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• (1530)

[English]

The Vice-Chair (Mr. Paul Szabo (Mississauga South, Lib.)): Good afternoon. This is meeting 22 of the Standing Committee on Government Operations and Estimates. Pursuant to the order of reference of Monday, October 18, 2004, this is a study of Bill C-11, an act to establish a procedure for the disclosure of wrongdoings in the public sector, including the protection of persons who disclose the wrongdoings.

This afternoon, colleagues, we have two panels of witnesses. In the first hour we will hear from Ms. Joanna Gualtieri, president of the Federal Accountability Initiative for Reform, also called FAIR.

Ms. Gualtieri, welcome. I know you have appeared before this committee in the past on a whistle-blower bill. We appreciated your input then, and we certainly do now.

Simply for the caution of all members, Ms. Gualtieri has a long-standing matter that is still in process. As a consequence, I think we should take due care to deal as much as possible with the bill and draw not on the case but rather on the experience from the case as it relates to the bill. I would encourage all members to be sensitive to that fact.

Having said that, Ms. Gualtieri, welcome. We certainly would like to hear your opening remarks, and I'm sure the members will have questions for you. Please proceed.

Ms. Joanna Gualtieri (President, Federal Accountability Initiative for Reform (FAIR)): Mr. Chairman, thank you for this opportunity to provide my testimony.

You chaired the last committee I testified at, so I'm encouraged to see you back, because you no doubt bring a wealth of experience.

Just as background, I am a lawyer and a founding member of FAIR, a non-profit, non-partisan organization promoting the right of employees to exercise free expression to challenge wrongdoing that betrays the public trust. My engagement with whistle-blowing arose out of my experience with the Department of Foreign Affairs. I spent years attempting to get management to investigate widespread violations of Treasury Board and departmental accommodation policies and what I considered was the squandering of billions of dollars. It was really the stonewalling and retaliation and ultimately the justice department's unethical tactics that convinced me of the need for reform.

For close to a decade I have counselled whistle-blowers; spoken nationally to chartered accountants, auditors, legal counsel, corporate

directors, and university students; and participated in numerous documentaries. My collaboration and consultation with the government accountability project in Washington has provided valuable insight. The experience has taught how a failure to protect whistle-blowers created a demoralized and disenfranchised public service, cocooned wrongdoers, and harmed the public good.

The committee has heard repeatedly that the Public Service Commission is not independent. There's been a lot of criticism about the reporting to Parliament through the minister. In our view, however, there are other compelling reasons to challenge Bill C-11. Foremost, it is not a whistle-blower protection act. It is a government-designed and administered disclosure regime that controls and reins in the whistle-blowers and obstructs the public's right to know.

Information Commissioner John Reid provided cogent and powerful testimony about how clause 55 trumps access rights and allows departments to secrete away information for 20 years. Paragraph 21 of the analysis I provided already to committee members discusses how really it promotes a two-way dialogue between the commissioner and the executives, not between the public and Parliament. It is a recipe for cover-ups.

Moreover, the commission can do little more than operate, really, as an impotent disclosure repository. It has no authority to order corrective action, no power to sanction the wrongdoer, and no power to grant a remedy, and it is dependent on Treasury Board for its budget, a serious impediment to the claim of independence. This impotency of course reflects not on the staff of the commission but on the conscious design of the office.

Even if Bill C-11 were to implement an ideal disclosure and investigative process, it would still be fatally flawed. This is because it fails to lock in remedial rights for the whistle-blower. It has been said that the fatal flaw of most whistle-blower legislation is the inadequacy of remedies. It is wrong—in fact I would suggest it is irresponsible—to encourage public servants to come forward and protect us, the public, and not give them the means to protect themselves. Scant discussion has been given to necessary legal protections. The focus has been on disclosure mechanisms and the investigative process.

The truth is, we will not prevent future scandals such as tainted blood, Somalia, Walkerton, HRDC, Westray, and even sponsorship, without protection. The committee must ask itself, why would someone come forward without legal protection?

We should note that any reluctance to bear witness will be compounded by the powerlessness of the commission. History has shown that employees will take risks when they feel their disclosures will lead to change, but with Bill C-11 insulating wrongdoers and management from personal accountability, most will conclude, why bother? Unless the government genuinely addresses the devastating consequences for whistle-blowers, there is little point in continuing to entertain Bill C-11.

Treasury Board itself reports harassment in the public service at about 20%. Mental illness in the workplace, a lot of it from bullying and harassment, costs \$33 billion annually. It is short-sighted to disconnect this epidemic from whistle-blowing, since harassment is management's tried-and-true response for whistle-blowers.

• (1535)

Significantly, a lot don't even recognize that they are being harassed because they are viewed as whistle-blowers. They see themselves as loyal employees doing their job.

Retaliation is subtle and difficult to identify. Common tactics include spotlighting the whistle-blowers rather than dealing with the message. They attack credibility, motives, and competence, manufacturing a poor record and threatening the whistle-blowers into silence. Isolating or humiliating the whistle-blowers and paralyzing their careers are other common scenarios.

Many who have experienced retaliation will not speak about it because it is too painful to recount. They are permanently scarred and are unable to find work, let alone be their own advocates. Top-notch employees are consigned to economic ruin, despair, and helplessness, and meaningful contribution is crushed.

In my experience with FAIR, it has been a privilege to have their trust, but it has been deeply moving to witness their struggles in challenging formidable institutional power for so many years. It has been another contradiction to witness this destruction in a country that prides itself on being a world leader in human and civil rights. There has been a collective failure of the government, the labour movement, and the NGO community to protect whistle-blowers, and hope is now found in the ability of this committee to redress this failure.

In the analysis that I've provided to you, I have highlighted 23 essential points for effective whistle-blower protection, and I urge

the committee to consider them and incorporate these safeguards. Let me briefly highlight some.

The first safeguard is full free speech rights. Whistle-blowers should be free to blow the whistle anywhere, anytime, and to any audience, unless disclosure is prohibited by statute, and even then disclosure must be permitted to Parliament or law enforcement. Bill C-11, as you know, is a vehicle to control whistle-blowers, requiring them to disclose to management, except in limited circumstances. This ignores the fact that most will have tried endlessly to have a dialogue with management, so to refer them back to management is ludicrous and will reinjure them and lead to cover-ups.

Secondly, there should be disclosure of any illegality and misconduct. We talk about disclosure extending to gross waste, mismanagement, abuse of authority, or danger to health and safety, but let's be clear that it must also cover workplace policies, regulations, rules, directives, codes of conduct, etc. I urge you to look closely at the fact that Bill C-11 does not include Treasury Board policy and guidelines—ironically the very policies that were exposed in the sponsorship program. It is our experience that they are commonly violated because the Department of Justice has advised management that there are no legal consequences because they are not laws and they are not regulations.

Third is the form for adjudication of whistle-blowers. I've spoken about this a lot. A whistle-blower must have an effective judicial process, including access to our courts of justice. Dr. Keyserlingk confirmed this in his testimony. Whistle-blowing may expose matters of substantial public interest and could be highly embarrassing to government. The courts are the only forum sufficiently independent and competent to serve as ultimate adjudicator. The Public Service Staff Relations Board identified as the forum in Bill C-11 is an administrative process with no experience in whistle-blowing, nor in abuse of authority and harassment. They are Governor-in-Council appointments and can be drawn from the ranks of the senior bureaucracy.

More troubling is that there is no access to the courts. This is not laid out in Bill C-11, but you have to recall that in November 2003, with section 236 of the Public Service Modernization Act, the government stripped this right from employees. They are thrown into a complete legal limbo. Those who are being harassed can only complain to their boss. It's a violation of due process and of natural justice.

Regardless of the setting, there have to be realistic burdens of proof. Bosses obviously do not confess to retaliation, so the law must provide for a reverse onus. When the whistle-blower shows a connection between the whistle-blowing and the retaliation, the burden must shift to management to show the retaliation was taken for legitimate purposes.

Finally, there's a remedy. If a whistle-blower prevails, the relief must be comprehensive to cover all consequences. There must be compensatory and punitive damages to make whole the whistle-blower from the ruins of retaliation. Paragraph 15 of my analysis discusses this, and I urge you to look at it.

●(1540)

I want to end by saying that of course we know freedom of expression is a constitutional guarantee under section 2 of the charter. Canadians expect Parliament to set in place laws and conventions that protect this right. It rings cynically hollow for parliamentarians to extoll the first-class quality of our public service while according its workers Bill C-11 second-class rights. For too long public servants have been subject to arbitrary recourse structures. While the world is embracing employee truth-telling, Canada must join this governance revolution.

This committee is entrusted with the responsibility of giving a voice to those who courageously speak out to protect us. Incumbent in this responsibility is the duty to incorporate effective legal protection and remedies. To do otherwise would ultimately reduce the government promises to nothing more than empty rhetoric and allow secrecy to once again triumph over transparency and integrity.

Many thanks for hearing my comments. I look forward to your questions.

The Vice-Chair (Mr. Paul Szabo): Thank you very kindly. You have made some important points and I hear the members aching to get at some questions. Let's carry on.

We'll start with Mr. Grewal.

●(1545)

Mr. Gurmant Grewal (Newton—North Delta, CPC): Thank you very much, Mr. Chairman.

I would like to thank Madam Joanna Gualtieri for the presentation as well as the lobby work on the protection of whistle-blowers through both FAIR and her personal efforts.

I have two or three quick questions.

Madam Gualtieri, in your presentation you seem to focus on the need for locked-in protection and remedial rights. From personal experience, can you paint us a picture of why these rights are so fundamental to a whistle-blower bill?

Second, you must be aware that I have a private member's bill on the order paper on the protection of whistle-blowers, Bill C-288. In fact, it has been introduced many times, in the previous Parliament as well.

Bill C-288 permits public servants to disclose wrongdoing to public bodies, including the media, whereas Bill C-11 attempts to keep allegations within the department and restricts the person's right to go to the public.

Bill C-288 gives every employee a duty to disclose wrongdoing, whereas Bill C-11 warns that disclosure must not be unimportant, frivolous, or vexatious.

Bill C-288 gives an employee who has alleged a wrongdoing and suffered from retaliatory action the right to bring a civil action before a court as a consequence, whereas in Bill C-11 the employee must take their claims of reprisal to an applicable labour board, whose deliberations could take a very long time.

Also, in Bill C-288 a supervisor, manager, or person of authority who harasses a whistle-blower is subject to criminal prosecution and faces a fine up to \$5,000, and as well they are subject to a possible liability for any resulting damages that may be awarded to the employee pursuant to any civil or administrative proceedings, whereas Bill C-11 prescribes no punishment for those who make a reprisal against whistle-blowers.

In Bill C-288 the minister responsible for the relevant department shall issue a public apology to an employee who is successful in a claim; in Bill C-11 there is nothing of this nature.

Finally, in Bill C-288 an employee who successfully blows the whistle will also be recognized with an *ex gratia* award, whereas in Bill C-11 it makes no reference to a reward, even though the current public service integrity officer states that rewards are essential.

In Bill C-288, written allegations shall be investigated and reported upon within 30 days, whereas there is no time restriction or guarantee in Bill C-11.

My question to you is, what do you see as the impact of the government's devious removal of the right to go to court?

Finally, what kind of impact has blowing the whistle had on you and your family?

Thank you, Mr. Chairman.

Ms. Joanna Gualtieri: Thank you for those questions. I'll try to be brief.

Yes, I have focused on protection and remedies. As I said, you could have the best disclosure regime available, but if you don't protect people, then ultimately they will not be safeguarded and they will not be able to come forward. So I've focused on protection and remedies.

You asked why. I think there is a lot of literature on the consequences for whistle-blowers. I have been involved in a legal process now for eight years, and up to this point much of the time has been spent just getting a forum to be heard. If my allegations are wrong, then I should get a forum where I'm told I'm wrong, and then I can get on with my life. I feel quite confident that there is merit to them, but the government has used its power to prevent me from getting to a forum. Hundreds of thousands of dollars have been incurred in legal fees, and I think the government has spent significantly more taxpayers' money. That is why the process has to be clear, because the whistle-blower needs to have some certainty they can seek a just resolution.

You talked about the differences between Bill C-288 and Bill C-11. You are correct in your articulation of those differences.

Ultimately, you went to the issue of removing the right to go to court. I want to briefly touch on this. There has been a lot of talk lately about the respect for judicial decisions, and it has been within the context of the marriage issues, and how once the court of appeal decisions came down, we had to give respect to the court of appeal decisions. The court of appeal ruled in Newfoundland, Nova Scotia, B.C., and then in Ontario in my case that public servants must have the right to go to court. Complaining to their boss is not a legal remedy. In fact it is often oppressive. This decision was not appealed to the Supreme Court of Canada. I think they certainly would have been granted leave and the government would have lost. So they amended the law. They went against these decisions, and they simply stripped the right of public servants to have access. The problem is that they are in complete legal limbo right now. You can only complain to your boss. This has to be remedied.

Finally, you asked about the impact. I don't speak often of it. It has been very difficult. It has been a life-altering decision to blow the whistle. I think you must recognize that for many whistle-blowers it's not a question of choice. Many people find themselves just doing their job and then in the position of whistle-blowing as a mere function of doing their job. They don't set out on a deliberate course of action. My career, obviously, has been stopped. But personally, it has been very difficult on maintaining a family life. You may note that I'm in my mid-40s and I'm pregnant. I didn't deliberately wait until my mid-40s to have a family. That was because the last ten years of my life have been dedicated to trying to solve the whistle-blowing issues that arose in the early 1990s at the Department of Foreign Affairs.

• (1550)

Mr. Gurmant Grewal: Thank you.

The Vice-Chair (Mr. Paul Szabo): Thank you very kindly.

We're going to move to Mr. Sauvageau of the Bloc.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny): Good afternoon, Madam. Welcome to the committee.

It is a little intimidating to speak after Mr. Grewal, who seems to be an expert, a connoisseur of the subject, when we compare his bill with Bill C-11. I will try anyway.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Good luck.

Mr. Benoît Sauvageau: First, you explained very clearly your concerns about Bill C-11. I appreciate your remarks. I have read—diagonally, I must admit—your recommendations and amendments to modify it. It's a very good thing. They are welcome.

I will start with your introduction. You refer to Mr. Clark, a founding member of the Government Accountability Project in Washington, who says this bill is not a good bill.

Could we conduct a comparative study, as Mr. Grewal did, on the different whistleblowing bills in other countries? We should compare like with like. You cannot compare private companies with the federal government. Could you say, for example, whether the situation is good in France and England, and whether Australia is an example not to follow? I mention these countries at random, I'm not familiar with their situation. Do you have two or three positive examples to provide, and two or three negative examples not to follow? That's my first question.

Secondly, you clearly explained that you do not want the Public Service Commission to be the organization responsible for dealing with complaints. You would rather have an independent agent, while preserving the possibility for public servants to go to court. It's a very interesting possibility. Do you think an independent agent...?

Currently, there are two schools of thought. According to the first one, a new, completely independent office would be created and would operate somewhat like the office of the Commissioner of Official Languages, or the Auditor General's office. An entity would be created and could be called the office responsible for whistleblowers, or some other name. According to the second one, an organization similar to that which exists within the Auditor General's office with the Commissioner of the Environment would be created, and this entity would benefit from the start of the Auditor General's notoriety.

Do you think it should be a totally independent agent, or an agent who would work, not under, but in parallel with the Auditor General? Those are my first two questions.

• (1555)

[*English*]

Ms. Joanna Gualtieri: Thank you.

Regarding other countries, yes, of course you should be looking at what's happening in other countries. I think we have to recognize, and I have suggested to the committee, that you must hear from Louis Clark and Tom Devine, the two founding members of the Government Accountability Project. They're in our backyard, in Washington. They have consulted all over the world and were responsible for the drafting of the Whistleblower Protection Act of 1989, which President Bush passed.

Also, the best whistle-blowing protection in the world is the new corporate accountability act, the Sarbanes-Oxley Act, which you probably heard of, which was implemented after the Enron and WorldCom debacles. So you should look at the Whistleblower Protection Act. It was a good act.

What you have to be cautioned about is that there were hostile judicial interpretations of it. Separately, President Reagan had set up a federal circuit court, but they had hostile decisions from government-friendly judges who basically pitted out the benefits of the act. So one has to be very cautious with something that can look good initially, because it can be manipulated by very skilful legal interpretation.

I would say the best whistle-blowing protection right now is found in Sarbanes, which I know Mr. Alcock referred to last week with respect to the crown corporations. Really, the most important feature of it is the right to have a jury trial; it has been found that the greatest success is before a jury of your own peers. You should look at Britain as well. They have had great success there with public concern at work.

You talked about what agency should have the authority. I believe that whistle-blowing is a significant enough issue that it should be an independent agency. I have the utmost respect for the Auditor General; I believe that Sheila Fraser is really one of our heroes. But let me just read something quickly to you:

Whether a contract is tendered or not tendered, we found that there is usually some lack of compliance with government contracting policies and guidelines.

...contracts were "approved" by people who did not have authority, or departmental approval procedures were not followed.

...goods were received or services rendered before the contract was awarded.

...there was insufficient evidence that pre-audit steps had been taken....

You would think that these were comments made by the AG with respect to sponsorship, but I'll tell you they are from the report of the Auditor General in 1982. So even the Auditor General is an office that I think we have to look at. They can do great work and a lot of ex-post-facto reporting, but they don't have power. It is very, very important that corrective power be given to the independent agency that investigates. We will spend millions of dollars investigating issues, but if all they can do is table reports—even to Parliament—this is not the kind of force that happens when you have corrective powers.

The Vice-Chair (Mr. Paul Szabo): I'm going to go to Mr. Boshcoff, who is going to split his time with Mr. Godbout.

Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.): I have a whack of questions, but we're going to split our time, and then hopefully there will be some time left over.

Can we conclude that you're not a big fan of the Public Service Commission?

Ms. Joanna Gualtieri: It's not a question of being a big fan; it's a question of asking whether that office is properly constituted to take this responsibility. I spoke a couple of weeks ago in Sudbury with Maria Barrados, and she's a fine person and made some very fine points. The question is, is it institutionally in conflict of interest? I think the answer to that is yes. Secondly, under Bill C-11, have they been given the proper power to do what they are being tasked to do? The answer, I believe, is clearly no.

• (1600)

Mr. Ken Boshcoff: When you quote from Mrs. Barrados about the culture essentially and that she isn't one of them, is it your feeling that should a separate agency be set up, there perhaps wouldn't be

people who hadn't worked throughout the system to take over a new agency, no matter how it's institutionalized?

Ms. Joanna Gualtieri: I'm sorry, the new agency should not have people who...?

Mr. Ken Boshcoff: No, no, if it were independent, which I assume you're leaning towards—

Ms. Joanna Gualtieri: Yes.

Mr. Ken Boshcoff: —the people who would staff it would have to come from some place, most likely have experience in administrative systems and knowledge of federal government processes, which would essentially mean they may live around here or close to it. I'm trying to qualitatively see what kind of difference there would be between a separate organization, understanding that people tend to know each other in a community of this size.

Ms. Joanna Gualtieri: That's a very good question. Before Ms. Barrados, her four predecessors as president of the PSC were former deputy ministers. I do not believe you can staff the independent agency at the top with people who have worked in the senior hierarchy. You may be able to consult with those people because, yes, you have to understand the systems, but there are plenty of people who are competent, who are well trained. I think inevitably there will probably be lawyers because there are a lot of legal rights questions involved. I believe you have to get people who really are independent. It's very difficult to sanction people with whom you have been working within the milieu. The cadre of senior mandarins in Ottawa gets very small at the top. I believe you have to go outside that cadre.

Mr. Ken Boshcoff: On the extent of the problem in Canada, when we talk about your analysis of the False Claims Act in terms of the multi-billions of dollars the United States has been seeing from these types of things, what is your view of the extent of parallel problems in this nation?

Ms. Joanna Gualtieri: I don't have data because we have simply not produced the data that they have in the United States on the degree of fraud. Leger did a poll a few years ago, and about 70% of Canadians reported that politicians were corrupt or somewhat corrupt. There is a perception out there that there is degree of wrongdoing. We have to be clear: it's not just criminal wrongdoing that we're concerned with; it is negligence, breach of fiduciary duty, breach of public trust, and those issues. And I think that we don't know the full extent because we have not had the ability to disclose in the past or to disclose with safeguards in place.

Mr. Marc Godbout (Ottawa—Orléans, Lib.): You've talked about protection. This is an area of concern actually in any whistle-blower legislation. What would be the three most important ingredients, as far as you are concerned, that would satisfy you in legislation that would include suitable protection? I don't know if you can have perfect protection. I have not seen it yet. What would be the three main areas we should be looking at in that respect?

Ms. Joanna Gualtieri: I touched upon those in my notes today, which you will get. They haven't been translated, so they will be translated and then they'll go to you officially.

On the issue of what you can blow the whistle on, it sounds fairly simple. You lay it out, and then people can come forward on it. You would be surprised to learn how many whistle-blowers have been denied protection or have been caught in the vortex of fighting the bureaucracy because they didn't do it the right way or go to the right person. As I said, the freedom to blow the whistle, I believe, should not be unduly constrained. Bill C-11 puts enormous constraints on it. I've articulated that fact in the longer paper I wrote. The consequences for the whistle-blower can be very serious. You could be in fact disciplined or prosecuted if you do it the wrong way. We have to give the individual voice to the whistle-blower.

I noted also that I think you should know that in the U.S. for twenty years now in the civil service context blowing the whistle to the media has been considered the same thing as blowing the whistle to a government, because they see that information as being the lifeline of protecting the public interest.

The disclosure has to extend, as I said, to all illegalities and codes of conduct, etc. It would be terribly frustrating for a whistle-blower to find out when they've come forward that they don't fit in the right category.

The issue of forum and burden of proof I cannot overstate. The experience in other jurisdictions with administrative tribunals and processes has been poor, because we have to be honest and look often at the appointment process to those tribunals. I want to be clear, it's not a question of denigrating the people who go into the office, but rather that the office by design is not one that is institutionally free of conflict. As I said, ultimately, both mediation and arbitration should be open to whistle-blowers. They should be able to choose where to get a remedy.

• (1605)

The Vice-Chair (Mr. Paul Szabo): Thank you very much.

We're going to move now to Mr. Preston and we will have a rapid round at the end if members want to do a little cleanup.

Carry on, Mr. Preston, please.

Mr. Joe Preston (Elgin—Middlesex—London, CPC): Thank you very much for attending here today and thank you so much for your honesty. I've been chomping at the bit, ready to get going.

Mr. Sauvageau asked you for some great examples of good whistle-blowing legislation from around the world and asked you for some bad examples. I guess by your comments that you would hold up Bill C-11 as a bad example of whistle-blowing legislation.

Ms. Joanna Gualtieri: I think it's terribly problematic, yes. It's not a good example.

Mr. Joe Preston: I consider you an expert witness on whistle-blowing because of what you've been put through or what you've had to go through in your own life, plus you've dedicated yourself to then looking at the problem of whistle-blowing.

As Bill C-11 was being written, were you asked for advice on what would make it a good bill?

Ms. Joanna Gualtieri: No, I was not.

Mr. Joe Preston: I tend to ask that question first of most of the witnesses. I've yet to find anyone who was consulted on Bill C-11. I'll keep digging until I find that person.

You mentioned that remedies are missing greatly in Bill C-11 and that if we don't put remedies in for the whistle-blowers, it's a fatally flawed piece of legislation. Could you just give me a very short answer as to why you say that?

Ms. Joanna Gualtieri: Because without protection, if you face the risk of being financially, emotionally, personally, professionally devastated, then you cannot come forward. As I said, I think it's even irresponsible to encourage people to do so, because you have no idea what it is like until you find yourself down that path.

Mr. Joe Preston: And as you say, you are eight years down that path and still hoping to move things forward. This isn't a process that would happen overnight. If I went to even an independent agency, if we do set it up with an independent agency, most whistle-blowing—I don't want to use the word "trials", but maybe I need to—most whistle-blowing trials aren't something that's going to happen in a very short term. They may take longer or as long as good criminal trials.

Ms. Joanna Gualtieri: Yes, the process would be very long. That's why we have to be clear. Whistle-blowing is not the panacea. The answer really is leadership. We talk about culture all the time, and I think often we actually even get fatigued by hearing about culture, but we really have to examine the public service and look at the fact that for so long public servants have really been under enormous constraints to toe the line. That ethos has to be radically changed.

Mr. Joe Preston: It appears as though this legislation was written with those types of facts in place—the public service will do what we ask, because here's what they'll do if they do what we ask.

You talked a lot about harassment being one of the reprisals, or certainly the first reprisal in the case of a whistle-blower's name coming forward—somebody knowing they're doing it. Some of my colleagues will say that harassment is an HR issue, and therefore would fall under the Public Service Commission. I give to you that it is a reprisal against whistle-blowing, and therefore also needs to be included in this. Simple harassment in the workplace may fall under the Public Service Commission, but harassment is a form of reprisal, and the sorting out of the two will really be the difficulty in writing the remedy piece for any whistle-blowing legislation.

• (1610)

Ms. Joanna Gualtieri: I think that's an excellent point. I've listened to testimony where the distinction has been drawn between having a whistle-blowing forum and then saying that harassment is an HR issue and there are other forums to deal with that.

First of all, I've told you there is no other forum to deal with that. The public service is in complete limbo. You cannot separate.... If a whistle-blower comes forward and says they've been retaliated against, harassment is a word...under that rubric it could comprise many things.

The other issue is that harassment may also become a systemic issue. Then certainly you will have people who will even blow the whistle on the fact. Blowing the whistle on a bullying boss is legitimate whistle-blowing. It's not the type we normally think of. We think of public health and safety, nuclear issues, or health issues, but harassment is a very serious issue these days.

Mr. Joe Preston: You say the right to go to court is a must, that a jury of your peers may be the only way to get a true answer to most whistle-blowing questions.

Could complaining to your boss be related to returning to the scene of the crime? For the most part, whistle-blowing may have to do with your boss. Is this truly what you're saying, and why we don't want that method of reporting in a piece of whistle-blowing legislation?

Ms. Joanna Gualtieri: I think common sense, let alone legal principles, dictates that you have to have independence at that stage. Studies have shown and certainly my experience in working with whistle-blowers is that people have already informed management of the issue. In fact, some of them have ultimately gone, as I did, right up the chain to the minister.

So once the form of process clicks in, to tell them to go back and do it again is ultimately fruitless. It's going to be a waste of taxpayers' money. It's going to set the whistle-blower up for re-injury. At that point, the form of process has to be to an independent body.

Mr. Joe Preston: Does Bill C-11, in the way it was written, protect whistle-blowers or government?

Ms. Joanna Gualtieri: As I said, I believe it is a bill that allows the government to control and even rein in whistle-blowers. I really believe the government wants to do the right thing. They should do the right thing. This is the opportunity to do it. There is a lot of revision to be done.

Mr. Joe Preston: I thank you for your answers. You were great today.

The Vice-Chair (Mr. Paul Szabo): Thank you.

We'll move now to Mr. Scarpaleggia, please.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you, Mr. Chair.

Thank you, Ms. Gualtieri, for being here. We've heard now from about five or six whistle-blowers. Their testimony has been extremely moving. I don't think anyone has been unaffected by what we've heard.

My question concerns clause 55. If I understand correctly, you believe it can be taken out of the bill without threatening the whistle-blower's right to anonymity.

Ms. Joanna Gualtieri: I don't think the purpose of clause 55 is anonymity. That's a very good question, because if Bill C-11 wanted to deal with the anonymity of the whistle-blower, there would have been a clause that dealt very clearly with that. We wouldn't have to glean it, or assume that is the purpose of this clause. Bill C-11 does not provide for anonymous whistle-blowing. It tries to talk about confidentiality, but that has to be distinguished from anonymous reporting processes, which are available in other jurisdictions.

Clause 55 quite clearly, as John Reid said, is really about pulling back the information and keeping it secretive for 20 years, if necessary.

• (1615)

Mr. Francis Scarpaleggia: As I understand it, because I was at the committee when Mr. Reid appeared, he's suggesting that it's there to protect the government and to leave it up to the government's discretion as to whether it wants to allow a scandal to be created in some form or other. Is it correct to say that it may also be there to protect an alleged wrongdoer?

Ms. Joanna Gualtieri: I don't think so, because, first of all, I think it is a consequential amendment.

Mr. Francis Scarpaleggia: Remember, I'm not a lawyer, so you'll have to go slowly.

Ms. Joanna Gualtieri: It's a consequential amendment to the Access to Information Act. If the concern was the anonymity of the whistle-blower, and anonymity is about protecting the whistle-blower, I think we'd see earlier on in the bill a clause for provision of anonymity to protect the whistle-blower. I think we'd clearly see the articulation.

Mr. Francis Scarpaleggia: Is it possible that it's a way of protecting the anonymity of the whistle-blower and protecting the rights of the alleged wrongdoer, prior to the wrongdoer being found to have committed wrongdoing? Is it possible that it would have a dual purpose? If so, would a solution not be to have a judge decide, perhaps, what should be made public and not made public? That might be a way of bringing in the courts.

Ms. Joanna Gualtieri: There are already statutory instruments in place, though, that govern the protection of sensitive information. The access act is one. There are others. There's the Privacy Act. There's national secrets, etc.

I don't believe this is there for the purpose that you suggest.

Mr. Francis Scarpaleggia: That's fine. I wanted to know your opinion on that.

Would you be in favour of having the new whistle-blowers agency contained within the Auditor General's office? Do you see a potential conflict of interest there?

Ms. Joanna Gualtieri: I think that the mandate and the purpose of a whistle-blowing agency is important enough that it should really have its own authority. I don't believe it should be under the auspices of the AG. That's not a reflection on the Auditor General, or even the office. I think we have to take a fresh start at this and see it as a serious undertaking and set it up as an independent agency.

Mr. Francis Scarpaleggia: Thank you.

The Vice-Chair (Mr. Paul Szabo): Thank you.

We're going to move to Mr. Lauzon for five minutes. He hasn't had an opportunity to speak yet.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Will Mr. Poilievre get five minutes afterwards?

The Vice-Chair (Mr. Paul Szabo): Considering where the clock is, what we'll do is this. Following your series, we'll go to the table and if anybody has any questions, we'll finish off the time. How's that?

Mr. Guy Lauzon: Okay.

Thank you very much, Ms. Gualtieri.

I want to start by commending you on your courage. I congratulate you on the long, hard fight. You are to be commended for that.

Secondly, I want to congratulate you on your impending good news. That's wonderful.

Ms. Joanna Gualtieri: Thank you.

Mr. Guy Lauzon: I happen to have access to a hard copy of your presentation. In the fifth chapter, it's interesting. It starts by saying it's not a whistle-blower protection act, and then you list a number of things. The last phrase or sentence summarizes that paragraph by saying it's a recipe for cover-ups. That's very, very interesting.

Somewhere else, and this is very helpful to us, you mention that Treasury Board surveys report that 20% of the public service has experienced harassment. Incidentally, I was a public servant for 22 years, and I would agree with that statement.

You go on to say that mental illness in the workplace, often resulting from bullying and harassment, costs Canada \$33 billion annually.

Somewhere else in your report you mention that Bill C-11 does not include Treasury Board policies and guidelines, "the very policies that were routinely violated in the sponsorship program in the definition of wrongdoing".

Can you make a comment about what I have just said?

Ms. Joanna Gualtieri: Sure.

I know we're limited for time, so I'd really like to go to the Treasury Board policy issue. This is a point I have been emphasizing for some time now. I've spoken, actually, with very senior people. I even had a discussion with Ms. Barrados about this.

The response of senior people is that they find it incredible that these policies do not have the force of law. I think the public would be surprised to hear that the vast majority of government business from day to day is governed by Treasury Board policies. Yet the Department of Justice advises management, "Don't worry. If there's a violation, you're okay, because they don't have the force of law." Whistle-blowing must extend to them.

Let me just add that maybe you could bring a violation of a policy under the rubric of misuse of funds, etc., but why subject us to a long process of trying to figure that out? For example, in the Gomery inquiry, Mr. Chrétien would suggest that there was no misuse of funds. I'm just saying that there can be a difference of opinion. I think Treasury Board policies must be included in the definition of wrongdoing.

● (1620)

Mr. Guy Lauzon: You mentioned in your opening remarks that whistle-blowers in most cases—and I know this from experience—think they're doing their job. Management calls it whistle-blowing, but day to day, we think we're doing our job by reporting a wrongdoing, and here we get termed or labelled a whistle-blower.

Can I ask how you ended up wearing the label "whistle-blower"? What did you do that was...? I would assume it was in the line of your work that you saw a wrongdoing and brought it to management's attention. Just in general terms, can you tell us the circumstances?

Ms. Joanna Gualtieri: Sure. Very briefly, my job was to manage.... We have a multi-billion-dollar real estate portfolio for our diplomats. What I ascertained and witnessed was that there was a lot of elasticity in the way the houses were procured. There were policies that governed this. The government is actually very responsible in instituting policies that govern a lot of things. The question is, do they sit on the bookshelves and collect dust or are they actually followed, and is there an enforcement mechanism to make sure they're followed?

We were spending what I considered, over a timeframe.... Billions of dollars were being wasted in not using—

Mr. Guy Lauzon: Billions?

Ms. Joanna Gualtieri: —property efficiently, in letting property sit vacant....

Mr. Guy Lauzon: You didn't say millions, you said billions?

Ms. Joanna Gualtieri: That's right.

Mr. Guy Lauzon: In our foreign service, there were billions of dollars being wasted?

Ms. Joanna Gualtieri: There are other people who have documented this. This is not just a personal opinion. This is not in a year, but looking over a timeframe. We have had property in Tokyo alone that was worth a couple of billion dollars. We're talking about valuable assets. If it's not developed and managed properly, then you are going to have waste.

Mr. Guy Lauzon: So you reported some wrongdoing?

Ms. Joanna Gualtieri: I tried to do my job, and I came up against a culture in the department that had been long established and that the Department of Foreign Affairs had been operating quite independently for many years. It's something that hopefully is changing.

The Vice-Chair (Mr. Paul Szabo): With the few minutes left, I think Mr. Poilievre has a question.

Are there other members who would like to ask a question? Mr. Sauvageau and Mr. Boshcoff. Okay, we'll take those three and we'll be done.

[*Translation*]

Mr. Pierre Poilievre: I would like to start by thanking our witness for her courage and her work. Thank you for being with us today.

I have only one question. Could you describe the consequences that should apply to managers who retaliate against whistleblowers? What should the consequences be for managers who retaliate against honest public servants and whistleblowers?

• (1625)

[*English*]

Ms. Joanna Gualtieri: Assuming the allegations bear out—and that is, again, why we have to have a legitimate process in place to ascertain that—I believe there has to be personal liability for the wrongdoer who both commits the misconduct and who retaliates.

Why? Because if we don't pursue personal accountability, it is of course the taxpayers of Canada again who will bear the burden. And it sends a message that's axiomatic—it could be criminal, but it could also be financial, through civil action—to say that if you are personally responsible, you may think twice before you embark upon a campaign of retaliation.

The Vice-Chair (Mr. Paul Szabo): Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Since I have only one question, I will divide it in two parts.

You said on page 2 of your presentation:

There can be no loopholes for form, context or audience, and whistleblowers should be free to blow the whistle on wrongdoing anywhere, anytime, and to any audience...

Suppose, for example, that, in a collective bargaining context, we end up with 2 000 disclosures on all kinds of things. Are you concerned that there might be false or vexatious disclosures?

As I understand, you would like the bill to also include ministers and members. Am I right?

[*English*]

Ms. Joanna Gualtieri: I'm sorry, what was point B?

[*Translation*]

Mr. Benoît Sauvageau: Does this provision generally cover elected representatives of the people who carry on illegal or fraudulent activities? Would you want the legislation to apply to ministers and members as well?

[*English*]

Ms. Joanna Gualtieri: The issue of false disclosures is one that comes up often. I think we have to look at studies that have been done in other jurisdictions. The fact of the matter is they have shown that people do not blow the whistle frivolously.

There will always be the potential malcontent in people, but they don't need this law to give them the ability to come forward with spurious or specious allegations. They may do that in any event.

So false disclosures simply don't happen. And in any event, I think people too quickly say, well, what if it gets published? I've dealt with the media. You have all dealt with the media. The media do a lot of fact-checking before they rush to press. The libel laws in Canada are such that they have to be fairly cautious. That's why you have to have a good process in place as well, because through that process false allegations will be proven as such. I think there is an overstatement that this is an issue.

And yes, you should be able to blow the whistle on ministers and deputy ministers, absolutely.

The Vice-Chair (Mr. Paul Szabo): And finally, Mr. Boshcoff, please.

Mr. Ken Boshcoff: Thank you, Mr. Chair.

You mentioned the extension of protection to consultants and contractors, and we've also had considerable debate about crown corporations. Is there a limit to the expansiveness of such legislation? Should it include all workers? Should it be universal across the country?

Those are three sets of corrals outside the normal public service that we're dealing with.

Ms. Joanna Gualtieri: To answer your question, I think within the public service you definitely have to include contractors, people who are on contract. Government service hires a lot of people on contract now. If you are in a function that involves the public trust, then you should be able to blow the whistle in the public interest.

Regarding workers, I believe workers everywhere should be protected and have whistle-blowing protection. That obviously is not going to be exclusively within the federal domain. Provinces should look at it; municipalities should look at it. The private sector—and I've spoken a lot to the private sector—is taking this issue very seriously. Quite frankly, that's because of legal liabilities. So it's a revolution that's happening now around the world on protecting occupational free speech, and I endorse that.

• (1630)

Mr. Ken Boshcoff: Would the federal role be to ensure that carrot or stick, or some other means, so that the private sector saw fit to come on board? Is that what you're saying? Or should it be enacted federally, and then the private sector be compelled to...?

Ms. Joanna Gualtieri: I think many people... Certainly my experience has been that I have a lot of questions about why the private sector is now taking the lead on this. Chartered accountants are very active in this role. I know Mr. Szabo's a chartered accountant, so he no doubt will be aware of this.

Many professionals are taking this very seriously. A lot of it has to do with preoccupation on governance, but also with legal liabilities. They're asking, where is the government's lead on this? Nonetheless, they're not waiting for the government; they are taking initiatives as we speak.

Mr. Ken Boshcoff: Okay. Thank you very much.

Ms. Joanna Gualtieri: You're welcome.

The Vice-Chair (Mr. Paul Szabo): Thank you very kindly.

There are many more questions. Although we don't have time now, you have at least put on the table a broad range of concerns, in a way. One I very much appreciate is the aspect of even harassment being a tool to preclude disclosures. It's kind of an interesting consideration as well.

On behalf of the entire committee, I want to thank you for your frankness and your thoroughness. Be assured we will do the very best we can to make sure that ultimately Bill C-11 is a good piece of legislation.

Ms. Joanna Gualtieri: Thank you, Mr. Chair.

The Vice-Chair (Mr. Paul Szabo): We're going to suspend now for our next panel, if they would come forward, please.

• (1632)

_____ (Pause) _____

• (1636)

The Vice-Chair (Mr. Paul Szabo): We'll resume our meeting.

Before we commence with our next panel, I want to bring to the attention of members a matter we should have a very brief discussion on at the end of the meeting. It has to do with the fact that the supplementary estimates are going to be tabled on Friday. That will leave us our Tuesday meeting on the week that we come back. They have to be reported back to the House by the following Thursday at 10 a.m., which means that theoretically we have to arrange all our meetings.

In any event, as you can understand, we should discuss how we wish to approach this. I have a suggestion to make at the end of the session, and we should decide how we will proceed on that.

I should also remind members that there is a vote. The bells will be going at 5:15, which means that we actually have to vacate here probably by 5:25, so we're eating into our time a little bit. I think we'll be carrying on with this session for about 40 minutes. We should be able to do it, since a couple of the members have other duties.

With that, please don't disappear too quickly. At the end of this panel, we should make a committee decision.

Our final panel for the day is from the Association of Canadian Financial Officers. We have Mr. Jim Currier, vice-chair and vice-president of membership, and Mr. Jean Szabo, executive director, vice-president of labour relations.

Gentlemen, welcome to the committee. We are anxious to hear your commentary, and I'm sure that the members will have some questions for you. You may commence, please.

Mr. Jim Currier (Vice-Chair, Vice-President of Membership, Association of Canadian Financial Officers): Thank you, Mr. Chairman, committee members. It's a pleasure to be here this afternoon with you.

We have a prepared text that we have circulated for your reading. After that, yes, we're open for questions.

The Association of Canadian Financial Officers was founded to represent members of the financial management group within the Public Service of Canada. Our 3,000 members are financial professionals employed in 54 departments and agencies throughout the federal government. Most hold accounting designations or business degrees.

The types of activities our members are responsible for, but not limited to, include: providing advice on financial implications and the potential impact of management proposals and actions; financial administration systems, operations and services, such as accounting control, reporting of revenue and expenditures; financial planning and analysis; financial policy and system development; internal financial audits; and also providing advice on and approval of the adequacy of financial controls and programs. Our members are charged with managing the departmental financial affairs within the financial control framework.

• (1640)

[Translation]

We have noted with interest the definition of “wrongdoing” in Article 8 of Bill C-11. Half of the definitions include references to uses or misuses of funds and assets within the government. As financial officers, our members have good reasons to be concerned with how this bill might affect their workplace.

[English]

Since 2003 our association has been engaged in an exercise of consultation and discussion with our membership, which resulted in focus groups being held throughout the country. In conducting these focus groups, it became evident that some of our members had felt different types of pressure and were not comfortable with how the Financial Administration Act and its controls were applied. This led us to the preparation of a study, which was released in September 2004, called "Checks and Balances: Accountability and Liability under the Financial Administration Act".

Following the study, the association sent to our members information about their legal responsibilities and liability under different statutes, including the Financial Administration Act, the Criminal Code and common law, as well as requirements of professional governing bodies.

One of our main concerns is that there is presently very little protection for civil servants who seek to disclose potential wrongdoings, and that leaves them with a choice none of us should have to make—potential loss of employment or looking the other way when wrongdoings are committed. This is why our members are looking at this committee to amend the bill and afford them the protection needed to come forward with their allegations of wrongdoing.

Our members have regularly expressed concerns about accountability and spending. Some financial transactions that they are told to process fail to comply with requirements of the control framework. They have on occasion been asked and pressured to certify payments that shouldn't have been made. The types of pressures are varied. They might include real threats to their job security and their chance of being promoted within the system, and reprisals such as marginalization in the workplace.

Financial officers take pride in their work. That is why this piece of legislation is so important to them. While the current environment warrants extra scrutiny of the work done by our members, they need to be adequately protected should they feel that in order to maintain their integrity they must disclose some wrongdoing.

The association recognizes the efforts of the government in presenting this piece of legislation. However, these efforts fall far short of what is needed to provide civil servants confidence in the belief that they can come forward with knowledge of wrongdoings, that the allegations will be independently investigated, and that as whistleblowers they will be effectively protected during and after the investigation from possible reprisals.

The first issue we have identified is clearly the problem of the agency in which the disclosure regime will be located. The bill provides the Public Service Commission with the responsibility of administering the policy.

We recognize that the Public Service Commission is being reformed and that its president, Ms. Barrados, is steering it in a new direction. However, our members do not consider that organization as having the credibility required to handle the issues that they might want to bring forward. Once again, this is not a reflection of Ms. Barrados and the work she and her team are accomplishing, but rather a conclusion of decades of experience working with and dealing with the Public Service Commission.

The government should realize that if the bargaining agents representing employees state that their members will not have enough confidence in the Public Service Commission to come forward with allegations, it's probably a good idea to listen and provide another vehicle.

We understand the government is reluctant to create a new agency, but in this case, if it is really serious in providing civil servants a system through which they will be able to expose wrongdoings, it should accept the recommendation brought forward by the unions. We believe that an agency at arm's length from the government with legislated authority and a director appointed by Parliament should be created. Its sole responsibility should be the administration of the disclosure regime. This would include the investigation of claims of wrongdoing and the verification that no reprisals are taken against the person who did their duty and came forward with the allegations.

Only an office established solely for the purpose of administering the disclosure policy and with complete independence will inspire confidence to allow our members to go forward with their allegations.

• (1645)

This is clearly the most important part of the whole debate. If civil servants do not feel protected by the new regime, then the bill is irrelevant. Our association strongly believes that members should feel safe and confident coming forward with their claim. The agency investigating the claim, working with the employee disclosing wrongdoing, must decide what measures are the most appropriate to take to protect him or her during and after the investigation.

There ought to be clear guidelines spelling out the consequences that would face a person taking reprisals against the whistle-blower. These guidelines would also protect the employee after the investigation of the claim. We cannot let people down who have done their duty and who have also taken a huge risk by coming forward with their allegation, by not taking extremely precise measures to protect them once the investigation has been completed. If the legislation is to encourage whistle-blowers to come forward, we cannot tolerate that once this is done, they might still face reprisals within their work. This would be the surest way to stop others from disclosing anything.

To be precise, we do not believe that the creation of the agency will open a floodgate of claims of wrongdoing. Civil servants are responsible professionals who will understand that the system is there not to be abused, but rather to protect them once they decide to come forward with allegations of wrongdoing. We believe, based on the experience of the Public Service Integrity Office and our own experience as civil servants and as elected representatives of our membership, that throughout the whole public service and not just with our membership we could see a few hundred claims per year resulting in investigations. This is a normal expectation when looking at the size of the organization.

This leads us up to the next point. There should be adequate training for civil servants in order to help them understand the new process, provide them with a clear definition of wrongdoing, and explain the available resources. We have seen the discussions within this committee regarding the definition of wrongdoing. It is to be expected that civil servants will also be unclear about what can or should be brought forward to the new agency.

The bill has to be clearer in order to provide employees with two definite choices: they can bring allegations to managers within the department or they can go to an independent agency. They should not be given the impression that they first have to present their issue within their department. The existence of this choice will provide employees with enough confidence to come forward. If employees feel pressured to go to their managers, they might not feel comfortable enough to go forward with their allegations and they might then decide not to disclose the information they have. Who would win by that? Certainly not civil servants who just want to do their job in a proper and dignified way.

The purpose of the bill is to get the information out in the open, if it exists. Let's do so. Let's not put obstacles in the way of honesty. If you ask us whether the bill should go forward in its present form without amendments, our answer would be no. There is absolutely no sense in adopting a piece of legislation that will not accomplish its goals. Furthermore, recent events have shown that we cannot afford to wait another five years, as proposed in the bill, before correcting it to a point where it may seriously offer civil servants the protection they need to come forward with information that could be crucial for the administration of our government.

Thank you.

The Vice-Chair (Mr. Paul Szabo): Mr. Szabo, do you have anything further to add? Okay, you're here as a resource for us.

Gentlemen, we're going to do five-minute questions for anybody who wants and then we'll get on with our other business.

Mr. Preston, please.

•(1650)

Mr. Joe Preston: Thank you very much for coming and for a good presentation.

I will offer at least a personal opinion that this bill will not go forward without being amended. We've heard enough witnesses so far tell us that it's fatally flawed, flawed, flawed somewhat, it's no good at all. I think you can give us that we will do some amendments or some changes to this bill before it goes forward.

The chair mentioned in the last segment that something new had come forward today—this thought of harassment before the fact of whistle-blowing. You came up with a fantastic example of it, where on occasion employees have been asked or pressured to certify payments that shouldn't have been made. This is a harassment before a whistle-blowing. Once this has happened, then the employee has to decide to come forward or not. I thank you for that example. This is a case where harassment would be a whistle-blowing area rather than a human resources area. Thank you very much for that.

You've been very clear that the PSC is not your first choice or on your list of choices. I thank you for joining the long list of people

who agree with us that the PSC may not be the place where whistle-blowing will be handled. You've recommended a new agency at arm's length, not an attachment to the Auditor General, as some others have suggested, just a straight new agency.

Mr. Jim Currier: The importance to us is that it be independent. We are not looking to be rolled under the wing of any other agency or body. We are looking for a situation where it is self-standing, fully independent. That's what the public service, the employees who work for our government, need to feel that they can come forward.

Mr. Joe Preston: You also state, as I think we've stated a few times and as I know myself, that if we don't get this right, it isn't worth the paper it's written on. Civil servants will not come forward, no one will come forward, if we don't get it right the first time. We only have to fail in this once before the second person says "I'm not going through what that person just went through." So you state very well that we need to get this new regime piece, this new piece of legislation, almost perfect the first time. We don't have a chance to revisit it in five years and see whether what we made was right or wrong.

You talked about consequences against reprisals. Can I have your thoughts on what consequences against reprisals might include?

Mr. Jim Currier: I don't want to become the advocate for what is a good or bad consequence. We are simply trying to identify that there is a need to protect people, both during the process and after the process has been concluded. We will have to leave it up to the powers that be at that point, the agency, to determine what is feasible or what is realistic in terms of reprisals and what consequences should be doled out. Our issue is to ensure that it's recognized that people do need protection throughout this whole process.

Mr. Joe Preston: The bill currently doesn't state what the consequences would be for reprisal. It just says there are bad things.

Mr. Jim Currier: We have pointed out in our presentation that what we see in the bill is the need for more clarity, and if the bill can be enhanced where it does provide clarity. We also suggested additional training, clarification for everyone as to what should be or should not be included within this legislation as covered by the legislation. That's what we're looking for.

Mr. Joe Preston: You also gave some examples, and one of them I've already stated, about employees being forced to do something they do not want to do. In that case, it's obvious that the employees are not going to report it to their manager. It is likely their manager who is making them do this. So you ask for other relief, certainly another arm's-length agency or an agency that they can go to.

Some others have suggested that the media is a third remedy, that the employee could certainly bring it into the open by going to the media with the piece. What are your views on that?

Mr. Jim Currier: My feeling, and what our association is emphasizing, is that the bill, with the establishment of a self-standing agency, would be sufficient. I don't propose that we open up the door for whistle-blowing to the media. What we are recommending is that an agency be prepared, that a free-standing agency be the answer.

• (1655)

Mr. Joe Preston: Thank you very much. That's all I have.

The Vice-Chair (Mr. Paul Szabo): Mr. Lauzon.

Mr. Guy Lauzon: Thank you very much, gentlemen. It's good to have you here.

I understand that you're speaking on behalf of 3,000 members in 54 departments, so you keep us honest. That's your job.

Mr. Jim Currier: It's our job.

Mr. Guy Lauzon: Right. You go on to say "our members are charged with managing the departmental financial affairs within the financial control framework". And you say, and other people have told me this, that "...our members have regularly expressed concerns about accountability and spending. Some financial transactions which they are told to process failed to comply with requirements of the control framework. They have on occasion been asked and pressured to certify payments that shouldn't have been made."—I think Mr. Radwanski comes to mind—"The types of pressure have varied."

Now I'm going to ask you a loaded question. I'm fiscally conservative, and if there was good, honest, appropriate whistle-blowing legislation, and people in your organization felt free to come forth with wrongdoings in a financial aspect, could you hazard a guess as to how much money the Canadian taxpayer would save in the course of one year?

Mr. Jim Currier: No, I can't, in all honesty.

Mr. Guy Lauzon: Would it be \$1 billion?

Mr. Jim Currier: My suggestion to you is this: the establishment of the agency and the process we're talking about is going to be much less than the lost opportunities of wrongdoings not reported. I think this is a win-win opportunity for the taxpayers of Canada to save and to have their government do the right thing.

Mr. Guy Lauzon: But undoubtedly, what you're saying is that the taxpayer would save money?

Mr. Jim Currier: Yes, very much so.

Mr. Guy Lauzon: Thank you very much.

The only other comment I want to make is about your statement, "This is clearly the most important point of the whole debate: if civil servants do not feel protected by the new regime, then the bill is irrelevant." I made a statement when this committee first started that if we didn't improve this bill, this bill in its present form would probably do more harm to the public service than if we didn't have it.

Is that a fair statement?

Mr. Jim Currier: I believe it is.

Mr. Guy Lauzon: Thank you.

The Vice-Chair (Mr. Paul Szabo): Mr. Poilievre.

[Translation]

Mr. Pierre Poilievre: Thank you, Mr. Chair.

We heard the testimonies of many witnesses, and the last witness we heard told me, after his testimony, that this bill is such a catastrophe that it would be more efficient to cancel it and start over. For your part, you said that you had very serious problems with this bill, that maintaining the status quo would be preferable, and that it would be better to cancel the bill than to adopt it.

Is it possible to resolve the deficiencies in this bill, or are they so numerous and serious that it should be taken away and rewritten?

[English]

Mr. Jim Currier: Our concern is that the proposed bill, as it stands, is not going to do us any good whatsoever. We are suggesting that it needs a lot more substance.

[Translation]

Mr. Pierre Poilievre: Are you suggesting to cancel this bill and write another one, or to correct the deficiencies in this one?

[English]

Mr. Jim Currier: I cannot comment as to what the degree of difficulty would be to re-engineer the existing bill or to start from scratch.

• (1700)

[Translation]

Mr. Pierre Poilievre: If the problems are so fundamental, if they are at the very core of this bill, is it at all possible to resolve them?

[English]

At its core, at its essence or root, the problems are so deep, can we even begin to fix it? If the DNA is wrong, is there anything the doctor can do to actually fix the patient?

Mr. Jim Currier: I think what you've got is a bill with the right intent, not necessarily the makings of something that's going to complete the operation with the results you want. So it becomes a toss-up between whether you throw it out and you start over, or you re-engineer it. The point here is that it would appear that the bill was put in place for the right purposes; it just lacks a lot of detail to make it all happen.

Mr. Pierre Poilievre: We've had approximately a dozen different presentations before us. And I don't think there was more than one that actually said that the Public Service Commission would be an appropriate vehicle to carry out this bill—and I think that was the president of the Public Service Commission. So I don't think we've had anyone—

Mr. Francis Scarpaleggia: On a point of order, Mr. Chair, I think one or two people did say it would be fine with them, including Mr. Chopra.

The Vice-Chair (Mr. Paul Szabo): It's still less than 5%.

Mr. Pierre Poilievre: I don't think there has been a single witness, other than Mrs. Barrados, before this committee who has actually been satisfied with this bill. It just seems to be an astonishing condemnation and a universal condemnation by almost every single witness who has come before this committee. The question I'm getting at here is this. We're spending a lot of time and energy trying to fix this broken-down car. I'm wondering if it's time we just didn't buy a new one.

I want to get a straightforward answer from you on whether or not you think this can actually be fixed, or if you think that we should start over again.

Mr. Jim Currier: My response to you would have to be this. In the interest of the Canadian taxpayer, whatever we can do to get this on track using the fastest and the most economical means is where we have to go.

Mr. Pierre Poilievre: Right. That makes sense.

The Vice-Chair (Mr. Paul Szabo): Perhaps we can move to Mr. Boshcoff, please. I think that's the last intervenor.

Mr. Ken Boshcoff: You talk about the fact that nonetheless, no matter what the state of the legislation is, out there the nature and the extent of the problem to be addressed isn't a floodgate. I would have to say that as an organization that represents professionals, certainly among yourselves you would be hearing far more discontent or people saying there's something rotten in Denmark. On your statement that a few hundred claims would probably be the ones that would be followed up, is that to your extent of experience in professional conferences and dealing with your colleagues?

Mr. Jim Currier: Yes, it is. We have received commentary and we've had focus groups with our members. As we suggested, we do not see this as opening the floodgates, but again it needs the clarity in terms of what is to be considered as wrongdoing. There needs to be efforts made to educate civil servants to make sure that everyone understands what is and what isn't wrongdoing, to avoid frivolous investigations, whatever. That is the role we have been trying to encourage with our members.

Mr. Ken Boshcoff: Over the course of your combined experience, you have probably seen much legislation proposed and made into the hamburger here on Parliament Hill. Of all the legislation that you've seen, when it starts off some of it cannot appear to be perfect in its application. A lot of it takes some exercise before it can actually run. Do you feel there are some fundamental breakdowns here that won't do that?

Mr. Jim Currier: Yes, we do. We do believe that if it proceeds as is, we are headed for failure.

Mr. Ken Boshcoff: And is that primarily because of the nature of the Public Service Commission itself?

• (1705)

Mr. Jim Currier: The Public Service Commission and the fact that the present bill points it in that direction.... We have no axe to grind with the Public Service Commission, other than what we are saying: that over years of history we do not feel confident and we don't think our members and most public civil servants will have that good feeling in their heart when they have to make the big decision. And it is a big decision: Do you want to blow your career, stick your neck out, and do what you think you should be doing when you

wonder, am I going to be supported? That's why we're pushing for that independent agency, so they have that support. It makes their decision and the information flow.

Mr. Ken Boshcoff: I appreciate also your comments that the government is well intentioned in trying to get this through and it understands the nature of what has to be done.

Thank you.

The Vice-Chair (Mr. Paul Szabo): Let me just offer a thought. There is a statement made in your presentation that says there is presently very little protection for civil servants who seek to disclose potential wrongdoings, and that leaves them with a choice none of us should have to make—i.e., potential loss of employment or looking the other way when wrongdoings are committed. Why did you use the words “potential wrongdoings”?

Mr. Jim Currier: Maybe I could explain. Under the Financial Administration Act there are several parts to that. Section 33 concerns the involvement of the financial officer, for example, who has verified that everything before him has gone right and is in order and that a cheque is later issued, assuming his approval is authorized. Section 34 of the Financial Administration Act concerns the program manager's signature and approval of the purchase, saying the acquisition of goods and services is in fact within the budget and is within the elements of the program. It's a sign-off.

What you then have, after that sign-off has occurred, is another individual doing another review and trying to interpret or challenge that last sign-off to ensure, one last time before we cut a cheque and spend the taxpayers' money, that it's done right. So it becomes in some cases an interpretation, and there are grey areas, because to a manager in a program area the expenditure in his or her mind could be very clear and for the good of.... The financial officer might look at that in a different light and say, I'm not so sure about that. That's why it's “potential”.

That's our role as financial officers, to do that challenge, to safeguard the public trust.

The Vice-Chair (Mr. Paul Szabo): Thank you kindly for the explanation.

I would think that all stakeholders would be concerned that we don't create a situation where somebody becomes independent in appearance and in fact but then becomes a tool for all grievances and all concerns that might be committed as opposed to dealing with wrongdoings as defined in the bill as to the definition, the understanding, and the use. There are many possibilities, and it would be very unfortunate if the bill created a situation where there was not a clear definition or a clear line of demarcation between, first, the responsibilities and grievances of human resources, and second, incidents of wrongdoing, where we're talking about a violation or breaking of the law.

Mr. Jim Currier: And we welcome that definition. That's what we're seeking.

The Vice-Chair (Mr. Paul Szabo): We need that support. The integrity of the ultimate body is going to be very important; it's important that it not be bogged down in those matters in which human resources should take responsibility. We're going to have to look for that careful balance and understand that possible harassment might be in fact an effort to suppress disclosure, a matter Ms. Gualtieri had raised. But I would hope that such incidents would be few and far between.

Gentlemen, thank you kindly for providing that information to us. I think it's been helpful.

I'm sure, in talking to the members, that the committee is committed to having a whistle-blower bill. Our first choice is to have a bill and we're still working towards that end, I want to assure you. We will exhaust all of the opportunities we have to get a bill that will have the support of all stakeholders.

• (1710)

Mr. Jim Currier: Thank you very much for the opportunity to come before you.

The Vice-Chair (Mr. Paul Szabo): Thank you.

I would like to now excuse the witnesses.

We don't have to suspend; I'm just going to leave this open.

Colleagues, if we could, we'll address the issue of the supplementary estimates. As I indicated, we've been advised that the supplementary estimates are coming down on Friday. With our break week, that means that when we come back, our first meeting is on the Tuesday. If we were going to deal with the supplementary estimates, we would have to decide today which departments, agencies, etc. we were going to specifically look at. We would have to complete that and all of the other attending work by the end of that meeting on Tuesday because the supplementaries have to be reported back to the House on Thursday morning at 10 o'clock, which is before our meeting. We have an almost impossible timeline.

Let me suggest something. They are generally not major or statutory adjustments. I would suggest that once we are in receipt of the supplementary estimates, all members take the opportunity to look at them and as the first order of business on the Tuesday we have a discussion of any matter members want to raise with regard to the supplementaries. We will determine at that time if there is anything there we feel we have to resolve prior to reporting the supplementaries back to the House for the Thursday morning.

So let's find out if we have concerns rather than trying to engage people and have them arrange their schedules to come to do things or to testify on their supplementaries when we haven't even seen them yet and haven't had an opportunity to do that. Let's give ourselves that opportunity.

I would then suggest, following that discussion on the supplementaries—and we will decide whether or not we are prepared to report the supplementaries back to the House in time for the Thursday morning deadline—that we spend the balance of the meeting talking about Bill C-11 and that we go in camera.

Members should take the time from now till then to discuss among themselves what we have heard in the testimony. I think we should

come prepared to make suggestions as to where we go from here, and we should determine whether we have a consensus on a course of action because of our deep concern that we make sure we give every opportunity for our whistle-blowing legislation to proceed.

Are there any comments on that game plan?

Mr. Preston.

Mr. Joe Preston: I'm new to this place. Are we held by this absolute timeline on the supplementaries?

The Vice-Chair (Mr. Paul Szabo): Yes. As you know, the supplementaries are simply the last adjustments to the budget up to the end of March of this year.

Mr. Joe Preston: They're still in the billions of dollars.

The Vice-Chair (Mr. Paul Szabo): However, even though we may have reported them back to the House, it doesn't mean that at a future time we can't still call any of the departments to ask them about matters on the supplementaries.

Mr. Joe Preston: But we can't make any changes.

The Vice-Chair (Mr. Paul Szabo): But we also have the estimates, which will also probably be tabled about the same time, so we are going to be in another round and we will have these people.

I don't think it's a good idea for us to try to anticipate anything and do the job poorly; then I'd rather not do it at all. I'd rather deal with it on an ad hoc basis and see if members have areas of concern on which we can get answers prior to reporting them back.

We don't have to vote on the plan. If members agree, we will deal first of all with the supplementary estimates. Please come prepared to discuss them if you have issues. For the balance of that meeting on Tuesday we will deal with Bill C-11. Come prepared to discuss our strategy. We'll be in camera, so I want members to be open on that.

For Thursday—I'll just give you a heads-up—we have invited the Auditor General. As you know, we passed a motion when we struck the committee at the beginning of this Parliament that we would deal with all Auditor General reports as they related to our responsibilities. Now we have this report that deals in part with foundations, and the Auditor General will be before us on the Thursday to talk about her report as it relates to us.

Mr. Sauvageau.

• (1715)

[Translation]

Mr. Benoît Sauvageau: Mr. Chair, please explain something to me. The Committee on Public Accounts is reviewing the Auditor General's report. I do not disagree, but I have just learned that the committee will be reviewing Chapter 4 or the Auditor General's report on February 15, i.e. the chapter on the foundations. How do we know which committee is reviewing which chapter of the Auditor General's report?

[English]

The Vice-Chair (Mr. Paul Szabo): We have under our mandate certain foundations that have been designated as being under the principal purview of this committee.

As a matter of fact, maybe I could ask our researchers to provide a chart we had in the last Parliament that listed all of the foundations, including their proper title, the amounts, the date they were created, and other specs. It was a very helpful matrix.

I believe there are about fifty foundations, and we're going to go and vote now that the Auditor General be the external auditor for all fifty that report to us and the other 150 that report to others.

Mr. Sauvageau, please.

[Translation]

Mr. Benoît Sauvageau: You know how interested I am in the above issue, i.e. the foundations issue. If it were possible to inform me, it would be appreciated. I straddle two committees, but again, I will come to see you. Should I ask the clerk to send the information on the foundations to my office? Thank you very much, I will.

[English]

The Vice-Chair (Mr. Paul Szabo): Merci.

We are adjourned.

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