House of Commons
CANADA

Standing Committee on Health

HESA • NUMBER 008 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, November 18, 2004

Chair

Ms. Bonnie Brown

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● (1110)

[*English*]

The Chair (Ms. Bonnie Brown (Oakville, Lib.)): Good morning, ladies and gentlemen. It's my pleasure to welcome you to this meeting of the Standing Committee on Health, during which we will be examining Bill C-12, an act to prevent the introduction and spread of communicable diseases.

We have witnesses this morning, and our first witness will be the Assistant Privacy Commissioner, Mr. Raymond D'Aoust.

Mr. D'Aoust, the floor is yours.

Mr. Raymond D'Aoust (Assistant Privacy Commissioner , Office of the Privacy Commissioner of Canada): Thank you very much, Madam Chair.

Thank you for inviting us from the Office of the Privacy Commissioner to offer our perspective on Bill C-12.

With me this morning is Hedy Kirkby, our legal counsel, and Melanie Millar-Chapman, policy analyst, both with the Office of the Privacy Commissioner.

We understand that updating the Quarantine Act is the first of a series of a set of improvements in support of public health that the Government of Canada wants to introduce. This is an important piece of legislation that is intended to prevent the introduction and spread of communicable diseases in Canada.

We are not here to argue against the public safety imperative. The SARS outbreak illustrated the challenges of disclosing relevant personal information in the face of a public health incident. Health Canada explained to us the fairly cumbersome and lengthy process to receive and disclose information on travellers during that period.

[*Translation*]

We also recognize the ever present threat from terrorist use of biological agents. The government needs to be in a position to respond quickly should such a situation ever arise.

For these reasons, our office can certainly see the value of the bill. On the whole, we are supportive of the legislation. What we can offer here today are some suggestions for improvements.

[*English*]

Before doing so, I want to explain the relevant aspects of our office's expertise and mandate.

As you may know, we oversee the Privacy Act, which protects the personal information held by more than 150 government departments, agencies, and institutions, including Health Canada. So the aspects of this bill of chief concern to our office are those that touch on the handling of personal information. I will say more about the Privacy Act near the end of my presentation.

In following through the escalating procedures outlined in Bill C-12 with respect to the health assessment and medical examination, it's clear that the legislation would permit the collection, use, and disclosure of personal medical information, information that in many cases could be highly sensitive. These are areas where we can bring our expertise in the handling of personal information to bear, and I think propose some comments that will be of interest to the committee.

Let me now provide you with detailed comments on the legislation, beginning with, as I mentioned a moment ago, some areas where we are supportive of the language set out in the bill, and then some provisions that we think require some improvement.

[*Translation*]

We would like to begin by expressing support for the language in clause 15. Proposed subsection 15(1) states that every traveller must answer questions and provide any information or record in their possession that the officer “may reasonably require in the performance of a duty under this act”.

We support the idea that the duty to provide information to a screening or quarantine officer should be qualified by the notion of reasonableness. This is a valuable protection for the traveller that we would like to ensure remains a central part of this legislation.

In our experience, we have found that the reasonable person test set out in the purpose clause of our private sector privacy legislation, the Personal Information Protection and Electronic Documents Act, has been very effective as a tool for establishing an appropriate balance of interests between public interest and privacy.

● (1115)

[*English*]

Subclause 54(1) allows an individual who reports a contravention of the act to request that their identity not be disclosed. Subclause 54 (2), however, makes the promise of anonymity subject to any other act of Parliament. "Any other Act of Parliament" includes the Privacy Act. It has been established in case law that the identity of an individual making allegations against another person can be accessible to that person under the Privacy Act, subject to certain exemptions.

Thus, while confidentiality should be the general rule under the bill, there will be situations where an individual who makes a formal access request under the Privacy Act will be entitled to know the identity of the whistle-blower. This is a reasonable balance, in our view, one that is consistent with what is proposed in Bill C-11, the Public Servants Disclosure Protection Act.

[*Translation*]

Regarding clause 2, under Bill C-12, a health assessment is an evaluation of the medical and travel history of a traveller, as well as a physical examination.

We believe that the reference in clause 2 to medical history should be narrowed to refer to the individual's "relevant" medical history.

It would be important to limit the scope of the collection of the traveller's medical history to what the assessor really needs to know to determine whether the traveller is a health risk. This is a reasonable limit on collection, even when the stakes are high.

For greater clarity and reasons of transparency, we would also recommend that clause 2 should include a definition of a medical examination. The parameters of the definition need not be limited, but the definition should set out what may be included, such as the collection of bodily fluids for the purposes of testing.

[*English*]

As for "reasonable grounds" in some provisions, there seems to be some asymmetry in the wording of clauses 56 and 57, as some subclauses are premised on "the opinion of the Minister" and others are based on "reasonable grounds".

We noted there was a lower standard in subclause 56(1), where only the opinion of the minister was required to make a disclosure to various governments or an international health organization, without a reasonableness requirement to temper that opinion. In contrast, subclause 56(2) and clause 57 both require that the minister should have reasonable grounds to disclose personal information to someone in the transportation business, or for law enforcement purposes.

Our recommendation would be to have a standard of reasonableness for all of these provisions.

On the protection of personal information, our final comment relates to the protection of such information to be done by regulation. Clause 62 sets out 15 areas in which the Governor in Council may make regulations. Paragraph 62(g) states that this includes regulation "respecting the protection of personal information".

We look forward to working with Health Canada officials on these regulations to ensure they enhance the existing protections afforded to individuals under the Privacy Act. For example, any collection of information resulting from a medical examination should be limited to the purposes of the legislation.

There also may be a need for some guidance on the disclosure and retention of personal information.

On the matter of disclosure, we would recommend that the regulations contain some guidance that the minister would need to ensure that any personal information to be disclosed under the act should be held in confidence, and that it should be used for the purposes of the act only.

● (1120)

[*Translation*]

It is a central feature of fair information practices to ensure that when personal information is disclosed, what is provided is as limited and specific as possible for the identified purposes. We are also aware of the need to remind recipients that they should hold the information they receive in confidence unless there is a statutory obligation to disclose it.

Maintaining control over the manner in which personal information is disclosed and managed by a third party recipient is an important feature of privacy protection.

On the matter of retention of personal information, given the sensitivity of the personal information that could be collected under Bill C-12, we would recommend that the information not be retained for longer than necessary.

[*English*]

In closing, we believe this is important legislation, in that, with some minor changes, it will have achieved an appropriate balance between protecting public health while at the same time respecting the privacy rights of individuals.

[*Translation*]

Thank you very much for your time today. I would be pleased to respond to any questions you might have.

[*English*]

The Chair: Thank you very much, Mr. D'Aoust.

Ms. Kirkby and Ms. Millar-Chapman, welcome to you both. We look forward to your participation in the question and answer period.

We'll begin the questions with Ms. Skelton.

Mrs. Carol Skelton (Saskatoon—Rosetown—Biggar, CPC): Thank you very much for being here today.

I have some questions of concern about some of the issues you've already addressed.

Does the Office of the Privacy Commissioner have any role in monitoring medical information, how it's collected and where it's stored, and so on?

Mr. Raymond D'Aoust: We're responsible for the administration of two statutes. One is the Privacy Act, which applies to all federal institutions. The Privacy Act contains a fairly comprehensive definition of personal information, which would include medical information.

We are also responsible for administering legislation that applies to commercial activities. That's the Personal Information Protection and Electronic Documents Act, or PIPEDA. There are also provisions in there that specifically deal with medical information.

So in response to your question, yes, we do have oversight responsibility.

Mrs. Carol Skelton: Would your office be able to assist an individual who believes their confidential personal information has been disclosed for a reason other than something that he or she feels is acceptable?

Mr. Raymond D'Aoust: Yes, absolutely. One of our main business lines is to investigate complaints. So any individual who feels that Health Canada or the agency has breached their privacy rights under the Privacy Act could certainly formulate a complaint, which we would investigate.

Mrs. Carol Skelton: Does any individual have the right to examine the information that was collected from him or her under this proposed act?

Mr. Raymond D'Aoust: Yes. The Privacy Act defines access rights, and the individual would have access to this information and would certainly have a right to examine this information.

Mrs. Carol Skelton: Clause 56 says that the minister would be allowed to disclose confidential business or personal information if the disclosure is necessary to prevent the spread of a communicable disease. Under what circumstances would you envision that it would be necessary to disclose this confidential information?

Mr. Raymond D'Aoust: Certainly as the objective of the act clearly specifies, to prevent the spread of a communicable disease, I think this would be warranted.

Perhaps I would defer to Hedy Kirkby or Melanie for any insight on the circumstances for disclosure.

Ms. Hedy Kirkby (Legal Counsel, Office of the Privacy Commissioner of Canada): I'll try. We're referring to subclause 56 (1).

Perhaps I could preface this by saying how this fits in terms of the scheme under the Privacy Act, which is the governing piece of legislation here in terms of the collection, use, and disclosure practices of the government institution in question. This particular provision is necessary to fit into the scheme of the Privacy Act, which, generally speaking, prohibits disclosure of information except in very specific circumstances.

One of those circumstances is where the disclosure is authorized under another act of Parliament. Thus, this is another act of Parliament that is setting out the precise circumstances in which the disclosure can take place. So it dovetails, then, with the Privacy Act.

● (1125)

Mrs. Carol Skelton: If you gave us an example, would that be easier?

Ms. Hedy Kirkby: I might look to Melanie to supplement this. I can explain why the provision is drafted in the way it is.

What this provision enables is disclosure to institutions within the Government of Canada, a province, a public health authority, a health practitioner or an international health organization. So there's a wide array of permissible disclosures at varying levels of government, domestic and foreign, as well as to health bodies.

Off the top of my head, in the federal family, the identity of a passenger and contact information could be something where officials of Health Canada might not have the complete information, and DFAIT might be a department where this information would be in hand, because they would have, for example, passport or visa information that might contain contact information. So there might be a need to communicate with that other federal government department in order to get the balance of the information required.

In terms of the province, because there's a joint role federally and provincially, often pieces of the puzzle reside in two different locations. Thus, it's necessary to build the puzzle by communicating with the other level of government, because, for example, the provincial government might have been the recipient of the information.

I don't know if there are any other examples you can think of, Melanie, that might supplement here.

Ms. Melanie Millar-Chapman (Policy Analyst, Office of the Privacy Commissioner of Canada): Not offhand.

Mrs. Carol Skelton: I'd like to go on further by asking you if you feel there are any restrictions on the minister in this act concerning who can receive this confidential information and how it is retained.

Mr. Raymond D'Aoust: We have certainly suggested that the criterion of reasonableness be added to subclause 56(1).

In terms of disclosure, I think certainly those are already planned for in a number of provisions that are consistent with the objective of the act. Provided that the criterion of reasonable grounds is met, I think we would be satisfied with this. We believe the scheme given here provides a reasonable framework for disclosure. So that's in essence what we....

Mrs. Carol Skelton: You fully believe that what's written in here is what we need for individuals' rights and freedoms?

Mr. Raymond D'Aoust: Yes, with the minor amendments that we suggested.

● (1130)

Mrs. Carol Skelton: With your amendments?

Mr. Raymond D'Aoust: That's right.

Mrs. Carol Skelton: Otherwise, no?

Mr. Raymond D'Aoust: Otherwise, no.

I guess we certainly would argue for those amendments. We would recommend that the committee consider those amendments.

Mrs. Carol Skelton: Okay, good. Thank you. I have some more questions.

Do you feel that there are privacy concerns in this bill for citizens where erroneous information has been taken, or released, or given to other government departments?

Mr. Raymond D'Aoust: Hedy, would you have a perspective on this?

Ms. Hedy Kirkby: Erroneously?

Mrs. Carol Skelton: Yes. If there was a mistake made, if something was done and somebody put down a wrong temperature or something, are there privacy concerns?

Ms. Hedy Kirkby: I'm trying to think how that would play out in a real-life situation if you were the person about whom erroneous information had been given. I would imagine how that would play out would be your interest, first and foremost, in seeing what information was collected by the government in order that you could deal appropriately with it. So I think where it takes us, probably, is to access rights of an individual.

Generally speaking, you would have a right of access to that information. I'm not sure how far to get into this, because when we're in the domain of your right of access to your personal information under the Privacy Act, we can enter into a very difficult scenario, legally speaking, that one day may be the object of some reconsideration and possible amendment in the Privacy Act when the right time comes.

What I'm speaking of here is that in terms of the information that's purely about you, you will ordinarily have a right of access to that information, so you'll get the benefit of understanding what there is. If we're in a scenario.... And I'm thinking again of the linkage to the erroneous, where some other individual has perhaps wrongly given information about you, they have seen you with an envelope, or something like that, and the envelope is an entirely innocent thing but they have reported that they think it contains a suspicious substance. That's when the world under the Privacy Act gets very complex, because unfortunately—you have to bear with me—it's not set out clearly right now in law.

What has happened historically is that the Privacy Act was considered quite clear in this regard for about 18 years. Why that was so was because in the definition of "personal information" in the Privacy Act, it said that the views, opinions, or comments made by another individual about you would not be your information, as the person making the comment, but would be my information, as the person about whom you are speaking. It was treated accordingly for many years under the Privacy Act until it came to the point in time when the Federal Court of Appeal was seized with the issue and said, "Well, yes, it is mine, certainly, when you're making comments about me, but we think it's also yours". So it complicated the issue in that fashion.

What the court said was that in order to determine whose it really is, you have to do a balancing exercise and you have to go through both a private and public interest test and weigh where it should go: should it be protected, or should it come to me? It leads one into that sort of quagmire.

The result under this legislation, then, I think generally speaking would be.... The provision this relates to is section 54 of the legislation. What it is saying in subsection 54(2), and Mr. D'Aoust spoke to this, is that there's a general requirement to maintain the confidentiality of the whistle-blower, but it says it's subject to any other act of Parliament.

● (1135)

What this would then lead to is that I would have my right of access to see what you have said about me. We would be forced into the balancing exercise then, and I would assume that the analysis that would take place would be on which interest would prevail here. If no value were to be added by revealing your identity in this kind of scenario, then your identity could be confidential.

It's a very difficult area, and I can't pretend it's otherwise.

I don't know if the government has spoken to this issue or not, because I think what lies behind those words "subject to any other act of Parliament" is that kind of unclear analysis that has to be brought to bear.

The Chair: Thank you, Ms. Kirkby, and thank you, Ms. Skelton.

It's Mr. Ménard's turn now.

[*Translation*]

Mr. Réal Ménard (Hochelaga, BQ): Thank you.

Just out of curiosity and so that I may understand better, how much have you been involved in the development of the bill?

I understand that as Privacy Commissioner, you are responsible for two acts. Before a bill is introduced in Parliament, are you involved in any way in its development?

[*English*]

Ms. Melanie Millar-Chapman: In this particular instance, generally speaking we have a consultative process on background and we receive briefings from departments. We did last year from Health Canada on the whole public health renewal process, and we have another one coming up shortly.

On this particular bill, that didn't occur.

[*Translation*]

Mr. Réal Ménard: I have three questions.

In the previous bill that was introduced by Minister Pettigrew—who, as you know, was somewhat of a comet in the Canadian health universe, since he was present only for a few months—there was a reference to compliance with the Canadian Charter of Rights and Freedoms.

I am somewhat surprised that you would not feel the need to propose to us an explicit amendment to ensure compliance with the charter.

Regarding this bill and the regulations that should follow, should there not be, either in a preamble or in another clause, the will to make sure that this piece of legislation complies both with the charter, the act and the Canadian Bill of Rights?

Mr. Raymond D'Aoust: That is a good question, but quite frankly, it is a question that may be more relevant to constitutional matters. I do not believe that we necessarily have that capacity in our office. I believe the question should be put to the Department of Justice. You should ask their legal advice in this regard.

However, at first blush, during the discussions that we had when we examined this bill, we did not see anything in there that could negate the provisions of the Canadian Charter of Rights and Freedoms.

Mr. Réal Ménard: I find interesting that you would suggest to us that there should be a narrower definition of medical procedure. In fact, in my view, this committee should agree to do just that.

Do you find that there are other acts that have defined what a medical procedure is?

There is already in this bill a definition of medical procedure. However, it must now be applied to the disclosure of any relevant information. Is that it?

Mr. Raymond D'Aoust: Exactly.

Mr. Réal Ménard: Consequently, we would not need to look for a definition ourselves.

Regarding clauses 56 and 57, you are suggesting that we should narrow down somewhat the information that can be disclosed to international health organizations.

I have two questions. Under the existing bill, a person could find him or herself in such a situation where he or she would be giving information that would then be disclosed without his or her knowledge or consent.

Am I interpreting the bill correctly if I say that such a scenario is possible?

● (1140)

Mr. Raymond D'Aoust: I believe that is the case. It would certainly be a possible scenario, yes.

In such a case, there would certainly be possible remedies, the right to file a complaint under the Privacy Act. We would then investigate such a complaint.

Mr. Réal Ménard: In your view, why is it that subclause 56(1) and clause 57 do not provide the same standard of control. Do you see any rationale that could explain the difference?

Mr. Raymond D'Aoust: Yes. In fact, subclause 56(1) deals with the minister's opinion while in clause 57, we are bringing in the notion of reasonable grounds. This is what we would like.

We would like to have a standard, a common test for all these provisions. That's the fundamental issue. Perhaps there should be a little less leeway in subclause 56(1).

Mr. Réal Ménard: Based on your understanding of this bill, could we find ourselves in a situation where a federal organization or agency would be directly transferring information to some provincial agency, still without the knowledge and the consent of the person being the subject of the investigation?

Let us take a concrete example. If a person is put under arrest by a quarantine officer in Dorval, would it be possible for the federal authorities to give some information to the regional authorities without the knowledge of that person and without any direct contact with provincial agencies?

Mr. Raymond D'Aoust: I believe that is the case, that it is a possible scenario.

Mr. Réal Ménard: So you find that we are right to be concerned with the constitutional scope of this bill.

Mr. Raymond D'Aoust: That is in fact a valid point. That may be something that could be examined more fully.

Once again, I believe that the question should be put to the authorities that have jurisdiction in this area. We do not have as such the mandate to interpret the Canadian Constitution.

Mr. Réal Ménard: My colleague Serge Ménard—

[*English*]

The Chair: You're well over your time. I'm sorry.

Mr. Réal Ménard: Oh, I'm so sorry.

The Chair: Yes, we might get another turn, but even so, those legal questions.... We have another legal person coming as the next witness, so you could chose to whom you are going to direct those questions.

[*Translation*]

Mr. Réal Ménard: Who is this?

[*English*]

The Chair: Professor Gibson.

But now it's Mr. Savage's turn.

Mr. Michael Savage (Dartmouth—Cole Harbour, Lib.): Thank you, Madam Chair.

I just have one question.

Ms. Skelton spoke earlier about the recourse available to individuals if they feel their privacy has been inappropriately breached. Does the legislation allow for compensation for people who feel they've been victimized by that, and should there be penalties for people who have inappropriately allowed private information to become public in a way it shouldn't?

Ms. Hedy Kirkby: That's a good question.

There are not, to the best of my knowledge, provisions in this legislation that enable an individual who has been wronged to seek recourse. That's probably not an entirely unusual situation in terms of legislative schemes, because there are many investigative bodies who will, of course, gather information on innocent individuals. I think here it must be governed by the public interest override, and I assume that would have been the intention of the government in not including such provisions in the legislation.

The second part, excuse me, was with respect to wrongful disclosures. Is that correct?

● (1145)

Mr. Michael Savage: Yes.

Ms. Hedy Kirkby: It's probably a bigger issue than just this particular legislation—

Mr. Michael Savage: Absolutely.

Ms. Hedy Kirkby: —because the Privacy Act, as you may be aware, does not contain recourse of that nature where there have been wrongful disclosures of information by one government department to another level of government, or to anyone, for that matter. This is a matter that has been the subject of much discussion over the years and is probably something one would want to consider adding into the Privacy Act to modernize it and make it consistent with its companion legislation, which is the private sector legislation our office is responsible for, the PIPEDA.

In the case of a private sector organization subject to the PIPEDA that in the same scenario wrongfully discloses the information, there are potential sanctions involved for the wrongful disclosure of information, not as a result of the auspices of our office, but as a result of a court review wherein the court can, in fact, order monetary damages. Under the Privacy Act the limitation right now is that you can seek that recourse in the courts, minus the monetary penalty, but you can seek recourse only for issues of denial of access to information.

That is basically the general scheme at play right now throughout government.

Mr. Michael Savage: Okay.

Mr. Raymond D'Aoust: If I may add to the response, we will be having discussions with the Minister of Justice on reform of the Privacy Act, and the issues you've raised will certainly be discussed with the Minister of Justice.

Mr. Michael Savage: That's great. I realize it's a much bigger issue than this particular act, but it seems to me that if we are going to be serious about ensuring people's privacy, there have to be procedures. There also has to be some penalty for breaching that.

Thank you.

The Chair: Thank you, Mr. Savage.

Mr. Merrifield.

Mr. Rob Merrifield (Yellowhead, CPC): I don't have a lot of questions, but I do have a couple.

Picking up on the previous question, I think this is something we broached with the minister, as well as with Dr. Butler-Jones, when he introduced this. The intent to compensate was certainly there, but it's the wording, and how we're going to place it, that becomes the difficult part that we're going to have to examine somehow. I know that doesn't come into the privacy area, but I believe we'll have to look at it.

On your area, you said proposed subsection 56(1) is not consistent with the two below it in regard to being reasonable. It's the opinion of the minister, rather than demanding reasonableness from the minister. I would agree with you. I'm wrestling with exactly how you would recommend the wording be placed or amended in that paragraph.

Mr. Raymond D'Aoust: We haven't done legislative drafting, but perhaps one way would be to replace “the opinion of the minister” in the fine wording, where we would include the reasonableness criteria to replace that.

If you look at clause 57, it starts off: “If the minister should have reasonable grounds”. Perhaps similar wording could be found for proposed subsection 56(1).

Mr. Rob Merrifield: Fine. I think I have it now. I appreciate that. Thank you.

The Chair: Thank you, Mr. Merrifield.

Is there anyone else who wishes to question?

Mr. Carrie.

● (1150)

Mr. Colin Carrie (Oshawa, CPC): Yes. Again, on what Mr. Savage brought up, if you're going to be speaking to the minister, I think we should also differentiate wrongful disclosure versus errors. Coming from the health care field, I could foresee errors happening.

If the three of you came in on a plane, we had to do blood work on all of you and one of you had a problem with a disease, if the blood work was switched, it could lead to very aggressive treatment. A person could become sick from the treatment if he wasn't sick in the first place. So I think it's very important that we have some type of compensation or recourse in this. That would be my greatest concern in that regard.

I have a couple of other questions, but first I'd like to thank you for this written document with your amendments. I must say that I agree with most of the things you've said.

You mentioned something in clause 2. In clause 2, you believe the reference to medical history should be narrowed to refer to the individual's relevant medical history. I can see why you're putting that in there, but sometimes when you're dealing with patients and trying to extract information, they may not see it as being relevant. I've run into this in my own practice, where my line of questioning is for a reason. If the person doesn't feel it's any of my business, for whatever reason, I am unable to collect information that would have been helpful for me in a diagnosis.

How would you say that the information is relevant? What would you give the examiner access to? Would he be able to have access to the person's prior health records from a family doctor? On the question of relevance, I'm not 100% sure. Could you explain it a little more?

Mr. Raymond D'Aoust: For instance, if we take the SARS respiratory disease or some form of that, one would think the medical examination should be limited to that issue. We don't think it would necessarily be reasonable to ask the individual for his or her history regarding other types of disease that have nothing to do with the issue at hand. That's the kind of criterion we believe should be applied when doing this.

Melanie, would you have an example?

Ms. Melanie Millar-Chapman: This was in the context of the health assessment definition we were looking to narrow the information for. I suppose there would be more information coming at the next level, at the level of an examination by the physician, for example. That would certainly be much, much broader. But at this level of the health assessment, we'd certainly be thinking what the physician considers relevant, what the quarantine officer considers relevant, and what is reasonable—but generally speaking, not procedures you had twenty years ago, for example.

Mr. Colin Carrie: You know what, I agree in principle with what you're saying, because I do believe in privacy, but sometimes relevance is a real funny road to walk.

I also had a question. You mentioned there's "a need for some guidance on the disclosure and retention of personal information" and how it may be retained longer than necessary. Do you have any specific recommendations on how long this information should be retained and on how it should be destroyed, or the length of time before it should be destroyed?

Ms. Melanie Millar-Chapman: I think this would be a discussion we would have later with Health Canada officials to see the sort of framework they would envision as reasonable, based on their experience and the experience of health care professionals. I think it's difficult to give you a ballpark assessment at this time.

Mr. Colin Carrie: But you are going to be speaking about this down the road?

Ms. Melanie Millar-Chapman: We would like to do that, yes.

Mr. Colin Carrie: Okay, thank you very much.

The Chair: Thank you, Mr. Carrie.

I just have one question. The protection of personal information suggests that all of it will be done by regulation. I'm wondering if you are satisfied with that, because with something in a bill, of course, we hold hearings and you can make your suggestions to us.

Is there some kind of a mechanism whereby you are sure that you will have access to having input to those regulations? For example, must the officials who are drafting the regulations run them by you as part of the circulation process, or would you rather have those kinds of things in the bill itself? Would you feel that privacy would be better protected if some of those things to be done by regulation were in the bill?

● (1155)

Mr. Raymond D'Aoust: We certainly have debated whether or not we should be enshrining those provisions in the bill, as opposed to leaving them to regulation, but we came down to the fact that regulation is an appropriate vehicle. We certainly would like to be consulted in the drafting of those regulations; we believe we have a perspective to share on privacy protection.

If consultation occurs with our office, we'll provide our best advice, and so on. There's no obligation on the part of the department to consult with us, but certainly we would encourage them to consult with us.

We were satisfied with regulations.

The Chair: You're satisfied with regulations? But would it be better if those principles were enshrined in the bill?

I mean, you're not striking me as a particularly aggressive group of people who are pushing the whole privacy thing, but rather as a group that is trying not to make too many waves. If this is what the department wants, you said you're satisfied. But I'm asking, because you are holding up the privacy flag within the government and we want to support you in that respect, if in your view it would be better to have at least some of that covered in the bill itself.

Mr. Raymond D'Aoust: Well, it certainly is an option.

The Chair: No, no, that's not what I'm asking you.

Mr. Raymond D'Aoust: Okay.

The Chair: I'm asking you if, in your view, it would be better to have it in the bill. Or if it's not that important, it could be done by regulation—even though you might be shut out of the drafting of the regulations.

Ms. Kirkby.

Ms. Hedy Kirkby: Part of the problem in responding to questions like that, but I will respond, is that the Privacy Act dates from 1983. Basically, it has put in place the general framework for protection of personal information. Much of the detail is not written into the law. To take the example of retention, which the member had asked about, the Privacy Act currently contains minimum retention periods but does not contain maximum retention periods. The way this has basically functioned for the last two decades is that it's been left to individual departments to determine their own internal needs for the retention of information.

Frankly, this is probably one of the areas where our office has less expertise than in many of the other issues involving collections, uses, and disclosures. We in fact have the same problem under the new legislation, under the private sector, that it again just leaves it to the organization and the private sector to determine the appropriate periods.

What this takes me to is that there are pros and cons, because the legislation that is our essential framework, under which everything is analyzed within our office, isn't as strong as one would like to see it, and it isn't as detailed as one would like to see it. The risk then is that if one starts to address these things piecemeal in other pieces of legislation, such as this one, as they're coming through the House, it creates difficulties in terms of maintaining a consistency in treatment of personal information. That would be the downside.

You're correct that—

The Chair: You'd probably rather have a chance to amend and update your own act than to get your oar in the water on this one and then maybe find yourselves hidebound by something you decided this year on privacy in the Quarantine Act when in fact that might not fit very well with some amendments you want to make to your own act later.

Mr. Raymond D'Aoust: That's correct.

The Chair: I see. Well, that explains it. That's why it isn't probably a good idea to start enshrining things in bills, but rather to get your oar in the water at the regulation stage.

When we report this bill back to the House, perhaps we could make some kind of amendment that when regulations are being developed, the Privacy Commissioner be asked to review them, or something like that. You can make sure that your basic principles are followed in that scenario.

● (1200)

Mr. Raymond D'Aoust: We would be satisfied with that, yes.

The Chair: Maybe the researchers could take note of that, and we could try to come up with an amendment of our own.

Anybody else?

Seeing nobody, I'll thank you very much for coming. Maybe we can even help you out by suggesting, in our various caucuses, that the Privacy Act needs to have an updating. That would make your work easier.

Mr. Raymond D'Aoust: Thank you.

The Chair: Again, thank you very much for sharing your expertise with us.

Our next witness, ladies and gentlemen, has come all the way from Halifax, out of that very stormy part of the world this week. We're very grateful to her for making that effort. She is from the Health Law Institute at Dalhousie University. My guess is that she probably knows our friend Françoise Baylis, who used to come and talk to us about reproductive technology from the ethics point of view.

Here she is now, Ms. Elaine Gibson, acting director of the Health Law Institute at Dalhousie University.

Ms. Gibson, we welcome you, and we invite you to begin your presentation.

Ms. Elaine Gibson (Acting Director, Health Law Institute, Dalhousie University): Thank you. And, yes, I do know Françoise very well.

The Chair: We were going steady with her for a while, she was here so often.

Ms. Elaine Gibson: I see.

Well, the Canadian world has shifted dramatically, post-SARS. The federal government needs to ensure that it's not overreacting, and needs to strive to ensure that adequate protection of the public is balanced against respect for the liberty of individuals and groups. It also needs not to overstep its bounds constitutionally, whether charter or division of powers.

Bill C-12 strives to achieve an acceptable balance. In some respects it does a fair job. Sometimes I would say there is more protection of the public required, and sometimes more respect for liberty. I will suggest specific ways to improve the balance. In the brief time I am here, I will focus on the most salient provisions from a legal perspective. While there are many areas where improvement is warranted—and I could submit to you a fuller list afterwards, should you wish—in the interests of time, I've developed my list of top eleven issues. I tried to keep to ten, but it went to eleven.

First, I'll discuss places where greater emphasis on rights is needed, in my view, then where provisions need strengthening, and then I'll make some general comments about the bill.

The first item I will address is right to counsel. A right to counsel should be provided by the state, and counsel should be provided by the state as soon as is reasonably practicable upon detention. Section 10 of the charter provides “the right on...detention...to retain... counsel without delay and to be informed of that right”. Arguably, for something as serious as detention upon entry to Canada for suspicion one is carrying a communicable disease, counsel should be provided by the state. This was included in the health protection legislative renewal proposal, but is not in Bill C-12.

The second issue is the right to a translator. At present, there is some limited provision under clause 24 when a health assessment or medical exam is to be done. However, a translator should mandatorily be provided much earlier in the process where needed, as soon as there is a duty under clause 15 for the traveller to provide information, and at every subsequent step along the way. Further, at present clause 24 states, “if the traveller does not have an adequate understanding of at least one of Canada's official languages”. I would suggest that it read instead, “where reasonably required for comprehension by the traveller”.

Under section 7 of the charter, one is not to be deprived of liberty “except in accordance with the principles of fundamental justice”. Surely it would violate principles of fundamental justice if duties were being imposed on the individual and their liberty was being curtailed without the ability to comprehend these duties and limitations on liberty.

Third, treatment should be ordered only by the court and not by a quarantine officer. At present, clause 26 permits the quarantine officer to order the traveller to comply with treatment or any other measure. Forced treatment can be immeasurably more invasive than detention. Section 12 of the charter states “Everyone has the right not to be subjected to any cruel and unusual treatment”. Of course, the individual may be offered treatment and may accept it voluntarily. While the compulsion of treatment will be necessary in some circumstances, for it not to be cruel and unusual, it should be mandated by the court and not by the quarantine officer.

Fourthly, and more broadly on the issue of courts, under the present bill there is no ability of the traveller to request judicial review of a decision. This surely is an oversight that must be corrected. There is a right to review of a detention order by a review officer under subclause 29(4), but the terms of review are not specified, they are left to regulation. It appears that an oral hearing, with the full rights of answer and defence, is not necessarily contemplated.

● (1205)

At present, the quarantine officer is to apply for court review if the traveller is refusing to comply. There should be a review by the court of the decision, available within a specified timeframe, upon application by the traveller.

Fifth, time limits need to be added. At present, there is very little mention of when a particular step needs to be taken, other than that it be as soon as reasonably practicable. One exception is for review of a detention order, which must be completed within 48 hours of receipt of a request. When an individual is being detained—that is, held against their wishes—the state must do more to ensure that the traveller is not arbitrarily detained, as prohibited by section 9 of the charter.

I would suggest that the timeframe be as soon as reasonably practicable, and at most, within 24 hours. This would apply to each of the stages of health assessment, medical exam, and the review of the detention order upon request.

Sixth, there needs to be added a requirement of reasonableness to justify action at a number of points. This has already come up in the proceedings, including with the previous witness. At times, in Bill C-12, the state must have reasonable grounds for its action, but far from all.

I would refer you for one example to subclause 29(3). In the middle of this subclause, it states as part of the test for continued detention, “if the officer is of the opinion that the traveller poses a risk”. Frankly, this isn't good enough to protect the charter right against arbitrary detention. It should state, “if the officer reasonably believes” or “believes on reasonable grounds”, not merely if he or she is “of the opinion”.

I will list for your purposes the provisions I have identified where the element of reasonableness should be incorporated. Those are subclause 29(3), paragraphs 32(a) and 32(d), clause 35, subclause 37 (1); clause 38; and clause 47. I have actually left out the ones that pertain to the minister, assuming that the minister isn't as likely to be held to the standard of reasonableness as others involved in the process.

Seventh, reference to travellers should be removed from subclause 47(1) of the general powers part of the bill. If you turn to subclause 47(1), it appears to be primarily about conveyances or places. However, it also refers to “whether a traveller has a communicable disease or is infested with vectors”.

Then, if you look to paragraph 47(1)(e), it states that the officer may conduct and test or take any sample. Presumably this would allow the taking of, for example, a blood or tissue sample from a traveller without even a reasonableness requirement. This undermines the protections in earlier portions of the bill. It is not at all clear that travellers need to be included under this general powers section. I would recommend the removal of reference to travellers in subclause 47(1).

Eighth, I draw your attention to the fact that there are at present significantly different provisions with regard to entry to Canada versus egress—that is, leaving the country. Although the powers are the same at entry and at departure points, the definition in clause 2 of a “departure point” limits it to places designated by the minister under clause 10. In turn, if you refer to clause 10, a departure point is only to be designated in case of a public health emergency of international concern, not even one of national concern. Therefore, there is no screening of travellers leaving the country permitted under this bill unless there is an international public health emergency.

● (1210)

Ninth, the description of which travellers fall under these provisions should be broadened.

Now I'm getting into areas where, instead of an increase in rights, I'm going to argue that the bill needs to be strengthened.

Referring to subclause 15(2), if the traveller has “reasonable grounds to suspect“—again, reasonable grounds to suspect—“that they have a communicable disease” or that “they are infested with vectors”, this will suffice. I believe that is appropriate. However, the subsequent portion adds, “or that they have recently been in close proximity to a person who has a communicable disease”. My concern is that in the case of a newly developing disease that is difficult or impossible to diagnose at the time, it cannot be established that the proximal person actually has a communicable disease, only that there is a reasonable suspicion that they have it. My suggestion is that the wording be changed to: “close proximity to a person who has, or is reasonably likely to have, a communicable disease”.

This definition is relevant to a number of clauses: subclause 15(2), which I just referred to; paragraph 16(1)(a); subclause 20(1); subclause 22(1); and clause 26.

Tenth, following along from my description of a newly developing disease, a number of times in reading this bill it occurred to me that it might be useful to have one level of powers to handle known diseases in non-emergency situations and a heightened level in case of emergency. The bill at present does contain some limited emergency provisions, and I understand that there are plans for broader legislation to address threats to public safety. Depending on timeframes for this subsequent legislation, the government may wish to incorporate additional provisions in Bill C-12 to address emergencies—for instance, the newly developing disease I just referred to.

Almost finally, I would refer you to specific provisions regarding flows of information, just referred to by the previous witnesses.

First, subclause 25(3) compels a province to advise Health Canada on whether a traveller has reported to the public health authority. There are questions regarding the constitutionality of this provision. I flag this as a provision requiring scrutiny in terms of division of powers.

Second, clauses 55 and 56, regarding the collection and disclosure of information, in my view require further restrictions. Specifically, there should be a definition of medical information. It should be identified from whom the information may be obtained, about whom, and what powers of use and disclosure flow therefrom.

Further, subclause 56(1) should be qualified to provide that the minimum amount necessary be disclosed, in the least identifiable form, for the stated purpose, and that the person or business be advised at the first reasonable opportunity of the disclosure.

I would further add in terms of information that Bill C-12 does not address a number of necessary and critical issues regarding health information required for purposes of public health. The health protection legislative renewal proposal included flows of information seen to be within the scope of the federal government. I flag this issue for this committee, as, if it is not addressed in Bill C-12, it does need to be addressed in the very near future.

Thank you for the invitation to address your committee.

● (1215)

The Chair: Thank you, Ms. Gibson, and thank you for the very excellent work you've done in your analysis of the different clauses of this bill. We are so grateful when someone comes and instead of just giving us a prose set of opinions, actually does the work, as you have done, tying it to the different clauses of the bill. It moves our work along so much more quickly. We're really and truly grateful.

I think Mr. Merrifield is going to begin the questions and answers.

Mr. Rob Merrifield: I want to thank you for being so concise and for giving your input. I would ask that we have a written copy of your presentation so we can follow it through. I may not have been able to get it all down.

The Chair: Yes. I've already asked the clerk. She's going to ask Ms. Gibson to get it printed and send it to us. Then, of course, we'll get it translated.

Mr. Rob Merrifield: In questioning a couple of the eleven that you've put forward, the very first one is a little sensitive for me. I'm a little fearful of asking for right to counsel. I did that in the past and ran into a little trouble. Nonetheless, in this case, maybe it would be warranted, but I am a little nervous in even saying that. You might have comments on that.

When it comes to number three, you say that treatment should be ordered by the court and not by the quarantine officer. What kind of a time delay would that take? What kind of jeopardy would that lead to in a case such as SARS or something where we're not sure what we're looking for or looking at?

My idea behind the Quarantine Act and its application is that it should be used very sparingly, but when it's used, it should be very aggressive. It's there for the protection of society, and only that. If it's used as a vehicle for anything other than that, then it shouldn't be used at all. On this one, where is your mind on that? Maybe you're more aware of the time it would take for a court order compared to a quarantine officer.

Ms. Elaine Gibson: Don't forget that this is specifically for treatment, not for detention. The need for treatment is reduced, in turn, by the powers of detention.

Note that the bill provides for application both to federal court and to the provincial superior courts. There's more latitude in terms of getting access to court. It would potentially be a case where an expedited application to court would be needed.

● (1220)

Mr. Rob Merrifield: I take your case as right that it's for treatment. Although let's say somebody gets off a plane and collapses. Under this act, are you suggesting that we shouldn't...? I suppose it's hypothetical, and you always look at the hypothetical when you look at cases. Is there a case that could be presented where it might put us or a patient in jeopardy, if we write into this piece of legislation that there be a court order rather than a quarantine officer?

Ms. Elaine Gibson: Again, I would remind you that I was only referring to mandatory treatment. In the case of someone collapsing, if he was unconscious and could not give consent to treatment, then there's an emergency exception in common law for facilitating the provision of necessary treatment. It's only when a person has been offered treatment and is refusing it that I suggest it's necessary for the decision to be made by a court.

Mr. Rob Merrifield: How long would the process normally take?

Ms. Elaine Gibson: I don't have an answer to that. I know that on child protection applications, for instance, they can be expedited in a matter of a few hours.

Mr. Rob Merrifield: Okay. Thank you, Madam Chair.

The Chair: Mr. Ménard is next.

[*Translation*]

Mr. Réal Ménard: Thank you very much for this presentation. I am myself studying law at Ottawa University. I have six credits to complete to obtain my degree. So I am happy that you are giving us the judicial context of this issue.

You referred to a provision that could be challenged from the constitutional point of view. That provision requires a province to disclose the identity of a person who would be declared a communication vector. What clause are you referring to?

[*English*]

Ms. Elaine Gibson: I believe it was subclause 25(3).

[*Translation*]

Mr. Réal Ménard: Okay.

[*English*]

Ms. Elaine Gibson: Yes, it's specifically subclause 25(3).

[*Translation*]

Mr. Réal Ménard: So that could be challenged as a requirement for a province to inform the federal government, which could be considered as a violation of the distribution of powers.

[*English*]

Ms. Elaine Gibson: I flag it as a definite issue. The federal government is explicitly, according to the Constitution Act, given powers over quarantine. So the question of whether the compulsion of information from the province is allowed constitutionally has to do with a number of factors. One is if it is rationally connected to quarantine. Of course it's a little more complicated than that; it depends on how seriously it's encroaching on provincial powers. But you need to find a clear link to the concept of quarantine to fit it under the federal quarantine power. It's also potentially under the criminal law power, which is federal.

Finally, another federal power under which it may be fit is the peace, order, and good government national dimensions power.

[*Translation*]

Mr. Réal Ménard: I have two more questions. As you know, we must remain vigilant because it would not be the first time that the government would be quietly trying to intrude. So your vigilance is worthwhile.

You seem to be saying that the traveller should be able to ask for judicial review of a decision made by a quarantine officer. Did I understand you correctly? Where is that in the bill?

So if a court order or a court decision is made, you are saying that there should be the possibility of a judicial review, which in the case of Quebec would be by the Superior Court. Are you saying that the citizen who is subject to a decision made by a quarantine officer should be able to have that decision reviewed by the courts?

● (1225)

[*English*]

Ms. Elaine Gibson: Yes, that's what I'm saying, in two circumstances. One is generally...and I think you are referring to the general submission I made that there should be a right of appeal to a court of a decision made by a quarantine officer. This bill provides for application both to the federal court and to the superior provincial courts, so in Quebec I assume that would be the high court, as you referred to it.

[*Translation*]

Mr. Réal Ménard: The Department of Health's officials told us that the right to a lawyer was already provided for. You seem to add to this that such lawyer should be provided by the state. Did I understand correctly? Witnesses who have appeared before us and who are now sitting behind you seemed to be saying that the right to a lawyer was provided in the bill. I understood you to say that it would be the right to have a lawyer provided by the state.

[*English*]

Ms. Elaine Gibson: That's right. The distinction I'm making there is that it's not only the right to be able to consult with a lawyer and have a lawyer represent you, it's also the right to be provided, free of charge, with that legal service.

[*Translation*]

Mr. Réal Ménard: By the Canadian state? What you are saying is significant. You are saying that, under the protection provided for by the charter, if one wants to retain a lawyer, it is not only a matter of going to a private practice lawyer. The Department of Health would have to provide in its budget that if one requires a lawyer, that legal advice would be paid for by public funds.

[*English*]

Ms. Elaine Gibson: I am proposing that route be taken. I am proposing that if it is not, there may be a violation of the charter.

[*Translation*]

Mr. Réal Ménard: You will please the Canadian Bar Association and the Barreau du Québec. Obviously it appears to me that this test is being carried quite far, but I believe that such a statement must be examined more carefully.

Thank you.

[*English*]

The Chair: You should be encouraging this, Mr. Ménard. It's a new career for you. There would be a lot of chances for business—you could hang out your shingle as an expert in quarantine.

Mr. Savage, and then Mr. Carrie.

Mr. Michael Savage: Actually, Madam Chair, I don't have a question for the witness. If I did, I'd be afraid to ask it, frankly.

I just want the committee to know something I've always known, that the information that comes from Nova Scotia to Ottawa is so much better than the information that goes the other way.

I congratulate you on your hard work, and I thank you for that.

The Chair: You'll be interested to know, Ms. Gibson, that we have two members from Nova Scotia on this committee, and I think they are also members of the Nova Scotia tourism commission or something, because we usually get a sales pitch every single day.

Mr. Carrie, perhaps you would like to tell us a little bit about your part of the country before you ask your question.

Mr. Colin Carrie: Well, I would, but we'd get into competition here.

I did want to commend you on your good work. You brought up some points, and I thought one was quite good, the entry to Canada versus the egress. As you said, there's no screening for travellers leaving the country.

Have you thought about how this affects Canada in international law, and do you think this is something we should propose even further? I know with SARS, had we had international cooperation, they had these temperature things we could have screened travellers with. I think for the future it would help in catching these things before they start moving internationally.

Ms. Elaine Gibson: Well, as has probably been said a number of times before this committee, communicable diseases do not respect borders. More and more we are seeing our obligation as one that is international in nature in this regard. I actually don't know if this was an inadvertent absence in the drafting—

● (1230)

Mr. Colin Carrie: I'm glad you noticed it.

Ms. Elaine Gibson: —or whether the government is actually trying to draw a very strong distinction between how we'll protect Canadians and how we'll protect people who are the recipients of people leaving the country.

In terms of international obligations, I actually haven't looked specifically at that. It's a very good question, one to which I don't have an answer at the moment. There are new international health regulations that are being drafted. I have not reviewed them for that purpose.

Mr. Colin Carrie: Another point you brought up, point ten, was about known versus unknown diseases in emergencies and how they should be treated differently. Is this something you have specific recommendations for in this act?

Ms. Elaine Gibson: I did not go to the level of looking at it specifically. It came to me with questions like, for instance, Mr. Merrifield's, in response to his question. He was reluctant to have a mandatory court review prior to forced treatment, in that it might cause delay. If it caused delay for a case of a known disease, one we're used to handling, then we're used to handling that. When it comes to a new disease that we don't know the parameters of, then he may be correct that it may be difficult to get a court decision prior to having treatment.

So it's in those situations and in the early stage of an outbreak that emergency powers may be needed. It would take a rather thorough review of the bill and pulling out various sections, having the standards lower at one point but higher if there's a declaration of a state of emergency.

Now, that said, as I mentioned, I also understand there is going to be further emergency legislation and public safety legislation coming in conjunction with the creation of the office.

Mr. Colin Carrie: I did notice when you brought that up that it did make me think there would be a necessity for a little more extensive review of what we have there.

Thank you very much. That's wonderful.

Ms. Elaine Gibson: You're welcome.

The Chair: I think there is an obligation on a traveller to present themselves to an officer at a departure point, but I think the crux of the matter is that the minister has to designate certain places as departure points.

Is that not it, Ms. Gibson?

Ms. Elaine Gibson: That's it, plus one other factor, though. If you read clause 10, it says:

> If, in the opinion of the Minister, there is a public health emergency of international concern, the Minister may by order designate any point in Canada as a departure point.

The Chair: Exactly, and she could actually just say that every airport was a departure point.

Ms. Elaine Gibson: She could, if there were a public health emergency of international concern. This statute, as presently drafted, wouldn't allow her to do that.

The Chair: I see. So while that is a good provision, we'd have to improve it. For example, if SARS were present in Toronto, and flights were departing for other cities in Canada that had no incidence of SARS, it seems to me it would be in our national interest to have that apply domestically as well as internationally.

Ms. Elaine Gibson: That's an issue that was not to be addressed by this Quarantine Act, to my understanding. It was going along with traditional concepts of the Quarantine Act as being for entry into and departure from Canada.

The Chair: Where is this other act going to come from—the Department of Health, Public Health, Justice, or Emergency Preparedness?

● (1235)

Ms. Elaine Gibson: I believe it's under Public Safety and Emergency Preparedness Canada.

The Chair: We will definitely need you to come back, because the concept of personal liberty is one some of us are pretty concerned about in the post-9/11 world.

Ms. Skelton.

Mrs. Carol Skelton: Thank you so very much for coming today.

The old Bill C-36 stated in the purpose clause that the bill's purpose was to protect public health, while ensuring respect for the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights. Bill C-12 doesn't have that statement in it. From a legal perspective, is that a significant omission?

Ms. Elaine Gibson: Could you just remind me, was that in the preamble or purpose section?

Mrs. Carol Skelton: It was in the bill's purpose section.

Ms. Elaine Gibson: I understand that representatives of Health Canada have taken the stance that the charter is to apply to this statute, so it need not be mentioned explicitly. By mentioning it in the purpose section, it provides some guide to interpretation of the statute.

Is it helpful to have it in? Whenever there's a purpose statement, it provides some guidance for the courts as to interpretation of the statute. On the other hand, it is true that the charter will apply, whether stated or not.

Mrs. Carol Skelton: The Canadian Human Rights Act prohibits discrimination on grounds of race, nationality, ethnic origin, and all those things. Under clause 51, a quarantine officer or environmental health officer can compel any person to provide any information or record in their possession about a traveller that the officer may reasonably require in the performance of their duties or functions under the act.

Can you envision any situation where this information could infringe on a person's rights?

Ms. Elaine Gibson: It clearly infringes on rights, but it intentionally infringes on rights in order to get the information. I mentioned that I had a number of other suggestions about the drafting of the bill. Certainly on this one I would prefer that it read, instead of “the officer may reasonably require”, that “the officer reasonably requires”.

Mrs. Carol Skelton: So that's the same—you feel “reasonably requires”.

Ms. Elaine Gibson: Yes, instead of “may reasonably require”.

Mrs. Carol Skelton: Thank you.

On another thing that was brought out, there does not seem to be a requirement for an individual to consent to the collection or disclosure of medical information under this bill. If no consent is required to either collect or disclose medical information, does this raise any ethical or legal concerns for you?

Ms. Elaine Gibson: Well, certainly it does. Information should be collected with consent where possible. That's just a general concept that we're moving more and more toward. It needs to be clearly justified if it's going to be gathered without consent. If it can be gathered with consent, that's the preferable first step. If not with consent, then the types of parameters I mentioned need to be drawn very closely around it.

Of course, public safety is an area where, I should mention, the courts have given great leniency, in the interest of the public, to interpret charter rights favourably vis-à-vis public safety. On the other hand, these principles will apply—that it should be the minimum amount necessary for the purpose, and it should be in the least identifiable form to meet the stated purpose.

● (1240)

Mrs. Carol Skelton: That's very good. Thank you.

The Chair: Thank you, Ms. Skelton.

Thanks on behalf of all the committee members. Some of them probably had to leave because they have meetings at one o'clock and only have 15 minutes to get some lunch, but I know they were very interested in what you had to say.

We all look forward to the printed version of your remarks.

Ms. Elaine Gibson: Thank you.

Should I also supply the latter comments I had that were not in my top eleven?

The Chair: If you can, that would be wonderful. Submit them to the clerk, and she'll take care of the translation and circulation of the document.

I thank you very much again for all the work you did. I have a feeling we'll be calling on you again, maybe not with this bill but perhaps with another one.

Ms. Elaine Gibson: Thank you for the opportunity.

The Chair: This meeting is now adjourned.

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