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Chair

Mr. Leon Benoit

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•(1145)

[English]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Order. Good morning, everyone.

Before we get to the agenda item, there is unfinished business to deal with.

Mr. Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I would just ask that we go directly to a vote on the motion that was under consideration at the end of last meeting.

The Chair: Okay.

Yes, Mr. Szabo.

Mr. Paul Szabo (Mississauga South, Lib.): On a point of order, Mr. Chairman, the orders of the day, as published on the website, are to deal with clause-by-clause on Bill C-11. Members need to be advised of what's on the agenda for meetings so that they can properly prepare. This matter is not there. Even though there may be a matter of unfinished business, the primary purpose of this meeting is to move on with Bill C-11.

I think this is unusual and probably out of order.

The Chair: We will go to the vote on the question then.

Those in favour—

Mr. Paul Szabo: I'd like to have the motion read, please.

The Chair: Read the motion, Mr. Poilievre.

Mr. Pierre Poilievre: I can provide the French language version as well, for anyone who wishes to have it. The motion has been read already, but I'm delighted to read it a second time.

The motion reads as follows:

That the committee recommend to the government that they collect the one hundred...

Sorry, you have the amended version, Mr. Chair.

The Chair: This is the amended version, I believe:

That the Committee recommend that the government undertake all necessary measures to collect forfeitures resulting from wrongdoings by any person of Alexis Nihon REIT in their dealings with Public Works and Government Services of Canada.

I believe that's the correct motion? Yes.

We're going directly to the vote....

Mr. Szabo.

Mr. Paul Szabo: The motion that was initially tabled with us was indeed the one that Mr. Poilievre had started to read, that Senator Massicotte—

Mr. Pierre Poilievre: Mr. Chair, a point of order.

Mr. Paul Szabo: Excuse me, I have the floor.

Mr. Pierre Poilievre: On a point of order, Mr. Chair, there is not a point on the floor, so I'm just wondering on what basis Mr. Szabo speaks at this point. Does he have a point?

Mr. Paul Szabo: Well, if you had listened to the argument, you would understand.

The Chair: There wasn't a point of order.

Mr. Paul Szabo: There is a point of order, if you'd let me finish.

The Chair: Is it a point of order?

Mr. Paul Szabo: There was an error—

The Chair: Mr. Szabo, just to be clear, had you called a point of order? I didn't hear it that way.

Mr. Paul Szabo: Yes, I did.

The Chair: Okay, go ahead, then.

Mr. Paul Szabo: The point of order is that the motion before us is in fact out of order, Mr. Chairman. As you noted, Mr. Poilievre had started to read the motion for which proper notice was given to the committee. It was debated. The motion called for Senator Massicotte to pay a fine of in excess of \$100,000 related to this matter.

The motion was challenged, and we asked that the clerk determine whether or not it was in order for this place, or this committee, to take this matter to task, because it dealt with a member of the other place.

As you know, Mr. Chairman, the matter came back from the clerk, and in fact it was found to be out of order—*out* of order.

Then, at that same meeting where it was determined that it was out of order, a substitute motion was put in here that a company, Alexis Nihon, should somehow be gone after for breaches of things and that a lease—

The Chair: Excuse me, Mr. Szabo, I'm going to ask you to get directly to something. We discussed this at the last meeting. This is the motion we are dealing with. Let's have the vote on the motion, unless you have some point of order directly regarding that.

Mr. Paul Szabo: I do.

The Chair: Then get to it, please.

An hon. member: Hurry up.

The Chair: Come on. Order.

Mr. Paul Szabo: Mr. Chairman, the motion that was substituted was, as you know, the motion that you read proposing that this lease be found null and void. Mr. Chairman, first of all, that is not an amendment, as you said. I challenge that this is an amendment to the initial motion. In fact, there is a whole—

The Chair: Let's go to the vote.

Mr. Paul Szabo: No, no. Hold on. I want to explain this point. I think it's important to do it properly.

The motion now before us did not have 48 hours' notice. It was not an amendment. It is not a revision, as was submitted. Indeed it effectively deals with the same matter on which the clerk brought back a ruling: that in fact it was out of order for this committee to deal with.

It still has to do with Alexis Nihon and Senator Massicotte and being in breach of a lease or a contract. After checking with the Clerk of the House of Commons and with the Speaker of the House, it was determined that the matter is in fact out of order. It is the same matter. This particular matter is out of order, even on the basis that it didn't even get 48 hours' notice, because it is not the same motion; it does not use the same words. It's totally different. There was no revision, no amendment made. So, Mr. Chairman, on that basis, this matter before us right now, as well as the fact that it was not on the order paper today before this meeting, is out of order and should not be dealt with.

The Chair: Mr. Szabo, we dealt with this at the last meeting. This is the amended motion, and we're going to go to the question on the motion.

• (1150)

Mr. Paul Szabo: Mr. Chairman, I'm sorry, but you just can't summarily do that. I challenge the chair's decision on this.

The Chair: Then we'll go to a vote on Mr. Szabo's challenge to the chair's decision.

Those in favour of that motion? Those who support the challenge?

Mr. Pat Martin (Winnipeg Centre, NDP): Are we voting to uphold the chair?

The Chair: Yes. He has made a motion to challenge the ruling.

Mr. Pierre Poilievre: You don't have the floor, Mr. Szabo.

If I could have the floor, Mr. Chair, I move to sustain the ruling of the chair.

The Chair: The motion we're dealing with is that the ruling of the chair be sustained. That's by Mr. Szabo. So let's go to the vote on that.

Mr. Paul Szabo: Before you go to the vote, I would ask the legislative counsel—

The Chair: I'd like to ask for some advice here.

We go directly to a vote. It's a non-debatable motion. I had better get the exact wording of the motion: that the ruling of the chair be sustained.

Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.): On a point of order, is that—

The Chair: There is no debate. We go directly to the vote on this, Mr. Boshcoff.

Mr. Ken Boshcoff: Okay, we'll deal with this and I'll rise on another point immediately afterwards.

The Chair: That the ruling of the chair be sustained is what we're voting on.

Hon. Diane Marleau (Sudbury, Lib.): That which ruling be sustained?

The Chair: That this motion is in order. Mr. Szabo challenged that, I believe. That's what I heard.

Is that correct, Mr. Szabo?

Mr. Paul Szabo: I made a point of order that it was out of order because no notice of motion was given. That hasn't been ruled on. If it's not in fact just a friendly amendment—in fact it is a totally new motion—it requires 48 hours' notice for this meeting to consider it. Notice was not given.

The Chair: Mr. Szabo, we dealt with this at the last meeting. This motion was submitted before the last meeting.

Mr. Paul Szabo: No, no. Notice was not given.

The Chair: It's an amendment to the motion. We had proper notice.

Mr. Paul Szabo: It is not an amendment. There is no record of any amendment. You can't amend the first one to get to this one.

The Chair: We're going directly to a vote on the motion. The motion is to sustain the ruling of the chair.

(Motion agreed to)

The Chair: Yes, Mr. Poilievre.

Mr. Pierre Poilievre: I asked to go directly to the vote.

Mr. Ken Boshcoff: A point of order, Mr. Chairman. When I was asked to attend an extra meeting at 11 a.m. today, the meeting was very explicitly, very clearly to deal with Bill C-11.

The second point I would like to make is that this amended resolution, whatever it may be, has not been distributed to us. It has only been distributed to those who would vote in favour of it. Is this democracy?

Mr. Chair, your impartiality is being strained to the limit.

Mr. Pierre Poilievre: Mr. Chair, on that same point—

The Chair: Just a minute, Mr. Poilievre. We had this motion; we amended it at the last meeting. You should all have copies, at least from your notes. I don't know if we have more than one copy or not, but I have a copy here.

Mr. Poilievre.

Mr. Pierre Poilievre: What we're seeing on the other side is absolute nonsense. We discussed the motion that you read just now last Thursday. If it was debatable last Thursday, surely there has been more than 48 hours' notice for the members to prepare themselves for today's vote. What we have, in reality, is nothing more than procedural obstacles designed to defend Liberal corruption. In the process, it delays work on a whistle-blower protection law. I find it reprehensible that this party is looking to filibuster its own whistle-blower protection law in the process of defending Liberal corruption. They are now filibustering their own whistle-blower protection law. Let's be blunt about what's going on here.

Mr. Ken Boshcoff: On a point of personal privilege, our reputations are being impugned. This meeting was called to discuss Bill C-11. We were asked to have extra meetings. We're trying to get to Bill C-11, and anything else is obstructionist.

•(1155)

The Chair: Let's go to the vote on the motion.

Mr. Szabo.

Mr. Paul Szabo: Let me simply advise. I have checked with the Speaker and with the table. This matter, even if reported back by this committee, will be rejected as inadmissible. If we are going to consider a motion that would find Alexis Nihon to be in breach of something, a motion that could result in the contract for the lease of the building being declared null and void, I ask that we at least have a representative from Alexis Nihon and from Public Works to explain to us the consequences of cancelling the lease.

Mr. Pierre Poilievre: A point of order. Is the member rising on a point of any kind?

The Chair: Mr. Szabo, if you'd read the motion, you'd see that it doesn't say what you have indicated.

Mr. Paul Szabo: The motion we had at the last meeting—

Mr. Joe Preston (Elgin—Middlesex—London, CPC): That was one of Mr. Martin's motions.

Mr. Paul Szabo: No, the motion we had at the last meeting was that the lease be null and void. We didn't get to Mr. Martin's stuff yet.

The Chair: Mr. Szabo, that simply isn't the motion we were debating at the last meeting.

Mr. Paul Szabo: I'm sorry, but that's what we debated.

The Chair: What does the motion say? I'll read the motion again, just to make sure it is clear. It was moved:

That the Committee recommend that the government undertake all necessary measures to collect forfeitures resulting from wrongdoings by any person of Alexis Nihon REIT in their dealings with Public Works and Government Services Canada.

Mr. Paul Szabo: That is not the motion we debated last.

The Chair: Mr. Szabo, this is what we were debating at the last meeting after it was amended. Because the meeting had taken much longer than anticipated, when the meeting was adjourned I indicated we would come back to this at the next meeting.

So we've come back to it. Let's go to the vote, please. It will be a recorded vote.

(Motion agreed to—[See *Minutes of Proceedings*])

•(1200)

The Chair: We will go to the other business for the meeting today, pursuant to the order of reference of Monday, October 18, 2004, 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.

We have as witnesses today the Public Service Human Resources Management Agency of Canada, Ralph Heintzman, vice-president, public service values and ethics. From the Treasury Board of Canada secretariat we have Michel Lefrançois, general counsel, secretariat legal services branch.

We'll now go to clause-by-clause of Bill C-11. You all have the appropriate papers in front of you.

We have one other issue to deal with before we go to the motions in front of you. We had a bit of a problem with Mr. Martin's motions. There were some technical glitches there, with a fax machine, amongst other things. His motions weren't received, but they were properly sent, I would argue. There's one other motion to that amendment by Madame Thibault, which was received late.

Hon. Diane Marleau: We can deal with the last one.

The Chair: We have it before us. I just want to get the consent of the committee to accept these motions and deal with them along with the rest.

Some hon. members: Agreed.

The Chair: Thank you very much. Then we'll just go ahead. These will be distributed now.

Let's go to clause-by-clause. The preamble is postponed under Standing Order 75(1) until later.

(On clause 2—*Definitions*)

The Chair: The first amendment we will deal with is Bloc amendment 2, which is on page 3 of your package of amendments. There is a line conflict there. In other words, if this motion passes there are other motions that will not be dealt with. Is there any debate on this amendment?

Mr. Sauvageau, do you have anything to say about this amendment?

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): Yes. We're all going to try to start off on the same foot.

[*English*]

The Chair: Did you move the motion? I'm sorry, I didn't have my translation on and I was busy talking.

[*Translation*]

Mr. Benoît Sauvageau: Things will be fine, once we've started, Mr. Chairman.

I'm trying to understand. It states that line 15 on page 2 will be replaced by "made in good faith and".

I repeat that things will be fine once we've started.

[English]

The Chair: That is the one. Your amendment is actually on page 3.

[Translation]

Mr. Benoît Sauvageau: If I'm not mistaken, this concerns line 15 on page 2.

I don't see it, Mr. Chairman.

[English]

The Chair: That's in the package of amendments.

[Translation]

Mr. Benoît Sauvageau: I'm getting into the starting gate, like everybody else.

I move that Bill C-11, in Clause 2, be amended by replacing line 15 on page 2 with the following:

“made in good faith and”

On line 15 of Clause 2, the words “not frivolous, vexatious or made in bad faith and” should be deleted and replaced by “made in good faith and”.

[English]

The Chair: Let it be noted that both the Conservatives and the NDP had raised a similar motion.

Mr. Martin, I see you have a comment.

Mr. Pat Martin: My only comment would be that if we do vote for this version of an amendment, the others will not be entertained. Is that correct?

The Chair: They could possibly. They'd have to be entertained as a subamendment.

Mr. Pat Martin: There were other things raised in this specific line by others. Some say that it should say “made in good faith”. Others say it should be “made in good faith by a public servant”, and others say “not made in bad faith”. Personally, I like the positive way of viewing it, so I prefer “made in good faith”. Maybe the Conservative Party would consider accepting that.

They also have an amendment on the same lines, the same clause, saying, “made in good faith by a public servant”. So I'd ask Mr. Sauvageau to consider that perhaps that should be the one amendment we make to this particular line—“made in good faith”, to have the positive reflection, but add the words, “by a public servant”.

The Chair: That is exactly what this bill—

•(1205)

Mr. Pat Martin: And that is what it says in the bill.

Okay, I have no other comment. I understand. Thank you.

[Translation]

Mr. Benoît Sauvageau: I agree with you.

[English]

The Chair: I'll go to the question.

(Amendment agreed to)

The Chair: We'll go next to the government amendment on page 6 of the package of amendments. The numbers are at the bottom of the page.

This is amendment G-1. Would one of you like to move the amendment and make any comments you would like?

Hon. Diane Marleau: These are technical amendments. If Mr. Heintzman wants to make a comment about that, it doesn't matter.

The Chair: Mr. Heintzman, have you any comment on this amendment?

Mr. Ralph Heintzman (Vice-President, Public Service Values and Ethics, Public Service Human Resources Management Agency of Canada): All this does is make this clause more general so that it will accommodate potential changes you make to this act. It just says “in accordance with this Act”, rather than referring to specific subsections. That's the first amendment.

In the second one, in the same motion, we're also trying to make the French line up with the English. So instead of saying “*travaillant*”, it would say “*employée*”, which is the same sense as in English.

The Chair: There is a problem with paragraph (c) of the amendment. That's where we're referring to a schedule that doesn't actually exist as a numbered schedule yet. Would the committee agree to put this off until we actually get the schedule in there as “Schedule 1”? Would the committee agree to postpone this?

Hon. Diane Marleau: The whole thing?

The Chair: We'll come back to it. Does the committee agree to stand this?

Mr. Paul Szabo: There is going to be a schedule 1, and there are other references, but—

The Chair: It doesn't exist yet.

Mr. Paul Szabo: We're going to vote on the whole bill at the end, but it knits together.

This is not a major item. We'll just clean it up.

The Chair: Meaning what?

Mr. Paul Szabo: It's a technical matter. I'd just call the question on it.

Hon. Diane Marleau: Do you think we should wait and call the question on this one after?

The Chair: Can I ask for the amendment to stand until we do have the numbered schedule in place?

Some hon. members: Agreed.

The Chair: All right.

Next we'll go to page 8 of the amendments. This is a Conservative amendment, by Mr. Lauzon.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): The purpose of this is to allow the commission to protect public servants who make disclosures to other independent officers of Parliament or to individual parliamentarians.

The Chair: Mr. Heintzman, do you have a comment on that?

Mr. Ralph Heintzman: I would only point out that this hugely increases the scope of this bill and significantly increases the range of persons to whom disclosures could be made.

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: At first glance, I'm inclined to agree with Mr. Heintzman entirely. The Auditor General Act and the legislation concerning the Ethics Commissioner probably both have a section on disclosure. I think that, in addition to leading to a dangerous omnibus bill, this would risk setting a precedent. I'm not at all in favour of this idea.

[*English*]

The Chair: Thank you, Mr. Sauvageau.

Are there any other comments?

We go to the question on the amendment.

(Amendment negated [See *Minutes of Proceedings*])

The Chair: The next one is on page 9. It's another Conservative amendment, again moved by Mr. Lauzon. Would you like to move your amendment?

Mr. Guy Lauzon: Again, this is to allow the commission to protect public servants who make disclosures of wrongdoing through the media. We had witnesses who got into trouble for that very fact.

• (1210)

The Chair: Mr. Heintzman, do you have any comment on that?

Mr. Ralph Heintzman: Of course, Mr. Chair, this goes even further than the previous amendment. This opens up your regime to the entire news media.

We haven't had a chance to study all the other amendments, but on the face of it, it would appear that this would significantly change the Canadian jurisprudence in this area, which puts significant limits on the freedom of expression for public servants. This would be a very significant step. That's all I'd say.

The Chair: Thank you, Mr. Heintzman.

Mr. Guy Lauzon: This is only to protect the person.

The Chair: Mr. Lauzon, we'd better go in order. You can comment later, of course.

Madam Thibault.

[*Translation*]

Ms. Louise Thibault (Rimouski-Neigette—Témiscouata—Les Basques, BQ): Thank you, Mr. Chairman. My colleague and I are very concerned by this amendment.

The bill we're considering together here in committee, which will be referred back to the House once we've passed it, is really intended to protect whistle-blowers. Those individuals will have a tool to disclose information and will be protected when they do so. They will then have to use these specific mechanisms.

I take a dim view of the idea that, in the context of this bill, we're encouraging people, in any way whatever, to take any other path but this one. We must prevent brown envelopes from circulating everywhere. People will be able to make disclosures in full

knowledge of the facts and will have access to excellent mechanisms for doing so. They'll also be protected from reprisals.

Thank you, Mr. Chairman.

[*English*]

The Chair: Merci, Madam Thibault.

Mr. Scarpaleggia.

[*Translation*]

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Mr. Chairman, to all intents and purposes, I was going to say the same thing. We introduced this bill precisely so that public servants would not feel obliged to send brown envelopes anonymously to members of Parliament or media representatives.

If we enable whistle-blowers to proceed in that manner and thus to circumvent the system we're establishing, we have to question the good faith of those persons. I entirely agree with Ms. Thibault. I will vote against this amendment.

[*English*]

The Chair: Thank you, Mr. Scarpaleggia.

Mr. Preston.

Mr. Joe Preston: Correct me if I'm wrong, but does clause 16 not do exactly this? It allows the public servant to make a disclosure to the public.

The Chair: Mr. Heintzman, could you comment on that, please?

Mr. Ralph Heintzman: Mr. Preston is correct. Clause 16 does, in very precise circumstances, authorize public disclosures in keeping with current jurisprudence, and the reprisal regime that's in the bill protects them in those circumstances.

The Chair: Thank you, Mr. Heintzman.

Mr. Lauzon, go ahead.

Mr. Guy Lauzon: We had a witness who came before the committee who in frustration had gone to the press after going up the chain of command and was persecuted as a result. This is to try to prevent that; someone who tells us about wrongdoing should not be persecuted. We have to prevent that whatever way they do it, and that's what I'm really looking for.

The Chair: Thank you, Mr. Lauzon.

Mr. Martin.

• (1215)

Mr. Pat Martin: I'm only concerned that by stating it at this point in the bill it gives an option to the public servant. He or she can either use the avenue of recourse we've created by this bill or go directly to the media and bypass this, and we don't want to give that impression. After someone goes through all the steps, there is a protected way to go to the media contemplated in clause 16. I believe that's where it should stay, and I don't think we should add it to clause 2.

The Chair: Thank you, Mr. Martin.

(Amendment negated [See *Minutes of Proceedings*])

Mr. Guy Lauzon: So I guess our next amendment is not—

The Chair: The next amendment we're dealing with is on page 9, and we've dealt with that. My apologies.

We're on page 10. Mr. Lauzon, that's yours again.

Mr. Guy Lauzon: The next one won't be necessary if we don't have the clause before.

The Chair: So that is not moved.

Page 11. Mr. Preston.

Mr. Joe Preston: It's as it reads, that we're including the armed forces as one of the agencies or the people who could report wrongdoing through this.

The Chair: Mr. Martin.

Mr. Pat Martin: As much as I sympathize with the mover of this motion and I understand some of his reasoning and his logic, I think it's an absolute non-starter in terms of getting this bill passed in this session of this Parliament. I don't want to jeopardize the possibility of having this bill passed, because it has so many merits; I don't believe this is important enough to see the bill jeopardized.

We have to consider that the duty of loyalty that exists between an employer and an employee in the military is absolute; the duty of loyalty is different. We're dealing with a different context and a different relationship, for a very good reason sometimes. An avenue of recourse to disclose wrongdoing in the military I think will have to be contemplated at a different time in a different setting, perhaps by a different committee.

The Chair: Thank you, Mr. Martin.

Madam Marleau.

Hon. Diane Marleau: With all due respect, and I appreciate the motion, I know that on Tuesday the minister said they had not found a way to include the armed forces, that there was no mechanism. I believe that's possibly because there's a kind of firewall between the government and the military so the government cannot use the military for political purposes, the government being Parliament. I think that's really what's causing the biggest problem at this point.

My understanding from Mr. Heintzman is that they haven't found a way to include them because of this particular quirk in the way National Defence is set up. Actually, the commander-in-chief is the Governor General, not the Prime Minister, and it has to do with that. I'm not a lawyer, but I have an idea that's one of the reasons.

Mr. Heintzman, I don't know if you have anything else to add to this.

The Chair: We have had this discussion before, but we do have three more people who want to make comments, and the next is Mr. Sauvageau.

Mr. Sauvageau, go ahead, please.

[*Translation*]

Mr. Benoît Sauvageau: I appreciate the amendment that's been put before us as well.

I believe the last paragraph of Clause 2 — where it concerns the Canadian Security Intelligence Service — will be the most tested part of the act in the next five years. It will have to be determined

whether we've made the right decision to exclude those agencies and accept the clause as it stands, or whether it would have been better to include the Canadian Security Intelligence Service, the Communications Security Establishment, the Canadian Armed Forces and so on.

I agree with the minister, who still wants to exclude them. However, a five-year review is required under Clause 54. Consequently, I believe this will be the first matter on the table in five years when the committee reviews this legislation. We're challenging all the agencies referred to in this part of Clause 2 to quickly and efficiently establish a process for receiving and managing complaints of wrong-doing for all members of those agencies.

I'll conclude briefly. I'm convinced that, when the committee reviews this legislation in five years, if the Canadian Armed Forces, the Canadian Security Intelligence Service and the RCMP haven't had the time to put in place a service for receiving and settling complaints of wrongdoing, the committee will determine whether they have been in bad faith and, consequently, whether they will henceforth be included in the act. I'm giving them the benefit of the doubt — I'm also giving it to the minister — and I suggest that we keep the present wording.

• (1220)

The Chair: Thank you, Mr. Sauvageau.

[*English*]

Mr. Poilievre, go ahead, please.

[*Translation*]

Mr. Pierre Poilievre: It must be borne in mind that this bill clearly describes the acts that may be subject to whistle-blowing. They are criminal acts, waste, human rights violations and so on.

A duty of loyalty such as exists among military personnel cannot be found in the public service. However, when a military member witnesses a criminal act or waste, he doesn't have a duty to talk about it. The duty of a member of the Canadian Forces is to be loyal to his employer, not to remain silent when he witnesses a criminal act or waste. This legislation only concerns criminal acts, waste and other actions. It will not protect state secrets.

Consequently, I support the motion and thank my colleague for introducing it.

[*English*]

The Chair: Thank you, Mr. Poilievre.

Monsieur Godbout, go ahead, please.

Mr. Marc Godbout (Ottawa—Orléans, Lib.): Mr. Chair, I was going to ask the witness to give us his analysis of what happens if aspects of it conflict with other legislation.

The Chair: Thank you.

Mr. Heintzman, have you any comment on that? We've kind of been through this, I know.

Mr. Ralph Heintzman: I would just repeat pretty much what I said the other day. There's both a policy aspect and a technical aspect to this. The policy aspect is whether in fact you want to modify the whole regime within the armed forces. The technical aspect is how to make different pieces of legislation actually work together, how to make the two reporting regimes work harmoniously, how to make the reprisal protection regimes work harmoniously. And the honest answer is that we don't have a technical answer to those questions at this point.

If it was the will of the committee to actually bring the armed forces in, we'd probably have to go away and work for a long time to figure out how to do that.

The Chair: I'll comment on that, Mr. Heintzman. At one point, the committee decided not to have witnesses from the military. I think we've made a decision on that, but that's not to say it won't happen in the future.

Madam Marleau.

Hon. Diane Marleau: Mr. Chair, because the Canadian Forces is a difficult aspect of it, perhaps the mover of that particular motion would like to withdraw it.

Mr. Joe Preston: Could I ask one question beforehand? If a member of our armed forces showed up at the public service integrity office with a complaint that fit into the wrongdoing list that my friend, Mr. Poilievre, so eloquently stated for us, would he or she be turned away?

• (1225)

The Chair: That's under the legislation, the way it is, Mr. Heintzman.

Mr. Ralph Heintzman: I don't think they'd be turned away. I'm sure they could have a conversation and get advice.

Mr. Joe Preston: But what if the Canadian public learned of the wrongdoing?

Mr. Ralph Heintzman: The commissioner would not have the authority to investigate.

The Chair: What's your answer, Mr. Preston?

Mr. Joe Preston: I don't feel I can withdraw it.

The Chair: Okay. We still have a couple of speakers.

Mr. Lauzon is next.

Mr. Guy Lauzon: First of all, I wholeheartedly agree with Mr. Poilievre's points.

We hope to eventually have 80,000 armed forces personnel. Yes, Mr. Heintzman, I can agree that it would probably take a great deal of work, but it would probably be worth it if 80,000 of our public servants, indirect public servants, if you will, would be covered under this legislation. I think it's critical. I've already had representation, for example, from the mounted police. I'm sure there's some reason for it. This would be welcomed by the armed forces.

To address Ms. Marleau's point, isn't it almost better to have an independent person and to have these people included so that it couldn't be used politically? The commission reporting directly to Parliament takes the politics out of the whole situation. There's some

give and take on that. But I would wholeheartedly agree that this has to be all inclusive, rather than selective, and I would encourage us, Mr. Heintzman, and whoever is needed, to really seriously look at somehow finding a way to include them.

The Chair: A very quick point, Madam Marleau.

Hon. Diane Marleau: I understand where you're coming from. My problem is that if we include it, we may not have working legislation for some time. That's the challenge. If they're having such a difficult time, we may pass a wonderful bill, but it will not be put into practice because they won't have the mechanism to do it.

The Chair: Thank you, Madam Marleau.

Mr. Guy Lauzon: You could do that six months down the road or something.

The Chair: Mr. Scarpaleggia, followed by Mr. Boshcoff, and then closing comments by Mr. Preston, if there are no others in the meantime.

[Translation]

Mr. Francis Scarpaleggia: Mr. Heintzman, you may have answered my question in another way, but I'd like to know I actually understood. Is it correct that, under this bill, the Canadian Forces, the Royal Canadian Mounted Police and so on would have an obligation to establish a parallel system? If that's true, under what clause is that the case?

Mr. Ralph Heintzman: Indeed, the four so-called excluded agencies are in fact not excluded. They're subject to the act because they're required to establish a parallel system consistent in all respects with the system established by the bill. The Treasury Board must certify that that system is indeed consistent with the one established by the bill and that the regimes are indeed comparable. If they aren't, under this bill, the Governor in Council would have the power to add any one of those four agencies to the schedule and, consequently, to include it if, for one reason or another, that agency had not put a comparable system in place.

Mr. Francis Scarpaleggia: So it's not a complete void. There are certain guarantees. Systems are in place. In any case, if someone believes that things are not working well enough within those four agencies, that can be debated on an opposition day, can't it?

Mr. Benoît Sauvageau: That's correct.

[English]

The Chair: Thank you, Mr. Scarpaleggia.

Mr. Boshcoff.

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

I'm going to vote against it because I'm going to stick with what we've been discussing for the past number of months in terms of the direction we have taken. I also agree with Mr. Sauvageau that these organizations have to show some effectiveness, and that it should be a very high priority in the review process. This gives all of them some kind of timeframe for demonstrating mechanisms for incorporating these protections. So our bill itself will set the standard for them, Mr. Chairman.

Thank you.

•(1230)

The Chair: Mr. Preston, perhaps you have some further comments you would like to make.

Mr. Joe Preston: Not to repeat what I've already said, but we need a way of protecting the 80,000 people in our armed forces—not on state secrets, not under line-of-fire issues, but under absolute wrongdoing as listed in this bill. If a member of our armed forces sees somebody stealing jet engines off the tarmac at Trenton, they need some way of reporting it. If their only means right now is to report it up the chain of command...we've heard from our witnesses in the American whistle-blowing legislation that the esprit de corps of the armed forces, CSIS, and the RCMP will likely not allow them to do it in a proper fashion without being punished in some way.

I feel very strongly about protecting those people too.

The Chair: Thank you, Mr. Preston.

I will call the question on the amendment.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Could I make a suggestion that this committee follow up on this issue, maybe a couple of years down the road? Is there agreement that we do that?

Some hon. members: Agreed.

The Chair: Okay. If the clerk could so note, we'll deal with that. It's good to put it on record that we're going to follow up.

We are now dealing with amendment CPC-8 on page 12.

Mr. Paul Szabo: That's consequential to the one we just dealt with, is it not?

The Chair: This is not a consequential amendment, but let's just have a look at it.

Mr. Paul Szabo: Based on the decision that was made, this one won't make sense.

Mr. Pierre Poilievre: Mr. Chair, it is my amendment, so I'll just quickly address it.

The Chair: Yes, go ahead.

Mr. Pierre Poilievre: It is actually a consequential amendment, but as we've just voted it down, I'll take a pass on the presumption that the result would just be the same. This would, in effect, remove it.

The Chair: It's not treated as a consequential amendment because two different members brought it forth.

So you're withdrawing that. You're not going to move that motion?

Mr. Pierre Poilievre: Just for the record, I do continue to support the concept of the military being included, but due to the committee's last decision, it would be redundant to ask for another vote.

The Chair: Thank you, Mr. Poilievre.

The next is amendment BQ-3 on page 13 in the package of amendments, and it is by Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: To be consistent with what I just said, I should withdraw this motion, and that's what I'm going to do. However, in the context of this motion, my Bloc Québécois colleagues and I wondered right up to the last minute whether it was appropriate to include the Canadian Forces and other agencies. Ultimately, we agreed to give them a chance. They have five years.

I would withdraw my amendment to the bill in an entirely non-strategic manner, as though we were playing poker, cards down on the table. I've discussed the matter informally with my colleagues. Everyone wants to push this bill through. If there were a problem and you had to get committee members to consent, we'd be prepared to continue the clause-by-clause consideration right up to the end. I briefly discussed this matter with my colleagues. We'd like the bill to be passed by the committee today.

Hon. Diane Marleau: Mr. Chairman, may I add something?

[*English*]

The Chair: Madam Marleau.

[*Translation*]

Hon. Diane Marleau: I think that's a good idea. However, my colleague already has a scheduled engagement for 1:00 p.m. Perhaps we could start at 3:30 p.m., then continue.

[*English*]

Mr. Paul Szabo: We can get it finished today.

[*Translation*]

Hon. Diane Marleau: Indeed.

[*English*]

Mr. Paul Szabo: If everybody just keeps disciplined, we'll get it finished.

The Chair: Monsieur Sauvageau, we will end this meeting at 1 o'clock. As you know, we'll meet again at 3:30, and the committee can decide from there.

To page 14, Conservative motion 9.

Mr. Poilievre, I've been told there's a line conflict between your amendments CPC-9 and CPC-10. Perhaps you could just explain what you would like to do here.

•(1235)

Mr. Pierre Poilievre: This particular amendment would include CSIS employees under the protection of Bill C-11.

What effectively happened here is that I asked the drafters to prepare for me amendments that would, one, include the military, which I have just agreed to retire; two, include CSIS; and three, include the RCMP. What you're seeing now is the amendment that would include CSIS. The following page is an amendment that would include the RCMP. But the way the page 15 amendment is worded, it would actually reverse the previous two amendments, if you see what I'm saying.

So I'm wondering if we could just vote on page 15 before page 14. If the page 15 amendment passes, it would effectively include the RCMP under the protections of this law. If this were to pass and CSIS were included, then....

It would just work logistically if we could vote on the amendment on page 15 before voting on the amendment on page 14. It's just the order, that's all.

The Chair: The order doesn't matter, so....

Mr. Szabo.

Mr. Paul Szabo: I think everybody understands.

I'd like to hear from Mr. Heintzman with regard to the inclusion—or non-exclusion—of CSIS. If we deal with the matter of the inclusion of CSIS and it's not accepted, then maybe we could make a motion on the fly simply to take out the RCMP. Because that.... We would just withdraw these two.

So let's determine whether there's a good or a bad reason for exclusion of CSIS. If we're not going to include CSIS, let's drop these two and make an on-the-fly amendment. You can pose an amendment simply to exclude the RCMP.

The Chair: Is there agreement to proceed like that?

Some hon. members: Agreed.

The Chair: All right. Thank you.

Mr. Heintzman, perhaps you could comment.

Mr. Ralph Heintzman: I won't comment on whether it's a good or a bad idea. It's clearly the government's position that they shouldn't be included, because they weren't included in the bill.

As I said before, I think there are both policy and technical aspects to this. In the case of CSIS and CSE, I think the issues are primarily policy. That is to say, the technical requirements of including CSIS and CSE are not that enormous. However, if it were the consensus of the committee to do that, the government might well want to bring forward a series of consequential amendments to that to take adequate account of some of the security issues that would raise.

On the RCMP, again, there's a policy issue as to whether you want to marry those two quite different systems. The technical issues are similar to those of the military in the sense that you have two quite different disciplinary and recourse regimes that would have to be technically reconciled. Unlike the case of the armed forces, if it's the decision of the committee that they want to go in that direction, I think it could be technically resolvable, but I think you have to decide the policy issue first.

Again, I think if it were the decision of the committee to go in that direction, the government might want to propose some amendments to take account of the very complex challenges posed by reconciling those two legal systems.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: Mr. Chair, I haven't had a chance to actually make introductory remarks on my amendments.

The Chair: Okay, Mr. Poilievre, go ahead.

Mr. Pierre Poilievre: First of all, I'm glad to hear there are no technical problems associated with including CSIS or the RCMP. I'd like to make a few points....

[*Translation*]

Pardon me, did you say there were technical difficulties?

• (1240)

Mr. Ralph Heintzman: Yes, I think that seems to be true in both cases. I think those problems are easier to solve in the case of CSIS and the CSE than for the RCMP, but it's nevertheless a complex matter.

Mr. Pierre Poilievre: I nevertheless think that could be done.

[*English*]

Sure, there are always going to be technical challenges, but these challenges are worth undertaking. We have thousands of employees who fall within these organizations and they deserve to be protected.

I would remind the committee once again that we're dealing with the disclosure of criminal acts, gross waste of public funds, and an assortment of other wrongdoings, most of which are criminal. Management of the RCMP or CSIS does not have the right to break the law. There's no special exemption from the Criminal Code if you are a manager at CSIS, or if you play a management role in the RCMP. So it follows logically that employees must have the right to expose wrongdoing when it happens.

Some members have said to me that they support the inclusion of the RCMP and CSIS in principle, but they do not want to see the government hold up the legislation, or try to block it, because it is so vociferously opposed to the inclusion of those organizations. I would say to that line of thinking that this committee cannot be held hostage. We have to do what we know to be right, and we have to expect that the government will do the same.

It's our right to include CSIS. It is our right to include the RCMP. It is the right thing to do to include both those organizations. They deserve the same protections that this bill will afford the entire public service. We will then leave it to the government to show if it has the moral fortitude to live up to its word when it says it wants to protect all employees of the government.

I would conclude by pointing out that the RCMP has been mentioned in the sponsorship scandal. Including the RCMP is the very least we can do, given the allegations of wrongdoing directed at it. It is not enough to ask these organizations to set up their own mechanisms. If we were going to do that, we might as well have just had Treasury Board or the Privy Council Office set up a regime for public servants. It's not enough to let management police itself. It's not enough to let management put in place a regime to protect itself against disclosures. So I would call on committee members to do what we know to be the right thing, which is to protect both CSIS and RCMP members.

The Chair: Are you ready for the question on page 15?

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: I have a question. When you say there are technical problems, does that mean redrafting or significantly changing this bill?

Mr. Ralph Heintzman: It would technically require a series of further motions for amendments to cover two aspects of the bill. All the security issues that would be raised would require further study by the committee. There's an important series of amendments that would be required simply to reconcile this act with the RCMP Act. Their whole system functions differently. It would require a further series of amendments to reconcile these two acts.

Mr. Francis Scarpaleggia: I take that to mean that this would involve a whole new round of consultations with the RCMP, the armed forces, and CSIS? I would like to avoid the nightmare that copyright legislation goes through every time it's amended. It takes eight years, because you have to do rounds and rounds of consultations to get it just right.

With respect to Mr. Poilievre's point, I don't think it's an all-or-nothing deal. These organizations have parallel systems and they can be reviewed by the Treasury Board. Just the fact that we have passed this legislation would put enormous pressure on the Treasury Board to pay particular attention to the whistle-blowing regimes in these four agencies.

My last question is, how do the Canadian Security Intelligence Service, the military, and the RCMP differ? Mr. Poilievre makes a good point here. If there's waste or theft, what does that have to do with national security? If someone has stolen a covert satellite we're sending up, that compromises the whole project. But how does that really differ from one to the other? It seems to me that security is an issue across all of these organizations.

•(1245)

Mr. Ralph Heintzman: Would you like me to comment?

The Chair: Go ahead, Mr. Heintzman.

Mr. Ralph Heintzman: You're right, security is an issue for all three organizations. If you were to include all three, you'd probably want to consider the amendments necessary to address those security issues.

The technical challenges are somewhat greater in the case of the RCMP, simply because the employment and discipline regimes are so different. Employees of CSIS and CSC are public servants. They function much the same way as public servants. Technically, it's a somewhat smaller challenge. The RCMP, however, have a distinctive, quasi-military regime.

So there's a legal complexity involved in reconciling those two bills. The Commissioner of the RCMP, under the RCMP Act, has a quasi-judicial function. He's not just a chief executive in the normal sense. Their disciplinary system works up through a court system, which eventually goes to the commissioner as kind of an appeal court. So in this bill he can't be treated in the same way as a chief executive. We would have to address this from a technical point of view if the RCMP were to be included. I don't say it's impossible, but it would have to be done.

Mr. Francis Scarpaleggia: I would like to follow up on the chair's point that this issue could be the subject of a major committee study that maybe we should undertake in the near future. In the meantime, I will vote against the amendment.

The Chair: Mr. Lauzon.

Mr. Guy Lauzon: Mr. Heintzman keeps coming back to technical difficulties. We have to make sure we don't exclude them, because it's a lot of work, or it's difficult work. The RCMP have their own process. But how does it work? We had Corporal Read here as a witness.

I have a four-page letter that just came into my office yesterday about a clerk in the RCMP out west. There shouldn't be that many technical difficulties in covering a clerk working for the RCMP. The RCMP, as I understand it, is now using Keyserlingk's office. If it can be done that way, why are we making this so difficult?

I think we have to do what Mr. Poilievre said. Never mind who's right. What is the right thing to do here? The right thing to do is to be all-inclusive. Yes, it's going to take some more work. I'm sure there are some big challenges. But wouldn't we have a better piece of legislation if we met those challenges? For this reason, I'm going to be voting for it.

The Chair: Mr. Heintzman.

Mr. Ralph Heintzman: The clerk in the RCMP would already be included in the bill. It already covers all civilians working for the RCMP.

Ms. Jane Graham (Counsel, Legal Services, Treasury Board Secretariat, Department of Justice): All members of the RCMP are excluded; civilian employees are included.

Mr. Ralph Heintzman: The non-uniformed RCMP are covered by this bill; it's the uniformed RCMP who are not covered, the members.

Mr. Guy Lauzon: She was having a hard time with her officer. So how would that fit?

Mr. Ralph Heintzman: If she's not a uniformed member, then she would be covered by the bill in its present form. She would be able to go to the commissioner.

•(1250)

Mr. Guy Lauzon: Would the commissioner be able to investigate with the RCMP? That's the question.

Mr. Ralph Heintzman: Yes.

A second point of clarification. I wasn't attempting to obfuscate. These are issues you can address if you choose. It's not an impossible task. But first you have to make a policy decision on whether you want to.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre: I'll conclude quickly.

Mr. Pat Martin: I think I've disappeared. Actually, it happens on a regular basis here. There seem to be these lengthy exchanges that leave me out all together.

The Chair: Sorry, Mr. Martin. You go ahead and Mr. Poilievre will close.

I apologize, I missed you entirely. I didn't see your hand.

Mr. Pat Martin: There are two things.

First of all, I take some comfort in the definition, as pointed out earlier, where at the bottom of clause 2 it does qualify that the public sector does not include members of the forces or those whose terms and conditions are substantially the same as those of members, but it does include other civil servants, non-military personnel on a base, for instance, or the clerk and typist in an RCMP station.

Second, in clause 52, under “Excluded Organizations”, it says “As soon as possible after the coming into force of this section, the person” shall cause a similar whistle-blowing disclosure system to be put in place that is equal to the provisions of this act.

That being said, I'm satisfied if we go ahead with what we have and try to achieve additions to it by Governor in Council. You don't have to wait for the five-year review.

I draw attention to clause 53 as well, where it says the Governor in Council may at any time add to the organizations that are covered by this act. There are lots of opportunities.

The Chair: Thank you, Mr. Martin.

Mr. Poilievre, your closing comments on the amendment.

Mr. Pierre Poilievre: Chair, there's going to be a review five years from now. Where that will lead, no one really knows, and how long it will actually take, no one really knows. I think we can safely assume that what does not make it into this bill when it's reported back to the House of Commons and is read the third time and voted on will never be in the bill, at least not in the foreseeable future. The notion that okay, maybe they shouldn't be left out but we're only leaving them out for five years, is flawed logic. If they shouldn't be left out five years from now, then they shouldn't be left out today.

Next, the notion that they can just set up their own parallel system runs contrary to the logic that has led us to create a bill as parliamentarians. If we had just applied that logic to Bill C-11, we could have said, well, we'll just ask that Treasury Board or the Privy Council Office or someone else set up a whistle-blower protection law and design it themselves, and we'll hope it works. That is effectively what this bill does with respect to the RCMP. Once again, it's more important that we get it right than that we just get it immediately. If we have to work a little harder and a little longer to make it happen, let's do it.

Finally, I just find it very confusing that the bill protects only people not in uniform. If I'm a non-uniformed employee of the RCMP and I see theft or waste, I can go and speak to the independent whistle-blower officer, but if I happen to get transferred over and become a uniformed officer and I see that same corruption and that same waste, all of a sudden I am not protected and I do not have provision under this law to go and see the whistle-blower protection officer. I have to go to some internal function I may not trust. I just find it very interesting that there are these amazing technical difficulties that make it too difficult for someone in uniform to report wrongdoing but there are no such technical difficulties for an administrator to do the same thing.

I'll leave it at that. I think this is the right thing to do, and I strongly implore the members of this committee to support the inclusion of the RCMP and CSIS.

The Chair: Let's go to the question.

It's CPC-10 at the bottom of page 15.

(Amendment negated [See *Minutes of Proceedings*])

• (1255)

The Chair: We'd agreed to an informal motion to include the RCMP. It'll just be included in the same place this was intended to go.

Hon. Diane Marleau: What you do is you make an amendment. You go to lines 35 and 36 and remove “the Royal Canadian Mounted Police” and so on, and then it becomes automatically included.

Mr. Paul Szabo: If I may, Mr. Chair?

The Chair: Yes, Mr. Szabo.

Mr. Paul Szabo: Replace lines 34 to 36 with “The Canadian Security Intelligence Service” or “The Communications Security Establishment”, period.

The Chair: Yes, that would do.

Yes, Madam Thibault.

Mr. Paul Szabo: If everyone has a replace line, whatever exists in lines 34 to 36—

The Chair: No, you'd have to go right to 40, would you not, Mr. Szabo?

Mr. Paul Szabo: You're absolutely right, 34 to 40.

The Chair: Okay.

Mr. Paul Szabo: In 34 to 40 replace it with “The Canadian Security Intelligence Service” or “The Communications Security Establishment”, period.

Hon. Diane Marleau: And delete the balance of that paragraph.

Mr. Paul Szabo: Yes, that's to 40. I should have said 40.

The Chair: All right?

Mr. Pierre Poilievre: So basically we're just deleting “RCMP” from the list of excluded organizations?

The Chair: Exactly. Thanks, Mr. Poilievre. I could have explained that. That would take them from the list of exclusions.

Hon. Diane Marleau: I know the rank and file of the RCMP wanted to be included, and they were.

Mr. Joe Preston: And the rank and file of our armed forces would—

Hon. Diane Marleau: Get ready with your amendments, Mr. Heintzman.

The Chair: I'm sorry, I never got the vote. Those in favour of that amendment?

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: What we've done, just for clarity, you understand—

Mr. Joe Preston: No, I understand what we've done. I just don't get it.

The Chair: The RCMP have been removed from the list of those excluded from the legislation.

Mr. Joe Preston: I've got that.

The Chair: Good.

Mr. Joe Preston: No, I'm happy.

A voice: Is this a good time to break, Mr. Chairman?

Hon. Diane Marleau: It's a good time to break.

The Chair: Oh, it is. It's 1 p.m.

Hon. Diane Marleau: Can we leave everything here?

The Chair: No, we're moving to another room.

Mr. Sauvageau, just before we adjourn, do you have a question?

[*Translation*]

Mr. Benoît Sauvageau: As I understand it, by excluding the RCMP from the list of excluded agencies, we're including it in the act.

Mr. Pierre Poilievre: Exactly.

Mr. Benoît Sauvageau: With or without uniforms.

[*English*]

The Chair: That is correct. They are now included in the legislation as it stands right now with the amendment we've made.

All right?

[*Translation*]

Mr. Benoît Sauvageau: All right.

[*English*]

The Chair: Thank you.

We will start again at 3:30 p.m. We will be in room 253-D at 3:30 p.m. See you all there.

The meeting is adjourned.

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