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# Standing Committee on Government Operations and Estimates

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Chair: Mr. Kelly McCauley





## Standing Committee on Government Operations and Estimates

Wednesday, April 19, 2023

• (1630)

[English]

**The Chair (Mr. Kelly McCauley (Edmonton West, CPC)):** Colleagues, good afternoon. I call this meeting to order.

Welcome to meeting number 61 of the House of Commons Standing Committee on Government Operations and Estimates.

Pursuant to the order of reference adopted by the House on Wednesday, February 15, 2023, the committee is meeting on the study of Bill C-290, an act to amend the Public Servants Disclosure Protection Act.

With us we have the creator of the bill, MP Jean-Denis Garon. We will have an opening statement from you for five minutes, sir.

Go ahead.

[Translation]

**Mr. Jean-Denis Garon (Mirabel, BQ):** Thank you, Mr. Chair.

Fellow members, thank you for having me. It is a privilege to come before you today to present my bill, Bill C-290, An Act to amend the Public Servants Disclosure Protection Act.

This is an important moment for me and for many whistle-blowers. This is a historic moment.

For more than 20 years, we have had few opportunities to improve the whistle-blower protection regime within the federal government. I would add that sound management of public finances and government as well as restoring public confidence in the government are deeply non-partisan issues.

We already have a public servants disclosure protection act, but it is flawed, unfortunately, and has at times led to a breakdown in the trust between prospective whistle-blowers and the government. Moreover, according to the independent U.S. organization Government Accountability Project, the Canadian act is one of the weakest of its kind among countries that have this type of legislation. In fact, Canada is ranked behind Lebanon, Rwanda, Pakistan, Bosnia, Tunisia, Uganda, Kenya, Zambia, Kosovo, Namibia, Serbia and many others. This is a problem for a G7 country, a G20 country, an OECD member country and for a democracy that is expected to have sound institutions.

This bill seeks to strengthen the mechanisms that protect the anonymity of whistle-blowers and includes additional categories of public servants in the system. It also seeks to better protect the identity of witnesses who participate in investigations. The bill will increase the obligation to support public servants who disclose

wrongdoing and will give them more time to file a complaint. At present, the limitation period is much too short. Disclosing wrongdoing is an extremely demanding process; it can take more than 60 days to decide whether to proceed. The bill will simplify the appeal processes that whistle-blowers can use in the event that they face reprisals. It will also make it possible, in cases of mismanagement, to refer the matter to the Auditor General.

I wish to point out that the current legislation came into being in the wake of the sponsorship scandal, which was exposed thanks to the expertise of the Auditor General, expertise found in few other places within the federal government.

The intent of the bill is to restore confidence between the public service and the federal government, which is extremely important. Whistle-blowers are very courageous individuals who want to better protect the public. The decision to disclose wrongdoing has an enormous impact on the whistle-blower's life.

Over the course of its review, the committee will meet with witnesses whose lives have been shattered by this process. These individuals placed their trust in the process, but it is seriously flawed—as we will see during the clause-by-clause review. They ended up being punished for doing good and for wanting to serve Canadians, Quebecers, taxpayers, democracy at large and our institutions. In some cases, these individuals were even placed under surveillance. The committee may meet some people who are afraid to come before the committee, who fear reprisals. It is this type of situation that we need to address; our democracy depends on it.

By protecting whistle-blowers, we are safeguarding democracy and sound management, as well as the government. Scandals should not be used as a management tool. We cannot wait for a scandal to occur before making adjustments to legislation.

We need to put mechanisms in place to ensure that Canadians who witness irregularities are better served by government institutions, and that is the very intent of the bill that I have introduced in the House of Commons.

Thank you.

• (1635)

[English]

**The Chair:** Thank you very much, Mr. Garon.

Colleagues, before we start our first round, there will be bells at 5:30. I'll do the customary ask in advance for unanimous consent to continue to about five minutes to six. Hopefully, we'll be able to get through Mr. Garon as well as the opening statements from our witnesses for the second hour before we suspend.

Are we good with that?

**Some hon. members:** Agreed.

**The Chair:** Thank you very much. I appreciate that, colleagues.

Mrs. Kusie, you're opening for six minutes, please.

[*Translation*]

**Mrs. Stephanie Kusie (Calgary Midnapore, CPC):** Thank you very much, Mr. Chair.

Thank you, Mr. Garon, for being here today, and for the work you did in developing Bill C-290, work that the government decided not to do.

What do you think are the reasons why the government decided not to implement the recommendations from the committee's 2017 report?

**Mr. Jean-Denis Garon:** It is difficult for me to speculate on the government's motivations, and that is not the purpose of my appearance today.

Keep in mind that the Standing Committee on Government Operations and Estimates produced a report several years ago. What is interesting is that a high level of consensus was achieved regarding this report. It was supported by dozens of briefs, and very credible and knowledgeable witnesses.

The provisions in my bill draw to a great extent on that report. In the opposition, we do not have the same means available to us as the government. There is the matter of expenditures and royal recommendations. We cannot suggest, for example, that lawyers' fees, which can sometimes... As you know, taking a case all the way to the Supreme Court can cost up to a million dollars and push people into bankruptcy. These individuals are effectively helpless. That option wasn't available to us.

Many, if not all, of the measures in the bill achieved consensus within the Standing Committee on Government Operations and Estimates.

I'd like to explain, if I may, the reason I brought this bill forward. Shortly after I was elected, in 2021, I was shocked to receive phone calls and emails from whistle-blowers who had witnessed wrongdoings, alleged wrongdoings. As you know, I'm not an investigator. I asked them why they didn't disclose this information themselves, and why they weren't using the processes that were in place. Many of them answered that they knew people who had taken the risk, and that it had ended their career and their life. Their physical and mental health suffered.

Under the current regime, individuals who witness wrongdoing are worried about losing their job, their income, their homes.

When I looked into the act, I came across this committee's report and the reports in which disclosure systems are ranked. When you

read these reports, you see how obvious the flaws are. When you want to travel down a road but it's full of potholes, it's impossible to reach the end without falling into at least one of them and suffering serious injury. This is when I said to myself that introducing this bill was in the public's interest.

**Mrs. Stephanie Kusie:** That was my next question. What was your source of inspiration for this bill? Was there something in your personal history that motivated you to introduce it? Thank you for answering my question.

Now I have some other questions.

You decided to add some portions of the 2017 report to the bill. Why did you choose those particular parts of the report and not all of it? What criteria did you use in choosing some parts and not others?

**Mr. Jean-Denis Garon:** There are three reasons that influenced our decision.

The first reason has to do with the constraints we face in the opposition. This was a big part of the equation.

The second reason relates to my strong desire to have a consensus-based process that would lead to the passage of this bill. I am convinced that this is possible. We are obviously open to amendment proposals during the discussions. The portions of the committee's report that we retained are the ones that are very likely to lead to a consensus.

Obviously, there is a cost associated with this work: we need to keep in mind that a lot of work remains to be done. We have been waiting a long time for changes that can be made simply and effectively. Any step in the right direction would be welcome, and this bill will allow us to get several steps closer to our goal.

Those are the main reasons that led us to introduce the bill in its current form.

• (1640)

**Mrs. Stephanie Kusie:** After this bill passes, what are the next steps for the current government and subsequent governments?

What do you think of the working group that was established to review the Public Servants Disclosure Protection Act?

**Mr. Jean-Denis Garon:** The whistle-blowers issue does not receive enough attention in the news. It's a topic that is often swept under the carpet. Soon after the bill was introduced, the President of the Treasury Board accelerated matters so that more consultations would be held. There are two things I want to say in that regard.

First, I am very happy that we are talking about these courageous men and women who disclose wrongdoing and want to improve public sector management. This was the first effect of the bill. Already, it is a success. If the government wants to hold consultations, it can do so. It can call on experts, and later, it can continue to strengthen the legislation such that royal assent will not be required.

However, these two processes are not mutually exclusive. The consensus-based measures in the bill can be adopted while consultations are still being conducted. The President of the Treasury Board recognizes that that this should be an ongoing process and that the work is never really completed.

**Mrs. Stephanie Kusie:** Thank you very much.

Thank you, Mr. Chair.

[*English*]

**The Chair:** Thanks very much.

Mr. Fergus, welcome back to OGGO. You have six minutes.

[*Translation*]

**Hon. Greg Fergus (Hull—Aylmer, Lib.):** Thank you very much, Mr. Chair, for your welcome. That's very kind of you.

I would also like to congratulate my colleague, Mr. Garon, for taking the initiative of introducing Bill C-290. As the member has just said, this is a tremendous opportunity to reach a strong consensus among all political parties on how to enhance the legislation.

Mr. Garon, I have a few questions for you about certain elements of your bill. A number of the proposed changes involve removing certain restrictions in the act that are intended to prevent overlap with other legislation or organizations. For example, the bill would remove subsection 19.1(4), which prevents individuals from availing themselves of a procedure under another act or a collective agreement when they file a reprisal complaint.

Do you think that the removal of this restriction would lead to significant overlap between recourse mechanisms?

**Mr. Jean-Denis Garon:** The purpose of the bill is to give greater recourse to an individual who discloses wrongdoing, and I believe that, overall, it does exactly that.

This said, the bill is complex, given that the protection of whistle-blowers has implications for many different branches of the public service. It has a very wide reach. Therefore, I believe that amendments should indeed be made to it. Everyone is aware that work needs to be done in this area.

Furthermore, the Treasury Board and the government have a role to play in all of this. The machinery of government is complex and involves many interactions. It will be helpful, even necessary, to hear from public servants on this topic. We are obviously open to hearing their views.

This said, it should be understood that certain mechanisms are provided for in collective agreements; however, this should not be used as an excuse to avoid making laws in relation to this matter. For many years, in some cases, unions have had to make up for the deficiencies in the current regime. Minimum standards must be set out in the legislation.

• (1645)

**Hon. Greg Fergus:** In your bill, why have the references to good faith and to reasonable grounds been removed from the sections of the act that relate to the preliminary review?

Mr. Roche, would you like to answer my question?

**Mr. Marc-André Roche (Researcher, Bloc Québécois):** Good afternoon. Thank you for your question.

The references to good faith are related to the whistle-blower's intentions. In some cases, a whistle-blower may have seen things they did not like for years, and it may be thought that, in disclosing these things, the whistle-blower is trying to hurt the colleagues involved.

However, it is not our role to determine whether, by filing a complaint, this individual is seeking to help or harm a colleague. What matters is determining whether the complaint is justified. Complaints must be judged on the facts, not on the intentions ascribed to the complainant. It is too easy to disregard someone based on the assumption that their intentions are bad. Therefore, we removed these arbitrary elements so that complaints will be judged on their own merits instead of the person's intentions.

If the person is likely telling the truth, whatever their motivation, an investigation and protection are warranted.

**Hon. Greg Fergus:** Isn't there a risk that the removal of these words could lead to frivolous or intentionally malicious disclosures?

**Mr. Jean-Denis Garon:** I think that, at present, the concern is that the provisions you are referring to could prevent the process from moving forward. That is our concern.

The objective of the bill is to improve the quality of the management and administration of public funds. If the complaint itself is justified, any government that wants to improve its processes has an obligation to proceed with the complaint.

In its current form, the provision you're referring to can prevent us from improving management processes in the public sector under the pretext that a person's intentions have been determined. The cost of maintaining this provision as it stands appears to outweigh the benefit.

**Hon. Greg Fergus:** I am short on time.

Would it be possible to find a middle ground in order to come up with something reasonable?

[*English*]

**The Chair:** Give just a brief answer.

[*Translation*]

**Mr. Jean-Denis Garon:** It is always possible to develop amendments or find other ways to rewrite the provisions of the act, provided it doesn't run counter to the objective.

**Hon. Greg Fergus:** Thank you.

[*English*]

**The Chair:** Thanks, Mr. Fergus.

We have Mrs. Vignola for six minutes, please.

[*Translation*]

**Mrs. Julie Vignola (Beauport—Limoulu, BQ):** Thank you, Mr. Chair.

Thank you, Mr. Garon. Thank you above all for introducing this bill.

In the last Parliament, we expressed the intention of examining this legislation, but then 2021 happened and it wasn't possible to carry out a review. You are forcing us to review the act, an undertaking that is well-received, particularly by public servants.

You have already stated your reasons for introducing the bill. For educational purposes, I would like you to provide a brief comparison for us, as clear and concise as possible, of the current act and the legislation that would result from the bill you have introduced in the House.

**Mr. Jean-Denis Garon:** As I said, first of all, the purpose of the bill is to better protect the anonymity of whistle-blowers and witnesses in investigations.

I'll give you an example. The decision to disclose wrongdoing can have a major impact on someone's career. Those who take this step are seldom the only ones who witnessed the wrongdoing in question. Although corroboration is needed, other witnesses may not be at the same point in their personal journey. Therefore, even if the anonymity of the person making the disclosure is ensured, when the time comes to talk with the witnesses and investigate, if these individuals do not have sufficient protection, this will severely constrain the investigator's investigative authority. This is part of what we had in mind when we drafted the bill.

Another issue relates to the time limits. The current legislation states that a person must make a disclosure within 60 days after witnessing a wrongdoing. I am telling you this because you are going to hear from witnesses who have gone through this process and paid a high price. These 60 days provide an opportunity to ask oneself certain questions. Will I be serving the public interest, and acting in the best interest of the country and sound management of the government? Will I lose my job, be demoted, face harassment and so on?

Indeed, there may be reprisals. Sixty days isn't much time to make this decision. When you get a mortgage rate, it is frozen for three months. This is an important decision, so we want to extend this period to a year. I would say that, in this regard, one year is very little time.

There is also the possibility of referring the matter to the Auditor General. At present, when an individual witnesses criminal acts in the public administration, there is obviously recourse to the RCMP. In the case of gross mismanagement, there is no recourse to the Auditor General. As you know, the Auditor General has a unique skill set within the machinery of government and enjoys a unique level of independence with regard to gross mismanagement. This is part of the proposed changes to the legislation.

Lastly, we have an obligation to support public servants. When a public servant suffers reprisals, this person is being given the opportunity to have the reprisal recognized before being forced to bring the matter before the Federal Court at their own expense, thereby risking bankruptcy. These are major changes that are going to make the process much more effective and much less costly, both for whistle-blowers, who are simply doing their job, and for the government, which must manage the entire process, including the appeal and judicial processes.

This is part of the changes contained in Bill C-290.

• (1650)

**Mrs. Julie Vignola:** As you mentioned, it takes a lot of courage to make a disclosure.

Do you know whether any whistle-blowers have turned to the RCMP for help or have filed complaints with the police, but were unable to be heard in spite of their efforts?

**Mr. Jean-Denis Garon:** I can't provide any specific examples right now to answer your question.

**Mrs. Julie Vignola:** What have you learned from whistle-blowers? What have they told you about their experiences?

**Mr. Jean-Denis Garon:** I would have thought that, in a developed country, their experience would be taken into consideration and their observations regarding the management of government would be viewed as expertise. When a person witnesses an irregularity, this becomes a kind of expertise that can be used to serve the government.

In academia, which is where I come from, expertise is valued. Several of the whistle-blowers who have sought my help, who have shared their accounts and with whom I have been in contact have been subject to reprisals, retaliation and demotions. We also need to consider the physical and mental stress that these people endure. They can lose trust in their employer. These are people who are loyal to their employer and who want the government to function properly. They want the government to serve Canadians. However, when they go through this process, these individuals and their families may suffer significant collateral damage.

To my surprise, in a potentially large number of cases, this loss of trust has caused individuals to avoid disclosing irregularities; these cases are therefore not included in the statistics. This is one of the problems plaguing the current regime.

I would have thought that these individuals' unique expertise would be welcomed. This has deeply shocked me.

[English]

**The Chair:** Thank you, Mr. Garon. That is your time.

Mr. Johns, you have six minutes, please.

• (1655)

[Translation]

**Mr. Gord Johns (Courtenay—Alberni, NDP):** Thank you.

[English]

It's good to see you, Mr. Garon.

First, before I get started, I really want to commend you. I know you had a very high order of precedence for PMB. You had many things you could have advanced, and you put workers first. I really want to thank you for that. That's really important.

I want to thank my colleagues at this committee as well. They also want to advance the discussion around your bill so that we can fix it. We know that workers are going through a difficult time. Inflation is way surpassing their wages right now. People are on the picket line right now. They're struggling to make ends meet. Further exasperating that is the mental health they face when it comes to the challenges around the current whistle-blowing system.

We're really happy about this bill around the Public Servants Disclosure Protection Act and improving it. It's direly needed. As you've stated, we fall behind our peers in other countries in protecting public servants who disclose wrongdoing, so it's important. If we don't protect public servants who blow the whistle, wrongdoing stays hidden and we all suffer. Again, I want to thank you for moving forward.

Today is an opportunity for us to help strengthen the bill. We've had some time to consult with some whistle-blowers and some stakeholder organizations that advocate for them, and they've raised some concerns about the bill. Obviously, we want to bring them forward to help improve it, if we're to truly have a system that protects public servants who make disclosures.

This is, again, about improving the bill. One thing we heard is the reverse onus. That would mean that, when a whistle-blower goes before the tribunal to prove employer reprisal, the burden of proof would switch to the employer, who would need to show it had good reasons to take action against the employee, reasons that aren't related to, say, the whistle-blowing. This is the foundation of any decent whistle-blower protection act.

In your discussions with stakeholders and public servants, have you heard about this, that this was a priority? Did you choose not to include it in the bill for any reason, or has it posed any concern?

[*Translation*]

**Mr. Jean-Denis Garon:** Yes, we discussed that, and the matter was also raised by a large number of whistle-blowers, including some who are here today. Indeed, it's one of the things that will have to be discussed. A reverse onus would be welcome if that is the committee's decision. Obviously, we would be very open to that.

With regard to the bill in its present form, there are some elements, one in particular, that would facilitate the process. For example, today, when you want to make a reprisal complaint, the matter must first be referred to the commissioner. If it is subsequently recognized that you have faced reprisal, the tribunal is where compensation may be awarded. However, if the commissioner does not determine that you were subject to reprisal, you have no further recourse than to appeal the matter to the Federal Court, which is extremely costly for an individual.

The current bill would allow the second level of recourse, the tribunal, to not only award damages, as is currently the case under the act, but also review the decision and thus provide a second opportunity to have the reprisals recognized before going through the formal court system. As I mentioned, this would give whistle-blowers an additional opportunity to assert their rights—one that would be less costly, faster and less damaging to their career, and would moreover facilitate processes within the machinery of government.

[*English*]

**Mr. Gord Johns:** I'm going back to the Integrity Commissioner and the investigations.

A concern around what's missing from the bill—and I'll ask you about it today—is the need for proper independent investigation of the wrongdoing that gets reported. Experts and advocates in the field have told me that we can't be confident in the investigations

happening under the current act because the Public Sector Integrity Commissioner has always been a government public servant.

Do you believe that a public servant whose career and connections rely upon staying in the government's good graces is the best person to serve as the Integrity Commissioner? Do you think that a truly independent expert would be better able to carry out truly independent investigations of wrongdoing?

[*Translation*]

**Mr. Jean-Denis Garon:** From our conversations with whistle-blowers and international legal experts who work on such regimes, we learned that the appointment process for commissioners often results in the appointment of someone from the machinery of government who is likely to return to it. This has been determined to be a problem. The bill does not refer to this explicitly, but during the appointment of commissioners, the government must pay careful attention to this aspect.

The current bill provides for recourse to the Auditor General in cases of alleged gross mismanagement. The Auditor General is independent and enjoys full confidence in matters of finance and management.

● (1700)

[*English*]

**Mr. Gord Johns:** Another concern about the bill, which we heard from stakeholders and public servants and which they've raised again and again, is the need for injunctive relief. This would mean proactive protection of whistle-blowers from day one, when they first report the wrongdoing.

When whistle-blowers report wrongdoing, do you believe that it's important for them to be able to immediately obtain an injunction to prevent employer reprisal? Do you see it as a critical aspect of protecting them?

**The Chair:** I'm afraid that's our six minutes, but maybe you can answer in Mr. Johns' next round.

We'll go to Mr. Barrett for five minutes, please.

**Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC):** Thanks very much, Chair.

Thank you to the witnesses for being here today.

I'm not sure how much time we have with bells, etc., so I have one thing to do before I proceed with my questions. I'd like to give notice of a motion that I'm not moving. I'll provide it to the clerk in writing in both official languages.

The motion is:

That the committee:

a) Invite the deputy heads from the following entities in relation to the redactions and improper translation of documents requested by the committee on January 18, 2023: Atomic Energy of Canada Limited; Business Development Bank of Canada; Canada Border Services Agency; Canada Development Investment Corporation; Canada Post; Canada Pension Plan Investment Board; Department of Finance Canada; Employment and Social Development Canada; Export Development Canada; Immigration, Refugees and Citizenship Canada; Innovation, Science and Economic Development Canada; National Defence; Natural Resources Canada; Office of the Veterans Ombud (Veterans Affairs Canada); the Privy Council Office; Public Sector Pension Investment Board; and TransMountain Corporation;

b) Invite the Office of the Law Clerk to brief the committee, in public, on the extent of the committee's powers to call for documents;

c) Instruct the Chair to send a letter to each of the entities listed in section a) of this motion to inform them that the committee is currently considering referring this issue to the House of Commons as a possible breach of parliamentary privilege.

Thanks very much for your patience.

Can you share examples of reprisals that whistle-blowers have faced?

[*Translation*]

**Mr. Jean-Denis Garon:** I have been in touch with a number of whistle-blowers. Some want to disclose their identity, some are well known and some have agreed to tell their stories.

For example, there is one case where an individual had all their work taken away and had nothing to do all week; however, at 2:30 on Friday afternoon, the person was asked to do all the work that should have been done during the week. Some individuals having been followed home. Some have experienced psychological harassment.

When the whistle-blower starts to be ostracized in the workplace, this person becomes a pariah among their colleagues. When individuals at senior levels begin to dislike and ostracize the person, and engage in reprisals, employees, regardless of their position level, naturally tend to distance themselves from the person. They tend to isolate the person, remove them from teams and so forth. Direct reprisals occur, but there are also indirect impacts on the individual's quality of work life.

[*English*]

**Mr. Michael Barrett:** Thank you very much.

Have there been individuals who have been mistaken for a public servant who made a protected disclosure?

What was the effect for those individuals?

[*Translation*]

**Mr. Jean-Denis Garon:** A person who decides to disclose a wrongdoing may, in certain cases, want to remain anonymous. Other employees or the individual's immediate superiors try to figure out who made the disclosure. The witch hunt begins, but sometimes the wrong person may be accused and suffer reprisals.

This raises the matter of how to protect individuals who are mistakenly identified as whistle-blowers. In a sense, there are two aspects to the problem. First, we must ensure that people who have witnessed wrongdoing make disclosures and that they can trust the system. Second, it is necessary to ensure that within the government, no one is subjected to reprisals, where or not the person is leg-

gitimately considered a whistle-blower. No one should ever have to face reprisals.

• (1705)

[*English*]

**Mr. Michael Barrett:** Thank you, Chair.

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

Mr. Housefather, go ahead for five minutes, please.

[*Translation*]

**Mr. Anthony Housefather (Mount Royal, Lib.):** Thank you, Mr. Chair.

Mr. Garon, thank you for being with us. Congratulations. I know that you always work very hard as a member. I am very pleased that your bill is being studied.

I am going to continue in the same vein as Mr. Fergus.

I am a little worried about removing the requirement that the disclosure be made in good faith and that the person have reasonable grounds to believe that they suffered reprisals. Mr. Fergus was trying to find a way to satisfy everyone.

Mr. Garon and Mr. Roche, do you agree that we should at least include the requirement that the whistle-blower should reasonably believe that what they are disclosing is true? I would not want a person to be able to disclose something that they believed to be false, even if it seems true on the surface. Perhaps there is a different way of wording "good faith". Is that possible?

**Mr. Jean-Denis Garon:** You're absolutely right.

Protecting people who disclose wrongdoing is not protecting defamation, and it does not mean we should allow a person to say anything they want about someone else. For our part, we were a little concerned about the legal consequences related to "good faith" as defined in the act, because this makes an assumption about the person's intentions instead of examining the basis for the complaint.

The definition you just gave—that the person reasonably believes that what they say is true—preserves, in a sense, the spirit that we sought to incorporate in the definition of "good faith", while removing the presumption of the person's intention.

I think that that is a step in the right direction.

**Mr. Anthony Housefather:** All right. That's great.

The bill also aims to add the requirement that chief executives support whistle-blowers. I think that this may be misunderstood by some people, who think that this involves money.

Can you explain to us what type of support is involved?

**Mr. Jean-Denis Garon:** This is indeed somewhat ambiguous. It's one of the points made in the analysis by the clerks of the House, who indicated that a royal recommendation was required. There were two reasons for this. If I may, I would like to take a little extra time to address this, without sidestepping the question.



The fact that we would like to expand the application of the act to include government contract workers and add a duty to provide support, which could be interpreted as financial support, could lead to the possibility of a royal recommendation being required. Therefore, we will propose amendments to tighten that up.

When someone files a complaint, we want to make sure that the system supports them properly, through logistical means that are inexpensive, in the sense that they do not require new financial allocations by the government. That is what we mean by support.

We will propose a clarification on this.

**Mr. Anthony Housefather:** Perfect. An amendment will be proposed, then, to define this support and specify that it is not financial.

**Mr. Jean-Denis Garon:** That is correct.

**Mr. Anthony Housefather:** All right. That's perfect.

You talked about support for contractors, and I have a question to ask you about that.

I believe that at least a certain percentage of contractors are subject to provincial law, if I am not mistaken.

Wouldn't it cause a jurisdictional conflict if contractors were included in exactly the same way as employees?

**Mr. Jean-Denis Garon:** Absolutely. This is one aspect of the bill that was flagged to us. We examined it closely and pretty well exhausted this issue. It is our view that the disclosure protection regime must be strengthened and expanded, but it must apply to public servants.

**Mr. Anthony Housefather:** Okay.

Some words, like “abuse of authority”, have been added.

What is the definition of “abuse of authority”? Can you define it or tell us what it should be?

**Mr. Jean-Denis Garon:** We are expanding the definition of wrongdoings. Take political interference, for example. It might be perceived as being new, but it's in the U.S. law, for example. It is one of the criteria of the Government Accountability Project. It is found in a number of places. It involves acts that go against the public interest. In the United States, the legal term is “improper intervention”, and here we might use something like “undue intervention”.

Abuse of authority refers to a manager's behaviour. Naturally, we wondered whether it should be defined in the act. After discussions with legal experts, we realized that the term may seem vague but is already well defined in the Public Service Employment Act, and had already been delineated in practice in Canadian labour law. Since the term is legally accepted and defined, and since it has been circumscribed by labour law jurisprudence, it is well and truly established in law.

I have to tell you that a lot has happened since I introduced the original version of the bill, and that it needs to include foreign interference. If a public servant—

• (1710)

[English]

**The Chair:** I'm afraid that is our time for this round.

Now we have Ms. Vignola for two and a half minutes, please.

[Translation]

**Mrs. Julie Vignola:** Thank you, Mr. Chair.

Mr. Garon, I have two and a half minutes, but you have already addressed my next question to some extent.

Is there anything not found in your bill that current events now force us to take into consideration?

**Mr. Jean-Denis Garon:** What matters is to expand the application of the act. This requires us to define the categories of wrongdoings under the act. This is why we refer, as I mentioned, to political interference and abuse of authority. They are fairly broad but well-defined terms.

Like I told Mr. Housefather, foreign interference must also be included. As a term, it's pretty well defined, while remaining broad enough. We saw this in the allegations of Chinese interference, among other things. If public servants or people that work in the government witness such interference and decide to report it to their organization, they must be protected. This is especially true when the system for protecting whistle-blowers is weak and people don't believe them; that leaves only one safety valve—media and journalists. In some cases involving national security, it is extremely important for public servants to be able to trust the system.

**Mrs. Julie Vignola:** Exactly, and some public servants may be tempted to turn to the media once more instead of relying on the current process. Does this have repercussions on disclosure and the protection of whistle-blowers?

**Mr. Jean-Denis Garon:** The media's job is important, obviously, but as I said at the outset, scandal does not constitute a management tool. The objective of having a good system for whistle-blowers is to protect these people in order to improve processes and remedy the shortcomings in government management that led to the irregularities.

Having an internal process that is perceived as an improvement mechanism is important.

[English]

**The Chair:** You are right on time. Thank you very much.

Mr. Johns, you have two and a half minutes.

**Mr. Gord Johns:** Another benefit of the bill is that it would allow public workers to report wrongdoing to, let's say, an officer in the portion of the public sector in which they are employed, and not just their immediate supervisor.

Can you share with us what the value is in that, and why it's so important that whistle-blowers have the ability to make that choice?

[Translation]

**Mr. Marc-André Roche:** Wrongdoings observed by public servants often occur in their work teams, and this could be the fault of their immediate supervisor. Currently, the employee can bypass the chain of command and make the disclosure to the person at the very top, the commissioner, although the process is very intimidating. However, sometimes the process should be simpler and involve the manager of a unit in the same department. This would simplify things and promote a culture of transparency, openness and frank discussion. The more simplified the processes, the easier it will be to solve problems before they escalate.

[English]

**Mr. Gord Johns:** The bill extends the application of the act to wrongdoings in the public sector that involve an abuse of authority and political interference. With these additions, is the list of potential wrongdoings broad enough?

Have you heard from whistle-blowers or advocates that any other category should be added or included?

• (1715)

[Translation]

**Mr. Jean-Denis Garon:** As I said earlier, this is still a step forward. Only time will tell if these two additions are sufficient. We're not sure, but clearly it is a major step forward. Adding these two categories ensures that a greater number of wrongdoings are captured. I think foreign interference has to be added.

What I must stress, Mr. Johns, is that the bill also provides for a review mechanism every five years—which is not the case in the current act. The political world and the government's organizational structure and management methods change, so it's critical that the Public Servants Disclosure Protection Act constantly adapt and that it be enshrined in the act. That alone is an important innovation, and will allow us to carry out further analyses and discussions. Once the bill has been passed and implemented, we can ask ourselves in five years whether the environment has changed enough to warrant new categories. This mechanism will likely be very beneficial to the legislation, since, clearly, updating the act has rarely been a priority.

[English]

**The Chair:** Thank you very much.

Go ahead, Mrs. Block.

**Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC):** Thank you very much, Mr. Chair.

Thank you for joining us. I am pleased to see this bill come to committee. I had the opportunity to speak to it at second reading.

As you are aware, the Federal Accountability Act was brought in back in 2006-07 by a Conservative government, following the Liberal sponsorship scandal. Over time, we have obviously seen that the protections that were provided in that act are not adequate. It's always good to review legislation with a view to improving upon it. I believe that is probably what motivated this committee to undertake a study back in 2017 and come forward with a number of recommendations to update whistle-blower protections. I know there

were a number of these recommendations put forward. I think there were 15.

I'm wondering if you could highlight for the committee, and potentially those who are listening in, which recommendations you used as part of this piece of legislation.

[Translation]

**Mr. Jean-Denis Garon:** I already answered that question in a broader sense. If it's all right with you, I could provide you with a written answer and a table summarizing all the recommendations that we chose to include in Bill C-290.

[English]

**Mrs. Kelly Block:** Thank you. I appreciate that. Neither did I do a side-by-side in regard to the bill and the recommendations.

I want to refer to the annual report on the Public Servants Disclosure Protection Act for 2021-22. In that report, the chief human resource officer stated the following:

In the 2021-22 fiscal year, federal government organizations received more enquiries and allegations than in any of the previous five years, and most of the allegations concerned a single serious breach of conduct. In parallel, we also saw the highest number of formal investigations launched. While these results may indicate public servants' growing awareness of the act, we know that more work is needed to strengthen the disclosure system to ensure employees have the confidence to come forward with cases of potential wrongdoing without fear of reprisal.

Were you at all concerned that the government abstained on the vote to send this bill to committee?

[Translation]

**Mr. Jean-Denis Garon:** I think that the government will vote for this bill at third reading.

[English]

**Mrs. Kelly Block:** All right. You have a lot more trust than many of us in this room.

Do you think that it showed a lack of commitment to protecting whistle-blowers, especially considering the lack of action in implementing the recommendations from the OGGO report and that it was something that was included in the TBS mandate letter?

[Translation]

**Mr. Jean-Denis Garon:** Your question gives me an opportunity to send an extremely important message.

Regardless of how people voted at second reading, today, committee members have an opportunity to create momentum. Personally, I am looking ahead. I sense that the climate is conducive to moving the bill forward. I am committed to persuading all my colleagues to vote for it, which I believe is possible.

• (1720)

[English]

**Mrs. Kelly Block:** Are you open to amendments to this bill?

[Translation]

**Mr. Jean-Denis Garon:** Yes, of course. It is the committee's prerogative to propose amendments and review them. We are also working on a number of amendments.

As I said, this is not a partisan issue. Any type of amendment that aims to correct or improve the bill will be considered. My intention is to expand the scope of the bill. If other parliamentarians have the same intention, amendments will be more than welcome.

[English]

**Mrs. Kelly Block:** Thank you.

[Translation]

**Mr. Jean-Denis Garon:** You're welcome.

[English]

**The Chair:** Thank you, Mrs. Block.

Ms. Thompson, we'll go to you to finish up.

**Ms. Joanne Thompson (St. John's East, Lib.):** Thank you.

Thank you so much for the work you've done on this bill. I think it's incredibly important. Your dedication and your ability to bring people together around this is a credit to you. Thank you.

I have a couple of questions.

Could you talk about the rationale for including the Public Sector Integrity Commissioner in assessing or reviewing internal disclosure processes within organizations, and against what standard the commissioner would assess them?

[Translation]

**Mr. Jean-Denis Garon:** The aim is to ensure that complaints are handled as fairly and efficiently as possible before judicial processes are involved, which are expensive and often discourage whistle-blowers from taking action.

As I explained previously, at the second level of recourse, the tribunal can not only adjudicate compensation, but also review the decision. Personally, I see this as a significant simplification. In addition, whistle-blowers would be given the right to apply to the tribunal and then to the Federal Court. Basically, it gives whistle-blowers an added opportunity to access justice more efficiently.

**Mr. Marc-André Roche:** If I understood correctly, you are asking me to comment on giving the commissioner an additional mandate, to assess the work of the departments.

The Information Commissioner does it when assessing whether access to information requests are handled properly. The Commissioner of Official Languages does it when determining if departments are complying with the Official Languages Act. Regarding whistle-blower protection, no neutral third party monitors the work of the government and makes recommendations to help the government to improve.

We believe that the Public Sector Integrity Commissioner is in the best position to do this.

[English]

**Ms. Joanne Thompson:** Thank you.

Back to the tribunal, on the rationale for requiring a tribunal to accept the commissioner's finding of reprisal, does this change a reprisal proceeding from an administrative investigation to a quasi-judicial hearing?

[Translation]

**Mr. Jean-Denis Garon:** The answer is yes, absolutely. I'm sorry, I misunderstood your previous question. I should listen to the French interpretation.

We believe that having an administrative tribunal, which exists in many other parts of the public sector, would facilitate the process. Furthermore, this would in no way eliminate the opportunity to subsequently file an appeal with the Federal Court.

[English]

**Ms. Joanne Thompson:** Thank you.

I realize that we're coming to the end of this round. Is there anything else that you would like to comment on, such as the timeline around the questioning, or thoughts that you want to bring forward?

[Translation]

**Mr. Jean-Denis Garon:** First, I would like to thank all the parliamentarians. I think that everyone has studied the bill thoroughly, making this a productive discussion, one that will continue into the future.

I want to say one last, very important, thing. A person doesn't choose to be a whistle-blower. They become one out of necessity. Going through this process requires tremendous courage. A person who decides to disclose wrongdoing faces major consequences. Obviously, even with the best bill, this will require a culture change in government and departments. It is a long process, and it is difficult to enshrine in the law. However, it is imperative that the law be improved to minimize all the costs to these people, who are dedicated to serving their employer and the public service. It is of the utmost importance.

Thank you, everyone, for your questions.

• (1725)

[English]

**The Chair:** You have 25 seconds.

**Ms. Joanne Thompson:** I'll be very quick and say thank you, because I think the human face is so important, as is the courage to come forward and really be able to hold a voice in very difficult circumstances.

Thank you.

[Translation]

**Mr. Jean-Denis Garon:** Thank you.

[English]

**The Chair:** Thank you, Ms. Thompson.

MP Garon and Mr. Roche, thank you very much for being with us today. We will excuse you.

Colleagues, we will give our clerk a couple of seconds, so we can set up for the next witnesses. With a bit of luck, they'll be able to do their opening statements. We will probably suspend for the vote then and come back to finish the two rounds.

We'll suspend.

• (1725) \_\_\_\_\_ (Pause) \_\_\_\_\_

• (1725)

**The Chair:** Colleagues, we are back.

Welcome, witnesses.

Welcome back, Ms. Forward. It's wonderful to see you again. I appreciate your joining us, and I appreciate everything you've done in the past helping this committee and with whistle-blowers.

Welcome, Mr. Sabourin.

You each have five-minute opening statements.

We'll start with you, Ms. Forward. Go ahead, please, for five minutes.

• (1730)

**Ms. Pamela Forward (President and Executive Director, Whistleblowing Canada Research Society):** Thank you, Mr. Chair.

I'm Pamela Forward, president and executive director of Whistleblowing Canada Research Society. We appreciate very much the opportunity to speak with everybody today.

Our heartfelt thanks to MPs who, thus far, have supported the private member's bill, Bill C-290, an act to amend the Public Servants Disclosure Protection Act, and to the Bloc Québécois member of Parliament from Mirabel, Mr. Jean-Denis Garon, for bringing it forward.

This bill is a long-awaited signal. It's a sign of humanity, compassion and respect towards Canada's public servant whistle-blowers. It will make significant, much-needed improvements and hopefully provoke many more to the deficient PSDPA.

In my time with you I will highlight some historical facts, why improvement in Canada's whistle-blowing regime is needed and thoughts on what more can be done.

In terms of history, here are some key facts.

Both of Canada's major parties have had a hand in the creation of the PSDPA, which was implemented in 2007. Clearly, they knew before the fact that the bill would not improve anything for whistle-blowers. Justice Gomery warned of this in his report on the sponsorship scandal in 1995. Instead of encouraging and empowering whistle-blowers, what it really did was control and suppress them.

More missteps perpetuated the suffering and enabled wrongdoers. First, was the 2012 government decision to disobey a statute—an indictable offence. They did not conduct the required independent review of the PSDPA after five years. Next, was the new gov-

ernment leader's decision to ignore the OGGO committee's 2017 unanimous report of its review of the PSDPA, recommending more than 20 amendments, if I remember correctly.

Why are improvements needed then? Studies and whistle-blower cases confirm that truth and truth-tellers in Canada are imperilled by this uncompromising unwillingness—at least up to now—to provide true protection and stop reprisals. This peril includes major catastrophes to both individuals and society at large, up to, and including, death. When truth dies, harm and corruption grow.

The studies and findings are listed in my submission. They confirm our flawed legislation and dysfunctional cultures.

Also, a key finding is that legislation alone will not protect whistle-blowers. The overriding factor for success is culture. If laws are introduced into an unwelcoming, resistant culture, they will not be properly upheld.

Here are a few whistle-blower cases.

This is an old one that has current consequences. Thirty years ago, in the 1990s, national security whistle-blowers from the then Department of External Affairs, the RCMP and CSIS were suppressed and ostracized. Their careers and health were destroyed for just doing their jobs. They reported on corruption in the Canadian high commission in Hong Kong that allowed Chinese Triads—criminals—to flow into Canada and bring along with them drug and human trafficking, money laundering, inflated house prices, etc. The consequences have persisted until today and have grown to include interference in Canada's elections by the CCP.

Here is a current case waiting to be told. This case concerns the Canada Border Services Agency and an officer who simply did his job by refusing to comply with illegal and potentially criminal orders from his superiors. You're going to hear from him in person. What's breathtaking and frightening is the litany of failures of all of the authorities he contacted who should have helped and could have helped, but didn't. That sadly included MPs from most parties. It's a living testimony to the disintegration of our democratic institutions in real time.

• (1735)

That's something else to consider. I'm going to leave it because of the time. I hope it will come up again.

What is needed then is Bill C-290. It contains eight internationally recognized best practices. There are 20 in all. A few more are needed to give a whistle-blower a reasonable chance to prevail. We urge you to work collaboratively to include as many as possible in the bill. This is not a partisan issue. Our democracy is under stress, and we need—and you need—whistle-blowers to come forward to help defend it.

The problems plaguing the current regime are.... I'm just going to list them and I have listed solutions in a table—

**The Chair:** I'll have to ask you to be very brief, please.

**Ms. Pamela Forward:** They are flawed legislation, implementation failure, uncommitted and ineffective leadership, political and administrative cultures that stress information control, and a lack of constructive scrutiny by Parliament.

Thank you.

**The Chair:** Thank you, Ms. Forward.

Mr. Sabourin, go ahead, please, for five minutes.

[*Translation*]

**Mr. Luc Sabourin (Retired Junior Officer, Canada Border Services Agency, As an Individual):** Ladies and gentlemen, thank you very much for having me.

On behalf of my colleagues, I would also like to thank Mr. Garon and Mrs. Vignola.

My name is Luc Sabourin. I'm 55 years old and the father of two young children, a 16-year-old girl and a 12-year-old boy. I am a whistle-blower who disclosed federal wrongdoings internally.

I was a senior quality control operator for the entry of critical and specific information in a federal database that contributes in part to national and international security. I held the highest security clearances, granted on an extremely limited and restricted basis. I performed my duties in an operational environment for the Canadian government during my 26 years of service, with no incidents in my career file.

My career began on August 13, 1990, and ended tragically and harshly on February 16, 2016. During the period from March 2009 to February 2016, I witnessed a number of criminal wrongdoings in my workplace. On February 16, 2016, I received a constructive administrative dismissal. This administrative procedure was the final step taken by my employer after eight years of psychological, physical and administrative harassment.

This constructive dismissal constituted a major reprisal by my employer for two reasons. First, an outside investigation, but one that was extremely limited and under the administrative control of the branch, revealed and demonstrated that the employer was guilty of harassment towards me.

Second, I used the internal disclosure processes, and religiously followed the employer's internal guidelines and protocols on disclosing wrongdoings and crimes in the federal workplace.

Consequently, management and co-workers who were the perpetrators undertook a major campaign of reprisals against me just to undermine and destroy me, and to catch me doing something wrong

in order to justify my dismissal. For eight years, I was the victim of psychological, physical and administrative harassment in the workplace, as well as a smear campaign, abusive management practices and unwarranted threats from colleagues and members of management. It was so extreme that I suffered a psychological breakdown.

In 2015, I reached the breaking point psychologically and made an unsuccessful suicide attempt. Today, life has given me a second chance to speak on behalf of some of my colleagues who are no longer with us as well as those who are still here. No one should have to go through what internal whistle-blowers experience at the hands of their employer.

I asked for help from the person in charge of my workplace, my Liberal member of Parliament, the Minister of Public Safety and the Minister of Justice. I also made a complaint to the RCMP, which has been unsuccessful to date.

Today, I am on permanent retirement for medical reasons. I am physically, mentally and financially shattered. My personal life and professional career have been destroyed, and the future is uncertain for me and my family.

I can state with certainty that the Government of Canada and the Canadian people had an experienced honest public servant who represented their interests with integrity and transparency. It is for these same reasons that the employer ended my career as a federal public servant.

It is imperative that each of you support amending the current law by passing Bill C-290 for whistle-blowers in the federal public service. This will protect them and save lives in the interest of transparency and justice. Democracy and public safety must be protected from potentially destructive and illegal situations in the federal public sector.

Thank you all for listening.

● (1740)

[*English*]

**The Chair:** Thank you very much.

We'll start with six minutes for Mrs. Kusie.

[*Translation*]

**Mrs. Stephanie Kusie:** Thank you, Mr. Chair.

I also want to thank the witnesses for being with us today.

Mr. Sabourin, I am very sorry to hear your story. Thank you for sharing it with us.

I'm glad to be here today. I hope that things will change from now on. As I said before, there was a report in 2017, but unfortunately, we have not seen any changes under the current government. The bill before us today is at least a start, and I hope that it is just the beginning. Indeed, I do not want other people to have to go through what you did.

Thank you very much.

[English]

Madam Forward, did you want to finish your statement? You read your recommendations, but was there anything else you wanted to add? I want to provide you that time to add to it.

**Ms. Pamela Forward:** No. I would just like to have the opportunity at some stage to talk about the proposed solutions for the problems that I itemized.

**Mrs. Stephanie Kusie:** This could be that opportunity. Please go ahead.

**Ms. Pamela Forward:** All right. The first one was—

**Mrs. Stephanie Kusie:** Are these the Braun amendments that we discussed in our meeting?

**Ms. Pamela Forward:** No.

**Mrs. Stephanie Kusie:** Okay. Please continue with your solutions. Go ahead.

**Ms. Pamela Forward:** Just briefly, in terms of flawed legislation, I would like to suggest that everybody here knows what effective legislation looks like. You have access to international experts. You have the work of the 2017 committee. It just remains for you to do it and to do what needs to be done.

There's no rational reason, from my perspective, that Canadians should not have all 20 best practices in the law. Why should we just stick with the eight that are there now and the three or four more that are really imperative if we want to be able to hold our heads up and at least be at some kind of a level status with other countries, our peer countries, other democracies around the world? That is what I have to say there. Please don't stop. As many best practices as possible are needed.

In terms of implementation failure, as has been mentioned here today, we need to provide adequate internal and external disclosure mechanisms, which provide the necessary functions for success. That includes advisory, internally and if they decide to go to the Public Sector Integrity Commissioner. That includes awareness-raising training, legal support, psychological support and all of those things that have been mentioned.

The investigation of wrongdoing and reprisals should be included internally as well. As has been mentioned, adjudicative supportive action, protection of the disclosure and prevention of harm should all be part and parcel of what an internal disclosure mechanism looks like. It doesn't exist right now.

It means that people need to learn how to actively listen. They need to become aware of the invisible forces driving reprisals, the psychological and unconscious forces, such as conformity in groups, obedience to authority and how we behave when we perceive threats. Our automatic response that we're often not aware of is to destroy the threat. It's a holdover from our days as cavemen. We're trying to survive, so we fight.

Then, in terms of uncommitted and ineffective leadership, leaders need to lead the change, and that's been the problem. They need to be a visible part of the behaviour-change communication plan. That's the next step. It's not just legislation. That is essential to culture change. There should be no gap between what a leader says

and what a leader does. There have been huge gaps. The leaders say one thing....

We have this wonderful law, but when it came to ensuring that all the things that the law says should be done to ensure that we have a workable mechanism were done and that the law was being translated in the public service, we didn't follow up. Those things did not take place. There was no training, no awareness raising and no leadership, really. If there is a gap, what that signals is insincerity, and trust will be lost again, leading to failure.

Political and administrative cultures that stress control over information—

• (1745)

**The Chair:** I'm sorry to interrupt, Ms. Forward, but that is our time.

**Ms. Pamela Forward:** Okay.

**The Chair:** We have to try to get a couple more folks in before we suspend for the vote.

**Ms. Pamela Forward:** I have just a few more points.

Thank you very much.

**The Chair:** There will be a lot of time in the second go-around.

Mr. Fergus.

[Translation]

**Hon. Greg Fergus:** Thank you, Mr. Chair.

I would also like to thank our two witnesses today.

I would especially like to commend Mr. Sabourin for his courage in appearing before the committee. It was an extremely difficult situation, as I recall.

[English]

Madam Forward, before I get into my questions, perhaps I'll leave you the opportunity to just finish off your answer to Mrs. Kusie. If you don't mind continuing just to finish off that part, then I'll get your questions.

**Ms. Pamela Forward:** Yes, it's very short.

In terms of political and administrative cultures, my suggestion is that what is needed is to develop open, listening and reflective cultures to replace defensive, controlling ones, if public trust is to be maintained. We need to shift from command and control public administration to listening and learning approaches. We need to admit errors, accept responsibility, correct them and learn.

There are actually organizations. There's a Centre for Public Impact that's working with governments around the world to implement exactly this change. I really would highly recommend you ask somebody from there to come and present to you. It's amazing the work that they're doing.

Then on the last point, the lack of constructive scrutiny by Parliament, I recommend that there be an ongoing parliamentary committee with oversight functions that would interact with NGOs and whistle-blowers to ensure system feedback and ongoing maintenance.

I'm taking part now in an international movement. There's actually a committee being led by the U.K. It's amazing the work that they're doing. They're passing a new law. It's a private member's bill that's just whooshing its way through Parliament. There's an all-party parliamentary group that is working intimately with civil society whistle-blower support groups. WhistleblowersUK is providing the secretariat to the all-party parliamentary group. They are in the process of passing a law to establish an office of the whistle-blower, which has teeth and can issue sanctions against wrongdoers.

**Hon. Greg Fergus:** You're getting into my next question for you, Ms. Forward.

Regarding an international comparison, we know we've heard that there are different bodies that would rate Canada poorly, but it's one of those things where you can have a great legal framework and you have no follow-up at all in practicality. I'm not certain about that international comparison.

According to you, which country has the best example and the best balance between a legislative framework and a culture that actually respects that legislative framework?

• (1750)

**Ms. Pamela Forward:** I don't know—

**Hon. Greg Fergus:** What's the standard we should look to?

**Ms. Pamela Forward:** —that there's any country that's best.

The United States is known as pretty much the inventor of whistle-blowing. They've had whistle-blowing since their first act in the 1700s, when contractors were cheating the government. There was a war going on or something. I don't remember.

They've had whistle-blowing legislation since 1979 and various iterations and improvements. What happens is that they still have culture problems. The government, actually... The difference I think is that the government takes whistle-blowing seriously. They think it's important to have proper legislation.

In terms of culture, what seems to have happened is that, whenever they pass an amendment to block some kind of a gap and improve things, people in the organizations work very hard to try to find ways around it, even if that means reclassifying jobs so that they are now security sensitive. Then they lay criminal charges against whistle-blowers.

There are culture problems wherever you go.

**Hon. Greg Fergus:** Ms. Forward and Mr. Sabourin, thank you.

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

Ms. Vignola, go ahead, please, for six.

[*Translation*]

**Mrs. Julie Vignola:** Thank you, Mr. Chair.

Ms. Forward, thank you for being here today.

Mr. Sabourin, thank you very much. My questions are for you. If you find them too intrusive or if you have difficulty answering them, please do not hesitate to tell me. I can take it.

In your opening remarks, you said that you had suffered reprisals. Could you describe a few of them, so that it is really clear to the public how far this can go? You spoke about your suicide attempt. I am happy to see that you are still here. It is one of the ultimate consequences of reprisals, but what happened before that?

**Mr. Luc Sabourin:** After I reported my observations to management, they began to push me aside. Either I had no work at all, or they gave me tasks that were beneath my skills. They took away tasks that I had been hired to perform. After that, I could go several days without work. Then, on Thursday evening, someone would come and put a pile of files on my desk, the equivalent of a full week of work. I could not meet the Friday deadline. What concerned me about this way of doing things was that it involved operational work important for our border officers. They needed to have these files to be able to perform their duties.

Then, when they saw that they could not hang something on me this way, they began to sabotage my work. That was not successful, so they vandalized my office. I provided you with photos of that. It took me several days to find everything.

Next, they tried to launch investigations on me just to undermine me. One day, I helped a new colleague who did not know the difference between a trip number, an authorization number and a tax identification number. I was accused of accessing information that I did not have authorization to access. I went through a management investigation, until the head of security confirmed that I had been doing my job, that I had been helping a colleague and that I had done nothing wrong.

Then, I got sick several times. There was no explanation. One morning, Purell was found in my coffee. This was one of the triggers.

• (1755)

**Mrs. Julie Vignola:** If I understand your last sentence correctly, the intimidation went as far as—

**Mr. Luc Sabourin:** —as far as trying to poison me.

I asked CBSA's professional standards unit to install cameras in my office so that the perpetrators could be identified, but my request was denied.

Senior management told me that, if the person responsible for these acts was found guilty, all the cases that they had defended at the Federal Court would have to be reopened, which could be embarrassing for the department.

**Mrs. Julie Vignola:** Avoiding embarrassment to the department was worth more than your life.

**Mr. Luc Sabourin:** Yes, madam.

**Mrs. Julie Vignola:** That is the message that you got.

**Mr. Luc Sabourin:** Yes, and it went further than that.

As part of my duties, I had to testify on behalf of the Canada Border Services Agency against members of organized crime.

A few weeks before I was to testify, I was threatened. Someone had disclosed my home address. My children were threatened directly. I had to request security measures for my children at school.

**Mrs. Julie Vignola:** If I understand correctly, the intimidation involved not only attempted poisoning, but also the providing of your address and personal details to organized criminals.

**Mr. Luc Sabourin:** No. Someone gave my information and my home address. People showed up near my house. They targeted me, threatened me and directly threatened my children a few weeks before I was to testify.

The only place that could disclose this information was my office.

When you testify, you have to give your work address.

**Mrs. Julie Vignola:** The actions you're describing appear to be criminal acts.

**Mr. Luc Sabourin:** They are criminal acts.

**Mrs. Julie Vignola:** Did you report it to the RCMP or Sûreté du Québec?

**Mr. Luc Sabourin:** I went to the RCMP with all the information that I had and what I had seen, including photos.

I was told that this was not under the jurisdiction of their unit. However, they did not refer me to another unit.

**Mrs. Julie Vignola:** Did they give you the reasons for that?

**Mr. Luc Sabourin:** The letter stated that it was not under the unit's jurisdiction. That's it.

**Mrs. Julie Vignola:** Okay.

If you could go back in time, would you still make a disclosure today?

**Mr. Luc Sabourin:** Yes, but I would do it in a different way.

**Mrs. Julie Vignola:** How would you do it?

**Mr. Luc Sabourin:** I would put all the information in an envelope and send it to the media. That's it.

The system abandoned me. The manager that I contacted and the directors at the time told me that it was more important to focus on my career and think about my family and my retirement than to focus on the potential legal repercussions of the allegations that I would be making against staff members, which included members of management.

[English]

**The Chair:** That is our time, I'm afraid.

[Translation]

**Mrs. Julie Vignola:** Thank you.

[English]

**The Chair:** Next will be Mr. Johns for six minutes, and then we'll suspend to vote and come back.

**Mr. Gord Johns:** Thank you both for being here and for your passion to fix this. I can't say enough about it.

Thank you, Ms. Forward.

I'm also going to go to you, Mr. Sabourin.

Again, I share the absolute gratitude for your courage to be here today, the strength you have and the resolve for justice for future workers, and current workers as well, so that they may feel safe and able to come forward in the future.

Many of the accountability experts and whistle-blower advocates voice concerns with regard to the fact that the Public Sector Integrity Commissioner has declined to investigate some pretty major high-stake cases, such as issues with Phoenix, issues you've seen in your work.

Do you believe that the commissioner, who has typically been a government public servant, represents a conflict of interest—someone that's been involved like that?

**Mr. Luc Sabourin:** Yes, sir, I do.

I reached out to the commissioner of integrity myself. I provided him with two years of material, and within a very short time frame, he came back and excluded a certain amount of information.

It was brought to my attention by a director at my unit that the integrity commissioner and the person I was pointing out in my complaints had previously worked together and knew each other. I requested from the integrity commissioner a formal notice, asking him to explain to me whether he had any conflict of interest with the people I pointed out in my complaint. He refused.

● (1800)

**Mr. Gord Johns:** Do you have any suggestions, such as maybe having an independent person be appointed moving forward?

**Mr. Luc Sabourin:** Yes, sir.

My recommendation to the members of Parliament before was that any type of situation like mine, involving officers in an operational environment where there is risk to the Canadian government and the people working in the field, should be turned over to an independent person. It should be somebody who has no ties to anybody, and a second person should be verifying the validity of the information and the decision that is made. That's the important transparency that we can have.

I hope I made sense.

**Mr. Gord Johns:** Absolutely.

Again, I really admire your strength in being here today. I want to thank you for that.



I'm going to give you some time to talk about what you believe are the failures and the foundational aspects of strong whistle-blower protections that need to be in this bill, which might not be in the bill yet, that we could look at to strengthen the bill through work with our friend and colleague.

**Mr. Luc Sabourin:** I think we all have to gain by working all together, every one of you, regardless of the party you represent.

We all represent you, the public servant. When the problems we face are people in high positions of authority who are engaged in wrongdoing or criminal activity, we have nobody to turn to. The mechanism in place to report it turns over the information that we give and the evidence we have to the people who are the ones we are reporting on.

This cannot continue. We cannot continue that way, because it's not conducive.... It's impossible to continue that way. We need to have an independent party who will take the information and protect us, and protect everybody else, and give the opportunity to any law enforcement agency to investigate discretely to see the magnitude of the problem or whatever damage was done.

It's very important that this concept is done. Otherwise, the system keeps failing us.

**Mr. Gord Johns:** Thank you for your service to Canada.

**Mr. Luc Sabourin:** Thank you, sir.

**Mr. Gord Johns:** Ms. Forward, do you want to add to that question I just asked?

I will give you some time to talk about what is missing in the bill that could help to improve the bill.

**Ms. Pamela Forward:** All I can say is that we have the eight best practices here.

In order to give whistle-blowers a reliable chance to prevail, we absolutely need the burden of proof.... The reverse-onus requirement should be there. A manager must prove the action taken was not a reprisal rather than the employee proving that it was. We need to also consider the question of financial losses to someone who is penalized for simply upholding the law and doing his job—at least have legal support in the system. That should be part of the system.

The third thing that I think is really important is that the amended PSDPA should ban NDAs. It should supersede such regulations that may occur in other laws, like NDAs that say you can't expose somebody or go public if somebody is doing something wrong.

**The Chair:** I'm going to interrupt here. We have just about 10 seconds, Mr. Johns.

We're going to suspend, we'll run and vote, and then we'll come back.

● (1800) \_\_\_\_\_ (Pause) \_\_\_\_\_

● (1825)

**The Chair:** Colleagues, thank you. We are back.

We appreciate witnesses' putting up with our doing our democratic duty.

We are into our final round. We are going to start with five minutes for Mrs. Block.

**Mrs. Kelly Block:** Thank you very much, Mr. Chair.

I want to start off by echoing the comment of my colleague MP Kusie. I also want to recognize and speak to the courage that has been alluded to here and the resolve that it has taken, I believe, for you to speak out and speak publicly.

I won't speak for all of us, but I would say that it is very difficult to understand how a professional public service would allow this culture to exist. It's even more difficult to understand and to hear the extent of the intimidation that you were subjected to and the impact that had on your mental and physical well-being. I want to thank you for coming forward, Mr. Sabourin, and sharing your story with us.

I also want to thank Mr. Garon one more time for introducing Bill C-290. I think the only thing worse than doing nothing is believing that you are doing something when you, in fact, are not.

Reviewing this piece of legislation and acting on it I think is something we are very committed to on this side of the House, of the room.

I don't really have any more questions. I would just turn the floor back to either of you to make any final comments that you would like to make to this committee today.

● (1830)

**Mr. Luc Sabourin:** It's just that my story is the story of every public servant who is loyal to this government and facing this dilemma. It's not just me. That's something that needs to be understood. I'm here on behalf of everybody who probably didn't have the strength or the chance that I had to be here today. It's very important to make this distinction.

**Ms. Pamela Forward:** I would like to underline what Mr. Sabourin has said. Our organization was set up to advance education on the whistle-blowing phenomenon through research and sharing that information publicly. We did not announce in any way that we provided services to whistle-blowers, but we end up providing support for whistle-blowers because they call us because there's nowhere else for them to go. I can't tell you how many stories I've heard similar to Luc's.

I'd like to share briefly that we just established a few months ago a support group for whistle-blowers. We have a professional facilitator manage the group. She's a former legislator from Manitoba.

Three of them had to leave the group. They could not even participate in the group because they are so mentally harmed by PTSD. They see threats and suspicion everywhere. They suspected me when they found out that I was a former public servant—I worked in a minister's office—so I became suspect immediately.

What we need to understand is that there's new information—really, it's old information that the public is more aware of—that this kind of behaviour, this bullying and harassment, causes actual brain damage that can be seen on a brain scan. That changes the landscape for employers. They now may become more legally liable. You can go in hand with a brain scan in the face of a history of harassment and bullying and being fired from the public service, or any organization.

When we're talking about public servants, it's a small minority of Canadian employees who are putting up with this kind of work. We hear from municipal and provincial people as well, and we've forgotten about the federally incorporated private sector, which has no protection.

**The Chair:** Thank you.

We'll go to Mr. Bains for five minutes, please.

**Mr. Parm Bains (Steveston—Richmond East, Lib.):** Thank you, Mr. Chair.

Thank you to our witnesses for joining us today. I will echo the statements of everybody else by thanking Mr. Sabourin for showing the courage to ultimately revisit his painful lived experience.

Thanks also to our colleague, Monsieur Garon, for bringing this forward again.

I think Mr. Sabourin talked a little bit about this. The bill includes making “failure to provide support” to a public servant who is making a reprisal part of the act.

Would this change violate the confidentiality of the process, as additional people would need to know the identity of the discloser? I think you mentioned that it ultimately goes to people who know the people who know the people.

My question is for Madam Forward.

Bill C-290 also includes a new category of wrongdoing, which is “abuse of authority”, but it has no definition within the bill. How can the committee solve the problem of how to define that?

• (1835)

**Ms. Pamela Forward:** I think anything that smacks of wrongness is abuse of authority. People know instinctively when authority is being abused. Bullying and harassment are abuses of authority. Part of abusing authority is abusing your power and not exercising your power justly and fairly. A lot of it probably could be from not having the skills to do so.

Part of being a good manager or a good employer is listening. To develop speak-up cultures, you first need to have managers who know how to listen up. Then people feel heard. If they can go to their manager and their manager doesn't get excited when they perhaps make a suggestion that they've noticed something that could be done better.... Instead of taking it as a personal insult that they

haven't done their job as a manager—which is often one of the things that sparks reprisals—they could just learn the skill of active listening. That encourages people to come forward.

That's one of the problems, really. It's just not having skills.

**Mr. Parm Bains:** You said this has been going on for a long time. Maybe Mr. Sabourin can also comment on this.

The culture of this is continuing on in various departments. We've seen it in other areas as well, whether it's the RCMP or other administrative areas.

Can you speak to the culture and what kinds of things you think...? I know you've talked about active listening, but expand on that if you could, please.

**Ms. Pamela Forward:** Thank you for the question.

We're talking about an internal environment. There are three things that impact an internal environment. One is structure. One is leadership. The other is culture.

With structure, strict vertical hierarchies in particular are very susceptible to developing dysfunctional cultures, mainly because of problems with communication. That's what the bill is trying to get around. Particularly if the wrongdoing is top-down, there are just no options for a whistle-blower, as Mr. Sabourin has mentioned.

The other question is leadership. Leaders have a huge impact on cultures in organizations. All leaders say that they're very open and that they want to hear what you have to say. They say to come to them, that they have open door, no problem, but what—

**The Chair:** I'm afraid I'm going to have to interrupt you again. We're past our five minutes for Mr. Bains.

**Ms. Pamela Forward:** I'm sorry.

**The Chair:** I'm going to hand things over to Mrs. Vignola now, please.

[Translation]

**Mrs. Julie Vignola:** Thank you, Mr. Chair.

Mr. Sabourin, before getting to the core of my question, I would like to know whether you were afraid of reprisals in coming here.

**Mr. Luc Sabourin:** I received threats from management. I was told that, if I spoke to MPs or the media, my federal government pension would be taken away. It was withheld deliberately for four years, from 2018 to 2022. The problem was resolved as a result of your office getting involved. It was a way of muzzling me for four years, so that I didn't speak to the media and so that my recourse options and deadline for disclosing the situation would run out.

• (1840)

**Mrs. Julie Vignola:** Okay.

Do you stand to benefit in any way from your presence here?

**Mr. Luc Sabourin:** Not at all. I benefit in no way.

**Mrs. Julie Vignola:** Thank you.

Earlier, you said that you were working for Passport Canada.

**Mr. Luc Sabourin:** I was working on document integrity.

**Mrs. Julie Vignola:** Okay.

What would the consequences have been for Canada's international reputation and national security if you had turned a blind eye to what you had seen and not reported it? Were you forced by your duties to report it?

**Mr. Luc Sabourin:** I had a legal and moral obligation to report the actions that I witnessed and that could result in a loss of the Canadian government's credibility with its allies. I could not turn a blind eye to these wrongdoings, which were serious offences of a criminal nature. If our allies had discovered these things, Canada could have lost its credibility and well-established relationships with its allies, including NATO members. When I reported the facts to management, my situation immediately became unbearable.

**Mrs. Julie Vignola:** Are you allowed to give us details on what occurred that would have resulted in our allies losing all confidence in us?

**Mr. Luc Sabourin:** Do I have parliamentary immunity?

**Mrs. Julie Vignola:** Absolutely.

**Mr. Luc Sabourin:** Okay.

Individuals in a position of authority ordered us to destroy passports and indicate in federal databases that we had returned the passports to the respective embassies.

I intervened. I told management that this way of doing things was illegal. It resulted in the creation of false documents in a federal database used by the Federal Court of Canada for some of its cases. I was told that the practice would stop. After a certain amount of time had passed, they put someone in a closed room to continue to destroy passports, while indicating in the federal database that we had given them back to our allies.

The perpetrators of these acts were in a position of authority. I reported them, and it cost me my career.

**Mrs. Julie Vignola:** How do you explain the fact that, to date, no genuine changes have been made to protect public servant whistle-blowers?

Why weren't these changes made? None of the committee's recommendations has been implemented in the six years since the report.

**Mr. Luc Sabourin:** Remaining transparent, but without pointing a finger at anyone, I can tell you that changing or amending the legislation to protect public servants scares some people and disrupts a very well-established culture. The only people who can make changes to help public servant whistle-blowers are the members of this committee. Without that, this culture will always be there. The only way to address it is to spell it out. You alone have the power to improve things.

**Mrs. Julie Vignola:** Could we, in part—

[English]

**The Chair:** I'm afraid that is your time for now.

We'll finish with Mr. Johns.

You have two and a half minutes. Go ahead, please.

**Mr. Gord Johns:** I've asked Mr. Garon this. One benefit of the bill is that it would allow public servants to report wrongdoing to an officer in the portion of the public sector in which they are employed and not just to their immediate supervisor.

Would it have helped you, Mr. Sabourin, to have had that in place? Could you speak about the potential of pursuing more than one method of recourse and resolution?

• (1845)

**Mr. Luc Sabourin:** If I understand the question correctly, you're saying if someone had the opportunity to approach a supervisor to—

**Mr. Gord Johns:** I'm saying if you could go beyond your own immediate supervisor.

**Mr. Luc Sabourin:** I went to every level in the chain of command to explain that situation, and the system failed me. What I'm stating is that we need to have an independent area to report to, so that, as I said earlier, a proper investigation could be done without anybody knowing what's going on. Even the person we report could still establish whether there's any merit to what we bring forward without causing discomfort to anybody.

When we report to our supervisor or anybody else in the chain of command, especially if it involves the people in the chain of command, there's not much we can do. There's no way this information or any type of administrative action will be initiated.

I hope I've understood and clarified the question.

**Mr. Gord Johns:** That's perfect.

Ms. Forward, one of the critical improvements that we believe needs to be made to the act is expanding whistle-blower protections to contractors who do public service work. We're seeing all this outsourcing and all of these contractors coming in.

Maybe you've seen contractors who witness wrongdoing and want to report it and those who do report it. Can you speak about the importance of that?

**The Chair:** Please provide just a brief answer.

**Ms. Pamela Forward:** I haven't heard a lot. I've heard about a couple of big cases. I think it's obvious that anybody who has witnessed wrongdoing on the part of any government entity or any entity whatsoever should be protected. Many countries protect all of their citizens. Doing so is part of their legislation. Any citizen, without qualification, who reports wrongdoing to authorities who can do something about it is protected. There's no reason Canada should be different.

**The Chair:** Thank you very much.

Colleagues, that is our time.

I just want to ask one brief question, Mr. Sabourin.

Could you explain why they were destroying those passports? Please walk me through it.

**Mr. Luc Sabourin:** I have no valid explanation for you as to why they were doing it. They basically said that they had no obliga-

tion to tell me because I was a junior officer, but I explained to them that what they were doing was a criminal offence.

With my 12 years of experience in that unit, I cannot explain to you why they were doing it. The explanation they provided to me made no sense. I challenged them on it, and I verified their doings. It was not valid.

**The Chair:** Thank you very much. Thanks for being with us today.

Ms. Forward, thank you as well. It's wonderful to see you. You mentioned the U.S. It was actually the Revolutionary War with their navy. The U.S. is blessed with a senator from Iowa—Senator Chuck Grassley—who's called the patron saint of whistle-blowers. I'm hoping that through what we've started today and started earlier that perhaps we can have 11 or 12 further patron saints, in Canada, for whistle-blowers.

Thank you both sincerely for your time today.

Colleagues, if there's nothing else, we are adjourned. Thank you.

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