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# **Standing Committee on Government Operations and Estimates**

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**EVIDENCE**

**Thursday, June 23, 2005**

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**Chair**

**Mr. Leon Benoit**

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## Standing Committee on Government Operations and Estimates

Thursday, June 23, 2005

• (1200)

[English]

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

After the delayed start to the meeting, we will continue with clause-by-clause of Bill C-11, which is the whistle-blower legislation.

Let's start on page 38 of the package. The number is at the bottom of the page. It's an amendment that was stood yesterday due to questions about the consistency of the translation between the English and the French versions.

Let's deal with that one. It has been reviewed, and we understand that the translation is perfectly fine.

Mr. Szabo.

**Mr. Paul Szabo (Mississauga South, Lib.):** Mr. Chair, very quickly, this morning in my office, I received a complete package, which is not in order by page number. It jumps all over the place.

**The Chair:** Yes, Mr. Sauvageau.

[Translation]

**Mr. Benoît Sauvageau (Repentigny, BQ):** Mr. Chairman, I don't know if this would simplify the committee's work, but we received a new package this morning. I suggest we work with the first package we received. I think that would make it easier for everyone, unless all members have incorporated the changes. We need to agree on the package that we're working with. Will we refer to the package we received on Monday, or to the one we received this morning?

[English]

**The Chair:** Mr. Sauvageau, I have the package that we were working with at the last meeting. I hesitate to change midstream, but I guess I will have to refer to the amendment identification, which in this case is amendment G-6. You'll have to work with that, if that's okay.

We're looking at amendment G-6, Mr. Szabo. You can manage that somehow.

Again, we're told that the translation is fine. Are there any problems with that, or can we go ahead and move it?

I would suggest that if people have material from the last meeting, we would continue with what we had at the last meeting. It was fine, and I don't want to change midstream. We have some items that weren't included in the page numbering, but I think it was working fine.

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

Mr. Lauzon.

**Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC):** I assume that it's Mr. Heintzman who is saying the French version is identical to the English. Does it say exactly the same thing?

**The Chair:** It was Mr. Heintzman.

Mr. Lauzon, do you have a comment?

**Mr. Guy Lauzon:** I would like some other opinions on it. We have some divergent opinions on whether it is in fact identical.

It's amendment G-6, on page 38 in the old book.

[Translation]

Ms. Thibault, is the meaning the same?

**Ms. Louise Thibault (Rimouski-Neigette—Témiscouata—Les Basques, BQ):** I'm satisfied with both versions.

[English]

**Mr. Doug Ward (Committee Researcher):** It's a government amendment, so I haven't seen it before.

**The Chair:** It's important when doing this that you look at the bill. What we're talking about is amendments to the bill. If you look on page six of the bill, you'll see the English and French. Use that and then include the amendments you have in front of you, the G-6 amendments.

**Mr. Guy Lauzon:** Mr. Heintzman, I assume you can give us an assurance that you won't lose it on the English court and then win it on the French court. You're confident this won't happen?

**Mr. Ralph Heintzman (Vice-President, Public Service Values and Ethics, Public Service Human Resources Management Agency of Canada):** Any court reads the two versions together and interprets them in the light of both. The English and French drafters believe that they say the same things. But one says it in French, the other in English.

**Mr. Guy Lauzon:** I think we can move on.

**The Chair:** Is it agreed that we accept these amendments, G-6?

**Some hon. members:** Agreed.

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

**The Chair:** We will now go to page 41, CPC-23.

Monsieur Sauvageau.

[Translation]

**Mr. Benoît Sauvageau:** I think you've forgotten BQ-6 on page 40.

•(1205)

[English]

**The Chair:** On BQ-6, there was a line conflict. We're going to have a look at it. It may be possible to make a subamendment that would include some of this, but I'm not sure. I have to look at it.

Mr. Sauvageau, are you satisfied? The line conflict, are you just dropping it?

[Translation]

**Mr. Benoît Sauvageau:** Yes. So then, we're on page 41?

[English]

**The Chair:** Sorry?

[Translation]

**Mr. Benoît Sauvageau:** We're on page 41?

[English]

**The Chair:** Mr. Lauzon, that's CPC-23, page 41.

**Mr. Guy Lauzon:** I was told I should withdraw that because I cannot say "wrongdoing to the Commissioner". It has to be the "Public Service Commissioner". So I have to withdraw it.

**The Chair:** Yes, or you could change it to what you said.

**Mr. Guy Lauzon:** That's what it is; it's already in the bill.

**The Chair:** Great.

Then to NDP-4, page 41.2.

Mr. Martin.

**Mr. Pat Martin (Winnipeg Centre, NDP):** I'd like to withdraw NDP-4.

**The Chair:** Okay, withdraw NDP-4.

CPC-24, page 42.

**Mr. Joe Preston (Elgin—Middlesex—London, CPC):** It's also withdrawn; it deals with Canadian Armed Forces.

**The Chair:** Yes, withdrawn.

(Clause 13 as amended agreed to)

[Translation]

**Mr. Benoît Sauvageau:** I believe BQ-8 on page 52 affects clause 13. Correct? If that's the case, shouldn't we deal with BQ-8 immediately? It amends clause 17, but impacts clause 13. Do we need to deal with it right away?

[English]

**The Chair:** BQ-8 amends clause 17.

I don't understand why we would deal with this now.

**Mr. Paul Szabo:** No, there's no problem.

So clause 13, as amended—

**The Chair:** Mr. Szabo, would you please let me chair the meeting? Thank you very much.

(Clause 14 agreed to)

**The Chair:** On proposed new clause 14.1, there is one government amendment, G-7, page 43.

**Mr. Joe Preston:** Did we not just vote on clause 14?

**The Chair:** Yes, Monsieur Sauvageau.

•(1210)

[Translation]

**Mr. Benoît Sauvageau:** I have a question about clause 14 that was just agreed to. Perhaps you can help me. The clause states:

14. A disclosure that a public servant is entitled to make under section 13 that concerns the Public Service Commission [...]

The problem with this is that under the act, a complaint will be handled by the President of the Public Service Commission. A public servant can make a complaint against the Public Service Commission. However, given that the position of commissioner is being created, should clause 14 be interpreted this way? Can Mr. Heintzman answer my question?

**Mr. Ralph Heintzman:** This portion of the bill will be changed when the amendments creating the position of commissioner are tabled in the House, that is when the committee reports to the House.

**Mr. Benoît Sauvageau:** That's what I thought. I have another problem, however. Is this the only independent officer of the House against whom a complaint may be made to the Treasury Board? For instance, can complaints be made against the Auditor General or the Commissioner of Official Languages, both of whom are independent officers of the House?

**Mr. Ralph Heintzman:** The text submitted to the committee last Thursday by the President of the Treasury Board proposed that any complaint involving the Ethics Commissioner be made to the Auditor General of Canada.

**Mr. Benoît Sauvageau:** And not to the Treasury Board?

**Mr. Ralph Heintzman:** No.

**Mr. Benoît Sauvageau:** Fine. I have no further objections. Thank you.

[English]

**The Chair:** Monsieur Sauvageau, you're happy with that?

We have carried clause 14.

We're on proposed new clause 14.1, G-7, page 43. Would a government member like to move that?

**Hon. Diane Marleau (Sudbury, Lib.):** I'd like to move that. Perhaps Mr. Heintzman can explain it.

**The Chair:** Mr. Heintzman, go ahead.

**Mr. Ralph Heintzman:** Mr. Chair, this proposed amendment responds to a concern that was raised with you by the Information Commissioner. He was concerned about the issue of second-hand disclosures by the employees of investigative bodies.

That is to say, there are a number of investigative bodies that have information about other organizations, so the Information Commissioner has a lot of information about things that are taking place in other organizations. He felt it was not appropriate for his employees to be put in a position of making disclosures to the commissioner based on information that they had about some other organization because that would put a chill on any relations that those bodies would have with other organizations.

What he proposed was that there be something in the act that prevented this. However, you wouldn't want to prevent the employees of the information commission or other similar investigative bodies being able to make disclosures or use that information if it revealed a wrongdoing in their organization; that is to say, in the information commission or in some other.

What this amendment proposes to do is to say that an employee of certain bodies—which are named in the proposed schedule—would not be able to use information from other departments in order to make disclosures, unless it was linked to wrongdoing in their own organization.

**The Chair:** Thank you, Mr. Heintzman.

Is there any further comment? We'll go to the question then.

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

**The Chair:** Now we're on RCMP-10, from the package that was given to us by Madam Marleau. It's on page 44.1 of the package.

**Mr. Paul Szabo:** I'm not sure. Are there no further amendments to clause 15? I think we had agreed that should there be no line conflicts, these matters would be accepted.

•(1215)

**The Chair:** Yes, we're standing clauses that refer to a schedule, so we'll stand this clause.

Yes, Mr. Heintzman.

**Mr. Ralph Heintzman:** I'll explain. I think the reason you decided to stand the clause related to schedules is that you need to decide the numbering after you decide on whether to include schedules. This is one of the ones that propose a schedule, so it's a substantive amendment as opposed to just a numbering amendment, and you might want to consider it at this point to decide whether in fact you want to create the schedule.

**The Chair:** The clauses that deal with the substance of these schedules come later. To me, it would make sense to stand these until we deal with those clauses.

(Clause 15 allowed to stand)

**The Chair:** Next is RCMP-11, page 44.3. Is the government going to move that?

**Mr. Paul Szabo:** This is a new clause, Mr. Chairman. It's consequential, and we agreed that they would be approved. So we moved them.

**The Chair:** Is there any discussion on RCMP-11?

**Mr. Paul Szabo:** We deemed these adopted unless there was a conflict of lines. So it's carried.

**The Chair:** Is it what we agreed to, to deem them adopted?

**Mr. Paul Szabo:** Right up to amendment number 20, subject to any line conflicts.

**Hon. Diane Marleau:** Yes, because we changed with the RCMP.

**The Chair:** RCMP-11 is on clause 15.1, *Requirements when making a disclosure*. Shall it carry? It is a new clause.

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

(On clause 16—*Disclosure to public*)

**The Chair:** Okay, we're on amendment CPC-25 on page 45 of the package.

Mr. Lauzon.

**Mr. Guy Lauzon:** In light of the committee consensus rejecting similar amendments, I'd like to withdraw this.

**The Chair:** All right, amendment withdrawn.

Next is government amendment G-8, page 46.

**Mr. Paul Szabo:** Mr. Chairman, these were submitted as technical corrections and amendments by the department. They are just to conform...but we think it's self-evident. We would move adoption.

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

**The Chair:** Next is amendment BQ-7 on page 48. We are still dealing with clause 16.

[*Translation*]

**Mr. Benoît Sauvageau:** Mr. Chairman, if I understand correctly, this amendment would allow a person disclosing a wrongdoing to make public a disclosure, even if the matter was not yet resolved. This is a proposed amendment to clause 16, specifically the last few words “but that was not resolved”.

[*English*]

**The Chair:** Monsieur Sauvageau, are you...?

[*Translation*]

**Mr. Benoît Sauvageau:** Subclause 16(2) notes the following: (2) Nothing in subsection (1) affects the rights of a public servant to make to the public in accordance with the law a disclosure that is not protected under this Act.

We're proposing to add the words: “but that was not resolved”, meaning that disclosure could be made even while the matter was under review. That's our interpretation. I seem to recall that Mr. Keyserlingk made such a suggestion.

**Hon. Diane Marleau:** Would Mr. Heintzman care to comment?

[*English*]

**The Chair:** Is there any debate or discussion on this amendment?

Yes, Mr. Scarpaleggia.

**Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.):** It's more a point of clarification. I read clause 16, and it seems reasonable to me, unless I'm missing something, that yes, you can go public if there's an emergency—if a nuclear reactor is about to melt down or if someone is going to have their health hurt in some other way—but at least, it seems to me, clause 16 imposes some kind of rational, logical limit on the right to go public right away. Otherwise, what we'll have is a situation of constant blackmail—people calling up the commissioner's office to say that if you don't resolve this by tomorrow, we're going to the press. Maybe I misunderstand.

•(1220)

**The Chair:** Would you like to respond, Mr. Sauvageau?

[Translation]

**Mr. Benoît Sauvageau:** Well, Mr. Heintzman...

**Mr. Francis Scarpaleggia:** Perhaps I misunderstood, Mr. Sauvageau.

**Mr. Benoît Sauvageau:** I'm not deleting anything. I'm merely proposing to add a few words, in particular “but that was not resolved”. If the matter is still under review, but the person disclosing the wrongdoing has reasonable grounds to make public that disclosure, he can do so.

The proposed amendment takes nothing away from clause 16 and its parameters. It merely proposes to add to subclause 16(2): “made in accordance with this Act but that was not resolved”. The parameters remain in place and I share your concerns, Mr. Scarpaleggia.

**The Chair:** Mr. Godbout.

[English]

**Mr. Marc Godbout (Ottawa—Orléans, Lib.):** It doesn't say it has to be resolved, so isn't that possible even if you don't add that line? Am I right or wrong, Mr. Heintzman?

**Mr. Ralph Heintzman:** Mr. Chair, our analysis of this is that

[Translation]

the proposed amendments doesn't add anything from a legal standpoint, because subclause 16(2) clearly states the following: 16(2) Nothing in subsection (1) affects the rights of a public servant to make to the public in accordance with the law [...]

All of the rights public servants currently have are thereby safeguarded.

This amendment would clarify something that is already guaranteed by subclause 16(2). The inherent danger in this is that it might give public servants and the courts the impression that this provision is more restrictive, or that the aim of the bill is to restrict, rather than guarantee, rights already secured in common law. The risk is minor.

I'd also like to draw your attention to the word “resolved”. It's not a matter of whether the issue is resolved, but more, you might say of

[English]

“adequately dealt with”.

[Translation]

That's about sums it up.

[English]

**The Chair:** Mr. Sauvageau.

[Translation]

**Mr. Benoît Sauvageau:** I don't have a problem with withdrawing the amendment.

[English]

**The Chair:** Okay, Mr. Sauvageau wants to withdraw. Is that agreed?

**Some hon. members:** Agreed.

**The Chair:** Agreed.

Next is amendment CPC-26, on page 49.

Mr. Preston.

**Mr. Joe Preston:** Mr. Chair, this is another piece from Dr. Keyserlingk about expanding the freedoms under clause 16, but for the same reasons as Mr. Sauvageau, I'm not going to fall on my sword over this. I want to withdraw it.

**The Chair:** Agreed?

**Some hon. members:** Agreed.

**The Chair:** Yes, Mr. Boshcoff.

**Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.):** Is it necessary to ask for the concurrence of the committee every time there's a withdrawal? If you withdraw it, it's done.

**The Chair:** When somebody withdraws an amendment, yes, I ask the committee in case there's somebody who objects to it, in which case it has to be dealt with.

(Clause 16 as amended agreed to)

(On clause 17—*Exception—persons permanently bound to secrecy*)

•(1225)

**The Chair:** We have amendment G-9, on page 50.

**Hon. Diane Marleau:** Yes, I'd like to move that.

That's a cleaning up of the bill. Perhaps Mr. Heintzman has some particulars he wants to add to this.

**The Chair:** Mr. Heintzman.

**Mr. Ralph Heintzman:** This is intended to correct something that seemed to us to be perhaps a bit of a drafting error or a conceptual error in the original draft, which I think, particularly with the inclusion of the RCMP, you might want to consider.

In the original draft the focus was on a particular category of persons, “persons permanently bound to secrecy”, and they were not permitted, by the original draft, to disclose what is called “special operational information”, under the Security of Information Act, to the commissioner. However, that would have created two categories of public servants: persons personally bound to secrecy who can't, and other public servants who could. The problem is that the other public servants actually know less and have less perspective on that information than the persons permanently bound to secrecy. So it wasn't actually a very happy proposal.

What this proposes to do is simply remove that reference to two categories of persons and simply refer to “special operational information” and say that this category of information would not be available to the commissioner.

I might mention there is another government amendment later on, however, that would permit the commissioner, in her investigations or his investigations, to get that kind of information.

**The Chair:** Thank you, Mr. Heintzman.

Monsieur Sauvageau, there's amendment BQ-8. I think you had indicated you wanted to withdraw it. Is that correct?

**Mr. Benoît Sauvageau:** Yes.

**The Chair:** Okay, so that is withdrawn. There is no line conflict left there, then.

Is there any other comment on amendment G-9?

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

(Clause 17 as amended agreed to)

(Clause 18 agreed to)

**The Chair:** Clause 18.1 is a new clause that has been proposed. It's amendment G-10, on page 53.

Does a government member want to move that amendment?

**Hon. Diane Marleau:** I so move.

Does Mr. Heintzman want to speak to it?

**Mr. Ralph Heintzman:** Mr. Chair, all that this does is save and maintain explicitly all existing duties and obligations of public servants to make disclosures. For example, under the Environmental Protection Act, and a variety of other acts, there are already existing obligations and duties to disclose, and this makes sure that those are all preserved.

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

(On clause 19—*Prohibition against reprisal*)

**The Chair:** We have amendment CPC-27, on page 55.

**Mr. Guy Lauzon:** The whole idea here was that if somebody does commit a reprisal against a whistle-blower, they would be “guilty of an offence punishable on summary conviction and liable to a fine not less than \$5,000”. We want to impress on the person who is considering reprisal how serious it is.

**The Chair:** Are there any other comments or discussions?

Mr. Szabo.

**Mr. Paul Szabo:** We had some discussions on this. On the areas of concern, just to remind members, when we're dealing with an officer of Parliament, to get their purview involved in areas outside of that—for instance, applying penalties, rewards, or whatever—tends to take it out of the same area. There are other remedies and jurisdictions here. I think this is quite problematic, because it would probably require amendments to other acts.

In any event, Mr. Heintzman, I think you have some comments on it as well.

• (1230)

**The Chair:** Go ahead.

**Mr. Ralph Heintzman:** I don't think there are any serious issues, from a technical point of view. It is a policy issue for the committee of whether it wants to give the bill the character it would have by adding explicit penalties. I just note there are other amendments. Both BQ-12 and NDP-4 also propose penalties for other parts of the bill. In the case of BQ-12, I think it's for obstruction of the commissioner.

**The Chair:** NDP-5 is identical, just so we know.

**Mr. Pat Martin:** Mine says “not to exceed \$5,000”, and theirs says “not less than”.

If I could have the floor I'd like to address CPC-27.

**The Chair:** Sure. We'll deal with CPC-27.

Madam Thibault.

[*Translation*]

**Ms. Louise Thibault:** Mr. Chairman, I have serious reservations about imposing a fine of more, or less, than \$5,000. I think that the future commissioner should be left to determine what the appropriate sanction should be. In my view, monetary sanctions are not a good way of preventing reprisals. I think we need to change our mindset and appeal to people's values.

Would Mr. Heintzman be so kind as to tell me which clause deals with psychological abuse? I believe there is a provision dealing with the subject. Exactly which provision spells out measures that the commissioner, in his or her wisdom, could invoke?

[*English*]

**The Chair:** Mr. Heintzman.

[*Translation*]

**Mr. Ralph Heintzman:** I'm unaware of any such provision.

**Mr. Benoît Sauvageau:** I believe I can answer that question. The Member is referring to BQ-9 which amends clause 20. It can be found on page 67.

[*English*]

**The Chair:** That deals with clause 20.

[*Translation*]

**Mr. Benoît Sauvageau:** Ms. Thibault inquired as to whether the bill contained a provision dealing with this particular subject. I answered that the relevant provision was clause 20. I realize that we're not on that provision yet. I was simply answering her question.

[English]

**The Chair:** Thank you, Mr. Sauvageau.

Mr. Martin, you wanted to comment on this.

**Mr. Pat Martin:** While I don't object to having specific fines cited in the bill—I guess we'll have to check to see if we can cite dollar figures—I do object to minimum sentencing as a policy. I don't like to set minimums; I like to set maximums. That gives the adjudicator a range from zero to whatever the limit is to choose from. When you start with a minimum, it paints any judge or adjudicator into a corner that it cannot be less than \$5,000. There may be cases where that's just not appropriate.

**The Chair:** Mr. Martin, you're talking about a difference in policy here. This amendment says “not less than \$5,000”; yours says “not exceeding”.

•(1235)

**Mr. Pat Martin:** I will be voting against amendment CPC-27.

**The Chair:** All right.

Mr. Preston.

**Mr. Joe Preston:** Can we add a penalty? If it's only a policy thing, it's not a problem for us to do it. If we leave the bill the way it is, the only punishment for committing a reprisal is up to and including termination. Under clause 9, that's the only sanction against a wrongdoing. So if someone commits a reprisal against an employee, the greatest punishment they could have is termination.

I'll be voting with Mr. Lauzon on this. We need to add some more teeth to discourage reprisals against whistle-blowers.

**Mr. Paul Szabo:** If we're going to get into penalties and other things, we're getting into something more complicated than whether you have up to \$5,000 or more than \$5,000.

Keep in mind, if there is an allegation of wrongdoing, it can be dealt with in a department. If it's determined that there was a reprisal, the act would make the one who committed it subject to a penalty. Who's going to determine the penalty? There's no language here. This is only part of the process of what could happen if there is a reprisal proven. Tribunals could be involved. I think we had discussion about this already. There are already people in place; there's a mechanism. Moreover, there are civil actions available under the law outside this act.

I think we're opening up a Pandora's box here. I don't know whether we need to specify internal adjudication mechanisms and penalties in the bill, when there are existing jurisdictions to deal with these matters.

Mr. Heintzman, maybe you can help us from a technical standpoint.

**Mr. Ralph Heintzman:** As a footnote to Mr. Preston's comments, I would add that in the absence of penalties, there is section 126 of the Criminal Code, which is a default penalty clause for any statute that doesn't have explicit penalties. I believe it provides for up to two years' imprisonment.

**Mr. Joe Preston:** Would it have to go to a civil action?

**Mr. Ralph Heintzman:** No, it's a criminal offence.

**Mr. Ken Boshcoff:** We know that we can't put everything in here, and that there are other mechanisms to deal with this aspect of the punishment. I don't want us to get weighed down to the point that the escape clauses may be stronger than the sanctions. I don't know if adding decals to the vehicle is going to slow it down. I'd vote against this.

**Mr. Joe Preston:** It's all well and good that there's something in the Criminal Code. That would mean someone who'd had a reprisal against them would have to charge that person in a criminal court. What would the charge be? Would the police lay it? I don't see that happening.

It's great to say there's a remedy's out there someplace in some far and distant land. But we see from current whistle-blowers in our government that there's no place else for them to go. They can go to the criminal courts all they want; the charges aren't laid.

**Mr. Ralph Heintzman:** The circumstances would be exactly the same. If you add a penalty in this act, the police would have to lay the charge. There's no difference. If you add a penalty here, you're creating a criminal offence. It's an offence under this act and the person would have to be charged.

**Mr. Paul Szabo:** We're getting into how the law works. It's important to understand that the public service is not left on their own when a reprisal is proven. They have the tribunal and the recommendation of the commissioner. They can make representations to the RCMP or other authorities to lay the necessary charges. It is not going to be up to the employee to initiate anything. It is going to happen under the existing mechanisms.

•(1240)

**Mr. Joe Preston:** If it's not stated in this act, it will be interpreted that the only punishment is termination of that employee.

**The Chair:** Mr. Scarpaleggia.

**Mr. Francis Scarpaleggia:** The only punishment is termination of the person committing the reprisal. Is that what we're saying?

**Mr. Joe Preston:** That's what it says.

**Mr. Francis Scarpaleggia:** Is that the only...or can a tribunal assess another punishment? Mr. Szabo, you were saying—

**Mr. Paul Szabo:** We have the court system. Anybody can raise a claim for damages and make that case—but under civil law, not this bill. This bill can only carry it so far. If there is a wrongdoing, a reprisal under the human resources policy of the Government of Canada, the agency, or the crown corporation, they can go to the fullest extent.

If there is a wrongdoing that constitutes a criminal infraction under the laws, that must be referred to the authorities.

**Mr. Francis Scarpaleggia:** I understand that. But you were saying if somebody has taken a reprisal that is not criminal, an employee who has been the subject of that reprisal can go to a tribunal.

**Mr. Paul Szabo:** No. There is a tribunal that deals with recommendations from the Integrity Commissioner. They deal with resolving—reinstating people, etc. But if somebody wants pain and suffering, for instance, that is not dealt with. That's something that has to go to a civil proceeding.



**The Chair:** Mr. Scarpaleggia, if you want some expert advice we'll go to the people at the head of the table next time.

Mr. Poilievre.

**Mr. Pierre Poilievre (Nepean—Carleton, CPC):** If somebody is charged with having contravened subsection (1), as mentioned in this amendment, how can they then be fined under a different section of the Criminal Code?

**The Chair:** Mr. Heintzman.

**Mr. Ralph Heintzman:** I'm not sure I understand the question.

**Mr. Pierre Poilievre:** You said fines already exist in the Criminal Code in other places.

**Mr. Ralph Heintzman:** No. I said section 126 of the Criminal Code provides minimum penalties for any act that doesn't have its own penalties explicitly in it. The default in section 126 is a jail term of up to two years.

**Mr. Pierre Poilievre:** Okay, so you're saying that someone "who contravenes subsection (1)" of the statute we're in the process of passing could face fines under section 126 of the Criminal Code.

**Mr. Ralph Heintzman:** I don't think section 126 provides for any fines.

**Mr. Pierre Poilievre:** Okay, which section do you refer to in the Criminal Code that does provide for fines?

[Translation]

**Mr. Ralph Heintzman:** Ms. Lefrançois, would you care to answer that question?

[English]

**Mr. Michel Lefrançois (General Counsel, Secretariat Legal Services Branch, Treasury Board of Canada Secretariat):** Thank you, Mr. Chair.

As Mr. Heintzman has stated, for those acts of Parliament without a penalty regime, the default or what you turn to is section 126 of the code. I can read the provision outright. Perhaps that will be easier.

This is section 126(1) of the Criminal Code of Canada:

Everyone who, without lawful excuse, contravenes an Act of Parliament by wilfully doing anything that it forbids or by wilfully omitting to do anything that it requires to be done is, unless a punishment is expressly provided by law,

—which is not the case here—

guilty of an indictable offence and liable to imprisonment for a term not exceeding two years.

● (1245)

**Mr. Pierre Poilievre:** I may have misheard. I thought I heard somebody say other fines were provided for elsewhere that could apply. So there are not, okay.

So we can operate on the assumption that there are no other ways a fine could be applied to someone who contravened this bill. In other words, Mr. Lauzon's amendment would be the only mechanism by which such a fine could be applied. That's what I'm getting.

I'm just going to rely on the experts over here, if that's okay.

**The Chair:** Your question was to the experts.

**Mr. Ralph Heintzman:** I'm sorry, was there a question to me?

**The Chair:** Yes, there was.

**Mr. Pierre Poilievre:** This amendment is the only instrument, then, before us that would provide a financial penalty for violation of the whistle-blower protection law?

**Mr. Ralph Heintzman:** I think the answer to your question is yes, but I'm going to ask my friends here to confirm whether there are any fines under administrative law that could be levied under clause 9 as part of the normal administrative sanctions.

**Mr. Michel Lefrançois:** Mr. Heintzman, you're referring to the Financial Administration Act?

**Mr. Ralph Heintzman:** Yes.

**Mr. Michel Lefrançois:** Okay.

There are contraventions to the Financial Administration Act in section 80 of the act. Now, those proceed by the same type of process that would proceed under the Criminal Code. That is, the Attorney General exercises discretion to intervene, lay charges, and prosecute. So that's another avenue. But those are specifically for matters dealing with financial management, or I should say financial mismanagement.

**Mr. Pierre Poilievre:** Okay.

**Mr. Michel Lefrançois:** For other matters, your avenue is indeed this provision of the code.

Now, as some members mentioned earlier, this does not preclude the use of disciplinary sanctions by the employer, and that would be an appropriate response.

**Mr. Pierre Poilievre:** Yes, but would they be allowed to use financial penalties?

**Mr. Michel Lefrançois:** A financial penalty is one of the things an employer has at its disposal, explicitly in the Staff Relations Act or Labour Relations Act. In the common law, for those crown corporations, that's less clear.

**Mr. Pierre Poilievre:** Do you know if that has ever been used?

**Mr. Michel Lefrançois:** Well, financial penalties are used commonly in the public service, but they're not used as a substitute for termination. They're used as a fine, if you will, but as a lesser penalty than the ultimate penalty of termination.

**Mr. Pierre Poilievre:** Can you provide an example of how it would be used?

**Mr. Michel Lefrançois:** A quick example would be in a sick-out—a general refusal of a hundred employees, let's say, to report to work. If you suspend them all next week, you're creating another headache for the employer. So instead of suspending them for a day, you give them a financial penalty of one day's worth of salary.

**Mr. Pierre Poilievre:** And in your opinion those kinds of penalties could be applied by the employer for violation of this law—for example, for carrying out a reprisal?

**Mr. Michel Lefrançois:** Yes, they could. But obviously it would have to fit the crime, so to speak.

**Mr. Pierre Poilievre:** Who would actually administer that fine? You say the employer, but—

**Mr. Michel Lefrançois:** The deputy, the chief executive under this legislation.

**Mr. Pierre Poilievre:** That person could be the one against whom a disclosure was originally made, or that person could be the one responsible for the retribution.

• (1250)

**Mr. Michel LeFrançois:** Well, that would pose a bit of a conundrum, but Treasury Board has residual authority in these matters.

Now, in regard to the matter you raise, Mr. Poilievre, I've never heard of such a thing. It would be quite an exceptional circumstance.

**Mr. Pierre Poilievre:** I'll just make this point, then, and I'll conclude.

If we want this law to constitute an independent whistle-blower protection avenue, then its consequences for violating the law must also be independently administered. By that I mean that any fines given out should be given out by the independent body—in this case, the commissioner—and not by someone who is actually in the department or in the government where the wrongdoing itself occurred or where the reprisal itself originated.

So if we do want this to be an independent avenue, as far I'm concerned the fines for violating the law must be independently administered.

**The Chair:** Thank you, Mr. Poilievre.

We have Madam Thibault, then Mr. Scarpaleggia.

[*Translation*]

**Ms. Louise Thibault:** Mr. Chairman, I hold a different view. Let's assume the commissioner, a neutral party, conducted an examination, found good reason to be concerned and made a decision, with supporting evidence. Supposing the commissioner duly recommends that action be taken. There is no reason to believe that departmental authorities would conspire not to take the recommended action. Departments already have a number of mechanisms in place, for example, the federal government's policy on harassment.

The bill mentions a possible fine of \$5,000 which would be imposed on someone who takes reprisal action. If that person is suspended for one, three or six months, that may be punishment enough. In addition to losing his or her job, the person is discredited. Losing one's job is tantamount to a genuine form of punishment. To ask someone to pay a \$5,000 fine while allowing that person to continue working is merely a slap on the wrist.

I want to emphasize this point because I don't believe this kind of sanction will change people's mindset. My colleagues hold a different view, and I respect that, but I think we need to look beyond the carrot-and-stick approach. We need specific measures. If the wrongdoing is serious, then we need to respond with the tools that we already have. Creating new ones will only serve to complicate an already complex process.

Thank you.

[*English*]

**The Chair:** What are you suggesting, Madam Thibault?

[*Translation*]

**Ms. Louise Thibault:** I plan to vote against this amendment.

[*English*]

**The Chair:** Mr. Scarpaleggia.

**Mr. Francis Scarpaleggia:** I agree that we shouldn't be getting into a whole philosophical debate about minimum sentences. I agree that it might not be a good idea to put a dollar figure in this clause. However, I'm being persuaded somewhat by the arguments of my colleagues that the deputy of the department should know that the law requires him or her to do something.

Is it possible to reword this whereby we take out the dollar figure and say that the person is liable to a fine and maybe put a maximum on it of one year's salary or...? It seems to me that the deputy may decide that there's nothing to be done.

**Mr. Michel Lefrançois:** Mr. Chairman, may I respond to the member's question?

The difficulty is that even if the regime is specific to this particular piece of legislation, it still has to take the course of a prosecution, unless you're providing an authority of the commissioner to levy fines. I don't know that you want to go there; it's almost difficult to fathom that they'd be equipped to do such a thing. If you substitute a different penalty regime for this from what is the default in section 126 of the Criminal Code, you're still faced with the prospect of getting the Attorney General of the province you're in to intervene and prosecute. No matter what you're doing, you're going down that route. That's the process you're condemned to follow, so to speak.

**Mr. Francis Scarpaleggia:** Essentially, you're saying that we can't have this clause because we don't have control over what the provincial Attorney General is going to do?

**Mr. Ralph Heintzman:** Parliament can include an offence in any law if it chooses to.

• (1255)

**Mr. Michel Lefrançois:** Your challenge, if I may, Mr. Chair, is, as in any other offence, to convince the Attorney General that it's worthy of his or her intervention. That's like anything else.

**Mr. Francis Scarpaleggia:** What is wrong with requiring the deputy of the department to make that effort to convince the Attorney General?

**Mr. Michel Lefrançois:** I'm not opining as to whether it's wrong or right, sir; I'm just suggesting that in this piece of legislation you can set penalties that are different from what is in the default regime under the code, but you're not providing the authority by so doing to another instance than the instance that is currently charged with prosecuting.

**Mr. Francis Scarpaleggia:** Could you repeat that in layman's terms?

**Mr. Michel Lefrançois:** Let me put it this way. You may change the fine, but you still have to knock on the same door to get satisfaction.

**Mr. Francis Scarpaleggia:** I understand that, and I don't think we should put a specific fine. But is there some way to put in this bill the requirement that in the case of an offence, the deputy must take action to try to convince the Attorney General to levy some fine? What is wrong with that?

**Mr. Michel Lefrançois:** If I may suggest, there's nothing a deputy can do. There's nothing any one of us mere mortals in this room can do to influence the exercise of discretion of an Attorney General. I can't think of anything offhand. Parliament may urge upon provincial attorneys general to prosecute, but I don't know that it makes any difference putting this into a piece of legislation.

And if you're suggesting that Parliament urge a deputy to seek charges levelled against one of his or her employees, I don't know if that would be the most comfortable situation for a deputy.

**Mr. Francis Scarpaleggia:** Actually, you've answered my question. That's what I wanted to know.

**The Chair:** Mr. Sauvageau, Mr. Scarpaleggia has the floor.

**Mr. Francis Scarpaleggia:** That's fine, Mr. Chair.

**The Chair:** Okay, Mr. Sauvageau.

[*Translation*]

**Mr. Benoît Sauvageau:** I'd like us to limit our comments. Certainly it would be interesting to discuss this important subject for half an hour, but let's be reasonable!

Although I disagree with their solution, I share the concerns expressed by my Conservative colleagues. Laws cannot be violated. That's a relatively simple concept. However, if no provision is made for sanctions or fines... I used another example in another committee. It's a little like saying that people cannot contravene the Highway Safety Code, but even if they do, there are no sanctions in place.

I'd like your opinion. I'm not a legal expert, but what would you think if we added the words: "No person shall take any reprisal against a public servant", or "any person taking such action would be in violation of section X and be liable to less than two years' imprisonment".

Can you reread the clause to us? If a person contravenes the act, what consequences does he or she face? You stated that if a person contravened the act, that person would be guilty of violating section 126 of the Criminal Code. Can you confirm that for me?

Why not spell this out clearly in clause 19? That would reassure our Conservative friends, and everyone else, for that matter. Given the way in which the bill is currently drafted, if I were an EX-4 or EX-5, I wouldn't necessarily know that if I took reprisal action, I would be liable to prosecution under section 126 of the Criminal Code.

The provision should clearly state: "No person shall take any reprisal against a public servant. Any person taking such action would be in violation of section 126 of the Criminal Code and be liable to imprisonment for a term of two years less a day."

[*English*]

**Mr. Ralph Heintzman:** Do you want me to respond to that, Mr. Chair?

**The Chair:** Yes, please, Mr. Heintzman.

**Mr. Ralph Heintzman:** Parliament could obviously do that. I think it would be a rather blunt club, in the sense that the only penalty available would be a jail term, rather than a fine, which is a more flexible instrument. The problem would remain—as my colleague pointed out—that you'd be very unlikely to get anybody to prosecute under this. You're much more likely,

• (1300)

[*Translation*]

as Ms. Thibault mentioned, to see administrative sanctions imposed. If a person is found guilty of having taken reprisal action, there is a far greater likelihood of that person being subject to administrative sanctions than of being prosecuted by the Attorney General of Canada. That's all there is to it.

**Mr. Benoît Sauvageau:** You're right.

The provision could be drafted to read: "No person shall take any reprisal against a public servant, on penalty of administrative sanctions".

**Mr. Ralph Heintzman:** The legislation already makes provision for that.

**Mr. Benoît Sauvageau:** Speaking as a legal expert, you're right. However, I'm putting myself in the place of an employer who reads the legislation, but doesn't analyse it. I think the legislation needs to be clear on this score. Even though we try to avoid them, occasionally, some repetition is good, for clarity's sake. Therefore, the provision could say: No person shall take any reprisal against a public servant, on penalty of administrative sanctions". Ultimately, such action would constitute a violation of section 126, even if that's implied. Quite often, when an act makes a reference to one particular provision or another, we seek advice from our legal services.

[*English*]

**The Chair:** Excuse me. It's one o'clock, and I know that several people have appointments, so we will leave this now.

Mr. Sauvageau, do you want to complete your question?

**Mr. Benoît Sauvageau:** It's okay. I've finished.

**The Chair:** We have a list for this issue. We'll leave it as it is. Everybody can consider this over the break.

This room will be locked between now and 3:30, so you can leave your things here. We will reconvene at 3:30.

The meeting is adjourned.





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