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Chair

Mr. Tom Lukiwski

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•(0845)

[English]

The Chair (Mr. Tom Lukiwski (Moose Jaw—Lake Centre—Lanigan, CPC)): Colleagues, ladies and gentlemen, I call the meeting to order. It's 8:45 a.m.

For the benefit of the committee, my understanding is that we may have these proceedings interrupted by bells for a vote shortly after 10 a.m. If that's the case, then we will probably adjourn very quickly after that, just to ensure that everyone can make it back to Centre Block for the vote. I'll gauge that when we get there. I would certainly like to be able to get one full round in. That means all of the seven-minute and five-minute rounds and Mr. Weir's final three-minute intervention. I would like to get that done before we adjourn.

With that, I welcome all of our witnesses who are appearing before us today.

Thank you very much, ladies and gentlemen, for being here. I understand that a couple of you have opening statements, and Mr. Friday, you're first up on my list.

Go ahead, Mr. Friday, for 10 minutes or less.

[Translation]

Mr. Joe Friday (Commissioner, Office of the Public Sector Integrity Commissioner of Canada): Thank you, Mr. Chair.

I would like to thank the committee for inviting me to appear before you this morning. Joining me today are France Duquette, Deputy Commissioner, and Brian Radford, General Counsel.

[English]

I'm delighted, Mr. Chair, to be here to discuss our experience in administering the Public Servants Disclosure Protection Act as it applies to me and to my office, and to have the opportunity to present you with concrete proposals that I firmly believe will contribute to a stronger and more responsive federal public sector whistle-blowing regime.

The proposed amendments are based on our 10 years of experience as the external option for whistle-blowers in dealing with more than 750 disclosures and more than 250 complaints of reprisal. They are also influenced by the experience of other legislation at both domestic and international levels and can be grouped under three main goals.

Our proposals are first intended to facilitate and encourage the making of disclosures of wrongdoing, including clarifying and emphasizing confidentiality. Second, they are intended to remove

practical barriers from my office to be able to carry out its investigations. Finally, and of essential importance, they are intended to address the unreasonably heavy burden placed on the shoulders of reprisal complainants and to strengthen the protection offered to them.

Before discussing the details of the proposals, I'd like to take a few minutes to discuss the context in which we conduct our work and the context in which these proposals were developed.

In the words of Madam Justice Elliott of the Federal Court in a recent decision, the whistle-blowing regime established under the act “addresses wrongs of an order of magnitude that could shake public confidence if not reported and corrected”, and that if proven involve “a serious threat to the integrity of the public service.”

We were not established to address every problem or issue that might arise across the vast public sector, but rather those situations serious enough to warrant Parliament's direct attention or the involvement of an adjudicative body such as the tribunal represented here by Madame Boyer and Monsieur Choquette this morning.

[Translation]

In carrying out my duties under the act, I should emphasize that I am not an advocate for any party. Rather, I am a neutral decision-maker who is required to be objective and impartial and to respect all parties' rights to procedural fairness and natural justice.

[English]

I'm confident, Mr. Chair, that you and committee members would agree with me that there cannot be an effective whistle-blowing system without a culture shift so that speaking out about potential wrongdoing is an accepted part of public sector culture and can be responded to and supported in a climate free from reprisal and free from fear of reprisal. I believe that over time this can be achieved. We are still in the first generation, so to speak, of implementing this legislation, but the opportunity now exists, with this review, to move us closer to our goal.

With this in mind, I have to stress that a small office of 30 people with an annual budget of about \$4.8 million can't do this alone. A change in thinking so that whistle-blowing is normalized takes more than one piece of legislation and more than one office. It requires an ongoing collective commitment. I am an active and proud part of that collective commitment, but we must be realistic in accepting, first, that the fear of reprisal exists, and second, that a larger shift has to occur before that fear can be diminished, if not eliminated.

This fear is very real. Over the years my office has made efforts within its capacity to collect information on this issue and to try to identify ways to diminish the fear. Two public opinion research projects were commissioned by my office, the most recent one being in 2015, and they highlighted, among other things, that there has to be more buy-in from upper management in order for there to be any real change in terms of the acceptability of whistle-blowing. These changes across the public service, in other words, generally need to trickle down to the managerial level in order to result in palpable change.

[Translation]

My office also has recently commissioned, and will soon be releasing, a research paper on the fear of reprisal. I will provide the committee with that paper immediately upon its completion. And to advance that discussion, I would encourage every public servant and every chief executive to make whistleblowing part of ongoing and open conversations in the federal workplace.

• (0850)

[English]

Recognizing that the fear exists is the first step in addressing it.

One other observation I'd like to make is that the field of whistle-blowing is one of rapid growth, with new systems being designed and adopted across a broad range of public and private sector organizations. I can say that many provinces and territories have adopted whistle-blowing legislation that contains many similarities to ours. What we know as well is that our federal model has very distinct features, such as my independent office and a dedicated tribunal to hear cases of reprisal.

Even among countries with similar legal and governance systems, there are differences in whistle-blowing regimes. While there are core principles that are generally adhered to in any regime, one of the key challenges is designing a whistle-blowing program that responds to the particular needs and interests of the stakeholders it is serving, and one that also takes into account the overall context in which it operates, including, very importantly, the existence of other recourse mechanisms, as my office was not created to replace any other body.

I believe this must be kept in mind as we take a critical look at our own system. The act creates a whistle-blowing regime designed specifically for the Canadian federal public sector. I hope the lens through which we examine the legislation in this review process ensures we are creating a system that responds to the needs of Canadians in having an effective and trustworthy public sector.

[Translation]

With these observations as background, I would like to identify some key recommendations for legislative change that are among those presented in my written submissions.

In carrying out my duties as commissioner since my appointment in 2015, I have made every effort to identify opportunities to affect positive change by way of adopting policies and practices to address uncertainty in the law or to clarify, for example, how I use the considerable discretion given to me under the law.

[English]

I've done this to ensure our discussions are focused on those issues that require, in my view, formal legislative amendment in order to support our effective work. I preface the discussion by saying that the 16 specific recommendations you now have before you are those that I believe require the formality of legislative amendment to properly achieve the desired outcome of the act.

Turning to those recommendations, I'm only going to highlight, given my limited time, one in each of the broad categories I mentioned at the outset of my remarks.

With specific request to reprisals, our goal is to lessen the considerable burden facing complainants, in addition to recommending very important and, I think, essential changes, such as giving the tribunal the power to order interim remedies and the reimbursement of legal fees for the complainant.

I want to draw your attention to my proposal that once a case goes to the tribunal, a reverse onus of proof is established. In other words, the complainant, the party with the least resources and the least power, does not have to prove that a reprisal took place. Rather, the employer has the onus to prove that what occurred was not reprisal.

I feel strongly that this is fair and just, as it seeks to level what is otherwise an uneven playing field. I was pleased to hear the previous witness's support of the same recommendation, and I also believe this represents best international practice.

I'm also proposing recommendations to encourage and support confidence and trust in the regime. A key recommendation in this regard is the removal of the good faith requirement for a whistle-blower or reprisal complainant. This may initially strike committee members as counterintuitive, but in reality, this requirement incorrectly focuses attention on the motivation of the individual coming forward rather than the actions being reported. The test should be whether the person believes the information is true, not the motivation to come forward. In my written submissions, as I emphatically state, motivation is not relevant. What is relevant is whether a wrongdoing or reprisal took place.

[Translation]

We are also, as you will see in my submissions, making recommendations to strengthen and clarify the provisions that enable our protection of confidentiality. I simply want to underscore, in my opening remarks, the importance of confidentiality in any whistleblowing regime.

[English]

In that regard, I'd like to come back to something I believe was said before this committee last week that is of serious concern to me and my office. As I understand, it was stated that the first thing we do when receiving a disclosure is to inform the deputy head and to communicate the name of the discloser. If there's one thing we're extremely careful about protecting, it is the identity of the whistle-blower. I hope this is not what was intended to have been said. I will happily respond to any questions about our processes in that regard.

Finally, another theme of our recommendations is addressing barriers to our ability to do our investigations. I draw your attention to one proposed amendment in particular. The act currently prevents my office from obtaining information from outside the public sector. This is a significant limiting factor in our gathering of evidence. For example, information in the hands of retired public servants is not technically within our reach, nor is information in the possession of third parties outside the public sector.

My request and recommendation is to simply repeal that section of the act to remove a clear barrier to my ability to carry out a full investigation.

• (0855)

[Translation]

In closing, I would like to say that our recommendations aim to strengthen and support responsiveness, effectiveness and accessibility in a way that I am confident will increase the trust of public servants in the regime that is aimed at protecting them.

That concludes my presentation.

[English]

I'll now be happy to answer any questions you might and to review any of the 16 proposals that I am very proud and confident to be putting before you this morning, Mr. Chair.

The Chair: Thank you very much, Mr. Friday.

Madame Boyer, you have 10 minutes, please.

[Translation]

Ms. Rachel Boyer (Executive Director, Public Servants Disclosure Protection Tribunal): Good morning and thank you very much, Mr. Chair and committee members, for the invitation to appear before you as you study the Public Servants Disclosure Protection Act.

I am joined by my colleague, François Choquette, our Senior Legal Counsel.

[English]

I thought I would begin by taking a few moments to discuss the mandate of the Public Servants Disclosure Protection Tribunal, as it will inform the scope of my presentation. I will then follow with an overview of the legal principles that govern us when dealing with complaints of reprisals. Finally, in closing, I will provide the committee with some statistical information that may be of interest.

The Public Servants Disclosure Protection Tribunal is one of two governmental bodies created under the act in 2007 to protect public servants from reprisals as a result of a protected disclosure or if they

have participated in good faith in an investigation of wrongdoing. You have already heard from my colleague, the commissioner. It is important to note that there is significant interplay in the contributions that each organization makes toward protecting whistle-blowers from retaliation and the resolution of these complaints under the act.

[Translation]

However there are important distinctions to be drawn between our two organizations. The commissioner's mandate is multi-faceted, and includes a wide range of powers, duties and functions. By contrast, the statute has only assigned one main function to the tribunal: to determine whether or not reprisal has taken place as the result of a disclosure. This creates a special relationship between the tribunal and the commissioner, which is reminiscent of a similar model put in place in the area of human rights protection, between the Human Rights Commissioner and the Human Rights Tribunal of Canada.

So an individual who believes that retaliation against him has taken place, because of a disclosure of wrongdoing within the meaning of the act, or because he has co-operated in an investigation, can file a complaint to that effect with the commissioner. If, after an investigation, the commissioner has reasonable grounds to believe that reprisals occurred, he may refer the case to the tribunal.

[English]

The parties who are entitled to appear before the tribunal include the individual who filed the complaint, the complainant, the complainant's employer, the person or persons alleged to have engaged in acts of reprisal, and the respondent or respondents, as well as the commissioner, the office that initiated the adjudicative process.

The tribunal is an independent quasi-judicial body composed of a chairperson and no less than two members and no more than six other members appointed by the Governor in Council. All of these members must be judges of the Federal Court or of a superior court of a province, and each member is appointed for a term of no more than seven years and holds office as long as he or she remains a judge.

As a quasi-judicial body, the tribunal has many of the powers and attributes of a court. It is empowered to find facts, to interpret and apply the laws to the facts before it, and to award appropriate remedies and disciplinary actions. The tribunal's hearings have much the same structure as a formal trial before a court. The parties before the tribunal lead evidence, call and cross-examine witnesses, and make submissions on how the law should be applied to the facts.

As parliament has only assigned to the tribunal the role of adjudication on the issue of reprisal, it has no regulatory role vis-à-vis employment practices in the federal workplace. It cannot be involved in crafting policy, nor does it have a public advocacy role. These roles are assigned to other bodies, as explained by the commissioner. According to the act, different duties and obligations are also imposed on chief executives within the public sector, on the Public Sector Integrity Commissioner, and on Treasury Board.

In addition, as the tribunal is made up of judicial members, it never had administrative or management responsibilities, nor was it ever designated as a department under the Financial Administration Act.

● (0900)

[*Translation*]

When the legislation was enacted in 2007, Parliament also established a registry for the proper conduct of the work of the tribunal and the management of the tribunal's administrative affairs and staff. Section 20.8 of the act, which provided for the establishment of the registry, was repealed on November 1, 2014, with the coming into force of the Administrative Tribunals Support Service of Canada Act. This service consolidated the support services of 11 administrative tribunals, including the registry of the Public Servants Disclosure Protection Tribunal, into a new organization known as the Administrative Tribunals Support Service of Canada. These support services include internal services, such as human resources, information technology, financial services, accommodation and communications. The consolidation also included registry services and other specialist services required for the tribunal to fulfill its mandate, such as research, legal services, and case analysis work.

These functions now reside in the secretariat of the Public Servants Disclosure Protection Tribunal. Throughout these changes, the tribunal retained its adjudicative powers.

A number of consequences flow from the focused mandate of the tribunal, as well as from its organizational and court-like structure.

To conserve their impartiality, tribunal members must remain neutral vis-à-vis legislative changes or on issues likely to be debated in cases that they may be called upon to decide. Judicial members must remain independent from the executive branch of government.

In the context of the current study, these principles prevent tribunal members, including myself, from issuing opinions or recommendations on many of the matters that will be discussed as you review the Public Servants Disclosure Protection Act.

That now leads me to my next topic.

[*English*]

What legal principles do tribunal members apply to reprisal complaints? How are reprisal complaints defined? The answers to these questions originate in our enabling legislation, the Public Servants Disclosure Protection Act.

The legislation defines reprisal as a disciplinary measure, a demotion, the termination of employment, a discharge or dismissal, any measures that adversely affect the employment or working conditions of a public servant, or a threat to take such a measure against a public servant because the public servant has made a protected disclosure or has in good faith co-operated in an investigation into a disclosure or an investigation commenced by the office of the commissioner.

The tribunal has been established to enhance public confidence in the integrity of public servants. Therefore, after holding a hearing on the matter, if the tribunal determines that reprisal has occurred, it can

order remedies in favour of the victims of such reprisal. In certain cases, it can also order disciplinary action against individuals identified as having taken measures of reprisal.

Following an application made by the Public Sector Integrity Commissioner to our tribunal, the mission of the tribunal is to provide public servant whistle-blowers with impartial and timely review of complaints of reprisal in accordance with the principles of natural justice. As such, the tribunal plays an essential role in the public sector disclosure process, which in turn favours the integrity of the public service.

[*Translation*]

In the last five years, the tribunal has received approximately one case per year from the commissioner. The tribunal renders on average one or two interlocutory decisions per year. This being said, the tribunal has not rendered a single decision on the merits of a case yet. That is because all of the cases received from the commissioner so far were either settled by the parties during the proceedings of the tribunal, or they are currently before the tribunal. The total number of cases introduced since the creation of the tribunal is seven, three of which were heard together in 2014, and two of which are currently ongoing.

Thank you.

[*English*]

The Chair: We'll now start our seven-minute round.

[*Translation*]

Mr. Ayoub, you have the floor for seven minutes.

Mr. Ramez Ayoub (Thérèse-De Blainville, Lib.): Thank you, Mr. Chair.

My thanks to all the witnesses for joining us today.

We have received very complete documentation this morning and it's a little difficult to go through it all, although that is not the objective. I am going to take the time to read it carefully and I'm sure we will have the opportunity to talk about it again.

Mr. Friday, I am trying to fully understand the table. It seems that a lot of the procedure falls onto your organization, even onto your own personal judgment. Put my mind at ease by telling me that it really works.

When someone wants to start a process to challenge the reprisals he has suffered as the result of a disclosure, it is you who decide whether the case will go to the Public Service Disclosure Protection Tribunal. The responsibility for transferring the file after an investigation is yours alone.

Tell me a little about the background for that.

● (0905)

Mr. Joe Friday: First, let me draw your attention to tab 9 in our binder, where we provide explanations for our procedure.

After an investigation is complete, it is my responsibility to determine whether the case will be taken to the tribunal. That is the decision I make for all the reprisal files. My office makes that decision.

Mr. Ramez Ayoub: What I am trying to understand is whether or not it is up to you to approve cases that go to the tribunal following the recommendations of your investigators or an investigation.

Mr. Joe Friday: Yes.

Mr. Ramez Ayoub: Okay.

From the many general reports produced in the past, it seems that there were shortcomings on the part of the person who preceded you. It seems that, to some extent, there was a lack of judgment or an abuse of power. I was not there, but that is what seems to be the case. That's what I read and that's what this says.

How are you going to proceed? Have changes been made so that we do not face that kind of problem again, so that we do not read those kinds of remarks in a general report?

That would serve to restore the confidence of the officials and the people providing information, and ensure that your organization can continue.

Mr. Joe Friday: Communication, awareness and improving trust in us are critical.

At the moment, we have the highest number of investigations in the history of our organization. Perhaps that is evidence that we are improving our processes. This is a permanent, ongoing challenge. We are very sensitive to the fact that, under the act, our organization holds all the power in terms of reprisals.

Mr. Ramez Ayoub: I will likely come back to this issue when I have studied the file you have presented to us a little more.

My impression is that the number of investigations that go to the tribunal is still quite limited. Maybe they are being settled beforehand. I have even heard that some of the disclosures you receive, particularly with regard to collective agreements, actually have to be dealt with by an organization other than yours. So, from the outset, clarification is needed on what constitutes the disclosure of wrongdoing.

Mr. Joe Friday: I feel that our recommendations will play a key role in improving the trust that public servants have in us. The objective of all the recommendations is to improve access to the tribunal and to resolution measures.

Mr. Ramez Ayoub: Okay.

In your presentation, you referred to a comment made by a witness at the committee last Thursday, to the effect that, formerly, the whistleblower's identity was automatically provided to the chief executive.

In addition, you say that you want to protect people, but you do not say that you do not do that. It leaves a door open, does it not?

• (0910)

Mr. Joe Friday: I am prohibited from identifying a whistleblower by name. We do not do that.

Mr. Ramez Ayoub: So what happened previously?

Mr. Joe Friday: The act requires that we identify the nature of the allegations but never the name of the whistleblower. That is part of the concept of natural justice and procedural fairness.

Mr. Ramez Ayoub: Okay.

Do you see your duty to protect the confidentiality of the whistleblower as a challenge, to the extent that, in a way, searching for information is almost inevitably going to allow the whistleblower to be identified, or allow the people involved to have their suspicions?

Mr. Joe Friday: Yes, we remain sensitive to that kind of risk. We must always find a balance between protecting confidentiality and protecting the right to procedural fairness and natural justice.

Mr. Ramez Ayoub: Thank you.

[English]

The Chair: Mr. McCauley, go ahead for seven minutes, please.

Mr. Kelly McCauley (Edmonton West, CPC): Welcome and good morning.

Mr. Friday, we discussed last week that recently, with the jet fighter purchase program, about 140 public servants have been required to sign a non-disclosure agreement for life. I'm wondering if you're familiar with that.

The question we brought up last week was how these public sector employees are protected under the disclosure act if they're forbidden from discussing anything under the NDAs they've signed. Do you know if it bars them from coming forward to you?

Mr. Joe Friday: I do not believe that it bars them from coming to me at all.

It might be of interest to the committee to know that the definition of a protected disclosure under the act is very broad. It includes not only someone coming to us but anybody making a disclosure in this situation, in parliamentary proceedings—so if I make a disclosure this morning, I'm protected—or under any process under another act of Parliament.

Mr. Kelly McCauley: Even if you're not, you can complain to yourself, I guess.

The group has discussed a lot about reprisals, but on wrongdoing and people coming forward, there are very small numbers. Obviously we have to have reprisal protection, but what are we doing to encourage people to come forward? We have 400,000 people covered under this, but just 86 have come forward, and wrongdoing was found in only one file in the last two years. What are we doing to encourage people to come forward?

Mr. Joe Friday: I might say, to begin my response, Mr. Chair, that I will also be tabling a founded case of wrongdoing the day after tomorrow in Parliament and another on the following Thursday, so there are two more coming. I can't speak—

Mr. Kelly McCauley: One is on me and one is on Mr. Weir? Okay. Thank you.

Voices: Oh, oh!

Mr. Joe Friday: One challenge that is routinely identified and discussed at both the national and international levels is the need for ongoing information and awareness. There can never be too much.

I will admit that when I came into the job, I thought it was going to be much easier to make coming forward front of mind for people, but there's a great and valid fear of reprisal. We take—

Mr. Kelly McCauley: Is it a built-in culture? We've heard about the DND culture of intimidation with regard to speaking up against some of the procurement. That came up before. We've been discussing the Phoenix issue a lot. We have reams and reams of paper from access to information stating very clearly that there were problems with the program, but no one came forward. We've seen staff who haven't been paid go to the media rather than speak up, because they're afraid of reprisals.

Mr. Joe Friday: I think it's a combination of both institutional or bureaucratic culture and human nature. It represents an enormous challenge for an organization such as this.

Mr. Kelly McCauley: I'm short on time. Do you have recommendations on how we can expand this? I don't want to say promote it, but....

Mr. Joe Friday: Well, I'm hoping that the sum total of our recommendations is going to be to demonstrate to people that they shouldn't be afraid to come forward, although I fully understand why there will be that fear. My motto to myself is that if my starting point is that whistle-blowing is the right thing to do, then it shouldn't be so goldarned hard to do it. Our collective responsibility in my office is to try to lower that burden.

We have included in the binders copies of our outreach and communication material that we distribute and that we continue to refine and produce. I believe we have also provided—

• (0915)

Mr. Kelly McCauley: I'm just going to interrupt you. You mentioned within your department, which is great, but how do we get it out to the other departments—procurement, DND, transport? How do we get it out to them? Do we build it into their mandate letters into the future?

Mr. Joe Friday: I think that any possible effort to raise awareness and encouragement is important. I would like to see questions asked in the public service employment survey. I would personally be very supportive of having, in every manager's performance assessment, a formal requirement that they raise the issue of whistle-blowing within their organization.

Our focus group test results, which we have included for your review, indicate the importance of senior management's role in this trickle-down—I don't want to say permission or approval—acceptance of whistle-blowing. It really is a project of normalization, if I can use that word.

Mr. Kelly McCauley: Perfect.

We're very short of time. You mentioned the reverse onus on reprisal, which I think is wonderful. I think we discussed with a previous witness about a reverse onus also for investigation of whistle-blowing. If I bring up something, instead of the department having time to hide it or brush it up, they're required to prove it—there's a reverse onus of proof on that—as opposed to just hiding it.

Is that plausible, or is—?

Mr. Joe Friday: I don't know if it would affect the actual investigative process. Departments have the statutory obligation to

comply. Failure to do so is a criminal offence. I think the reversal of an onus is relevant before a decision-making body like the tribunal—

Mr. Kelly McCauley: I just have one last the question before I'm out of time. I'm sorry, but we're just so short of time.

I noticed in looking at a chart here that it shows disclosures of wrongdoing, 86; disclosures of wrongdoing carried from previous years, 39; reprisal complaints, 30. It's pretty even across the last five years.

Is there a general correlation between the reprisals and the number of reports? Are these reprisals related to those reports, or are they other reprisals?

Mr. Joe Friday: We can accept a reprisal whether or not a person made a disclosure to our office. The reprisal is not contingent upon there having been a founded case of wrongdoing in any way. It's just anybody who comes forward. Under that broad definition—

Mr. Kelly McCauley: They're not necessarily related to the disclosures.

Mr. Joe Friday: Not necessarily, no.

Mr. Kelly McCauley: Okay, thank you.

Again, I was sorry to interrupt, but we were short of time.

The Chair: Thank you very much.

Mr. Weir, you have seven minutes.

Mr. Erin Weir (Regina—Lewvan, NDP): Thanks very much.

I'm very pleased to hear the recommendation in favour of a reverse onus, as well as including whistle-blower issues in surveys of the federal public service. These are topics that we've discussed at our last couple of meetings.

I do want to get a little bit into the case of your predecessor integrity commissioner, Christiane Ouimet. It seems to me that the office was somewhat tainted by the fact that the Auditor General determined that she had failed to fulfill her mandate. Indeed she was accused of many of the same behaviours that the office should be trying to combat in the federal public service.

I wonder if you could speak to that, and speak to how it's affected the office and your work in it.

Mr. Joe Friday: Mr. Chair, that period in our history...and I guess I could perhaps understate it by saying that it was a rocky start to the new Integrity Commissioner's office. The onus that it has put on the organization is certainly to continually reassure people that when they do come to our office, they will be treated confidentially and fairly and fully and will be given the full benefit of the law.

It has formed part of our identity, but that is now almost seven years ago, so I'm hoping that our successes and achievements following the departure of the first commissioner have gone a very long way to reassuring people. I hope that the 16 recommendations that I'm tabling before you today are a confirmation of the commitment of my office to protecting people who come forward and to supporting whistle-blowers.

● (0920)

Mr. Erin Weir: Do you feel that the effort to get past it has succeeded, or do you think that public servants looking at the office, knowing that you were working very closely with Madame Ouimet, would be apprehensive or nervous about approaching you or the organization based on that history?

Mr. Joe Friday: Obviously I hope that would not be the case. I can't think of a single incident in which someone has said they won't come forward because of that. I hope that my statements, my actions, my words, and my decisions as commissioner, which is a position I've held for just less than two years, would go a significant way to dissuading any discouragement that might otherwise be there.

Mr. Erin Weir: I want to also give you an opportunity to respond to the Auditor General's spring 2014 report, which I think was quite critical of the way that you and Mario Dion managed a couple of whistle-blower cases. There were very long delays, and confidential files went missing. This is part of the background that our committee looks at. I want to get your take on it, your response to it.

Mr. Joe Friday: Yes, that report was specifically in relation to a delay on two cases, I believe, so it was confined. Following that.... In fact, even before that report was tabled, we were putting in place internal standards to ensure that we have the structures in place and, quite frankly, the people in place—and enough people, which is a recurring challenge—to get the work done and to avoid those kinds of delays.

We have service standards in place now to deal with our cases: 90 days to do an initial case analysis, and a year to complete an investigation, with a target of 80%. As of today, I believe we're above the 90% mark. My two colleagues here and another colleague, our director of operations, meet every three weeks to go over files to ensure that delays are identified and managed appropriately.

There will be cases, I have to say, in which we have 20 or 30 witnesses, and some of those witnesses will be unavailable and some of them are seeking legal representation. All of that contributes to delay, but we have set our own internal service standards to monitor our own ability to do our work in a timely fashion.

Mr. Erin Weir: Excellent.

As other committee members have mentioned, at our last meeting we heard from a number of civil society groups, outside advocates on whistle-blower protection. Some of them are in the room today. I wonder what steps you've taken to engage with that community to work with those outside experts to improve the process.

Mr. Joe Friday: We work with what I would describe as a broad network of people whose input we're interested in taking into account. We've listened to voices, and dissenting voices are of course part of a democracy. I have an advisory committee on which we have significant union and organizational representation.

I think that in the current iteration of that external advisory committee we have a rich and broad representation of the voices of public servants. It's public servants who are our primary stakeholders. Of course, members of the public can also come forward and make a disclosure to our office, but the primary focus is certainly on public servants.

Also, under our act, “wrongdoing” is in or related to the federal public sector.

Mr. Erin Weir: It absolutely makes sense to be consulting with public servants and the unions that represent them, but how about these outside groups, such as FAIR or Democracy Watch? It seems to me that in the past an attempt was made to include some of them on a committee, and that was ended pretty quickly. I wonder why that is. Might it be worth trying to again reach out to those organizations and include them in the process?

● (0925)

Mr. Joe Friday: Mr. Chair, our office is always interested in getting the broadest possible input from the broadest possible array of informed voices.

The Chair: I'll have to stop you there. Thank you.

We'll go to Madam Shanahan, please, for seven minutes.

Mrs. Brenda Shanahan (Châteauguay—Lacolle, Lib.): Thank you, Chair.

Thank you, witnesses, for being here this morning.

The numbers are still very much a concern to me, the relatively few numbers of disclosures that are made in the first place. That's the first thing. That's the funnel we need to be working with. One would think, with a public service of 400,000 employees, that there would be somewhat more than the tens of cases—barely a hundred or so cases—we're seeing.

We heard testimony from other witnesses that of course not every disclosure enters into the criteria of whistle-blowing, but I'll take it from the position of a new employee, of somebody who's concerned about their job. They see something that they don't understand and want to talk to somebody about it, and the first thing they're greeted with—because apparently these are the kinds of tools that are given to the employees at their orientation—are five questions that you should ask yourself before you even say anything. As for some of the things the employees are told right away, I know we're trying to be helpful, but one thing they're told is to be concerned about what effect this would have on their families and their friends.

What's in it for the employee to even come forward? Nothing but trouble. Can you please comment on that?

Then I'd like to hear from you about how the changes that you would like to see would in fact encourage more people to come forward. Maybe we can take away the word "whistle-blowing" and just come forward with their concerns, because everyone benefits in that case.

Mr. Joe Friday: Mr. Chair, first I would like to point out that the pamphlet you have, the five questions, is not one that we distribute anymore. That negative message it was sending represented a way of thinking some years ago.

That is not distributed. That is not published anymore. We have a new pamphlet, and the new pamphlet is actually included in your binder today.

Mrs. Brenda Shanahan: Is this the new pamphlet here?

Mr. Joe Friday: Those are the new five questions.

Mrs. Brenda Shanahan: Okay. All right. The other one was a decision-making tool that was a link to the website.

Mr. Joe Friday: The first five questions, and I agree with you, had almost a dissuasive tone or a discouraging tone. I think the thinking behind that was that we wanted people to understand the importance of whistle-blowing, and the fact is, things have happened. Reprisal is not something that we can pretend doesn't exist in the system, but our new five questions, I think, put a much more positive spin on it.

With respect to the numbers specifically, as I said in my opening remarks, Mr. Chair, we have to take into account the fact that there's a very crowded landscape of recourse mechanisms in the federal public sector.

I don't replace anybody. I'm not an appeal body from anybody. It's not uncommon for someone to come to my office to say, "I was just at the Human Rights Commission. I don't like the decision. Can you please review it?" I was not created as an appeal court for those bodies.

I also have great discretion under the act. I believe a significant portion of the cases that I don't act on are those that I feel can be better dealt with by another body. It's not that those situations go unattended.

For example, I'll use the human rights situation. If someone comes to my office and says that they've been discriminated against, contrary to the charter of rights, would that be a wrongdoing? Absolutely, if it's proven to be true. Does my office need to be the office that says that? Maybe not. I respect the expertise that other tribunals and other bodies have, so in a typical case, if there is such a thing in my world, we would likely say to that person, "We think that the Human Rights Commission and the tribunal, with its expertise and its specific remedies and its specific processes, is the appropriate place for you to take your—"

• (0930)

Mrs. Brenda Shanahan: If I may, Mr. Friday, I'll ask you to give us a flavour of the comfort level that people have in coming to your office. I say that knowing that you have recommended that in fact the Auditor General's office be endowed with some powers, from my understanding here, when investigating your office, that your office has not completed.

Again, it becomes an additional step, but of course in the trust landscape, the Auditor General's office has a tremendous amount of trust from people. Would it be appropriate to encourage people—and I'm just putting that out there—to approach the Auditor General's office in the first place?

Mr. Joe Friday: The proposal with respect to the Auditor General is to expand the power they have to deal with a reprisal. They can currently investigate our office under the heading of wrongdoing. We think it's fair that this should be expanded to reprisal, so it's to put a broader or a more complete set of powers into the Auditor General's hands vis-à-vis their oversight of my office. I think the investigator's office is not free from investigation itself, so we would be expanding the power given to the Auditor General.

With respect to the particular legislative amendments to increase confidence—for example, right now you can make an internal disclosure to a designated senior officer or to your manager—my first proposal is that you be able to make a disclosure internally all the way up the line, up to and including the deputy minister. It's to open those gates.

We want to have, as I mentioned in my opening remarks, access to outside information. If, for example, a public servant is accused of running a business on the side or using it in an inappropriate way, it would be important for me to have the ability to look at business records outside the public sector in order to do that. I think that would increase confidence.

There is one proposal that I feel very strongly about—not most strongly, because I think the reverse onus, the interim remedies, and the payment of legal fees are essential—but the entire idea that you have to prove that you came forward to my office in good faith makes me crazy. You should not have to do that. What matters is that you have reasonable belief in the truth of what you're coming forward with.

The Chair: We'll have to stop there, Mr. Friday. Perhaps you could expand upon that in our next round of questions, which will be five minutes in duration.

[*Translation*]

Mr. Clarke, you have the floor, and you have five minutes.

Mr. Alupa Clarke (Beauport—Limoilou, CPC): Thank you, Mr. Chair.

Good morning to you all. Thank you for joining us this morning.

Mr. Friday, I am going to continue with you.

I have with me the annual report on the Public Servants Disclosure Protection Act, prepared by the Treasury Board. If I am not mistaken, our first witnesses, two weeks ago, were officials from the Treasury Board. I have the statistics that you provided to us. I am interested to see the total number of disclosures analyzed from 2010 to 2016. We can see that there are two routes to consider.

Mr. Joe Friday: There is the internal route and the external route. They are linked, but they are completely separate.

Mr. Alupa Clarke: So that is what we are going to keep talking about because that is what interests me.

Internally, the total number of disclosures analyzed over five years is around 2,000. The total number of disclosures received and analyzed by your office since 2007 is 774. In your view, what explains the fact that, apparently, public servants are using the internal route more than your office?

Mr. Joe Friday: The Treasury Board statistics deal with allegations, not with disclosures. In our office, we analyze disclosures. Each disclosure contains a number of allegations. I feel that it's almost impossible to compare the two because the Treasury Board uses a different method.

Mr. Alupa Clarke: Nevertheless, if we compare things according to the same standards, is there a way to find out if you receive more cases than the internal route? If you take your own data, do you have to handle more cases? Do people have to deal with more of them?

Mr. Joe Friday: We received 1,700 allegations.

Mr. Alupa Clarke: That is much the same. Thank you for that clarification.

Should there be an internal process? Why could you not be the only one looking after all complaints, all disclosures, all allegations, and so on?

For example, last week, we heard comments from an official who deals with disclosures in the Department of Health. I assume he does a good job, but do we really need a body to protect whistleblowers in every department? Could you not be the only one who looks after it all?

• (0935)

Mr. Joe Friday: One of the strengths of the Canadian system is that those options exist. The choice lies with the whistleblowers. It depends on each person's level of trust. The goal is to make sure that each potential whistleblower has all the information needed to make a completely informed decision. That's a very important aspect of our system.

The former system required people to go through the internal option before they could use the external option.

Mr. Alupa Clarke: That is interesting. So you are saying that, beforehand, people had first of all to go through the internal process. Now they are allowed a choice.

Mr. Joe Friday: The whistleblower can choose the internal route or the external route.

[English]

The Chair: Thank you.

[Translation]

Mr. Alupa Clarke: Thank you, Mr. Chair.

[English]

The Chair: Mr. Whalen, you have five minutes, please.

Mr. Nick Whalen (St. John's East, Lib.): Thank you, Mr. Chair.

Thank you all for coming.

I want to go to your chart here, Mr. Friday, to the third tab in the document you have provided. Could you provide us with a sense of the number of disclosures of wrongdoing that are received but not analyzed? You're starting at a number of disclosures that are received

and analyzed. How many disclosures are you receiving and not analyzing?

Mr. Joe Friday: None. All disclosures, just to explain the process

Mr. Nick Whalen: No, no, that's fine. I want to move through the chart here.

The next thing we have is investigations launched. We see that over, let's say, the previous nine years, somewhere between a sixth and a tenth of investigations were launched as a result of the analysis. Over the past few months, I guess this financial year, about a third of the disclosures being received and analyzed are getting an investigation. Can you explain why this great uptick is occurring?

Mr. Joe Friday: Do you mean the increase in investigations?

Mr. Nick Whalen: Yes.

Mr. Joe Friday: I would like to think that it demonstrates good leadership on the commissioner's part.

Mr. Nick Whalen: Okay, but how come it wasn't happening in the previous years?

Mr. Joe Friday: My approach has been to always use the investigative process to determine whether or not something does constitute wrongdoing. At the—

• (0940)

Mr. Nick Whalen: Sure, that's fine, Mr. Friday, but how come it wasn't happening for the previous nine years?

Mr. Joe Friday: I think it could also be the fact that the kinds of cases we're getting now are more focused on the actual understanding of what wrongdoing is. For example, in the first couple of years we were getting an enormous number of staffing complaints that were really the purview of the Public Service Commission. I think we're getting fewer of those now. I think we're getting more cases that are, if I may say, stronger evidence cases—

Mr. Nick Whalen: Of wrongdoing rather than labour relations.

Mr. Joe Friday: —that actually deal with wrongdoing as defined under our act.

Mr. Nick Whalen: Okay. That's fine.

There seems to be a great uptick, then, in the number of cases. If you're not receiving labour relations cases and you are receiving cases that relate to actual wrongdoing from previous years, why do you see that coming forward now as opposed to...?

We now have 65 cases, and I'm assuming that we have to gross this up by, I don't know, about 50% in terms of the actual number of investigations occurring just over the short span of a year. Why do you feel that so many more legitimate allegations of wrongdoing are coming up now, when they hadn't been coming up over the previous nine years, when it was all labour relations?

Mr. Joe Friday: I think one of the key reasons for this is awareness of our office. I have to say that it still surprises me, when I'm doing a public speaking event or I'm at a meeting or other event of some kind, that people are still surprised to learn that there is a federal public sector whistle-blowing regime.

Mr. Nick Whalen: We were told last week that everyone has it in their contract. They have a code of conduct that includes an explanation. Their employment contract states that this office exists and describes its purpose and how to go there for help, although, if I look at previous years, it seems that people weren't necessarily helped. They're being made aware of it, but they're not listening, I guess, or is it perhaps that the disclosure within their employment contract isn't sufficient disclosure?

Mr. Joe Friday: I think one of the challenges is to ask whether we want every public servant to be thinking about reprisal and blowing the whistle every day of the week, or whether, to use the fire station analogy, they know that if something happens, there's a process they can go to that will support them, and they know exactly where it is.

Mr. Nick Whalen: Mr. Friday, I still see—

Mr. Joe Friday: There's an ongoing awareness, if I can put it that way.

Mr. Nick Whalen: Yes.

As someone who might have received two separate flyers, one that tells me to be afraid of whistle-blowing and one that encourages me to engage in whistle-blowing, even though the experts who came last week told us that it might be one of the worst things we could do for our lives, I still see 65% of cases of whistle-blowing not being investigated.

It's not many, so for the last three or four years, perhaps you could provide us with a breakdown of the reasons in terms of the analysis of wrongdoing received. You could group them into buckets, I'm sure. You described some of the buckets. Last year 73 investigations were analyzed but not launched. The previous year, 83 disclosures were received with no investigation launched, and maybe this year 44 were received but not launched. This would give us a sense of why people's concerns aren't being treated with the same level of respect or why, through the analysis process, they might disappear.

You could just come back to us with that information.

The Chair: Unfortunately, Mr. Friday, we'll have to get you to do that, submit that in written form, since we're out of time.

Mr. Joe Friday: If I may respond—

The Chair: We're well over time.

[Translation]

Mr. Clarke, you have the floor for five minutes.

Mr. Alupa Clarke: Thank you, Mr. Chair.

Mr. Friday, I am coming back to you. You are popular this morning, I see.

I am going to talk about the statistics again, and—

[English]

the total number of reprisal complaints received and analyzed.

[Translation]

I guess I could have said that in French.

For example, in 2008-2009, there were 20 complaints of reprisals. Basically, 20 public servants told you that they had suffered reprisals after having made a disclosure. That's what it means.

Mr. Joe Friday: The link is vital. Under the Public Servants Disclosure Protection Act, reprisals...

Mr. Alupa Clarke: Whether or not it is confirmed, a person feels that it has happened.

In 2008, 20 people came to your office. But no investigation took place as a result.

Moving to 2009, two investigations took place. But nothing actually happened.

Why, every year without fail, do we see a significant number of people who feel that they have been the object of reprisals, but you find that it is not the case? Is there a problem with the authority? I do not know what is going on.

• (0945)

Mr. Joe Friday: With most of the complaints we received, there was no disclosure. The problem is that all the reprisals happen in the workplace. But not all labour relations problems are reprisals. All reprisals are a way of getting revenge, but all cases of revenge are not reprisals under the act.

Mr. Alupa Clarke: That's why I'm kind of playing the devil's advocate.

For the past three weeks, a number of witnesses have told us that the act is not always working as it should be and that a lot of whistleblowers are not properly protected. Based on your figures, a number of people said they were subject to reprisal, but you told them that it wasn't the case.

Ultimately, perhaps the act is not as bad as it seems. It is also important to prevent public servants from starting to think that, when their superior tells them to act in a certain way, it is a reprisal. There's also authority in public service and it is important to be able to exercise it.

Is the act as bad as that? In a number of your decisions, you told public servants that they were not victims of reprisal.

Mr. Joe Friday: Fifty per cent of cases are outside our jurisdiction. I don't have the jurisdiction to handle 50% of the cases that are submitted to me.

Mr. Alupa Clarke: What sorts of cases are you not able to process?

Mr. Joe Friday: For instance, the act doesn't allow me to process grievances. There are also complaints from provincial public servants, which don't fall under my jurisdiction.

Mr. Alupa Clarke: I admire public servants, but for the purposes of the study, let me ask the following question. Do some public servants abuse your services to solve internal problems, to advance in their careers or for other things? It's a valid question, after all.

Mr. Joe Friday: Yes.

Mr. Alupa Clarke: We have to look at all the possibilities.

Mr. Joe Friday: We have never concluded that there was bad faith.

Mr. Alupa Clarke: You want to believe in good faith, but, ultimately, you very often tell the people there are no grounds for challenges. As you said, you don't have the authority to handle 50% of the cases.

Mr. Joe Friday: That's right.

Mr. Alupa Clarke: For the other 50% of the cases, you have the authority, but you tell those people that there are no grounds for challenges.

Mr. Joe Friday: Yes, but a large part of cases are rejected for other reasons, when they file a grievance, for instance. Those cases are already settled through a different process under a different piece of legislation. We are not a court of appeal.

Mr. Alupa Clarke: Certainly, the numbers don't tell the whole story.

Thank you.

[English]

The Chair: Thank you very much.

Go ahead, Mr. Peterson, for five minutes, please.

Mr. Kyle Peterson (Newmarket—Aurora, Lib.): Thank you for that, Mr. Chair, and thank you to the witnesses for being here with us this morning.

I have a few questions.

Mr. Friday, you suggest some legislative changes, but in your presentation you also rightly acknowledge the need to change the culture. Obviously it takes more than legislative change to effect that change.

In your defence and in your department's defence, though, the culture itself isn't really a unique culture. The culture you're pushing against is actually human nature. If I'm a whistle-blower or an employee, why would I come forward with a complaint? Why would I subject myself to what I consider a very cumbersome process, to the possibility of reprisal, and to the possibility that I might be wrong or may have misinterpreted or didn't really see what I thought I saw? It seems to me the obstacles in the place of a potential complainant are manifold, and some of them are, quite frankly, beyond your or anyone's control.

I think the crux of whistle-blower legislation in general is that it's trying to address human nature, the tendency for people to go about just doing their jobs, putting their time in, supporting their families, and not wanting to rock the boat, so to speak—and who can blame them?

The more cumbersome we make it... I come from the world of litigation, and the biggest complaint among my colleagues is that civil procedure is extremely cumbersome and is not necessarily fair to the plaintiff. Defendants can use it to slow down the process, to delay it and get to the end they want.

Then I came here, and I realized that Ontario civil procedure is like a walk in the park compared to some of the regimes we've built here in Ottawa. Even under this act, I have three options as to where

to come forward as a complainant, but I can also grieve it to my union. There may be a human rights component, and in that case I can avail myself of the Canadian Human Rights Act.

It seems to me that the process is massive and that we don't do enough to empower the potential complainant. Even if we could change the culture and change the attitude, what would I do, practically speaking, if I were a new employee or a relatively young employee and I saw something I thought was wrongdoing? Even if you appeal to a sense of duty or my sense of doing what's right for Canada, why should I be the one taking that risk when there are 400,000 other people who aren't? I see that as the big obstacle, and I don't know what you, Mr. Friday, or what we as legislators can do to address that obstacle, except maybe make this culture shift.

There seems to be a consensus that there are not very many complaints coming forward. Maybe there's nothing anyone can do about it, but we can make sure the complaints that do come forward are processed properly, that the procedural fairness levers are place, and it doesn't become... The fear of reprisal, I think, is only one obstacle. Who wants to become engulfed in procedure after procedure and lengthy delays, not knowing what it's going to do?

Mr. Chair, I've represented complainants in civil proceedings. It changes your life. It becomes your entire life. If you are on a three- or four-day trial, the month before, you can't think of anything else. You can't sleep. It literally takes the wind out of a lot of people's sails. If I'm working for the public service, why would I want to risk all that for what I think might be a wrongdoing, when none of my colleagues are coming forward?

● (0950)

Mr. Joe Friday: First of all, Mr. Chair, as a former litigator I fully understand where you're coming from. You raise an interesting question—one that I've spent a lot of time thinking about and have actually spoken about as well, most recently at the Council on Governmental Ethics Laws Conference in New Orleans, and at the OECD—and that question is, how do we define success? Is it only about the number of final case reports we table, the number of findings? Is it the number of people who come forward, regardless of the outcome of the case, because that indicates that they're not afraid and they have confidence in the system? Is it the extent to which people feel they have been treated fairly? Does that build their faith and loyalty in the system? I don't want to underplay the importance of making reports, but I think the definition of success in this field is far more multi-faceted and varied.

With respect to steps that can be taken to address this issue of navigating the web of mechanisms, I'm very happy to say that my team spends a considerable amount of time doing that with everybody who contacts them. We find it falls on our shoulders to try to explain this process. In many cases, people have been to a number of other places and have been told that it's the wrong place or it isn't where they should go. Many people who are providing the information don't—

The Chair: We'll have to cut it off there.

I do apologize because, frankly, I think Mr. Peterson has locked on to probably one of the most important facets of what this committee needs to do. We have certainly, from the Chair's perspective, received information from whistle-blowers who, unfortunately, because of their fear of continued reprisal, have not agreed to come forward, even under the cloak of anonymity or the assurances of an in camera proceeding. I think whether or not there are adequate protections being given to those people who do come forward is a real concern. As Mr. Peterson said, why should they? Unless that changes, nothing else will happen.

That's an extraneous comment; I apologize for that.

Before we go to Mr. Weir, I will say this, colleagues. I mentioned that there will be bells ringing. My understanding now is that it's going to be on a time allocation vote, which means, procedurally, that after the motion is put, there will be a 30-minute debate, and then the bells start ringing. I think we will probably have almost the entire meeting.

I should have another rotation of questions for the government side, a full round. You can give it to the clerk. It will be the same thing for the opposition, and Mr. Weir, I know where you stand on all of this.

Mr. Weir, you have three minutes, please.

• (0955)

Mr. Erin Weir: Thanks very much.

Mr. Friday, I was going to ask if you can think of any Canadian federal whistle-blowers over the past decade who would be deserving of public recognition and thanks.

Mr. Joe Friday: I don't know if I am in a position to identify someone. I don't know if I would be comfortable doing so.

I think that one starting point for me and my office is the respect for the confidentiality of a whistle-blower who comes forward. For example, when we were trying to think who might be appropriate to come to speak about their experience here before this committee, we realized how difficult it is to suggest that someone come forward.

Mr. Erin Weir: Sure; if someone is coming forward confidentially, clearly it wouldn't be appropriate to recognize them publicly. However, there are whistle-blowers who come forward publicly. I think, for example, of the American Office of Special Counsel, which has an annual award recognizing courageous whistle-blowers. Is that something that you've thought about doing in Canada?

Mr. Joe Friday: We talked earlier on in our office about having a whistle-blowing award, and we've spoken to our American counterparts about their program for public recognition. We haven't put our minds to how we might do that in any detail recently. I don't think it's without its significant challenges and potential problems.

I think that the greatest contribution that my office can make is to satisfy and respond to people's needs individually and privately and not necessarily publicly. There are some people who don't want that kind of recognition. There are others who may want that recognition, but it's not something we've pursued with great energy.

Mr. Erin Weir: I just strikes me that if one of the goals is to normalize whistle-blowing, one of the ways of doing that is to

publicly recognize it—of course, not to out someone who has come forward in confidence—

Mr. Joe Friday: Right.

Mr. Erin Weir: —but to recognize people who are out there publicly. What do you see as the reason to not have that kind of recognition?

Mr. Joe Friday: It would simply be the private or confidential nature of whistle-blowing.

I think it's important to remember that we are a neutral, investigative, independent agent of Parliament; we're not an advocacy group. As I said, we don't represent a whistle-blower. As I often say, I don't advocate on behalf of a whistle-blower; I advocate on behalf of the act of whistle-blowing. We have to be careful in recognizing and respecting how our office has been created as an investigative, neutral body, not representing one side or the other.

The Chair: Unfortunately, Mr. Weir, we're out of time.

Now we'll start again with a seven-minute round.

[*Translation*]

Mr. Drouin, the floor is yours for seven minutes.

[*English*]

Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.): Thank you, Mr. Chair.

Welcome back, Mr. Friday, to our committee.

I want to let you expand a bit on what Mr. Peterson was talking about and let you finish. I also want to touch on culture and I want to touch also on two recommendations that you put into your statement.

Do you have any more thoughts about what Mr. Peterson was saying before he got cut off?

• (1000)

Mr. Joe Friday: I don't remember. It's now gone.

Mr. Francis Drouin: That's okay.

You mentioned resources before. I was just looking at budgets over the past four or five years, and it seems that the budget for the office has sort of gone down. Was your office subject to the deficit reduction action plan?

Mr. Joe Friday: We contributed on a voluntary basis to the deficit reduction plan.

Mr. Francis Drouin: Do you feel that has impeded the ability of your office to carry out investigations, or were you able to cut costs in the back office?

Mr. Joe Friday: At that time, we were able to do that. A constant focus on our part is cutting back-office expenses and trying to plough as much of our budget as we can into our operational focus.

For example, when Madam Duquette was appointed deputy commissioner, we eliminated a previous executive position that she had occupied so that we could have that money to put into operations. Operations remain the focus of our budget.

Mr. Francis Drouin: Okay. Thank you for that.

Last week we heard from witnesses that the first thing you do when you carry out an investigation is to go to the deputy head. You've sort of touched on that in your statement. Can you elaborate on the process when you investigate, and how you ensure the protection of the identity of the whistle-blower?

Mr. Joe Friday: Our process is actually a two-step process. When someone makes a disclosure to our office, it immediately goes to a case analyst. That case analyst deals only and directly with the whistle-blower, no one else, to get as much information as they can about the nature of the allegations. They do an analysis that may include research on applicable policies and laws. Then they make a recommendation to me about whether to investigate or not. We give ourselves 90 days to do that.

During that period of time, no one knows that the disclosure has been made. No one knows who the whistle-blower is except us. We don't communicate anything to anybody else.

If and when we decide that we are going to investigate, then the notice provisions of our act kick in, and we are required under the act to give notice of an investigation to the chief executive. We have to give notice if we're going to show up and start taking away boxes of files, for example.

We give notice that we are investigating a disclosure, and we are required under the act to give the deputy minister or the chief executive the substance of the allegations. We do not name the discloser at that time in that notice. We have given at tab 7 a sample notice letter of an investigation. The reason we give the substance of the allegation is that a fundamental component of natural justice and procedural fairness is to know the case against you.

The discloser is not identified. We then investigate. We can go all the way to a case report before Parliament, and the wrongdoer or the wrongdoing organization would not necessarily... It's possible to guess, of course, based on facts in a case, and I recognize that the discloser may be someone.... It's not uncommon during an investigation for a potential wrongdoer to speculate as to who the discloser might be. We would never give that information in the course of an investigation.

Mr. Francis Drouin: You don't need to make a request under the Access to Information Act. Once you've sent out the notice, you can have access to all the information you require.

Mr. Joe Friday: Yes. Every chief executive is required to give us access to premises, information, and employees. When we ask to speak to someone or ask to have information, it's a legal obligation to comply. I can issue a subpoena if I need to.

We have had an extremely high level of co-operation throughout the history of our investigative processes. Sometimes people need a friendly reminder that they have an obligation. When they realize that, they tend to comply very quickly.

● (1005)

Mr. Francis Drouin: One of the last recommendations you made was to allow your office to obtain information outside of the public sector. In your experience, have you had many cases where outside information was available, but because of the act, you couldn't access that information?

Mr. Joe Friday: I wouldn't say that we've had many, but when we have encountered that hurdle, it has certainly interfered with our ability to complete an investigation in the way we would have liked to complete it. I don't know if I could say that it has prevented us from making a finding of wrongdoing, but it has certainly slowed things down and forced us to try to find information in the hands of other people. I will say that despite the fact that....

We've interpreted our act to allow us to at least ask for the information if it is in the hands of someone else. What I want is the ability to do that without having to ask someone outside the public sector, "Gee, do you mind giving that to me?" I would rather be able to say, "I want that information because I need that information, and the reason I need it is to complete an investigation."

Mr. Francis Drouin: Okay.

The Chair: You have less than 30 seconds.

Mr. Francis Drouin: Do you feel that using a third party could potentially better protect the employee or department that is subject to an investigation?

I'll just give you a quick example. If you're investigating a particular department where the whistle-blower, the employee, finds himself or herself, they will be in a specific department, a specific branch, and if I were the manager, it would be fairly easy to identify who that person could be. However, using a third party, perhaps using access to information, could potentially hide better the identity of the employee.

Do you feel that this could be useful?

The Chair: Mr. Drouin, I should have been more explicit. When I said you had 30 seconds, that was for both the question and the answer.

Voices: Oh, oh!

The Chair: Unfortunately, we're out of time. We're going to have to go to Mr. McCauley for seven minutes, please.

Mr. Kelly McCauley: Mr. Friday, you can answer Mr. Drouin's question quickly, if you don't mind. I wouldn't mind hearing it.

Mr. Joe Friday: I don't see a particular benefit in using a third party for the purposes of protecting confidentiality. I may not fully understand the question, but I'd be happy to come back to it if there is time.

Mr. Kelly McCauley: Thanks, Mr. Friday.

When you give notice of an investigation, you send a letter. What timelines are you giving? The reason I ask, cynic at heart, is that we've seen in other governments, provincially.... We saw here in Ontario that the premier's office wiped their computers clean of emails. I think it's a natural human instinct to go into protection mode. I don't have faith at all that it would be "Look, I'm being investigated. Here's my Internet browser history."

Do you not worry that roadblocks are being thrown up to your investigations or protections?

Mr. Joe Friday: I think it's certainly possible that people could and would do what they can to avoid producing—

Mr. Kelly McCauley: I'm not a lawyer, but you mentioned natural justice: a person has the right to know. I would think that a lot of times it would be a department or their acts being investigated, and maybe not a person. I don't think such natural justice would apply to a department. We saw in the Lac-Mégantic disaster that Transport Canada wilfully, systematically overlooked safety procedures. That wasn't Bill Smith doing it; it was the whole department. It would seem counterintuitive to protect natural justice—

Mr. Joe Friday: One good thing about the technological world we live in is that if information in the hands of one person is destroyed, it is also in the hands of many other people. We've gone in and we've essentially seized servers. We've had our own IM/IT people come in and go to backup servers—

Mr. Kelly McCauley: Is there a stronger way to investigate, without having to give full notice and say, "We're coming in next week"?"

Mr. Joe Friday: Pardon me?

Mr. Kelly McCauley: Is there a better way to do the investigations, as opposed to giving such advance notice, etc.?

Mr. Joe Friday: In the—

Mr. Kelly McCauley: I'm not criticizing. I'm just wondering if there is a better way.

Mr. Joe Friday: Right. I haven't put my mind to that specific issue, but it hasn't proven to be that negative or deleterious to an investigation.

Mr. Kelly McCauley: Have any of the whistle-blowers ever commented back that something has been hidden, deleted, or shredded?

•(1010)

Mr. Joe Friday: Yes, in fact.

This was in another province. In one of our earlier cases, we actually had the whistle-blower contact us to say, "I think something

may be going on", so we put an investigator on a plane immediately and went to—

Mr. Kelly McCauley: Perhaps there are ways, as we're developing this, that we can develop a more robust investigation process.

Mr. Joe Friday: Part of this goes to good investigative procedure as well.

The Chair: Colleagues, I'm going to interject here and reverse what I said earlier, which was that we'd probably get through the full round.

There was a time allocation motion, but from a procedural standpoint the government has given intention that it's not giving allocation for the debate to be completed in a day or two: it is to be completed today. That circumvents any 30-minute debate, which means the bells have started ringing now. There will be a vote in approximately just under 30 minutes, so unfortunately we'll have to adjourn.

On behalf of the committee, I want to thank Mr. Friday, Madame Boyer, and all of the witnesses for your appearance here. I wish we had more time, because I think there are many more questions that committee members have. We may have written questions for you, Mr. Friday and Madame Boyer. If we do not schedule another meeting inviting you to reappear, at the very least we may have written questions asking for your submissions to be sent to our committee.

Mr. Joe Friday: Thank you, Mr. Chair.

I have also provided in your binders the contact information of all the members of my senior management team. I assure you that we remain available at your convenience to answer any questions or provide any information that you, Mr. Chair, or committee members may have.

The Chair: Thank you very much. We appreciate that.

The meeting is adjourned.

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