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Chair

Mr. Leon Benoit

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• (1535)

[English]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good afternoon, everyone. We'll continue with our clause-by-clause study of Bill C-11, the whistle-blower legislation.

I've just had a discussion with the clerk. We have a couple of things we have to go back to clean up.

The first thing is that Madame Marleau, just at the end of our morning meeting, brought a stack of amendments that would accommodate the inclusion of the RCMP in this legislation. Do I have agreement from the committee to include those amendments in our order of discussion on the bill for clause-by-clause this afternoon and in the future? Agreed?

Some hon. members: Agreed.

The Chair: The other thing is that the clerk has pointed out to me that this morning we negated a motion brought forth by Mr. Poilievre—CPC-10, on page 15—and then Mr. Szabo brought exactly the same motion and we carried it. What we'd like to do is go back to Mr. Poilievre's amendment and deal with it. We can deal with it in any number of fashions. I'm looking for the will of the committee on this.

Mr. Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I don't think it requires any debate; I think we just approve it. It's the same thing as we attempted to do, in principle. I understand that logistically we need to approve this one because it was given notice.

The Chair: It was exactly the same motion, too—exactly.

Mr. Pierre Poilievre: So do we want to just quickly approve it, then? Everyone has agreed to it.

Hon. Diane Marleau (Sudbury, Lib.): Is that on page 15?

The Chair: Yes. It's exactly the same.

Hon. Diane Marleau: On the French side, it looks a little bit different.

Mr. Pierre Poilievre: No, the only thing that's different about it on the French side is that the order of the language is different, so the amendment had to be worded slightly differently.

What it does precisely is remove the RCMP from the list of excluded organizations, but it leaves in CSIS, the Communications Security Establishment, and the Canadian armed forces. So everything else remains; the only thing that changes is that the RCMP is removed as an excluded entity.

Mr. Paul Szabo (Mississauga South, Lib.): Mr. Chair, could we seek the wisdom of the legislative counsel or clerk as to the preferred way to resolve this dual motion?

Ms. Susan Baldwin (Procedural Clerk): I would prefer that we dealt with Mr. Poilievre's motion, because it's translated and yours was not.

Mr. Paul Szabo: Fair enough. I would like to ask the consent of the committee to withdraw my verbal motion, which would remove the RCMP from the exclusion.

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

The Chair: Okay, and then is it the will of the committee to pass Mr. Poilievre's motion, which did exactly the same thing?

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

The Chair: Thank you very much for the cooperation of the committee.

Hon. Diane Marleau: I have a problem with the French side, because it's not at all what the English side says. It deals solely with the Canadian armed forces, so I'm not quite sure how this fits in. On one side you talk about the Canadian Security Intelligence Service and the Communications Security Establishment, and on the French side you deal with the armed forces—*les forces armées, les forces canadiennes*. They aren't quite the same.

The Chair: Can we have the translators deal with that and fix it up and get the French translation to be the same as the English? Can we do that? Great.

The next issue is that the second amendment in the amendments received from Madame Marleau is very similar to Mr. Poilievre's amendment as well. But we've dealt with Mr. Poilievre's. Why would we...?

• (1540)

Ms. Susan Baldwin: Because the wording is just ever so slightly different, and I'd like to make sure, if we could ask the lawyers with the department, that there's not some kind of small distinguishing feature I've missed.

The Chair: Okay. On the advice of the clerk...

Mr. Heintzman, do you have a copy of the amendments Madame Marleau presented to committee just before the end of the 11 o'clock meeting?

Mr. Ralph Heintzman (Vice-President, Public Service Values and Ethics, Public Service Human Resources Management Agency of Canada): Yes.

The Chair: And do you have a copy of Mr. Poilievre's amendment, which is CPC-10, on page 15 of the package? I'm not sure how you've had these presented to you.

Mr. Ralph Heintzman: Yes.

The Chair: Can you see if there really is any significant difference between the two? Is there some small distinguishing feature that we should be considering here, or are they in fact substantially the same?

Mr. Ralph Heintzman: Our conclusion is, I think, that Mr. Poilievre's amendment has the effect of taking the RCMP out of the list of excluded organizations, similar to what was proposed by Mr. Szabo and Madame Marleau earlier. Then the motions Madame Marleau tabled after that are consequential amendments that are needed, in the government's view, if the RCMP were to be included, to give technical effect to it.

The Chair: But there's one specific.... I guess we could just go through these one at a time.

Mr. Ralph Heintzman: Yes, you're absolutely correct. There is one motion that is the same.

The Chair: Right. Okay. So there is no subtle difference.

Mr. Ralph Heintzman: That is right.

The Chair: Okay, Mr. Poilievre's amendment, then, will stand.

I have included on my agenda here all of the amendments that were presented by Madame Marleau, so we'll just deal with them as they come.

We are now on page 16 of the package of amendments, amendment BQ-4, which is Monsieur Sauvageau's.

Monsieur Sauvageau, do you want to move that amendment?

[Translation]

Mr. Benoît Sauvageau (Repentigny, BQ): Yes.

The current definition of public servant is as follows: Every person employed in the public sector, including the chief executive. This amendment would broaden the definition of "public servant." We are proposing the following definition: Every person that is or was employed in the public sector or that is or was appointed by the Governor in Council, including the chief executive.

This would make it possible for retired people, for example, to lay a complaint if they are aware of a wrongdoing.

[English]

The Chair: Is there any discussion on that issue, or debate?

Mr. Paul Szabo: Can we ask Mr. Heintzman if there's any...?

Mr. Ralph Heintzman: Are we on page 16?

The Chair: We're on page 16, yes, BQ-4.

Mr. Ralph Heintzman: I would just point out for the committee's consideration that this significantly widens the coverage of this bill to include, if I read it correctly, all GIC appointees and former public servants. You'll obviously want to consider whether you want the bill to go that broadly.

The Chair: Okay.

Mr. Szabo.

Mr. Paul Szabo: Mr. Chairman, we know there are literally thousands of GIC appointees, and not all of them would be classified as employees. They may be under contract and other matters. They have specific terms certain.

Also, with regard to former employees, I'm not sure whether or not they have access to the benefits of the services for the tribunals, under the CIRB or the other tribunal. So I'm not sure whether or not it works. How do you extend it to former employees? I'm a little concerned that this bill won't service all those.

• (1545)

The Chair: Mr. Heintzman, do you have any comments on this to help us out?

Mr. Ralph Heintzman: From the point of view of the working of the reprisal regime, clearly there would be a problem, in the sense that those reprisal regimes are not designed necessarily for GIC appointees, and obviously not for public servants. There'd be a problem of convergence in this bill, I think, from that point of view.

The Chair: Okay.

Mr. Szabo.

Mr. Paul Szabo: Mr. Chairman, GIC appointees also serve at pleasure, so that removing them from office is covered by a whole other rule of the game. I think this may be trying to put a square peg into a round hole. It might be problematic and cause us some difficulty.

The Chair: Mr. Preston, you were on the list.

Mr. Joe Preston (Elgin—Middlesex—London, CPC): First of all, I have no problem with the Governor in Council appointees, and I would like to see "was employed" in there also to prevent the practice of terminating an employee so that they would be no longer covered by this bill. So "was employed" is very important, because when does "was" start? I'll leave it that way. If they were employed by the government up until a minute ago, they're still covered.

The Chair: Thank you, Mr. Preston.

Monsieur Sauvageau, and then Madame Thibault.

[Translation]

Mr. Benoît Sauvageau: I understand the concerns expressed by Mr. Heintzman and Mr. Szabo. I would like to make a clarification, if members will allow. I hope it is not too late.

There is no doubt that I would not want someone who worked in the public service 20 years ago to make a complaint. But if someone gets fired, that person is no longer a public servant and therefore is no longer covered by the legislation. So I would like to humbly propose the following definition: Every person that is or was recently employed in the public sector or that is or was recently appointed by the Governor in Council, including the chief executive.

By that I mean a few months or a few years. I would like it to be interpreted that way and for us to add the word "recently." I believe that we can do that if there is unanimous consent. It would simply be a clarification of what I meant. Mr. Preston has explained it well. If a whistle-blower like Mr. Cutler is fired, he can no longer be covered by this legislation.

Hon. Diane Marleau: Could we clarify something?

[English]

The Chair: Is it on this issue? Okay, Madame Marleau.

[Translation]

Hon. Diane Marleau: I thought that the group decided to include a clause in the bill stipulating that the commissioner had the right to hear complaints from anyone, whether the person was still working there or not. I believe that these people are covered in that way. We want to make sure that the commissioner has the right to receive complaints from any quarter.

Mr. Benoît Sauvageau: With all due respect, Ms. Marleau, I would like to believe you, but I think that this provision was dropped so that the commissioner would not get too many complaints. But if it is already there, I would not have any problem.

Hon. Diane Marleau: I thought that we had agreed to give the commissioner the right to hear and select complaints as he saw fit. Anyone who has seen anything could go to the commissioner's office and lay a complaint.

Mr. Benoît Sauvageau: I do not think so. We would need to check before continuing this conversation. We said that a client could go to an employment centre, see something and lay a complaint, and that there would be no end of complaints.

Hon. Diane Marleau: Yes, but the commissioner has the right...

Mr. Benoît Sauvageau: I think that we need to add the word "recently." The idea behind this amendment is certainly not to urge the 300,000 or 400,000 or millions of retired public servants to lay a complaint because they remember something that goes back to World War II, for example, such as faulty grenades being sold. That is not what I meant.

[English]

The Chair: You have heard the request by Monsieur Sauvageau to make an obviously friendly amendment to his own amendment, to add "recently" just before "employed"—between "was" and "employed" on the second line of the amendment.

Is that friendly amendment agreed to?

Some hon. members: Agreed.

The Chair: Now the discussion is on the amendment.

Madame Thibault, followed by Madame Marleau.

• (1550)

[Translation]

Ms. Louise Thibault (Rimouski-Neigette—Témiscouata—Les Basques, BQ): I would like those who know to explain to me the problem that there seems to be with including governor-in-council appointees.

[English]

The Chair: Mr. Heintzman, I know you gave an explanation, but could you explain more specifically what the difficulty is in handling Governor in Council appointments?

Mr. Ralph Heintzman: I might ask my legal colleagues to help me here, but first of all I'd like to clarify something.

The reprisal regime in the bill does allow for a former public servant, who was for example fired as a result of making a disclosure, to bring a complaint of reprisal to the commissioner or to the board and be reinstated. In that sense, the bill already provides for somebody who was a public servant but who ceased to be a public servant because a reprisal was taken against them to have that situation addressed and redressed and to be reinstated in their employment.

On the issue of GIC appointees, Michel, would you have any comment on the problems created by including GIC appointees in the bill?

Mr. Michel LeFrançois (General Counsel, Secretariat Legal Services Branch, Treasury Board of Canada Secretariat): I don't have much to add on that notion, except to perhaps clarify that GICs are under a different system of employment altogether. As Mr. Szabo indicated earlier, their conditions of employment or the way they're appointed is wholly different from that of public servants under this act. It very much is a square peg in a round hole.

[Translation]

If I understand correctly, the purpose of Mr. Sauvageau's amendment is to ensure that people cannot be fired in order to deny them the right to disclose wrongdoing. That is not the case.

Firing someone is certainly within the definition of "reprisals." So people cannot be fired to deprive them of a right, since that right is connected to the reprisal. If that is in fact the purpose of this amendment, it does not seem to me to be necessary.

[English]

The Chair: There are still are more people on this amendment.

Mr. Scarpaleggia.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): No, that's fine. I pass.

The Chair: Mr. Lauzon.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): We seem to be trying to find ways to prevent people from being included. I think that goes contrary to the spirit of the whole bill. The whole idea is to try to uncover wrongdoing, not necessarily to get someone into trouble, although lots of times it does. But why are we almost looking at the glass as half empty and asking how we can keep these people out? We should make it very friendly. I agree with Mr. Sauvageau to have a sort of time limit, but some people in employment don't feel comfortable making a wrongdoing known; maybe they want to wait six months or three months after they leave. If they do.... Why are we making it exclusive, rather than inclusive?

It is the same with Governor in Council appointees. It doesn't have to be that complicated. Whether it's a Governor in Council appointee who uncovers some theft, or whether it's a clerk or an executive, they should have the right to bring that to the commission.

That's my thought.

The Chair: Thank you, Mr. Lauzon.

Mr. LeFrançois, you explained in very vague, broad terms why this would be a problem. You said the employment terms are quite as different as a square peg in a round hole, but if you could explain for the committee why that can't be handled in this legislation, I'd like you to do that. It would surely help; otherwise we're going to have a long discussion here.

• (1555)

Mr. Michel LeFrançois: Mr. Chairman, I'm not prepared to explain precisely why that is not workable. It's not something we've had the opportunity to analyze in detail, but public servants under this legislation fit a basic mould. Governor in Council employees do not fit the same mould. There can be effects that we haven't had the opportunity to look at that we may find regrettable, but I cannot specify at this point, here and now, precisely what those negative effects may be.

The Chair: Mr. Scarpaleggia. Then I'll go back to you.

Mr. Francis Scarpaleggia: Mr. Chair, I take Mr. Lauzon's point, to a certain degree, but it seems to me we discussed at different times in this committee that there was a responsibility too upon public servants to bring wrongdoing to the attention of those who can do something about it.

I hear Mr. Lauzon say, let's make the law in such a way that if somebody still feels uncomfortable about whistle-blowing, they can wait until they retire and then come back to it. I don't know if that's the spirit Mr. Lauzon intends, but I'm starting to get a little uncomfortable now that we're getting away from the idea that there's a responsibility on the part of public servants to come forth. We're saying, wait until they retire and have a few years of pension money under their belts, and then let them come out and whistle-blow. The fact of the matter is, when you're retired from the public service, and assuming you were not wrongfully dismissed because you were about to whistle-blow, if you're out of the public service for a certain number of years, why would you need protection?

We can't go around making legislation by saying why not this or that. Why not include clients of the employment centres? Why not include everybody under the sun? Then the thing becomes so broad we're never going to get it passed. That's the only point I'd like to raise.

The Chair: Thank you, Mr. Scarpaleggia.

We have a list of speakers—quite a long list.

Mr. Martin.

Mr. Pat Martin (Winnipeg Centre, NDP): My only view is that I don't want this whole thing to collapse under its own weight. I want the existing public servants to have a whistle-blowing regime for the first time ever. That's my goal. I hope that by summer—I hope that by the end of tonight—we can be well along the way.

This is turning into a sort of “let's throw everything in here, because it would be a shame if we didn't have this, and it would be great if we could have that”, and I think we're losing sight of how close we are to actually achieving something great here. I'm worried that this could get too broad if every former civil servant could now come forward to access this office.

First of all, they don't need the protection of a whistle-blower act anymore, because they're no longer public servants. If they're no longer public servants because they were fired for having blown the whistle, they're already in.

I don't see the point in this. It makes an interesting academic exercise, but it clicks the clock away, and we're losing time. We have a big fat book of amendments, all of which are interesting, but we're losing sight of the goal here.

The Chair: Thank you, Mr. Martin.

Just to let you know who's on the list, we have Mr. Poilievre, Mr. Boshcoff, Mr. Sauvageau, Madame Marleau, and Madame Thibault.

[*Translation*]

Mr. Benoît Sauvageau: Mr. Chairman, may I ask a question so that the list does not continue to grow?

[*English*]

The Chair: Go ahead, Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: My question is for the witnesses. You said that public servants who disclose wrongdoings could not be fired because they were protected by the legislation.

I would like to ask you a question about whistle-blowing. It seems to me that I saw this in the bill, but I want you to reassure me. Is this legislation retroactive to 2004? In other words, I am very sensitive to Mr. Scarpaleggia's argument that we would not want someone to retire and to decide to lay a complaint a year later, etc.

This legislation does not apply to people who retired a year or two ago. Does it apply retroactively to people who have just retired? It seems to me that it does, but I would like a clarification on that. If it is the case, it means that it applies retroactively to whistle-blowers and reprisals could not be taken. If so, I am prepared to withdraw my amendment.

• (1600)

[*English*]

The Chair: Mr. Heintzman.

[*Translation*]

Mr. Ralph Heintzman: There is a retroactive aspect to the current bill, but it is quite limited. It is retroactive in the sense that anyone who makes a disclosure for the purposes of an investigation or procedures stemming from the Auditor General's report on the sponsorship scandal is protected under this legislation. But it is not retroactive in a broader sense. It is only retroactive for that aspect, going back to February 10, 2004.

Mr. Benoît Sauvageau: That is where I saw 2004.

Mr. Chairman, Mr. Poilievre may speak after I am finished. I would simply like to say that I appreciate and understand that the retroactive aspect is included in this bill where reprisals are concerned, but I would like it to apply to disclosure as well. I do not know whether it can be put into this amendment, but that is what we meant and we would like it to be included in the legislation in that way.

[English]

The Chair: Mr. Poilievre.

[Translation]

Mr. Pierre Poilievre: I think that this amendment is important for the disclosure aspect. It is not a question of revenge.

[English]

Revenge is unlikely to be an option for a retired public servant, because they're no longer in their job.

That being said, they should have access to the same disclosure mechanisms as contemporary public servants have access to. For example, I think of the case of Allan Cutler. He's no longer with the public service. What if there were other wrongdoings he is familiar with? Without the provisions contained in Mr. Sauvageau's amendment, he would have no mechanism by which to make a disclosure through this bill, because the wrongdoing he reports may not be directly related to the reason he left the public service.

Perhaps there's a totally different wrongdoing that is not related to the reason he left the public service, and he would like to divulge that particular wrongdoing. The only way to do it would be to make this bill open enough to cover people like him or others who are currently in retirement stage, so that they would be legally permitted to go to the commissioner to make their disclosure. The current bill does not permit that, and there's no reason it should not permit it.

So I urge all members to strongly support this amendment.

The Chair: Thank you, Mr. Poilievre.

Mr. Boshcoff.

Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.): Thank you, Mr. Chair.

When we came here today, I'm sure most of us had the understanding that we would try to move these amendments through in the spirit of cooperation, so we could get a good strong bill. It seems some of these now, and some of the discussion, are actually going to make, I would think, not such a good bill.

I'm really hoping we could stick to the focus we had before. Some of these things that are being added on, almost ad hoc, are just taking away from the quality of what we had, Mr. Chairman. I'd like to get down to it. We're on page 16 after 35 minutes. Please.

Also, one thing is that as chair you have a speakers list. I know there's some queue-jumping here, but please, I'd ask you to hold to it.

The Chair: Thank you, Mr. Boshcoff.

On the list, we have Madame Thibault next.

[Translation]

Ms. Louise Thibault: My colleague can speak for himself, but I believe that I can also speak on behalf of both of us. We are here to work in a collegial way to make this bill into good legislation. I have said that from the outset.

My colleague's suggestion was really aimed at the disclosure aspect. Let us suppose, for example, that someone becomes aware of potential wrongdoings six months before he or she retires. Two or three months after retiring, the person might regret not having done

anything. It would be unfortunate if people in that situation were unable to take action. The idea is not to go back 25 or 40 years. It would be up to the commissioner to decide whether the disclosure was pertinent. My colleague's recommendation to include the word "recently" does not weaken the provision in any way. People are intelligent and they know that "recently" does not mean five or ten years before. We are talking here about a period of 12 months or so.

On the other point, since Mr. Lefançois cannot give us an explanation, I do not understand why there needs to be a different system for governor-in-council appointees. If that aspect is keeping us from moving forward, we could certainly present a friendly amendment, if Mr. Sauvageau agrees, and withdraw the proposal. It was intended as a constructive change. The idea was not to hinder the committee's work, but rather to ensure that the legislation was as effective as possible.

• (1605)

[English]

The Chair: Let me ask Mr. Heintzman a question before we go on to Madame Marleau.

In clause 20, which is under the heading "Protection of persons making disclosures", subclause 20 (2) says—it's talking about a complaint to the board:

A public servant, or a former public servant or a person designated by a public servant or former public servant for the purpose, who alleges that a person has taken a reprisal against the public servant in contravention of section 19 may make a complaint in writing to the Board in respect of the reprisal.

I guess that's specific to reprisals; that's the issue here. We're not talking.... This amendment has to do with making disclosures, so....

Yes, okay.

Mr. Ralph Heintzman: Mr. Chairman, on the issue of disclosures, perhaps I could add some information. One of the reasons for creating an internal disclosure regime of the type this bill aims at is that serving public servants are, as it were, in a conflict of interest. They have a duty of loyalty that prevents them from speaking publicly, because they are public servants; on the other hand, they have a right of free speech and also a duty to report wrongdoing. An internal disclosure regime aims at solving that problem for the public servant by giving them the means of internal disclosure.

If you're dealing with a former public servant, they are no longer in that same conflict. They are no longer a public servant; they are no longer under a duty of loyalty in the same degree. They may be a person permanently bound to secrecy, which would limit some very top secret information they could reveal, but they are now in a position to make a disclosure, virtually to anybody, of something they want to do.

They don't need the mechanism the serving public servant needs, because the serving public servant is bound by the duty of loyalty. That's why you're providing them with an internal disclosure mechanism.

The Chair: Okay. I'll just carry on through the list, then.

Madame Marleau.

Hon. Diane Marleau: Remember, this is not just about disclosures. This is about protecting public servants who disclose, so we must remember that.

The other thing is that I thought—and I think we'll be making an amendment like this at some point—we were all in agreement that the commissioner could accept disclosures from anybody, whether they're former public servants, former GIC appointments, whatever, even contractors who have seen something. The commissioner would have the right to investigate whatever is brought to him. I was under that impression.

What you're doing here is saying we want everybody to go and report, which is fine, but I want to see us amend the bill to make sure the commissioner can take complaints from all over and investigate them. This is more about trying to protect, but you can't protect somebody's who retired. How can anyone take a reprisal against them?

What we're saying is that there is a place where we will amend the bill, if it's not already done, to make sure the commissioner can receive complaints from just about anywhere. I think it's going to be done, either way.

GIC appointments are a bit of a problem. I'll tell you why. It's not because we don't want their complaints—they're free to complain—but because they serve at pleasure, which means that if the government decides they don't need them anymore, they can let them go, and then they can go to court and fight it, or do whatever. You can't give them the same reprisal protection as you do a public servant. That's why.

• (1610)

The Chair: Thank you, Madame Marleau.

Mr. Preston, and then Mr. Szabo's on the list.

Mr. Joe Preston: This is simply to state that I have an amendment very similar to Mr. Sauvageau's, right after it. It came directly from Dr. Keyserlingk's testimony to us asking that both of these pieces be put in: that we include Governor in Council appointees and that we include a definition to cover the disclosure mechanism, along with the reprisal mechanism in subclause 20(2), as you stated.

This is where it came from, and I thought we all pretty much agreed with Dr. Keyserlingk, when he was here, that his amendments were in good faith and worked for us. That's all they are. I have no reason to not support this.

The Chair: Okay. Finally, I think, Mr. Szabo.

Mr. Paul Szabo: Mr. Chairman, I think we've probably heard everybody's position. I don't think I'm going to change anybody's mind, so I'll just pass, and maybe we'll call the question.

The Chair: Okay, we will call the question on Bloc amendment number BQ-4.

I'm sorry, Mr. Sauvageau, do you have a...?

[*Translation*]

Mr. Benoît Sauvageau: With the correction that we made by adding the word "recently"?

[*English*]

The Chair: We have that friendly amendment: "recently" added between "was" and "employed" on line 2 of the amendment. So we're voting on the amended amendment by Mr. Sauvageau.

Mr. Paul Szabo: On the friendly amendment?

The Chair: Yes, the one just recently added in.

Mr. Paul Szabo: You're voting on the motion?

The Chair: We're voting on the motion, right.

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

Mr. Joe Preston: Mr. Chair, the next one is similar, except it does not talk about former employees, it only talks about Governor in Council appointments.

I'd still like to see them in there. Dr. Keyserlingk suggested we put them in.

The Chair: No, we're not actually on that amendment yet. We're going to one in the package Madame Marleau has brought here, and that would be.... It's the RCMP-3, which is page 5 in the package of amendments brought by Madame Marleau.

I'm just trying to find my copy of it too.

Madame Marleau.

Hon. Diane Marleau: It's RCMP-3; they're all the same.

The Chair: It is on page 5.

Madame Marleau, are you going to move?

Hon. Diane Marleau: I move that we accept this amendment having to do with the Royal Canadian Mounted Police. This is on clause 2. These are required because we're including the RCMP.

The amendment is that Bill C-11, in clause 2, be amended by replacing line 2 on page 3 with the following:

in the public sector, every member of the Royal Canadian Mounted Police and every chief executive.

The Chair: All right. Agreed?

Hon. Diane Marleau: And then the same thing in French.

The Chair: Actually, before we vote on that amendment, I have to say that there is a conflict. It's CPC-11; we will not vote on that if this amendment is passed.

We can't do it in that order, can we?

Okay, then let's go to amendment CPC-11, page 17, which was with us at the start of the meeting. I call the question on CPC-11, page 17.

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

• (1615)

The Chair: Now we will go to amendment RCMP-3, the one we had. Just for clarification, RCMP-3 is on page 5 of the RCMP package submitted by Madame Marleau.

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

The Chair: We're now dealing with amendment CPC-12. There is a conflict here again with RCMP-4. If CPC-12 is carried, then we won't deal with RCMP-4. Is that correct?

Let's go with CPC-12, on page 18 of the package we had in front of us from the start. Is there any discussion on that?

Moving the amendment is Mr. Preston.

Mr. Joe Preston: I'll move the amendment. This amendment is modeled after subsection 27(1) of the Personal Information Protection and Electronic Documents Act, which provides a clear definition of retributions. This provision should be modelled on that act.

Again, this came from Dr. Keyserlingk's testimony to us. What it amounts to is a new definition of reprisal. It adds this clause ahead of the lettered definitions of what a reprisal means.

The Chair: Mr. Heintzman, have you any comment? Does anyone have a comment on this?

Mr. Ralph Heintzman: I have simply an observation, Mr. Chair, that the protections provided here go well beyond disclosure. If you look at (b) and (c) in the amendment, they aren't about disclosure; they're about wrongdoing itself. I merely note that point. It's not reprisal for having made a disclosure; it's protection against reprisal, as I read it, for having taken an action—i.e., “refused or stated an intention of refusing to do anything that is a wrongdoing”. Similarly, paragraph (c) reads “has done or has stated an intention of doing anything that is required...”. These are no longer protections against reprisal for disclosures. These are protections against reprisals for something else.

I simply note that for the committee.

The Chair: Reprisals for something else....

• (1620)

Mr. Ralph Heintzman: For wrongdoing, for example, or for stating an intention to do wrongdoing, or refusing to do something.

The Chair: Okay.

Mr. Martin.

Mr. Pat Martin: Thank you.

I would have problems with paragraphs 2(b) and (c) too. I don't think the application is a good fit for a whistle-blowing bill.

As a former union rep, I've represented lots of employees who were ordered to do something and said no, sometimes for a very good reason. You do have the right to refuse unsafe work, but you don't have the right to refuse work that you have made a judgment call may be wrong. The rule in any industrial setting is obey now, grieve later. So unless you're putting yourself or others at risk, part of your obligation as an employee is to obey and do what you're told. If you feel it's wrong, you have the grievance procedure later.

I don't think this language was crafted with our application in mind. I just don't think it was. I think it would complicate matters. I think we'll be into a two-hour debate on this alone.

My initial reading of it, as a former union rep, is that I like the language in the bill better than I like this language. It's more general and less specific, and I think it's actually broader in scope than the very specific things contemplated in this amendment.

The Chair: Thank you, Mr. Martin.

Mr. Lauzon.

Mr. Guy Lauzon: I share some of Mr. Martin's concern, but I'm just wondering.... Let's say your foreman or your boss comes along and says, “I want you to load that stuff onto my pickup truck, because I'm going to take it home to fix my cottage”. That's an illegal act. I know you can refuse to do something for safety purposes, but how do you refuse to break the law? There has to be some way to protect those people, so how do we do that?

I guess that's what Mr. Preston was trying to do with this. If my boss tells me, as a public servant, to do something that's illegal, I'd like to know that somehow I have the right to refuse to do that.

The Chair: Well, you do under the law.

Anyway, I will go to Mr. Scarpaleggia.

Mr. Francis Scarpaleggia: Yes, wouldn't you just be protected under the law? If it's blatantly illegal, you're protected anyway, under the law.

I think we're talking about the grey areas.

The Chair: Okay, to the question on Mr. Preston's motion CPC-12, on page 18.

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

The Chair: There's a lot of paper to organize here.

We go now to RCMP-4, in the RCMP package.

Madame Marleau.

Hon. Diane Marleau: I move to amend Bill C-11 in clause 2 by replacing line 11 on page 3 with the following:

public servant, including, in the case of a member of the Royal Canadian Mounted Police, a discharge or dismissal;

All of these things are to include the RCMP.

The Chair: Any debate or discussion on that?

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

The Chair: We have to go back a little bit now to RCMP-1, which fits in clause 2.

Madame Marleau.

Hon. Diane Marleau: I will move that amendment. It defines a member of the Royal Canadian Mounted Police; that's all it does.

The Chair: Has everybody had a look at that?

We're ready for the question.

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

• (1625)

The Chair: We'd previously stood an amendment, I believe Mr. Szabo's, because the schedule 1 that was referred to actually hadn't yet been identified as schedule 1. So let's just not vote on clause 2. We'll stand clause 2 until we actually do identify that schedule 1.

Fair enough?

(Clause 2 allowed to stand)

The Chair: We'll go on to RCMP-5, and to what would be identified as new clause 2.1.

Madame Marleau.

Hon. Diane Marleau: Again, this is authority to act for the Commissioner of the Royal Canadian Mounted Police. It's a consequential amendment.

The Chair: Has everybody had a look at that?

Mr. Heintzman has a comment to make.

Mr. Ralph Heintzman: I don't have a comment to make, Mr. Chair, but I could give a brief explanation.

This is one of the technical amendments that arises from the fact that the commissioner has more than one role, and that some of his roles are quasi-judicial, as I called them earlier. He's actually the end of a long chain of hearings, and is considered in law as actually a lower court. His rulings can be appealed to higher courts. As a result of that, there are certain ways in which the text of our current bill doesn't work well with that regime. The commissioner can't give him recommendations without that corrupting his role in a later hearing.

So it would be necessary for us to allow the commissioner, for the purposes of certain provisions of this act, to designate somebody else to hold all the powers of chief executive for the purposes of those powers. Otherwise, it would be very difficult to reconcile Bill C-11 with the RCMP Act.

The Chair: Thank you, Mr. Heintzman.

Madam Thibault.

[Translation]

Ms. Louise Thibault: My doubts are probably groundless, sir, but what Ms. Marleau has proposed does not seem to match what we have in writing. I understand very well what has just been explained. The amendment states: 2.1 The commissioner [...] may appoint a deputy or assistant commissioner [...] to exercise the powers or perform the duties and functions of the commissioner as a chief executive in respect of any of paragraphs 22(g) [...]

I would like to know whether the 22(g) referred to here is in the Royal Canadian Mounted Police Act or this bill.

[English]

The Chair: Mr. Heintzman.

[Translation]

Mr. Ralph Heintzman: I am not sure that I understood your question, but I can tell you that these are provisions of Bill C-11.

[English]

The Chair: Any other comments?

To the question.

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

The Chair: We will vote now on new clause 2.1.

Mr. Paul Szabo: If I may, Mr. Chairman, in our big book we have numbers at the top. And 2.1 is a clause number, not a motion number.

The Chair: It's a clause number.

Mr. Paul Szabo: So you're going back to the bill.

The Chair: We've carried the motion, which is an amendment. This amendment forms a new clause—clause 2.1. That's all that's in

clause 2.1. We have to carry that actual clause before we go on to clause 3.

Shall clause 2.1 carry?

Some hon. members: Agreed.

(On clause 3—*Amending the schedule*)

• (1630)

The Chair: We're going on to clause 3, which is on page 19 in the package, and that is a government amendment.

Hon. Diane Marleau: It's a spelling error; it's amending the schedules.

The Chair: My mother could have made that correction very quickly, actually.

Mr. Joe Preston: There are three schedules.

The Chair: Mr. Heintzman, have you really got something to say on this?

Mr. Ralph Heintzman: I was just going to say that you might want to stand this one. It's in the same category. You should come back to it when you've decided on the number of schedules.

Mr. Paul Szabo: There are two already? Schedules 2 and 3?

The Chair: No.

We will stand this clause to go on to RCMP-6 from Madame Marleau's package.

Hon. Diane Marleau: Again, it's an amendment to the schedules. We can't do it because we don't have the schedules.

The Chair: We'll stand that as well. RCMP-6 will stand as well.

Mr. Joe Preston: That has only to do with schedules?

The Chair: We'll go on to page 21 of the package, which is a government amendment. I must point out that there is a conflict. RCMP-6 actually had a line conflict with CPC-13 as well.

Mr. Paul Szabo: What's the schedule?

The Chair: It's the same thing.

Mr. Paul Szabo: Are we standing all schedules? Is that the idea?

The Chair: Yes, we'll stand all schedules.

Mr. Paul Szabo: Let's carry on. What's after this one?

The Chair: Is that in schedule 2—Government-3 on page 21?

Mr. Paul Szabo: It says schedule 1 and schedule 2.

Hon. Diane Marleau: Schedule 1 and schedule 2.

The Chair: I'm following through on mine. I haven't gotten to the actual amendment.

All right, what about CPC-13? Would it deal with schedule 2 on page 23?

Yes, Mr. Szabo.

Mr. Paul Szabo: If I may, I'd like to seek a little cooperation from the members. Because we dealt, I think properly, with the RCMP inclusion, it did trigger a bunch of amendments, all of which are necessary to effect the inclusion of the RCMP in the bill. The clerk is doing a good job of showing us how to knit this together. It is causing a little bit of shuffling of papers for members as well as for them. I wonder if the members would agree to adopt all the remaining RCMP amendments, from 6 to 20, provisionally, so that when they come up we will be noted.

Mr. Joe Preston: When there's a line item in conflict we'll be noted?

Mr. Paul Szabo: If we could just adopt these provisionally so that when they do slot in.... But in fact, we would approve them as a block right now.

The Chair: I would like to point out that in some cases there are line conflicts.

Mr. Paul Szabo: I'm saying provisionally.

The Chair: How do we deal with the line conflicts then, if we're passing these provisionally?

Mr. Paul Szabo: We adopt them provisionally so that unless a line conflict is subsequently identified, these will be deemed to have been approved.

•(1635)

The Chair: Otherwise we'll go to the other motion that causes the line conflict.

Is there agreement by the committee to do that?

Some hon. members: Agreed.

The Chair: Let's proceed on that basis.

We can deal with RCMP-6. It is on a schedule, but it's a schedule that exists and we can deal with it. Is that correct?

Okay, Mr. Preston.

Mr. Joe Preston: I want to be on your speakers list when we get there. Okay?

The Chair: Yes. Is that on RCMP-6?

Mr. Joe Preston: Yes, because it's the same as ours in clause 3, that the Governor in Council can add or delete "the name of any Crown corporation or other public body". I'm not worried about the RCMP in this piece. I'm glad they're included. However, we need a mechanism, and I'm asking the group—and I have an amendment later on that asks the same thing—to remove the word "deleting" so that at no time can the Governor in Council delete organizations.

I recognize you're about to ask me what if an organization goes out of business or we sell it off. Then it will have no employees in Canada anyway, and therefore this won't be needed.

The Chair: Mr. Preston, if I could comment, I believe there was a line conflict in RCMP-6 and CPC-13, so we should go to CPC-13.

Mr. Joe Preston: Okay. Having just spoken to CPC-13, I'm trying to remove the words "or deleting". The words "or deleting" come out of both opportunities for the schedule.

Mr. Heintzman, what's your opinion on that? I recognize it may create a clerical error at some point in the future, where we still

mention an organization that doesn't exist anymore, but it stops the Governor in Council from being able to opt out the department or the government when they find they're in trouble.

The Chair: Do you want to comment?

Mr. Ralph Heintzman: Mr. Chair, this is a standard clause in almost any law that has schedules of this kind that name organizations, so that they can be adjusted from time to time to reflect the organizations that are in existence.

I would just point out to the committee that the schedule to this bill is not the only schedule referred to in the bill that names organizations. There are at least two other schedules that also list organizations; the schedules to the PSSRA and the schedules to the FAA, if I recall correctly, and those can also be amended by the Governor in Council, because organizations change from time to time.

The Chair: On amendment CPC-13, on page 23 of the package, is there any other discussion, or should we go to the question?

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

•(1640)

The Chair: CPC-14 is defeated as well.

For clarification from the government side, we received amendment G-3 in the original package you submitted to us. Then we have RCMP-6 from Madame Marleau's package, which was presented to the committee at the end of the last meeting. Is RCMP-6 in fact meant to replace G-3?

Mr. Paul Szabo: No, G-3 is the complete amendment.

When they went through, anticipating that the RCMP were going to be included, they did all of the consequential.... These things are only good if there is no.... So we go with the original government amendments.

Mr. Ralph Heintzman: It depends on how many schedules you add, finally, to the bill. We didn't know that. You can stand all the references to schedules until you've finished your work on the bill, I think.

Mr. Paul Szabo: We said we would do that, but we wanted to define them. I think the clerk wanted to define these schedules so we could deal with the rest of them. But with respect to G-3 versus RCMP-6, G-3 is a more comprehensive amendment to—

Mr. Ralph Heintzman: They refer to different schedules. So there could be three schedules.

Mr. Paul Szabo: Well, paragraph 3(a) refers to schedule 1, paragraph 3(b) refers to schedule 2 on both of them. Where's the difference?

Mr. Ralph Heintzman: The difference is that the RCMP amendments couldn't take into account what the committee's decision would be on the other amendments, so they had to be done on the basis of Bill C-11. If we were doing RCMP-6 now, it would probably say "schedule 3", but we couldn't know that in advance.

Mr. Paul Szabo: Now, having explained that, what would you advise the committee to do now with regard to G-3?

Mr. Ralph Heintzman: I would advise you to stand all the things dealing with schedules until you've agreed on the schedules and then we can come back to them and decide what the numbers should be.

Mr. Paul Szabo: Is that what we're going to do?

The Chair: I think we have to stand all of the amendments that refer to the different schedules because the schedules aren't numbered. So let's just carry forward. We can't deal with G-3 or RCMP-6. So let's just see where we are next.

Yes, we stand clause 3 to wait for the schedule numbering.

(Clause 3 allowed to stand)

(Clauses 4 and 5 agreed to)

(On clause 6—*Chief executives may establish codes of conduct*)

The Chair: For clause 6, there is CPC-15 on page 25. It amends clause 6.

Mr. Joe Preston: It changes the word “may” to “shall”. It states later in clause 6 that the “chief executives must be consistent with the code of conduct established by the Treasury Board”. So it makes that a very strong definition. I'm just changing the word “may” to “shall”.

The Chair: Thank you, Mr. Preston.

Madame Thibault.

[*Translation*]

Ms. Louise Thibault: I would simply like to be sure that the French and English versions are equivalent. I am not an interpreter or a translator. However, I would translate “shall establish” by “*doit établir*.” I feel that there is a connotation of obligation.

If we say: “*L'administrateur général établit...*,” it can mean that it may happen tomorrow, 10 years or 20 years from now. But if we put “*doit établir*,” it is very clear.

[*English*]

The Chair: Okay. Is that accepted?

Mr. Paul Szabo: Mr. Heintzman.

The Chair: Mr. Heintzman, yes.

Mr. Ralph Heintzman: I think the question for the committee is whether you want to require every organization in the public sector to have its own code in addition to the public sector code this bill requires the Treasury Board to create. It could be that an organization is small enough, or there is some other reason, for the chief executive to say, we may not need one here; we'll just use the Treasury Board code. I guess the question for the committee is whether you want to give the chief executive that flexibility to decide whether he has to have his own code in addition to the Treasury Board code.

•(1645)

The Chair: Mr. Boshcoff.

Mr. Ken Boshcoff: In support of Mr. Preston's amendment, I believe this would actually go a long way toward establishing a new corporate culture. This bill is going to do that, but this is the kind of legislation that supports it throughout the country.

The Chair: Thank you, Mr. Boshcoff.

Do you want to close with this?

Mr. Joe Preston: I'll close. Let Mr. Szabo—

The Chair: Yes, Mr. Szabo.

Mr. Paul Szabo: Thank you, Mr. Chairman.

If it's understood—and the committee has understood—that establishing a code could also include the adoption, then I have no problem. We'll be supporting the motion.

The Chair: Madame Thibault.

[*Translation*]

Ms. Louise Thibault: I very much appreciate what my colleague has just said, since I believe that accountability and responsibility come with this. They will take ownership and this will be part of their culture. Whether they use it as a guideline or take a cut-and-paste approach, at least they will acknowledge their accountability.

Thank you.

[*English*]

The Chair: Okay, to the question, then.

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

(Clause 6 as amended agreed to)

(On clause 7—*Application*)

The Chair: RCMP-7 is an amendment to clause 7. Would Madame Marleau...?

Hon. Diane Marleau: Let's move it, but I thought we had done it.

Mr. Paul Szabo: Well, we approved it, provided there was no line conflict elsewhere. If that is the case, then it's accepted.

Mr. Joe Preston: It's their code of conduct.

Mr. Paul Szabo: That's right.

So as amended, then.

The Chair: Is that understood and agreed? Okay, I think we had decided that.

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

(Clause 7 as amended agreed to)

(Clause 8—*Wrongdoings*)

The Chair: To clause 8, amendment G-4, on page 26 of the package. Would a government member like to move that amendment?

[*Translation*]

Ms. Louise Thibault: Does anyone have page 26 in French? We have it only in English.

[*English*]

The Chair: I have a French copy here, Madame Thibault. Could I give that to you? There are more. Madame Thibault, if you'd like, I'll just pass this to you. We did receive them at the last meeting, but I'll give you my copy.

Yes.

Mr. Paul Szabo: Mr. Chairman, this is a technical amendment provided by the department, inserting the words “in or relating to the public sector”. It's minor. Is there any earth-shattering reason for this?

Mr. Ralph Heintzman: Well, it is a technical amendment, but it has a significant implication. What it does is broaden the meaning and application of wrongdoing. The problem in a sense with the original wording was that it referred only to the contravention relating to the official activities of public servants, whereas this says “wrongdoings in or relating to the public sector”. So, for example, a public servant would be—

Mr. Paul Szabo: So it's broader.

Mr. Ralph Heintzman: It's broader.

The Chair: I'll call the question.

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

The Chair: Now, amendment CPC-16, page 28 of the package. Who's name is that in?

Mr. Joe Preston: Mine.

The Chair: Mr. Preston's name. Yes, go ahead.

Mr. Joe Preston: In regard to certain prohibitions named later in the bill about the handling of wrongdoings and the making of false statements, about obstruction in the research of a wrongdoing, or destroying documents in the research of wrongdoing, I believe these numbers are incorrect. They're supposed to be sections 40, 41, and 42. They say 41, 42, and 43.

• (1650)

The Chair: Mr. Heintzman.

Mr. Ralph Heintzman: Mr. Preston is correct.

The Chair: Okay, so that is a technical amendment, I guess.

Mr. Paul Szabo: Mr. Heintzman, what about the impact of this? Does it change anything or cause you some concern?

Mr. Joe Preston: If you're caught shredding documents, you're doing a wrongdoing.

Mr. Ralph Heintzman: Well, what it does—I'm trying to absorb it here—is take the prohibitions that are included in the bill and add them, if I'm reading this correctly, to the definition of the term “wrongdoing”.

Mr. Paul Szabo: I'm not sure if they're the same.

Mr. Ralph Heintzman: In a sense, they're already covered by what you have in (a), which is a contravention of an act. They're in this bill. Anything that contravenes this bill is covered by the definition of wrongdoing.

Mr. Paul Szabo: Okay, do you want to withdraw?

Mr. Joe Preston: So if they are prohibited in this bill and this bill passes, then it's an act of Parliament? I'd withdraw in that case.

Mr. Ralph Heintzman: Then it's covered by (a).

Mr. Joe Preston: I would withdraw it, so it would then become automatic with wrongdoing? I withdraw.

The Chair: Agreed.

So we're now to CPC-17, in the name of Mr. Lauzon, yes?

Mr. Guy Lauzon: Oh yes, it just changes “gross mismanagement” to “mismanagement” as one of the criteria for protective disclosure, since “gross” is a subjective term.

The Chair: Mr. Heintzman, what's your interpretation of this?

Mr. Ralph Heintzman: This is similar to a number of amendments I think the committee will be looking at, and the general tendency of the amendments is, in a sense, to take out the qualifying adjectives. So remove the word “serious” and remove the word “gross”. The problem with that is that it makes it difficult to know where to draw the line to get into actual wrongdoing. At what point does poor management get poor enough to become wrongdoing? On the whole, there is a tendency in this area, including in the United States, to try to give the courts or somebody who's dealing with this some guidance as to where you cross the line so that it actually becomes wrongdoing. There is probably a fair amount, unfortunately, of kitchen garden mismanagement that is not necessarily wrongdoing.

The Chair: Just for further clarification, is the term “gross mismanagement” an accepted, recognized legal term?

Mr. Ralph Heintzman: That is a common term. It appears in the U.S. whistle-blowing legislation, for example.

The Chair: So how does that fit in Canada? In terms of just “mismanagement” and “gross mismanagement”, would there be a clear distinction in Canadian law?

Mr. Ralph Heintzman: There is jurisprudence around this particular term, and it's really a threshold question. When does something become significant enough that it's right to think of it as serious public interest wrongdoing?

The Chair: Okay, the next on the list is actually Madame Thibault.

[*Translation*]

Ms. Louise Thibault: I would like to point out that the term for mismanagement in French could apply when someone has just moved into a position and does not have all the tools he or she needs to do a good job. The person may have taken the 101 training but not the 204 version, for example. So it may not be a case of gross mismanagement that can be laid at the feet of a single individual. So I do understand the expression used in English.

Personally, I am not really in favour of dropping the adjective. Mr. Lauzon, you talk to us about your career and it is often very relevant. I believe that these terms have been used for many years by a large number of organizations. When we talk about gross mismanagement, we know that there is nothing benign about it. The meaning is the same in both languages. So I would suggest, for the good of the legislation, that the wording not be changed.

• (1655)

Mr. Guy Lauzon: In my opinion, the commission should decide.

[*English*]

The Chair: Just a minute, Mr. Lauzon. We'll get back to you.

Mr. Szabo, go ahead, please.

Mr. Paul Szabo: Mr. Chairman, the language certainly is recognizable from other legislation. I think the important thing here is that it is the commissioner who's going to determine what the concern is.

I think, for example, "gross mismanagement" should be on a par with the other wrongdoings. I would think failure to keep track of how many pens somebody took could be a case of mismanagement of pens. I would think it's up to the commissioner to determine, and I would prefer to leave the language there, and I would think similarly about other expressions, because no matter whether you put them in or leave them out, there is no definition. In every case, we are going to revert to the commissioner to use his best judgment. I would think, wherever possible, we should keep the items in the group of the same seriousness of nature so that we understand that we are dealing with matters equivalent to breaking the law.

So I'd like to leave that language in there.

The Chair: Mr. Boshcoff.

Mr. Ken Boshcoff: Essentially it's the same thing, Mr. Chair. We've established that wrongdoing and whistle-blowing is worthy of public attention. Some managerial incompetence isn't really something we want to bring to national attention, and I'm hoping we can actually have some level here that won't water this legislation down so that we can actually show that we are being very serious about it.

The Chair: Do you want to close off the discussion, Mr. Lauzon, as the mover?

Mr. Martin, go ahead.

Mr. Pat Martin: I would just add briefly that I'm quite used to seeing this language in industrial relations jurisprudence. It's actually part of industrial relations language. There's insubordination, and then there's gross insubordination. People who are around that area know what this means; they know the weight behind the word "gross". It adds a certain weight to it, and it gives guidance.

So the biggest problem we're going to face with this whistle-blowing bill is the initial adjudication of the intake officer, whether it's the commissioner or a staff member, and guidance will be needed. The officer is going to need to be able to measure the difference between mismanagement and gross mismanagement, insubordination and gross insubordination.

I like the word. I'm not scared away. I know what the mover is trying to do. We don't want to narrow it down and have certain complaints thrown out because the language doesn't support them, but there is good reason for this word "gross" in this example.

The Chair: Thank you, Mr. Martin.

Mr. Lauzon, to close off the discussion.

Mr. Guy Lauzon: Actually, it's obvious that I'm being out-numbered here by the wisdom of the committee, but my concern is that it would be the commission that would decide the severity of the wrongdoing. As long as, somehow or another, that can be assured, I would actually withdraw that amendment if there were some kind of assurance that it will be, in fact, not necessarily the manager of that person but the actual commission.

The Chair: Mr. Heintzman, could you comment on his concern?

Mr. Ralph Heintzman: It is true that the commissioner will apply the tests that you give him or her, which is why it's important to give the commissioner clear tests. He has to be able to decide, when someone brings a disclosure, if it meets the test that Parliament has given.

The Chair: Okay then, Mr. Lauzon is agreed that his amendment be withdrawn.

Thank you.

On amendment CPC-18, page 30 of the package, Mr. Lauzon.

Mr. Guy Lauzon: It removes a need for a danger to life or health to be "substantial and specific" in order for it to be considered wrongdoing, since these terms are, again, subjective.

The Chair: Mr. Lauzon, have you any further comment?

Mr. Guy Lauzon: Maybe I could just get a few comments from the committee members.

The Chair: Okay, Mr. Martin.

• (1700)

Mr. Pat Martin: I'd just like to remind people that we have to be really careful with the language, because anything we put here is subject to grievance, for one thing. Even though it's legislation and not a collective agreement, employees have the right to grieve in that arena, too.

So let's just think of an example where an employee is working in an environment where the windows are hermetically sealed, and that person truly believes that having fresh air is important to his or her health and ability to live—some people are fanatical about fresh air. If the language simply says "that creates a danger to the life and health" and doesn't specify that it has to be something of substance, then even if the person is wrong, and even if the person is proven wrong, it could initiate this complicated two-year grievance arbitration process that would be agonizing for everybody. I know it's an extreme example, but that's why these qualifying terms are here. Nobody wants anybody to make mischief with this bill, either.

When we first began this whole exercise, one of the cautions I brought to the table was that some people may use whistle-blowing as industrial sabotage. I say that as a union advocate, as a workers' representative. If you don't want a disgruntled employee to use his or her rights under the whistle-blower legislation to get back in a vengeful way at an employer, then this language is useful in that context.

The Chair: Mr. Lauzon.

Mr. Guy Lauzon: Based on Mr. Martin's wisdom and advice, I will withdraw that.

The Chair: Okay. It is withdrawn

We're on RCMP-8, from Madam Marleau's package. I haven't had time to look at it.

Mr. Paul Szabo: It's another consequential one that was provided. It's deemed approved.

Some hon. members: Agreed.

The Chair: All right.

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

The Chair: The next amendment is CPC-19, on page 31 of the package.

Mr. Guy Lauzon: Based on the experience of my last two suggestions, I will withdraw that amendment, Mr. Chair.

The Chair: It is withdrawn. We're now on amendment CPC-20.

Mr. Guy Lauzon: I'm sorry. Excuse me. I'm confused here. Can we go back to CPC-19?

The Chair: Yes. I think that we're trying to move it along rapidly. The alternative is to go more slowly, if the committee would allow us.

Go ahead, Mr. Lauzon. We can go back to CPC-19.

Mr. Guy Lauzon: I had my numbers mixed up. I was looking at CPC-19, on the last number. This adds "an act or omission that contravenes a Treasury Board requirement, policy or guideline". It's an addition.

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: If I understand correctly—and Mr. Heintzman will correct me if I am wrong—the Treasury Board is included in clause 8(a). It reads as follows:(a) a contravention of any act of Parliament or of any regulations made under any such act [...]

Mr. Ralph Heintzman: A Treasury Board policy is not, strictly speaking, a regulation from a legal standpoint. The difficulty with Treasury Board policies is that they cover a wide range of subjects, from very serious to very minor. For example, there is a policy on day care centres in the public service. If a chief executive chooses to not apply this policy in a strict way, can it really be considered wrongdoing?

In fact, the Treasury Board policy environment is not very well defined, and what is at stake is not always that important. That is why it is difficult to link such policies to a definition of the term "wrongdoing."

[*English*]

The Chair: Thank you, Mr. Heintzman.

Is there any other debate or discussion on this? We'll go to the vote then.

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

• (1705)

The Chair: Next is amendment CPC-20, Mr. Lauzon.

Mr. Guy Lauzon: That's the one I want to withdraw.

The Chair: That one is withdrawn then.

The Chair: We're on amendment C-21, on page 33 of the package. Take your time.

Mr. Guy Lauzon: Yes, we want to add "the directing or counselling of a person to commit a wrongdoing set out in any of paragraphs (a) to (f)".

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

Mr. Ralph Heintzman: Our interpretation, Mr. Chair, would be that in a sense this is already covered because the act is in relation to any of these wrongdoings. If you were to specifically include this, I think that you might want to consider adding a word like

"knowingly", i.e., "the directing or counselling of a person knowingly to commit a wrongdoing". You wouldn't want it to be inadvertent. They'd have to be conscious that they were actually doing this.

Our sense is that this is not inconsistent with the bill and in a sense is already implicit in it.

Mr. Guy Lauzon: I think that's a reasonable friendly amendment.

The Chair: It's a friendly amendment, then, removing "the" and adding "knowingly".

Mr. Joe Preston: Where's it going?

The Chair: Right at the start. It would replace "the" with "knowingly directing". I think that does it.

Any other discussion on this, with its friendly amendment?

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

The Chair: Have we held anything? No.

We should be able to vote on this clause now.

(Clause 8 as amended agreed to)

(Clause 9—*Disciplinary action*)

The Chair: We're on RCMP-9.

Madame Marleau.

Hon. Diane Marleau: Again, it's consequential. I don't think there are any...

The Chair: RCMP-9 is consequential.

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

(Clause 9 as amended agreed to)

(On clause 10—*Establishment of internal disclosure procedures*)

The Chair: We are now on amendment G-4a, page 33.1 of the package. We have the French version here.

Mr. Paul Szabo: It's a technical amendment.

The Chair: We do have an English version. You should have that in your stack. It isn't in your booklet, but you should have it.

Perhaps I can read it in English. It would amend Bill C-11 in clause 10 by replacing lines 8 to 12 on page 5 with the following:

10.(1) Each chief executive must establish internal procedures to manage disclosures made under this Act by public servants employed

I don't know if you can get that, really. It's better to have it in front of you.

• (1710)

Mr. Paul Szabo: It's a technical amendment. It's just a polish-up.

The Chair: I think it is a technical amendment, yes.

Mr. Marc Godbout (Ottawa—Orléans, Lib.): The French version is very weak.

The Chair: The French version is very weak?

What do we do about that?

[*Translation*]

Mr. Marc Godbout: It states:[...] made under this act by public servants [...]

Hon. Diane Marleau: [...] employed.

[*English*]

The Chair: Do enough of you have the English version in front of you to see whether that's strong enough?

I mean, is that more what you're looking for?

Mr. Paul Szabo: The English is fine.

The Chair: If the English is fine, can we pass the English and have translation deal with it?

Mr. Marc Godbout: Yes, just put a note in.

The Chair: So can we pass the English version with a note to check the French translation?

Some hon. members: Agreed.

The Chair: Okay. Thank you.

(Amendment agreed to)

(Clause 10 as amended agreed to)

(Clause 11 agreed to)

(On clause 12—*Disclosure to supervisor or senior officer*)

The Chair: We have government amendment 5, G-5, on page 34 of the package.

Mr. Paul Szabo: Mr. Chairman, again, this was a technical amendment submitted by the department. They wanted to add a couple of phrases here. And I can't explain them, but perhaps the officials can explain why they've asked to put this in the bill.

Mr. Ralph Heintzman: The government has put this forward, Mr. Chair, to address an issue that the committee discussed on a number of occasions. A number of the members expressed concern about the way in which the original clause 12 was worded, that it gave the impression that before making a disclosure, a public servant had to be certain that the thing they were disclosing was actually a wrongdoing, which might be discouraging, or a kind of chill.

What we've tried to do here is in a sense lower that concern. So it's not when a public servant "believes that a wrongdoing has been committed"; instead, it's when they can provide "any information that the public servant believes could show that a wrongdoing has been committed or is about to be committed".

[*Translation*]

It is more encouraging for public servants. The requirements are less stringent, so to speak.

[*English*]

Mr. Paul Szabo: It's just a stronger clause 12; is that the idea?

Mr. Ralph Heintzman: Right.

The Chair: Thank you, Mr. Heintzman.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I support G-5 and I am even prepared to withdraw BQ-5.

[*English*]

The Chair: I was going to mention, before we voted on that, that there is a line conflict with CPC-22 and BQ-5. The Bloc have withdrawn BQ-5.

Mr. Joe Preston: I have a reason for liking some of my amendment, so how do we deal with it?

Mr. Paul Szabo: We can do G-5, Mr. Chairman. It's basically to replace clause 12 with the new proposed clause 12.

The Chair: Could yours be dealt with as a subamendment of G-5, Mr. Preston?

Mr. Joe Preston: The point was that clause 12 got to the issue that employees "may disclose" their visions of wrongdoing to their own senior executive officer or then up the chain of command to someone else in their department. It did not mention the public integrity officer we're now creating at the end of clause 12; it didn't mention it until clause 13. I thought it was more important that we mention it before clause 12. But it's simply a matter of order. I had also included in mine that former public servants could make the same disclosure for the same reasons.

The Chair: Mr. Preston, I guess it's a question, but did we not deal with the former public service issue?

• (1715)

Mr. Joe Preston: Yes, we did deal with that.

The Chair: What's the other issue? I'm sorry.

Mr. Joe Preston: I think it's simply easier if I withdraw it. It's not all that critical. It's going to be in both places.

The Chair: So it's withdrawn? Thank you.

Shall G-5 carry?

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

(Clause 12 as amended agreed to)

(On clause 13—*When disclosure can be made to the President*)

The Chair: We're on G-6, page 38 of our package. There is a line conflict on that as well, with BQ-6, CPC-23, and NDP-3.

Would some member of the government move G-6?

Mr. Ken Boshcoff: I so move.

The Chair: Is there any explanation? I haven't had time to look at it yet.

Hon. Diane Marleau: It basically says they can report to the separate agency. It says "the President of the Public Service Commission". As you know, that change will be made in the House of Commons so the language is consistent with what's in the bill now. That will be changed to reflect that this will be an independent commission.

Mr. Guy Lauzon: I think my suggestion solves the problem: wrongdoing to the commission.

Hon. Diane Marleau: Does it matter whether they change it just to "the commission"?

Mr. Ralph Heintzman: You can't do it now.

The Chair: I understand...because the Public Service Commission is what's in this legislation right now. "Commissioner" he can.

Mr. Paul Szabo: That's correct. Leave it alone.

The Chair: Yes, Mr. Heintzman. If we could, let's get your wisdom on this.

Mr. Ralph Heintzman: Mr. Chair, the current draft of Bill C-11 doesn't give any role to the Public Service Commission; it only gives it to the president of the Public Service Commission. There's no role prescribed in the current text, which of course will be changed in the House to become the public sector integrity commissioner, but in the current text of Bill C-11 you're working with, there's no reference to the Public Service Commission. The references are to the president of the Public Service Commission, who would have had the role of commissioner.

If I could, I'll just explain. Clause 13 is merely consequential to the changes you made in clause 12. It's to reflect those changes in clause 13.

The Chair: Okay.

Mr. Preston.

Mr. Joe Preston: Is paragraph 13(1)(b) now saying that the public servant has to have, must have already done that, or could have done that?

Mr. Ralph Heintzman: I'm sorry, Mr. Preston. I missed the question.

Mr. Joe Preston: Is paragraph 13(1)(b) forcing the employee to have passed the information through the chain of command, or could have?

Mr. Ralph Heintzman: It does not force them to. It gives them the choice. If there are reasons they feel that they cannot make the disclosure internally—that is, the person they would be disclosing to is implicated, or for some other reason—they can go to the commissioner.

Mr. Joe Preston: Right. It doesn't say that very clearly. That's my point.

Mr. Guy Lauzon: It says the opposite of that. It says the public servant has already disclosed the information to his or her supervisor.

The Chair: Do you want to add a subamendment?

Mr. Guy Lauzon: I think that should be deleted.

The Chair: Okay, the subamendment would be deleting what?

Mr. Guy Lauzon: This goes against what you're trying to do, does it not? This says he or she has to go. It says "the public servant has already".

Hon. Diane Marleau: That doesn't mean he has already, but the first line is "may disclose...to the President of the Public Service Commission".

Mr. Guy Lauzon: Why do we need paragraph 13(1)(b), then?

Mr. Ralph Heintzman: Situations may occur where he wants to appeal to the commissioner. That is, he may already have disclosed it internally and not had satisfaction, didn't feel that it was adequately dealt with or properly investigated, and therefore wants to take it to the commissioner to have it looked at a second time. It's kind of an appeal mechanism.

Mr. Joe Preston: That's what it used to say in paragraph 13(1)(b). Is there a reason you've taken that off?

Mr. Ralph Heintzman: No, it's not. That feature of it is not changed.

• (1720)

Mr. Joe Preston: That's just an addition we're going to pick up there.

Okay, thank you.

The Chair: Are you satisfied, gentlemen?

Are we ready for the question on amendment G-6?

Just hold a minute. We might have a issue.

The issue here is, again, the line conflict. If this motion passes, then amendments NDP-3, BQ-6, and CPC-23 cannot be moved.

Mr. Martin, are you okay with that?

Mr. Pat Martin: Yes.

The Chair: We'll go to the vote, then.

Monsieur Sauvageau.

[Translation]

Mr. Benoît Sauvageau: You were going to ask me if I was prepared to withdraw BQ-6?

[English]

The Chair: Yes.

[Translation]

Mr. Benoît Sauvageau: If you had asked, I would have said yes.

[English]

The Chair: Okay. Thank you.

Mr. Guy Lauzon: I think the French version is not the same as the English.

[Translation]

Ms. Louise Thibault: There is no (a) and (b) in French.

[English]

The Chair: It looks like the French amendment that's here isn't the same amendment at all. I can tell that.

If we move the English, can we just allow the translators to put it in, in French? I don't know how to handle this translation issue.

Mr. Guy Lauzon: The French version will have to reflect the English version.

The Chair: It's explained to me by the clerk that if we just assume they are the same, if there is a problem, the government will look at it and translate.

Madame Thibault, you have a concern.

[Translation]

Ms. Louise Thibault: Why did those who worked on the French version of this clause replace the word "matter," which has a great deal of meaning, with "information"? I do not know why the government made that change. I would have kept the previous version. When I see the text in French, I will be able to give you an answer.

[English]

The Chair: Okay.

Mr. Heintzman, yes.

Mr. Ralph Heintzman: As far as we can tell, the English and the French are consistent. You have to remember that in Canada, laws are not translations. They are drafted in French and in English by separate drafters. They mean the same thing, but they don't necessarily use exactly the same language or the same structure. So you shouldn't look for exact parallelism of structure and language, but the objective of the drafters is to make sure they mean the same thing.

The Chair: Madame Thibault, do you want to comment on that?

[Translation]

Ms. Louise Thibault: In the English version of G-6, which is before us, I was curious to know why the word "matter" was replaced by the word "information" in (a) and (b).

Mr. Ralph Heintzman: As I already explained, that change resulted from the one made to clause 12, mainly in English. The idea was to broaden the range of situations in which public servants could make a disclosure.

Even implicitly, there would be no requirement for someone to know in advance that the action constituted actual wrongdoing. It would only be necessary for the person to possess information that led him or her to believe that wrongdoing existed and should be investigated.

• (1725)

[English]

The Chair: Yes, Mr. Lauzon.

Mr. Guy Lauzon: Mr. Chair, I'd like to make a suggestion that we just stand this until it gets translated, until we have the translators take a look at it. I would like to see the finished version in French and in English. I think probably Ms. Thibault would appreciate that as well.

The Chair: There seems to be uncertainty as to whether it's consistent or not. Can we stand this clause, and at our next meeting come back?

(Clause 13 allowed to stand)

The Chair: Mr. Szabo, on a point of order.

Mr. Paul Szabo: Mr. Chairman, I think the cadence of this meeting has been established. It would appear that we're not going to get it done tonight.

We have a national caucus meeting that goes from 5:30 to 7 o'clock tonight. We're prepared not to go, but even if we don't go, at the pace we're going with this bantering and members not being ready, this kind of thing, we're not going to get finished by the time the vote's called anyway.

So we either make a commitment that we pick up the pace a little bit here, or if it's not going to get done by 7 o'clock, then what I suggest is to adjourn the meeting at 5:30 p.m., and we'll pick it up on Thursday's meeting at 11 o'clock. By that time, everybody will have had a—

The Chair: If we could, we have this room till 6 p.m. So we could go to 5 or 6 p.m. or something.

Mr. Paul Szabo: Well, we can't get it finished by 6 p.m. Okay. Well, I would suggest 5:30 p.m.

The Chair: So the committee should decide where to go from today. Really, there was no meeting scheduled for 11 a.m. I see it was on the notice, but I don't know where it came from.

Mr. Paul Szabo: Well, Mr. Chairman, I would suggest that we've made some reasonable progress on important issues. I think members maybe have to have a chance to carefully look at the rest. When we come back on Thursday we'll be able to really cut through them.

The Chair: Will we be able to deal with this in one meeting on Thursday? That's the question.

Do you think so? Or should we schedule an extra meeting, 11 a.m. to 1 p.m.?

Mr. Guy Lauzon: We want to make sure it gets done, so whatever...

The Chair: Is it the will of the committee to schedule an extra meeting for 11 o'clock on Thursday?

Some hon. members: Agreed.

The Chair: Okay, that is agreed. We'll have the normal meeting if needed—as it probably will be. We'll have another meeting from 11 to 1 o'clock. You'll get the details on that.

Should we adjourn this meeting now, or do you want to carry on?

The meeting is adjourned.

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