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Home » News » Politics



## Law groups urge government to revamp cyberbullying bill

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Two prominent groups representing Canadian lawyers are calling on government to change its cyberbullying bill, saying broad new surveillance powers being proposed go beyond the scope of the bill and are vulnerable to a Charter challenge.

The testimony from the Canadian Bar Association and Criminal Lawyers' Association on Tuesday sparked testy exchanges, including one with a Conservative MP who argued police officers' "spidey senses" should be enough to justify a warrant-less intrusion of a person's privacy rights.

But lawyers warned that Bill C-13, in its widely supported pursuit of fighting cyberbullying, has raised new, broad questions over lawful access to electronic data.

"The bill announces itself about being about cyberbullying and protecting Canadians from online crime, but certainly it far exceeds those parameters," Michael Spratt of the Criminal Lawyers' Association told the committee, adding the bill is "not only overly broad, but it's likely unconstitutional."

The lawyers' complaints follow those of non-partisan watchdogs over Bill C-13, tabled after the high-profile deaths of Rehtaeh Parsons, Amanda Todd and others. The bill criminalizes cyberbullying but also includes, for instance, provisions allowing companies to voluntarily hand over data with impunity. Watchdogs have warned about a lack of judicial oversight. However, the families of several teens who died after high-profile cyberbullying cases have said they support the bill, and the government has regularly invoked victims' rights in defending the bill's expansion of surveillance powers.

Marian K. Brown, an executive member of the Canadian Bar Association's criminal justice section, told the committee the bill, as written, could have unintended consequences, such as prosecuting image-sharing cases that are "merely careless" as full-scale cyberbullying and should be given a more precise wording. The CBA made 19 recommendations for changes to the bill.

"We're at a perfect storm of legal change and technological change and it's no wonder we're having difficulty with it," Ms. Brown said. The CBA echoed other critics' calls to split the bill apart, moving forward quickly on the new cyberbullying laws and giving a closer look to the new police powers.

Two other witnesses, lawyers Gregory Gilhooly and David Butt, told the committee they favour the bill, with Mr. Butt calling it a "win-win." Each have done work related to victims' rights causes. Mr. Gilhooly suggested it wasn't a concern if the law was proven unconstitutional. "I'm firstly worried about keeping our children and citizens alive when it comes to issues of cyberbullying. ... If it turns out our laws have gone too far in accordance with what the Charter sets out, I'm more than happy to have a perp walk [away free after a failed case] but to have a child alive," he said. In a struggle between privacy and victims' rights, he said "a tie's gotta go to the victim here."

Mr. Spratt later argued "a tie doesn't go to the victim, a tie goes to the Charter," adding it is possible to boost police powers without infringing on privacy rights.

Conservatives on the committee took exception to some of the lawyers' critiques during the two-hour session. Mr. Spratt at one point sparred with David Wilks, a former Mountie who is now a Conservative MP, over Mr. Spratt's suggestion the bill opens the door to police abuse.

"What we want to avoid is police obtaining personal and private information based on their spidey senses, which happens all the time and the courts have a dim view on that," Mr. Spratt said, speaking about the new powers in the bill.

Mr. Wilks, interrupting, said: "As a police officer, my spidey senses, as you [call] them, are the one and only thing that will allow me sometimes to move forward in an investigation that will eventually bring forward more information" in a case.

"Well, unfortunately, spidey senses don't amount to reasonable and probable grounds [to justify seizing data], and the courts have found that acting on spidey senses and your suspicions is what leads to evidence being excluded," or ruled inadmissible, Mr. Spratt replied.

At another point, Ms. Brown was asked what the harm would be if someone's personal information was erroneously swept up in an investigation. "Infringement of a Charter-protected privacy interest is a harm," she replied.

Bill C-13 is one of a handful of bills currently before Parliament that include provisions to expand police powers to monitor Canadians. They come amid revelations that the government is monitoring Canadians' social media accounts and that there were 1.2 million cases in 2011, the most recent year available, where government agencies asked telecommunications companies to voluntarily hand over certain data. Justice Minister Peter MacKay has said the bill won't be split apart, and all signs are government will push ahead.

"We cannot protect people by mere declarations. We must also give the authorities the ability to actually investigate and prosecute offences under the law. That is what this bill does," Prime Minister Stephen Harper said when asked about the bill Tuesday.