text. Any of the work we do does involve testing the holdings. There is a system in place whereby, at the source where the information is collected, certain information that can be readily identified as Canada-based information can be filtered out of the communications. They are non-selection criteria that could include Canadian area codes, postal codes, addresses, e-mail addresses that, when queried, this information simply does not come through to the system.

In the event that something should come through inadvertently, such as an e-mail attachment, which can happen, it is handled in a manner consistent with the Privacy Act, and normally destroyed.

Once we have gone through an extensive testing period, Mr. Bisson, the commissioner, comes out and we explain to him our methodology and procedures. He has hands-on experience with what his staff is doing.

Mr. Bisson: We have a downtown office in Ottawa located at 90 Sparks Street. We operate mostly from there. We also have offices on Heron Road. The people from our team often go to Heron Road. I do not go there often. I mostly come to the office at 90 Sparks Street. I report for my team. We decide what steps should be taken after that.

I have been at the CSE much more often since 1996 in order to familiarize myself with their operations. Now, however, I go every two or three months, something like that.

Senator Kenny: Just so we are clear, the word "defeats" was used. Could you tell us what that means?

Ms Weeks: I am sorry, Madam Chair and Senator Kenny, to have used a jargon term. A defeat is like a block, something that precludes information from coming through based on predetermined or defined characteristics.

Senator Kenny: Just so we understand clearly, you run the staff for the commissioner. How big is the staff that is technically doing these checks?

Mr. Bisson: I am a part-time commissioner, based in Montreal, but I come to Ottawa I would say once a week, usually for a full day. Ms Weeks is here for administrative assistance. We also have personal contracts. My second mandate will expire in June of next year. Thus, our present program runs until June. We establish a three-year schedule and decide what to do. As I mentioned, we cannot do everything.

Senator Kenny: My question, sir, is: How large is Ms Weeks' staff?

Mr. Bisson: About five people on a contractual basis.

Senator Kenny: What are their qualifications?

Ms Weeks: We have quite an assortment of skills and talents. We have technical people at a very senior level. We have administrative people. We have opted to contract senior, former government or retired government officials, including experts in IT, rather than having a full-time staff. We staff on a contractual basis, depending upon the nature of the studies we are about to undertake.

Senator Kenny: So you have five people who make all of these studies.

Ms Weeks: Yes.

Senator Kenny: How many intercepts are these five people responsible for supervising or examining?

Ms Weeks: We conducted one particular study in which we looked at a one-month period. In two instances, we examined all of the intercepts. In one it

was simply millions and millions so we had to opt for a percentage. We were talking thousands and thousands of intercepts. It was done to develop a baseline for comparative purposes.

Our findings were quite astonishing in terms of the very, very few interceptions that were Canada-based. They had been handled in a manner consistent with the Privacy Act.

Senator Kenny: Help us with the statistics, then. What percentage of intercepts do you need to have to develop a level of statistical comfort so that you have an adequate sample?

Mr. Bisson: We do not judge that by the percentage, no. It would be impossible.

Ms Weeks: In terms of this one-month period, sir, we examined all the voice intercepts and all the image intercepts. Quite frankly, I do not know what percentage of the text intercepts that we examined. That was the one that was in the millions. However, we were more than pleased with the results of the testing.

Senator Kenny: What is the order of magnitude of the intercepts you did study? You threw me for a bit of a loop when you said millions and millions of intercepts and you have this staff of five people. You also said you examined all of the voice and all of the text intercepts. How many voice and texts intercepts were involved in the month in which you did the study?

Ms Weeks: This was 18 months ago. There were hundreds of thousands.

Senator Kenny: How can five people examine hundreds of thousands of intercepts?

Ms Weeks: It was not five. It was two people pulling the information in on dedicated computers that had been set up for us for this testing purpose.

Senator Kenny: Help me through this, then. We are talking about hundreds of thousands of messages. How can two people evaluate them so that you are confident they are coming from and going to people who are legal?

Mr. Bisson: What is important, if I may say, is not the quantity. It is to examine the policy that is in place in the CSE. The policies are followed.

Senator Kenny: I accept that, sir, but my question to Ms Weeks was: If, during the one month when she was testing the policies she examined all of the text

and all of the verbal messages, how did two people accomplish it if the number was in the hundreds of thousands?

Ms Weeks: Madam Chair, Senator Kenny, we selected a one-month period of traffic. The study itself went on for close to one year. It was not one month of testing. Over a year, we examined one specific month's holdings. It could never have been accomplished in a month. However, for the sake of establishing a sample, we picked a one-month period and studied it exhaustively.

(French follows--Senator Bacon: M. Bisson, si je comprends bien le poste de commissaire....)

(après anglais)

Le sénateur Bacon: Si je comprends bien le poste de commissaire, il y a un décret en 1999 qui a reconduit le commissaire dans ses fonctions et qui a aussi élargi le mandat en ce qui concerne les plaintes, en lui permettant d'informer le plaignant des résultats de son enquête.

Sur quoi le commissaire se base-t-il pour juger qu'une plainte est frivole, vexatoire, sans objet ou entachée de mauvaise foi, ce qui fait en sorte qu'il ne fait pas d'enquête sur les faits qui sont survenus?

M. Bisson: Depuis que le mandat a été élargi en 1999, nous n'avons pas eu une plainte formelle qui nécessitait une enquête sur la plainte. Nous avons bien des lettres comme vous en recevez, vous les membres du Sénat, que nous pouvons à l'occasion juger complètement frivoles et nous répondons. Cela peut aussi être quelque chose qui n'est pas frivole, mais qui n'est pas de mon ressort. Nous leur répondons à ce moment que ce n'est pas mon mandat de régler le problème de ressources humaines. Nous pouvons prendre l'exemple de quelqu'un qui aurait été employé par le Centre, qui n'y serait plus, et qui se prétendrait congédié injustement. On lui répondrait que malheureusement ce n'est pas de notre ressort. Nous n'avons donc pas eu depuis deux ans de plainte justifiant une enquête, mais nous disposons des mécanismes appropriés pour s'en occuper.

Le sénateur Bacon: Je vous ai entendu dire tout à l'heure «urgent and priority» concernant le projet de loi C-36 devant nous. Je suis très contente de vous entendre dire cela parce que nous avons essayé de faire dire cela à quelques ministres aujourd'hui qui n'ont pas répondu de cette façon.

Quand on parle de type de plaintes, par exemple, vous devez juger aussi si les activités de la CST sont légales, mais vous dites qu'il n'y a pas eu de plaintes du tout.

M. Bisson: Il y a deux choses. Les plaintes sont des plaintes qui viendraient, par exemple, d'un employé du CST qui dirait qu'il s'est commis un acte. Nous n'avons pas eu à examiner la légalité d'un acte dont on aurait prétendu que l'acte était illégal. Quant au reste, le mandat qui m'est confié par l'arrêté en conseil du gouvernement est de déterminer si le Centre opère de façon légale et se conforme aux lois du Canada. S'il ne s'y conforme pas, je dois faire rapport immédiatement au Procureur général du Canada et au ministre de la Défense nationale.

Dans les nombreux rapports soumis au ministre -- les rapports annuels et les rapports classifiés -- ils n'ont jamais porté sur un geste illégal qui aurait été posé à l'intérieur du Centre.

Ils ont porté sur des questions de politique, de procédure, mais pas sur des questions de légalité.

Le sénateur Bacon: Vous parlez d'un rapport annuel et aussi de rapports confidentiels. Il y en a plusieurs?

M. Bisson: Des rapports confidentiels, à peu près quatre par année.

Le sénateur Bacon: Ils sont remis au ministre?

M. Bisson: C'est cela.

Le sénateur Beaudoin: Il y a quelque chose qui me tracasse un peu. Ce n'est pas vous le Centre. Vous, vous êtes du CST?

M. Bisson: C'est cela.

Le sénateur Beaudoin: Vous recevez une plainte et vous l'étudiez. Pouvez-vous vous prononcer sur la légalité?

M. Bisson: Je n'ai pas reçu de plaintes à l'heure actuelle.

Le sénateur Beaudoin: Non, mais si vous en receviez une?

M. Bisson: Si on s'apercevait que la plainte est bien fondée et qu'elle révèle une illégalité commise par le Centre, je ferais rapport au ministre de la Défense nationale et au procureur général de qui relève le Centre. Je n'ai pas besoin d'avoir de plaintes pour le faire. Si dans notre travail d'examen des politiques et des opérations on se rendait compte d'une illégalité, c'est non seulement mon devoir mais mon obligation de le rapporter immédiatement.

Le sénateur Beaudoin: Ce matin, j'ai posé la question à la ministre. On nous a dit qu'il y avait deux systèmes. Si l'enquête part de l'extérieur du Canada, c'est le ministre de la Défense nationale qui autorise le Centre à intercepter les communications privées. C'est ce que dit la loi. L'article 102 du projet de loi confirme que c'est le ministre de la Défense nationale qui autorise le Centre de la sécurité des télécommunications à intercepter les communications privées. Si c'est à l'intérieur du Canada, si j'ai bien compris la réponse de la ministre, on suit notre système constitutionnel, c'est-à-dire qu'on va devant un juge et on obtient un

mandat. C'est la légalité. La légalité pour l'intérieur du Canada et la légalité pour l'extérieur. Autrement dit, si cela origine d'un endroit à l'extérieur du Canada, c'est le ministre qui donne l'autorisation. Si c'est à l'intérieur du Canada, on suit ce qu'on fait tous les jours en droit criminel, le mandat est donné par un juge de la Cour supérieure. Si vous avez la possibilité de vous prononcer sur la légalité de la plainte, si je comprends, bien, vous suivez deux systèmes différents?

M. Bisson: Je ne voudrais pas contredire d'autres témoins qui ont beaucoup plus d'expérience et beaucoup plus de poids que moi, mais je vais essayer d'expliquer cela clairement.

Jusqu'à aujourd'hui et d'ici à ce que le projet de loi devienne loi, le ministre de la Défense nationale n'a rien à autoriser. Pourquoi? Parce que tout ce que fait le Centre jusqu'à aujourd'hui ne concerne que des gens situés à l'extérieur du Canada, qui ne sont pas des citoyens canadiens qui se trouveraient à l'extérieur du Canada. Le ministre n'a aucune autorisation à donner, il n'a rien à faire jusqu'à maintenant. Le Centre doit simplement s'assurer que la communication ne concerne que des gens qui ne sont pas des Canadiens et qui sont à l'extérieur du Canada. Selon la nouvelle disposition du projet de loi qui permettrait au ministre de donner les autorisations, il pourrait y avoir quelqu'un qui serait au Canada et qui serait un Canadien, mais l'autorisation et l'enquête que ferait le Centre devrait viser un organisme ou une personne située à l'extérieur. C'est la première condition que je lis, c'est l'article 273.65(2)a), je le cite :

[...] l'interception vise des entités étrangères situées à l'extérieur du Canada.

Le ministre sera appelé à intervenir à ce moment parce qu'il y aurait quelqu'un au Canada qui serait en communication avec cette entité étrangère à l'extérieur du Canada.

Actuellement, cela ne peut être fait. Il faut que ce soit à l'extérieur du Canada, aux extrémités. Et là, le ministre pourra décider en sachant que les conditions de l'article 273.65 sont remplies, que telle entité étrangère à l'extérieur du Canada doit être interceptée même si elle a une communication avec un Canadien situé à l'intérieur du Canada. Ce n'est pas le Canadien qui sera visé, mais l'entité étrangère située à l'extérieur du Canada.

Le sénateur Beaudoin: Mais il va pouvoir intercepter une communication privée?

M. Bisson: Oui.

Le sénateur Beaudoin: Quand vous êtes au Canada, vous suivez la tradition de nos lois et de notre système qui fonctionne d'ailleurs très bien. Pourquoi ne pas suivre le même système pour l'étranger? J'ai relevé quatre arrêts de la Cour suprême sur l'interception des communications privées. Ils vont tous dans la même direction. Il faut demander un mandat de la cour. C'est un excellent système qui fonctionne très bien chez nous. Cependant, quand c'est à l'extérieur, on dit qu'on ne s'adressera pas au judiciaire, mais à l'exécutif. C'est un choix. Cependant, j'ai un peu de mal à comprendre pourquoi on fait cela. Pourquoi ne va-t-on pas devant la cour? C'est la loi.

M. Bisson: Il y a un article très important sur lequel vous allez être appelé à voter, c'est l'article 273.69. Cela met le point sur vos préoccupations. Les nouvelles dispositions qui autorisent le ministre ne seront pas assujetties à la partie VI du Code criminel sur la protection de la vie privée dans les communications. Précisément pour que le ministre, lorsqu'il est convaincu que toutes les conditions prévues à l'article 273.65, -- et dont la plus importante est que l'entité visée soit à l'extérieur du Canada -- puisse émettre une autorisation au Centre dans la mesure où toutes les conditions sont remplies.

Le sénateur Beaudoin: Si le ministre peut le faire, le juge pourrait le faire? Pas avec la loi actuelle, mais si le projet de loi passe tel quel?

M. Bisson: Sûrement, aujourd'hui, alors que la loi n'est pas encore en vigueur, on pourrait procéder en vertu du Code criminel et aller devant un juge et obtenir une autorisation pour intercepter les communications d'un Canadien. Mais ce que le projet de loi veut, c'est faciliter sans encore une fois porter atteinte à la protection des renseignements privés des Canadiens, s'adopter une situation particulière lorsque l'entité qu'on vise, la personne ou l'organisme, est de l'extérieur du Canada. C'est elle qu'on vise. Par ricochet, on va forcément intercepter une communication dont l'une des extrémités est au Canada. Soit que c'est le Canadien qui loge la communication avec l'organisation visée ou l'organisation qui communique avec le Canadien. C'est un choix qu'a fait le législateur pour permettre une méthode particulière lorsque les conditions 273.65 sont remplies.

C'est le nouveau mandat qui m'est donné parce que les autres éléments de mon mandat, je les ai déjà par les décrets du gouvernement qui est de 1996-1999. Le nouveau mandat est de faire un examen des autorisations que le ministre va donner et de faire rapport.

Le sénateur Beaudoin: Je comprends. C'est un choix.

M. Bisson: C'est un choix politique qui a été fait par ceux qui présentent le projet de loi.

(Sén. Finestone: I must admit that I do not understand one single...)

(anglais suit)

(Following French)

Senator Finestone: I must admit that I do not understand one single thing that has been discussed. I would like to know how many million did they say, half a million? How many conversations in one month did you evaluate? Did you say that was in the millions? How many did you say?

Ms Weeks: Senator, we took one month in time and examined those transactions, but it took us over a year to do so. Our scope was one month, but the length of the review was much longer.

Senator Finestone: How many did you review during the one year or so of the one month?

Ms Weeks: I believe there were in excess of 250,000 transactions. This is not a paper review, senator, it comes quickly on the screen.

Senator Finestone: I am still not sure what you are doing, but perhaps you could answer my questions. You are collecting electronic information, whether it is coming, as I understand it, from voice, image or text; is that right

Mr. Bisson: We are not collecting.

Senator Finestone: You are reviewing. Are you using something that looks at the Carnivore system or the Equinox system that has key words that identifies potential threats or potential security problems? How do you differentiate between a love exchange and a terrorist exchange; could you tell me that? I want to know if these are friends or enemies.

Ms Weeks: Senator Finestone, we are looking to ensure that these communications, both foreign and Canadian, are not being inadvertently intercepted, collected and kept. Our tests would involve the origin and destination of these communications to ensure that the privacy of Canadians is being safeguarded.

Senator Finestone: Are we only interested in knowing if it is a Canadian voice, text, data or image that is being captured; is that it?

Ms Weeks: That was the purpose of the test, yes, to ensure that the privacy of Canadians is safeguarded.

Senator Finestone: If you find that privacy is not safeguarded, would these people be outside of the parameters of the Privacy Act of Canada?

Ms Weeks: If they are foreign communications, they are not bound by the Privacy Act, that is correct.

Senator Fraser: Mr. Bisson, you are probably aware that many parliamentarians have spoken about various methods of review or possible methods of review of various elements of this bill. You are the first actual reviewer to appear before us.

Given your experience as commissioner, but also your experience as a jurist, I should like to ask you not for a political opinion but for a practical and legal view on whether it is possible to have an independent reviewer, such as yourself, look at some of the elements in this bill, once they are in place, that involve cabinet decisions. I am thinking particularly of the famous lists, the cabinet may make lists of people, groups or organizations, who are suspected of being terrorists. Once you are on that list, your property can be seized. There is a provision to appeal once to a court. However, that hearing can be *in camera*, and you may not hear all the evidence against you. If the court says you stay on the list, then you are stuck. After that, it is only the Solicitor General who, every two years, looks and says, "I think I will keep your name on the list."

My question is: Is it possible, practically or legally speaking, to have someone such as yourself or a panel of persons such as yourself, retired judges or supernumerary judges, Privy Councillors, people of intellectual and security respectability, who would look at that list once a year or so to say, "Yes, the people on this list are there for good reason and proper procedures were followed in deciding to put them on the list."

Do you see what I am driving at?

Mr. Bisson: Yes, I do. However, senator, you just mentioned that there is a review by a judge.

Senator Fraser: In my view that is not a satisfactory review, because it is a one-time review.

Mr. Bisson: Having been a judge for 27 years, I would say that is a satisfactory review.

Senator Fraser: I do not know if you have read that provision. The part that bothers me is that first you must apply. If you are an innocent little immigrant who does not speak either official language well, or do not know what is going on, you may not know enough to apply for the review.

Suppose you apply for the review. The hearing could be held *in camera*. Neither you nor your counsel is present to hear the evidence against you. You may not receive the evidence against you; you may get only a summary, if that, of the evidence against you. That strikes me as less than the normal judicial review that we would place such faith in. You get that only once. After that, you could stay on the list for the next 20 years.

Mr. Bisson: You realize that we are completely outside the scope of my concern.

Senator Fraser: You have all this wonderful experience.

Mr. Bisson: You mention a panel or board that could review. That is feasible. It is a choice that the legislators must make. It is possible. It could make very good sense.

(Senator Joyal: Il y a un point...)

(French follows)

(après anglais)

Le sénateur Joyal: Un point est resté en suspend dans les réponses fournies aux questions du sénateur Beaudoin. Lorsqu'il s'agit d'une conservation ou d'interception d'une conversation entre un Canadien et une entité étrangère, le Canadien n'a plus le droit à la vie privée protégée de la même façon que s'il s'agit d'une conversation ou d'interception d'une conversation entre deux Canadiens au Canada.

M. Bisson: Vous avez utilisé les termes «de la même façon» je pense que vous avez parfaitement raison. Il y a une autre façon, c'est que le ministre -- on verra à l'application comment cela se déroulera l'article 273.65(*d*) qui existe -- n'émettra pas d'autorisation sans s'assurer qu'il y a des mesures satisfaisantes pour protéger la vie privée du Canadien qui serait non pas visé, c'est l'entité étrangère qui est visée, mais qui serait partie à la conversation. Le ministre devra s'assurer d'avoir des mécanismes et ce sera l'un des nouveaux éléments, dans les pouvoirs que me seront accordés par la loi, de vérifier de faire une revue à savoir si le ministre a bien utilisé sa discrétion ou sa décision lorsqu'il a décidé d'autoriser l'interception de la communication.

Le sénateur Joyal: Sauf que vous faites vous-même enquête sur la façon dont le ministre a utilisé ces pouvoirs, mais vous faites enquête et rapport au ministre.

M. Bisson: Oui.

Ce que je comprends habituellement d'un organisme qui fait l'objet d'un contrôle, c'est que le rapport est remis à une entité ou à une autorité autre qui a pour but de s'assurer qu'il y a une sorte d'«arm's length» entre l'agence qui fait l'objet de la vérification et la personne qui s'assure que le rapport qui est fait a la capacité objectivement de prendre une décision. L'article 273.65(8) stipule:

(P6 Sen. Joyal: The commissioner on the communications report annually...)

(anglais suit)

(Following French—Sen. Joyal continuing)

The Commissioner of the Communications Security Establishment shall review...and report annually to the Minister on the review.

(French Follows—Sen. Joyal continuing: Vous enquêtez sur le ministre, mais...)

(après anglais)(Sén. Joyal)

Vous enquêtez sur le ministre, mais vous lui faites rapport à lui?

M Bisson: En vertu du paragraphe 8, je ne suis pas celui qui portera un jugement de valeurs sur les décisions du ministre pour lui dire qu'il a mal agi pour telle ou telle raison, mais je pourrais lui indiquer, dans le rapport que je lui ferai annuellement ou même plus souvent, qu'il doit retenir que dans tel cas, l'autorisation ne comportait pas toutes les sauvegardes qu'elle aurait dû comporter. Nous établirons les mécanismes à l'usage.

Je comprends où vous voulez en venir: je fais rapport au ministre et vous allez me dire que le ministre en disposera comme il veut.

Le sénateur Joyal: C'est exactement ce point que je voulais souligner. Ce n'est pas comme si vous faisiez rapport au procureur général du Canada ou au premier ministre. En Grande-Bretagne, le «commissioner» qui serait votre homologue, fait rapport au premier ministre. Le premier ministre représente une autorité différente que le ministre concerné, en l'occurrence le ministre de la Défense. Le premier ministre a le pouvoir d'être informé si le ministre de la Défense, lorsqu'il a pris la décision que les mesures de sécurité de vie privée étaient satisfaisantes parce qu'un Canadien était en cause, le premier ministre a la capacité de juger objectivement de la décision que le ministre de la Défense aurait prise dans les circonstances.

Dans le cas présent, ce qui me laisse perplexe, c'est que vous analysez les conditions prévues à l'exercice du pouvoir qui est donné au ministre à l'extérieur de la protection donnée dans le code pénal actuellement et que vous faites rapport à ce même ministre.

M. Bisson: Je suis un premier lecteur comme vous depuis lundi dernier du projet de loi. Le ministre voulait, par le paragraphe 8, s'assurer que ses autorisations avaient été bien exercées conformément à la loi.

On n'a pas tellement mis le commissaire comme juge de la valeur de l'autorisation donnée par le ministre. C'est une préoccupation valable que vous exprimez. Est-ce que le rapport ne devrait pas être fait à quelqu'un d'autre en plus du ministre?

Le sénateur Joyal: Si vous prenez la partie 5.1 du projet de loi, pages 129 et suivantes, à l'article 6 de cette partie, par exemple, on voit qu'il y a au moins un

juge de la Cour fédérale qui intervient pour revoir le certificat émis par le ministre du Revenu pour déterminer si une agence de bienfaisance ne contrevient pas aux dispositions de la loi. À ce moment, un juge de la Cour fédérale intervient. C'est une autorité extérieure et c'est une autorité qui a une sorte de capacité d'intervention indépendante.

Ce qui me préoccupe ce n'est pas votre honnêteté ou votre probité, au contraire, c'est le fait qu'on donne à un ministre un pouvoir exorbitant eu égard au code pénal qui implique un Canadien et le «monitoring» qui est fait de l'exercice d'un pouvoir exceptionnel n'est pas fait à une autorité extérieure qui a la capacité de pouvoir donner au moins un autre cran d'arrêt au cas où il y aurait une sorte d'abus possible de l'exercice d'un pouvoir exorbitant.

Il faut être un peu plus serré sur le contrôle qu'on fait de l'exercice du pouvoir quand ce pouvoir est exorbitant et non pas en faire simplement une sorte de gestion «in house». On s'entend entre nous et si je vous dis que cela n'a pas été très bien, on se dit qu'on fera mieux la prochaine fois.

La justice est ainsi faite. Ce n'est pas à vous que je le dirai, vous qui avez siégé à la Cour supérieure et à la Cour d'appel. Il y a différents niveaux pour s'assurer que la capacité d'apporter à chaque fois une option objective pour s'assurer des droits des Canadiens.

M. Bisson: Je suis d'accord avec vous quand vous dites qu'il s'agit d'un pouvoir exorbitant.

L'article 273.69 qui met de côté la partie 6 du Code criminel, qui existe depuis 30 ans, c'est exorbitant. Quant au mécanisme, je suis satisfait que vous ferez valoir vos revendications à l'occasion des réunions de ce comité, mais je n'ai pas d'autorité de faire rapport sur la législation. Vous exprimez une préoccupation fort valable, parce qu'il est indéniable que le pouvoir est exorbitant.

Depuis que les dispositions de la partie 6 du Code criminel ont été mises en vigueur, depuis 1971, c'est la première fois que l'on y fait brèche. On ne va pas à un mandat judiciaire. On fait une brèche pour des motifs valables. J'en suis convaincu. Il faut s'assurer que des sauvegardes sont mises en place.

Le législateur va peut-être songer à quelque chose de différent du paragraphe 8. Vous allez faire valoir vos préoccupations adéquatement, j'en suis convaincu. On pourra peut-être vous expliquer mieux que moi le véritable sens du paragraphe 6.

(Senator Beaudoin: Is it exorbitant to set aside what already...)(anglais suit)

(Following French)

Senator Beaudoin: Is it exorbitant to set aside what already exists in our system? I cannot ask you that question, I am sure, but the question that comes to my mind is that 273.69 is possibly ultra vires, at least against the jurisprudence of the Supreme Court on the warrants for interception of private communication.

Mr. Bisson: The only answer is that you are a better constitutionalist than I am.

Senator Murray: I have several questions to which I should know the answer and do not. Who is the chief of the Communications Security Establishment?

Mr. Bisson: There have had a new chief since August 9, Keith Coulter.

Senator Murray: Is he a military person?

Mr. Bisson: I met him only once, and that was still early in his tenure. I met him once in August. Ms Weeks can give you more background.

Ms Weeks: Mr. Coulter, who I believe will be appearing before you, if I am not mistaken, before the week is out, does have a military and a public service background.

Senator Murray: My question was whether he was coming.

The Chairman: Senator Murray, he will be coming along with the Minister of National Defence.

Senator Murray: I have another question to which I should know the answer: Are the activities of the CSE subject to review by the Security Intelligence Review Committee?

Mr. Bisson: No.

Senator Murray: You are the review commissioner?

Mr. Bisson: Exactly.

Senator Murray: Your duties are, it says here, to review the activities to ensure they are in compliance with the law and then, in response to a complaint, to undertake any investigation you consider necessary and to inform the Minister and the Attorney General of any activity that may not be in compliance. You are required also to submit an annual report.

The statute under which you operate is the National Defence Act. I do not have that act in front of me as such. I have these amendments. What do these amendments add to your mandate?

Mr. Bisson: Everything is new here. There is nothing in the National Defence Act about the Communications Security Establishment and my function. This was established by Order in Council, as I mentioned in my opening remarks, back 55 years ago and has been operating that way ever since.

Senator Murray: Your mandate and all the authorities listed will, for the first time, be found in a statute?

Mr. Bisson: Yes.

Senator Murray: There is here a reference to the authority of the CSE to protect computer systems and networks of the Government of Canada from mischief by intercepting private communications.

Does that reference to the computer systems or networks of the Government of Canada include also those of the Senate and the House of Commons?

Mr. Bisson: That I will not venture. You do have some privileges. The Government of Canada is not the legislative arm of Canada. I just read by the words.

Senator Murray: CSE would require some explicit authority before they could touch our networks?

Mr. Bisson: You might put the question to them.

Senator Murray: If you caught them doing it, would you let us know right away?

Mr. Bisson: Yes.

Senator Murray: There are references here to privacy matters:

273.64(2) Activities carried out under paragraphs 1(a) and (b)...

(b) shall be subject to measures to protect the privacy of Canadians in the use and retention of intercepted information.

A bit later:.

273.65(2) The Minister may only issue an authorization under subsection (1) if satisfied that

(d) satisfactory measures are in place to protect the privacy of Canadians...

We already have a Privacy Act in this country.

Mr. Bisson: Yes, sir.

Senator Murray: When I see these provisions relating to measures and the requirement for the minister to authorize, I begin to wonder whether these provisions will operate notwithstanding the provisions of the Privacy Act that we already have in place?

Mr. Bisson: I do not see that that would be the case. The Privacy Act is there. The Privacy Commissioner made an audit about five years ago. The CSE is subject to the Privacy Act, definitely.

Subparagraph 273.65(2)(d) only applies when the minister will authorize interceptions. The bulk of the work of CSE will continue to operate as it has been operating so far and will be subject to the Privacy Act.

The Privacy Commissioner may decide next year to do another audit, as he did in 1996. The doors will be open, of course. It is not a secluded place where no one who must do business cannot enter. The Auditor General has been there. The Privacy Commissioner has been there. We are there. It is not a place where they do anything they want, however they want.

Senator Murray: Is CSE doing anything now, to your knowledge, that is not covered in these amendments?

Mr. Bisson: No, definitely not.

Senator Murray: Are you aware of guidelines with regard to sharing information, whether on Canadian citizens or on foreigners, with CSE's counterparts in foreign countries? Are there guidelines covering that?

Mr. Bisson: They do not share information concerning Canadians, definitely. They do share information with our partners. It has been known for several years that we are partners with the United Kingdom, New Zealand, Australia, the United States, for up to 50 years now.

Senator Murray: Have you examined the information that they have passed on to other countries?

Mr. Bisson: Ms Weeks will answer but we necessarily go into that.

Ms Weeks: The bulk of the communication goes the other way. Most of the communication comes from the allies to us.

Senator Murray: I see. Do you examine any information that we supply to our allies?

Ms Weeks: We have examined, yes.

Senator Murray: You are satisfied that it is proper?

Ms Weeks: The commissioner expressed his satisfaction, yes.

Senator Murray: Are there guidelines about that?

Ms Weeks: Yes, there are.

Senator Murray: What are they, in general?

Ms Weeks: There are policies and guidelines. There is also now ministerial direction on sharing information.

Senator Murray: In addition to the policy and guidelines which are presumably ministerial in origin?

Ms Weeks: These are internal policies, but the minister has recently issued ministerial direction.

Senator Murray: Perhaps we will have an opportunity to discuss that.

Mr. Bisson: You may realize that, in the United States, the counter part of CSE is a huge operation with 22,000 people working in a suburb of Washington. The agency is called National Security Agency. Canada benefits a lot from the information coming from them because they have the technical means that we do not have.

Senator Murray: Thank you. We can pursue these matters.

Senator Tkachuk: I know that you oversee this part of the act and do not administer this act. Senator Joyal and Senator Murray asked about this clause.

The minister authorizes the interception or wiretapping a conversation between a Canadian and a foreigner.

Mr. Bisson: No. The new legislation is directed at foreign entities. It may happen that there is a Canadian at the other end.

Senator Tkachuk: That is new?

Mr. Bisson: That is completely new.

Senator Tkachuk: Before, only conversations between two foreign parties could be intercepted. Now, they could intercept a call between Saudi Arabia and Canada, for example, and they would need permission to do that. Right?

Mr. Bisson: They will look first at Saudi Arabia, but as there is a Canadian involved in the interception the minister will have to give his authorization.

Senator Tkachuk: That is right. Satisfactory measures are in place to protect the privacy of Canadians. Well, his or her privacy is already being invaded. They are listening to his telephone conversations.

Mr. Bisson: Yes.

Senator Tkachuk: How does he protect the privacy of Canadians when he is already invading their privacy? What if, in that conversation, they hear that Canadian talk about something that is illegal but not terrorist? It may have to do with shipping child pornography across borders or some such thing.

Mr. Bisson: We have to read the last part of the sentence, which says "use or retain only if essential to international affairs, defence or security.,

Senator Tkachuk: That is pretty wide scope.

Mr. Bisson: It might not cover the child pornography that you mentioned.

Senator Tkachuk: I do not know what the minister would require. I am having difficulty understanding it. How will you protect me, as a Canadian citizen, if the minister wants to listen to my telephone conversation with someone from Saudi Arabia or Afghanistan who he thinks is a terrorist?

Mr. Bisson: It is the reverse. They are listening to the foreign entity, but you are at the other end of the line.

Senator Tkachuk: How do they know that I am on the other end of the line?

Mr. Bisson: Through other means they know that this foreign entity will have communication with a Canadian.

Senator Tkachuk: They overhear it and now they want permission to continue listening to it?

Mr. Bisson: No. They have other means to suspect. Someone on behalf of the minister will present the reasoning for the authorization. Do not expect the minister to sign that in blank.

Senator Tkachuk: I am not trying to be difficult. I am just trying to see how you protect Canadian citizens. There are other aspects of this bill that we are concerned about with regard to this. I am concerned about eavesdropping on Canadians by simply fulfilling these four criteria. How will you satisfy yourself that the organization that is eavesdropping is protecting the rights of Canadians and ensuring that private communications are retained if they are essential to international affairs? Once they are eavesdropping on me, they are already invading my privacy. What is there to protect after that?

Mr. Bisson: It will be my duty to ensure that CSE conforms to this section of the act. In fact, your privacy is invaded, although the communication that is targeted is in a foreign country. There is no doubt about that. However, the minister will not issue an authorization without satisfactory safeguards in place. The minister will probably issue direction to the CSE. We will see how (*d*) will work.

Senator Tkachuk: Good luck.

Senator Andreychuk: Is the position of Commissioner of the Communications Security Establishment that you hold still filled on a term-by-term basis? Is it correct that it is not part of our law per se on an ongoing basis?

Mr. Bisson: The office is continued. There is a section of the act that says that the person holding the office or the office is continued. That is found in section 273.62 (7).

Senator Andreychuk: Without regard to Bill C-36, it is my understanding from a previous committee on which I sat that the review function was not entrenched, that the government could cancel that review function.

Mr. Bisson: You are perfectly right. I was first appointed for three years by an Order in Council in June 1996. The government might have decided in June 1999 that that was the end of it. However, now it will be legislated, as I have been requesting for years.

Senator Andreychuk: Bill C-36 legislates your office. That is one advantage.

Mr. Bisson: Exactly. Not for me, but for the public of Canada.

Senator Andreychuk: Exactly. It has not been an office upon which we could rely, as we could SIRC, which was in legislation.

Mr. Bisson: Yes.

Senator Andreychuk: As I understand it, currently if someone complains to you and you investigate the complaint, your report goes only to the minister and the complainant never knows the outcome of it.

Mr. Bisson: That has not been the case since 1999. When I was given a new mandate for three years in 1999, I was expressly given the power to report to the complainant.

Senator Andreychuk: Do you give them a full report or do you just give them the decision?

Mr. Bisson: As I mentioned earlier, I have not yet taken a complaint through the full process. When I do report to a complainant, I will probably give them the reasoning for the decision of "complaint dismissed" or "complaint well-founded."

Senator Andreychuk: Since 1999 you have not had to move on a complaint?

Mr. Bisson: No.

Senator Andreychuk: You said earlier that you have reviewed all of the transmissions for one month. I understood you to say that throughout your entire mandate there have been no violations. If a communication is accidentally improperly intercepted and, upon realization of that, the information is destroyed, you do not call that an unlawful transmission? If it is corrected, you do not call it invalid?

Mr. Bisson: If a Canadian communication is intercepted by accident and immediately destroyed, there is no violation.

Senator Andreychuk: There were in fact transmissions that were in violation, but they were corrected to your satisfaction?

Mr. Bisson: Yes. As I have said, there are an immense number of communications and there are many ways that a Canadian communication can be mistakenly intercepted.

As Ms Weeks mentioned, that is the purpose of the defeat mechanism. A communication involving Canadians will disappear. There may be mistakes from time to time. CSE does not pretend that the communication of a Canadian has never been intercepted. However, there are policies in place to ensure the disposal of these communications.

Senator Tkachuk: Mr. Bisson, I would feel much comfortable if you were reporting to Parliament rather than reporting to the minister. If you report to the minister, you say, "You know, minister, we have a little problem here. I think when you signed a couple of these things, it got a little out of hand and we were listening to a bunch of things that we should not have been listening to."

I do not know if the minister is your friend. You are an OC appointment. He could be your friend. We know how these things work. I am not saying in your case it did. You are a well-respected jurist. However, maybe it is not you. You may not be here forever. It will be somebody else. It may be a close friend of the minister, and the minister says, "You know, just kind of bury that in the report." Or maybe the OC is cancelled. So now what happens?

Mr. Bisson: I do not think any minister would dare do that.

Senator Tkachuk: I do not know that. I am just saying you do not report to Parliament. You report to the same people who do this stuff.

Mr. Bisson: Yes.

Senator Tkachuk: After that, the only thing you can do is write in your report that the minister did not listen to you, and I am just saying good luck to that, too.

Mr. Bisson: As I mentioned, if there is anything illegal being done -- but you do not assume that it is illegal -- I have a duty to report to the Attorney General. Let us assume that it is not illegal.

Senator Tkachuk: The same person who authorized it, the Attorney General would have authorized this.

Mr. Bisson: No, the Attorney General does not --

Senator Tkachuk: I am just asking. Would you feel better reporting to Parliament? Would you not think this process would be a better, clearer process?

Mr. Bisson: I already report to Parliament annually. My annual report is public. You have to protect, as I mentioned, issue a classified report to the minister. Some have been obtained through the Access to Information Act with deletion. Reporting to Parliament is fine, but there should be a mechanism for some classified report to someone.

(French follows -- Senator Fraser: En réponse au sénateur Joyal...)

(après anglais)

Le sénateur Fraser: En réponse au sénateur Joyal, vous avez dit tout à l'heure qu'une partie du projet de loi était exorbitante. À quelle partie du projet de loi faites-vous référence?

M. Bisson: Je fais référence à l'article 273.69. La partie VI du Code criminel est en vigueur depuis maintenant 30 ans. Et c'est sûrement exorbitant que l'on dise que telle chose ne sera pas soumise au Code criminel.

Le sénateur Fraser: Oui.

M. Bisson: Je pense que personne ne va nier que c'est exorbitant.

Le sénateur Fraser: Est-ce que dans votre tête, exorbitant signifie excessif?

M. Bisson: Non, pas du tout. Exorbitant dans le sens que cela sort de la norme.

Le sénateur Fraser: Diriez-vous que c'est quelque chose de très inhabituel?

M. Bisson: Oui, quelque chose de très inhabituel. Sauf erreur de ma part, c'est la première fois que l'on dit que certaines choses ne seront pas assujetties à cette disposition parce qu'autrement, comme le sénateur Beaudoin l'a souligné, il faut recourir à des mandats judiciaires. Ce n'est pas excessif, mais ce n'est pas dans la norme et, de plus, cela existe depuis 30 ans, depuis 1971.

(Sen. Kenny: With respect to the exchange...)

(anglais suit)

(Following French)

Senator Kenny: With respect to the exchange of information with allies who have the capacity to listen electronically, could you give us some general outline of the policies and guidelines that govern that exchange?

Mr. Bisson: The main feature is that the partner will not collect interception that CSE could not collect. We cannot tell the United States we are prevented from collecting communication between Canadians and ask the United States do it for us. That is the main feature and the basis feature. Ms Weeks could elaborate on that, but that is the most important.

Senator Kenny: I have heard it the other way around, and perhaps you could comment on it, that we have passed information to other agencies that we could not deal with but gave it to them to handle and analyze.

Mr. Bisson: Not true, definitely not.

Senator Kenny: How do you know that, sir?

Mr. Bisson: If you ask me, have you been there every day to see if we have not passed information to the United States about American citizens, but the policy is there is no collecting of information by either members of the partner countries that will intercept communication of people coming from one of the other countries. We do not do it in Canada. They do not do it in the United States, New Zealand, Australia or the United Kingdom.

Senator Kenny: I was suggesting information collected on Canadians being passed to Americans, as an example, so they could analyze it and make use of it, although we could not under the current legislation make use of it ourselves.

Ms Weeks: There are two international conventions that have existed since the creation of these agencies. One is they do not collect on behalf of one another, and they do not use each other to collect information that would be otherwise unlawful in their own countries to collect. It is established convention. It is their *modus vivendi*, and it is at the root of their policies.

Senator Kenny: How do you verify it?

Ms Weeks: We saw no evidence in any of our testing that this was done, and at the end of the day, when you are dealing with policies you have verified with international partners at review agency meetings from other countries, you have to take some of this stuff at its face.

(French follows: Senator Joyal)

(après anglais)

Le sénateur Joyal: Monsieur Bisson, lorsque le droit constitutionnel à la vie privée est violé ou non respecté, il doit normalement y avoir un mécanisme pour obtenir réparation dans notre régime de droit qui est fondé sur le respect de la règle de droit.

Et ce qui m'inquiète dans la section qui vous concerne, c'est que lorsqu'on continue la lecture du chapitre, au haut de la page 125, on lit:

Le procureur général du Canada peut tout simplement délivrer un certificat qui, à toutes fins pratiques, dispense le ministre de la Défense qui a autorisé l'interception de la communication privée de rendre disponible quelque information que ce soit.

La semaine dernière, le commissaire à la vie privée a attiré l'attention du public canadien sur ces deux dispositions. Si nous les lisons en succession avec les dispositions précédentes de votre section, en pratique, le Canadien qui est placé dans une situation où il n'est pas protégé par une autorisation judiciaire n'est pas protégé et ne peut pas se protéger dans le contexte où il y aurait une invasion injustifiée dans sa vie privée. Il suffirait pour le procureur général d'émettre un certificat comme il est mentionné aux articles 103 et 104. À ce moment-là, on ne reconnaît pas au Canadien en question la capacité de pouvoir protéger son droit à la vie privée. Est-ce que ces deux dispositions ne vont pas carrément à l'encontre de l'article 7 de la Charte canadienne des droits et libertés?

M. Bisson: Je vais me limiter aux articles qui concernent mon mandat. Prenons l'hypothèse que le Canadien se plaindrait que sa vie privée a été indûment violée par l'autorisation donnée par le ministre. C'est dans mon pouvoir de recevoir la plainte et j'en disposerais suivant la preuve qui me serait faite. Je ne vois pas comment l'article 103 viendrait interagir avec les dispositions qui concernent le Centre de la sécurité et des télécommunications.

Le sénateur Joyal: Vous faites une enquête. Vous arrivez à la conclusion qu'il y a eu une intrusion indue dans la vie privée d'un citoyen. Ce dernier décide d'intenter une poursuite pour obtenir réparation. Le procureur général du Canada, qui serait mis en cause, n'a qu'à utiliser le pouvoir qui lui est donné à l'article 104 aux termes duquel il peut simplement émettre un certificat et déclarer que ces renseignements sont essentiels à la sécurité, à la défense et aux relations internationales du Canada. À toutes fins pratiques, on nie à l'individu, par le biais

du pouvoir additionnel qui est donné au procureur général du Canada, la capacité pour un citoyen de faire valoir ses droits.

M. Bisson: Je ne voudrais pas m'aventurer dans des dispositions que je n'ai pas eu l'occasion d'étudier, mais je ne suis pas sûr que les articles 103 et 104 aillent aussi loin que vous ne le croyez. Le procureur général du Canada peut émettre un certificat pour empêcher la divulgation des renseignements. Mais empêcher le citoyen de se plaindre, je ne suis pas sûr...

Le sénateur Joyal: Ce n'est pas ce que je dis. Ce n'est pas ce que le commissaire à la vie privée a mentionné.

M. Bisson: J'aime mieux ne pas intervenir parce que ce ne sont pas les dispositions sur lesquelles j'ai porté mon étude depuis une semaine.

(Chair : We have a final word from ...)

(anglais suit)

(Following French)

The Chairman: We have a final word from Senator Beaudoin.

Senator Beaudoin: The question is simple. It is on section 24 of the Charter.

(French follows -- Senator Beaudoin reading in French)

(après anglais)(Sén. Beaudoin)

Et je cite:

Toute personne, victime de violation ou de négation des droits ou libertés qui lui sont garantis par la présente charte, peut s'adresser à un tribunal compétent pour obtenir la réparation que le tribunal estime convenable et juste eu égard aux circonstances.

C'est dans la Charte, donc c'est dans la Constitution, et c'est donc plus important qu'un projet de loi qui n'est pas un acte constitutionnel.

La personne pourrait très facilement poursuivre devant un tribunal et j'arrive à la conclusion que l'article 24 s'applique. C'est tellement clair. Les articles 103 et 104 sont intéressants et importants, mais c'est une loi, ce n'est pas une Constitution. C'est la Constitution qui l'emporte. Enfin, c'est tout ce que j'ai à dire. Cela m'apparaît clair.

(Sen. Joyal : It would be of benefit for members ...)

(anglais suit)

(Following French)

Senator Joyal: It would be of benefit for members of this committee to read the press release of the Privacy Commissioner last week. The commissioner specifically raised that question of 103 and 104 in relation to the protection of privacy.

Senator Beaudoin: He is coming and we will ask him the same question.

The Chairman: I should like to thank the witnesses for being here tonight. This has been a new topic of conversation for a parliamentary committee and we are pleased you took the time to come.

The committee adjourned.