



HOUSE OF COMMONS  
CHAMBRE DES COMMUNES  
CANADA

44th PARLIAMENT, 1st SESSION

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# Standing Committee on Government Operations and Estimates

EVIDENCE

**NUMBER 073**

Monday, June 19, 2023

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Chair: Mr. Kelly McCauley





## Standing Committee on Government Operations and Estimates

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• (1625)

[English]

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

Colleagues, good afternoon. Welcome to meeting number 73 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 for clause-by-clause consideration of Bill C-290, an act to amend the Public Servants Disclosure Protection Act.

Colleagues, I'll remind you that, when you're speaking, make sure you keep the earpiece away from the mike to avoid feedback for our valued translators.

Last meeting, I mentioned we had to address the issue of the nominee for the Public Sector Integrity Commissioner. If we have consent, I'm going to propose that we meet with the nominee on Wednesday for a five-minute opening statement, and then one six-minute round with each department.

Are we good with that, colleagues?

**Some hon. members:** Agreed.

**The Chair:** So be it.

I'll get to you, Mrs. Kusie.

Are those bells? We have a vote in 30 minutes.

Colleagues, do we have unanimous consent to continue until five minutes before the vote?

**Some hon. members:** Agreed.

**The Chair:** Great.

Mrs. Kusie, do you have something? Go ahead, please.

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

I hope we can come to a fast resolution on what I'm about to discuss here today. This is a matter that has been before this committee several times before. It is on what I believe is a potential breach of privilege.

Mr. Chair, I would ask you to listen to what I'm about to go over in an attempt to demonstrate how this has been breached, not only for me but for all members within this committee. As I said, I hope

we will have the support of the NDP and the Bloc as well as the government in this recognition, so that we can move swiftly on to Bill C-290 and get that bill—I know the Bloc is very anxious to do so—back to the House for the next step.

The breach of privilege, Mr. Chair, is a result of several things.

The first relates to our repeated attempts to get documents from the different departments. As of today, I believe, six of 21 organizations, who have been asked three times. The first was on January 18 and the second was on March 5 by you, Mr. Chair. My goodness, March 5—what month are we in now? We're in June, so this was three months ago. Again, this was after discussing it in this committee on March 8, for a third time, yet they haven't completed their submissions. In fact, 16 submitted redacted documents, when in fact McKinsey themselves have provided unredacted pages.

That is certainly the first reason. We've asked for these documents on several occasions. We certainly want to hear from all the departments. We've heard from some of the departments. I have further information here that tells me it probably isn't even necessary for us to hear from the remaining departments that exist. There seems to be some type of lack of will to move forward on this.

I recognize that we want to get to Bill C-290. We want to get it passed through the House. The Conservatives are committed to doing that. I'm hoping everyone else is as well, understanding the important testimony we've heard.

That would be the first one. We've asked three times for these documents. We have not received these documents.

[Translation]

The second reason obviously has to do with official language rights. It's really important that the committee receive the documents in both official languages. We've seen that some of the documents were redacted. That's not good enough, because we need the documents in both official languages.

Of course, Mrs. Vignola was a good spokesperson. She showed why we had to have documents in both official languages. Furthermore, a member of our party, Mr. Godin, demonstrated why the Conservatives felt it was important for all documents to be translated into both official languages.

I will now talk about the third reason.

[English]

I said that it was very important that we receive everyone from the departments to explain to us why we did not receive the documents. However, I believe I have here a communication that moots that, Mr. Chair. It is a communication with the Privy Council Office, from Maia Welbourne to Mr. Paul Mackinnon and cc'd to Erin Mather, Linda Nguyen and Jean Cintrat. Mr. Mackinnon asks Ms. Welbourne if she thinks that....

He writes, "Good morning. Remind me"—and this is on June 6, so around the time that we had the first group—"If passed, it's not binding on government to produce documents. Sent from my iPhone"—as we all do in this day and age, Mr. Chair.

Now, the next part I'm going to read out is very shocking. It's actually contrary to what the legal specialist who was in there visiting said. It, in fact, reads, "The government considers it non-binding if Parliament does."

According to this communication, according to the PCO, it does not have to listen to the will of this committee or the will of Parliament. It just has to listen to the government. If that is not a breach, I cannot think of what type of breach of privilege might exist. If the PCO, the acting body of this government, is saying that what we decide here, what all parties on this side of the House—in the opposition, I should say—decide, or in fact what we as a committee decide, is not movable and is not actionable enough to produce documents.

I'll finish the communication. It says, "The government considers it non-binding"—that's just so insulting it's difficult to read—"if Parliament does. If government doesn't produce documents as ordered by the House, then the matter can be escalated in a number of different ways, including as far as finding the government is in contempt, a minister or official being called to the bar, a non-confidence vote".

This is the same kind of scenario as last June with Iain Stewart's being called to the bar, and regrettably, we remember how the government hid behind that event. I think it was truly an event in the House of Commons. However, this is where it gets even juicier, unfortunately.

I'll quote again: "Main difference now being the supply and confidence agreement with the NDP." This document goes on to say, beyond the insult, that our deciding as a parliamentary committee is not enough for this government to produce documents because it is supported as a result of the supply agreement between the NDP and the Liberal government.

It is for these three reasons.... First is the denial of the documents in redacted form.

• (1630)

[Translation]

Second, we did not receive full versions of them in French and English.

[English]

Then, finally, there is this insulting communication that I have in my hands whereby this government actually believes that it is not their responsibility, and who knows who the PCO has been instructed by. We've tried to pull this information from them in the past regarding other matters, but they have been instructed that they are not required to follow the will of Parliament. They are not required to follow the will of this committee and bring these documents to us.

Why need we even listen to these other departments if the PCO has been instructed that these documents need not be supplied to this committee? It's more than enough, I believe, to consider it a breach of privilege.

Perhaps then, Mr. Chair, I will read the motion that I brought forward here today. You can certainly take the time to determine if you agree with my assessment as well.

• (1635)

**The Chair:** Do you have copies of this?

**Mrs. Stephanie Kusie:** Yes, copies have been distributed, or they are being distributed to all members. I will now read this into the record if we're ready.

Again, before I read it, Mr. Chair, I hope we can come to a fast resolution that this is, in fact, a breach of privilege, so that we can move forward to Bill C-290, which is of paramount importance, certainly for the Bloc and of interest for the Conservatives as well.

With that.... Pardon me?

**Mr. Gord Johns (Courtenay—Alberni, NDP):** If it was so important, then we'd do this later.

**Mrs. Stephanie Kusie:** I'm reading it now. I move that further to the evidence received by the committee subsequent to the motion adopted on Monday, April 24, 2023, in relation....

By the way, I should say that if the member of the NDP feels so strongly about moving on to Bill C-290, as we do, then he'll vote in support of this motion and we can just move forward to Bill C-290. I think that would be the best way he could show his support for Bill C-290 right now.

I'll continue reading. Actually, I'll start again. I move:

That, further to the evidence received by the Committee subsequent to the motion adopted on Monday, April 24, 2023, in relation to the redactions and improper translation of documents ordered for production by the Committee on Wednesday, January 18, 2023, the Committee is of the opinion that there is a potential breach of privilege which must be reported to the House, and therefore, notwithstanding the decision of the Committee on Monday, April 17, 2023, the Committee adopt the report drafted by the analysts, entitled "Question of Privilege on Providing Documents to the Committee", as amended, instruct the Chair to present this report to the House forthwith....

I'm going to pause here again, Mr. Chair, and say that we don't want to hold up any of the House business. We just simply want this referred to the House. We don't want to mess up the schedule any more. We are all anxious to get home to our constituents and serve them over the summer, but we feel this has to be dealt with prior to leaving. We just want this referred to the House. That's all we want, Mr. Chair. I believe we'll satisfy the breach. Again, the motion says:

...adopt the report drafted by the analysts, entitled "Question of Privilege on Providing Documents to the Committee", as amended, instruct the Chair to present this report to the House forthwith, and that the Committee request a comprehensive government response pursuant to Standing Order 109.

Yes, I hope that this committee will take.... I'll wait for your ruling, but I would hope that should you potentially decide it is a breach, this committee would take it seriously, pass this motion and send this off to the House, so that we can swiftly move on to Bill C-290.

Thank you.

**The Chair:** Thanks, Ms. Kusie.

The motion is in order. I don't have anything else to offer except that it is in order and you can continue if you wish.

**Mrs. Stephanie Kusie:** Sure.

As I said, I feel as though there certainly has been a breach of privilege. I'm really looking forward to this group passing this motion and referring this to the House so that we can receive all the documents that we should, as parliamentarians, be allowed to see. I'm really looking forward to this being passed and this being sent to the House.

**The Chair:** Thank you.

I have Mr. Housefather, then Mr. Jowhari, Mr. Kusmierczyk and Mr. Johns.

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

Obviously, the situation is frustrating for everyone, but I want to lay out how this would work because what Mrs. Kusie is saying is, I don't believe, accurate about how it would happen.

If the committee were to adopt her motion, any member of the House could raise this as a question of privilege—

**The Chair:** I'm sorry. Can I interrupt for a second?

You're not as clear as you normally are.

**Mr. Anthony Housefather:** I'm sorry about that. Is that better, sir?

**The Chair:** Give me just a moment. We're just confirming with the interpreters, Mr. Housefather.

We're good. Thank you. Please go ahead, sir.

**Mr. Anthony Housefather:** Thank you very much.

If we were to refer this to the House, then any member of the House could raise a question of privilege, which would, if the Speaker rules that it is a prima facie case of privilege, end up taking up all kinds of time in the House, not to mention the representations that would be made to determine or argue that it was a question of privilege.

While I am sympathetic to the arguments being raised by my colleague, I definitely do not want the valuable legislative time of the House this week being taken up by a question of privilege and stopping legislation from being adopted. For that reason, Mr. Chair, I would not be prepared to support passing this today, in any event.

Thank you very much, and I'll turn to Mr. Kusmierczyk, who I think was next.

**The Chair:** Thank you for bypassing me, Mr. Housefather. I'm not getting in my word count.

**Mr. Anthony Housefather:** That's not what I meant, Mr. Chair.

**The Chair:** Mr. Kusmierczyk.

**Mr. Irek Kusmierczyk (Windsor—Tecumseh, Lib.):** Actually, Mr. Chair, I think it was Majid who was on deck second. Am I not correct? That's at least how it came across.

**The Chair:** Yes, that's right. I'm sorry. I thought he was waving away.

Go ahead, Majid.

**Mr. Irek Kusmierczyk:** You always have to defer to your senior.

**Mr. Majid Jowhari (Richmond Hill, Lib.):** In age, maybe, but not in wisdom.

Our colleague, Madam Kusie, referred to a number of emails. I don't think our side, at least, is in the position of having had an opportunity to look at them and see. That's the core of the conversation we are having. I think the analysts have done a good job reflecting all the facts in a very chronological order for a certain period. That was shared with us, so thank you to the analysts.

However, the gist of the discussion Madam Kusie is having is that she somehow has had an opportunity to have access to certain information, which has led her to believe that the government does not intend, under any circumstances, to provide the document we asked for. We have another meeting on Wednesday, and I think this would be a great opportunity to see whether those who are referred to in these emails could be present and answer the question of what this means.

Without access to those emails and verification, it would be very hard for me, today, to make that decision to be able to support it. That's why I was asking if it's possible for us to get access to those emails and understand what the contents are and make a decision then. If those are the cases, then we could compile that and put it in a report and send it out. That's really the core of the conversation or what you're justifying.

I'll stop there, because I don't want to filibuster or kill time. Thank you.

• (1640)

**The Chair:** We have Mr. Kusmierczyk, Mr. Johns and then Mr. Barrett.

**Mr. Irek Kusmierczyk:** Thank you, Mr. Chair. I appreciate the opportunity to speak to this.

I want to say that I think my colleague Mr. Housefather, again, as is his standard, has gotten to the heart of the matter. Even though we take this matter of privilege seriously—of course we want to get to the bottom of the reasons why the documentation wasn't provided by the various agencies unredacted—the concern here is that it will open up an opportunity for our colleagues on the Conservative side to simply delay the work being done in the House of Commons. That work is absolutely too important. We see, for example, in other committees, questions of privilege being raised by the Conservatives that tie up the work of those committees for multiple meetings.

I was elected to this committee and this House to get work done. What I'm seeing in this committee is a tremendous drift in its work. We have drifted off course. We have eight studies—eight—that have been opened up: McKinsey, the GG expenditure, outsourcing, diversity and procurement—do you remember that one?—Arrive-CAN, air defence procurement, the national shipbuilding strategy and Bill C-290. These are all paramount. All of these are important studies. We opened all of these and have not finished a single one.

I look at the McKinsey study and see the mountainous production of papers—hundreds of thousands of documents and millions of words submitted. I think the PBO estimated that's \$9 million in translation alone. If halting the work of this committee and delaying the work of Parliament are the goals, I have to say that's disheartening. We see these tactics time and again.

I weigh those concerns against the seriousness with which we take the question of privilege—this issue before us—but, again, let's call a spade a spade here. We've seen this before. This is not new. There's nothing new under the sun. We've seen this before. We know how this plays out. There's too much at stake. There's too much work, especially in this last week. Canadians expect us, in this last week, to buckle down, work together and get legislation passed. They are looking for us to demonstrate leadership. For that reason, I can't support this. I support the principle of it, but I see the door this will open. It would only delay the work of this committee. Again, we have been blown way off course already. It's time to rein this back in.

I'm turning to my colleagues across the table among the NDP, the Bloc and the Conservatives: Let's right this ship. Let's get it back on course. Let's get these committee studies passed and do the work Canadians expect us to do, especially in this last week in Parliament.

For that reason, I don't think I can support this.

Thank you.

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

Go ahead, Mr. Johns.

**Mr. Gord Johns:** Thanks.

We heard from Matthew Shea from the Privy Council Office. He appeared at this committee. He's the assistant secretary to the cabinet, ministerial services and corporate affairs.

He brought to the attention of this committee.... When we grilled him about the redactions, he cited the "Open and Accountable Government" document. He cited that, in "Accountable Government" from 2011, the previous government issued the following guidance to ministers in the public service, and the same guidance was issued by the current government in "Open and Accountable Government" in 2015:

Public servants also have a duty to hold in confidence some of the information that comes into their possession in the course of their duties. There is a tension between that obligation and the request of parliamentarians for disclosure of that same information. When appearing before parliamentary committees, public servants should refrain from disclosing that kind of confidential information, for instance because the information is confidential for reasons of national security or privacy, or because it consists of advice to Ministers. Accounting officers should not disclose confidential information, including advice to Ministers, even where that information pertains to matters of organizational management. In practice, officials should endeavour to work with Members of Parliament, in cooperation with Ministers and their offices, to find ways to respond to legitimate requests for information from Members of Parliament, within the limitations placed on them.

This policy was brought in by the Harper Conservatives. We should be looking at this policy and having a conversation about that. If we have more questions about these redactions, we should be bringing Matthew Shea back here in front of this committee.

I appreciate Mr. Kusmierczyk's talking about being adrift in this committee. We haven't gotten a study done. In fact, the Conservatives keep bringing forward motions that could be included in the reports, whether it be on the Governor General, on McKinsey.... We have nine studies going right now. This could be included in the study on McKinsey. We have 220,000 pages so far. This is what this committee has received.

I want to give an idea. It would take 30 seconds per page to look at it. It would take 1,833 hours and 20 minutes to review these documents. That's 52 full-time weeks. Since it's only been a few months, it would probably take about four full-time staff to go over the documents we have gotten so far. I don't believe anyone around this table has done that, unless you somehow have a budget that I don't have in my office or have a pile of volunteers who want to go through 220,000 pages.

I suggest that we include this in our final report—that would make sense to me—so that we can get to Bill C-290, or we can get Matthew Shea back here and can ask him more questions because I have a lot more questions before I want to send this to the House.

I hate redactions, and I hate this policy. I think it needs to be reviewed. Clearly, it's a problem for this committee. I don't believe that sending this nuclear approach to the House is the right approach. I think we should be doing some work here in this committee before we do that.

• (1645)

**The Chair:** We'll have Mr. Barrett really quickly, and then we'll suspend for voting.

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

First, this is looking for a comprehensive government response so that concurrence is not moved on it in the House.

Second, we would be happy to see this moved on Wednesday. The House is going to rise before the Speaker would return, but then it's in possession of the House. There's no intent to delay. I can have that assurance made by the opposition House leader to the government House leader: that there will be no question of privilege raised by any members of the official opposition.

Third, the agreement was, by government members and by the members of the NDP, that if we gave time and if we heard from these witnesses, they would refer this to the House. If someone wants to amend this so that it's reported as soon as Wednesday's meeting is over, then that would be consistent with everyone keeping their word. Anything less than that is a complete bait and switch.

**The Chair:** Thanks.

We are going to suspend until after the vote, colleagues.

• (1645)

(Pause)

• (1715)

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

Mr. Barrett, you have the floor.

**Mr. Michael Barrett:** Thanks, Mr. Chair.

In spite of conversations we had the last time the subject was raised, there's obviously not going to be any agreement on this today. We have business in Bill C-290 to deal with.

I move that we adjourn debate.

**The Chair:** Can we vote on that, colleagues?

It looks like we have unanimous consent to adjourn debate.

(Motion agreed to)

**The Chair:** Thanks.

Give us a couple of seconds, colleagues, so I can excuse our analysts and bring in our legislative clerks.

Mr. Housefather, you had your hand up, and you put it down.

**Mr. Anthony Housefather:** I did, Mr. Chair. I'm so sorry.

I know you adjourned debate, but I think a request had been made by Mr. Jowhari to get a copy of the email that Mrs. Kusie read into the record when she intervened previously.

Thank you.

**The Chair:** I'm sorry. Was that a copy of the motion or—

**Mr. Anthony Housefather:** No, she read an email from the Privy Council Office dated June 6, 2023, which she used to argue for the motion. Since none of the rest of us had seen it—

**The Chair:** I'll ask if she wishes, but I'm not sensing a desire to at this moment.

I'm sorry. The answer is no.

We will get to Bill C-290.

(On clause 33)

**The Chair:** We're on clause 33 starting with NDP-15, which is page 35 of the package.

Go ahead, Mr. Johns.

**Mr. Gord Johns:** Thank you, Mr. Chair.

This requires the publication of routine.... Currently the information provided in annual reports provides little insight into operational performance and no basis for monitoring, evaluating or improving the system. The statistics provided can reveal all serious anomalies, such as cases remaining dormant or receiving little or no attention for several years, and averages do not reveal this. Such cases have thus far been uncovered only incidentally by other means, such as the release of PSIC's case management data following Christiane Ouimet's resignation in 2010 and investigations of two specific cases by the Auditor General.

Under this amendment, the information provided in the annual report, which sheds some light on operational performance, would provide some basis for monitoring, evaluating and improving the system, knowing that information on the duration of cases would reveal whether any cases are taking an unreasonable length of time to process.

It's a no-brainer. This information was already captured in the commissioner's case management system.

Mr. Chair, to save time, could we vote on this now?

**The Chair:** I'm sorry. Mr. Fergus has his hand up.

Go ahead, Mr. Fergus.

**Hon. Greg Fergus (Hull—Aylmer, Lib.):** Mr. Johns, I really appreciate where you're trying to go with this amendment. Unfortunately, I have two important concerns with it, and I think you would agree with me. It's not what you brought up, which I think was important. It's a matter of confidentiality.

Mr. Johns, as you know, there are people's health records, especially in the case of some people who might have faced reprisals, and they might have had some mental health issues caused by the reprisals. This is something that you don't want to have tracked. How can you secure the confidentiality of that information?

Then there are larger issues. These are cases that the commissioner at PSIC has seen or that have been brought to his attention. I'm sort of offering the opposite side of this, but what about the cases that have been resolved internally without PSIC's involvement?

On one hand, I understand what you're trying to get at, but I think you're opening up a whole can of worms regarding people's health records, the safety of how we pull those records and how we dispose of them after three years in a way that doesn't cause any problems to the people who are involved.

• (1720)

**The Chair:** Be quick, because Mr. Johns is first.

**Mr. Majid Jowhari:** Is it NDP-15 or NDP-16? I just want to get clarification.

**The Chair:** It is NDP-15.

**Mr. Majid Jowhari:** It's NDP-15. Okay. Thank you very much.

**Hon. Greg Fergus:** I apologize. I was looking at NDP-16.

**The Chair:** I apologize, Mr. Johns. I think someone was debating a different amendment.

Do you have anything on amendment NDP-15, Mr. Fergus, or can we go to a vote?

**Hon. Greg Fergus:** I agree with Mr. Johns' amendment NDP-15 completely.

**The Chair:** Okay. Shall NDP-15 carry then?

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

**The Chair:** On amendment NDP-16, we have Mr. Johns.

**Mr. Gord Johns:** It requires the gathering and annual publication of statistics regarding the career and health trajectory of whistle-blowers as a direct performance indicator. There is a lack of direct performance indicators from PSIC. Virtually all accounts of federal whistle-blower experience in Canada reveal that careers ended, health was damaged and lives were shattered. There is no official data available regarding the career and health trajectory of whistle-blowers, and no attempt to acquire this.

Only the federal government has the information, authority and resources to obtain this information, which is inaccessible to researchers and others for reasons of confidentiality, and this is critical to any effective five-year review of the act.

Again, I'm hoping we can just vote on it.

**The Chair:** Go ahead, Mr. Fergus.

**Hon. Greg Fergus:** I won't repeat myself, sir, but what I pointed out before is my objection to this one. I'm hoping that people understand the importance of people's health records and the safe-keeping of that confidentiality so that it doesn't follow them, track them or, unfortunately, get leaked.

(Amendment negated: nays 8; yeas 2 [*See Minutes of Proceedings*])

**The Chair:** Amendment NDP-16 is defeated.

On amendment NDP-17, we have Mr. Johns.

**Mr. Gord Johns:** [*Technical difficulty—Editor*] requires the gathering and annual publication of client satisfaction as a direct performance indicator. There is a lack of direct performance indicators for the Public Sector Integrity Commissioner.

Multiple reports by the Auditor General and judicial review decisions show that PSIC incompetence, gross mismanagement and failure to provide due process, etc., always disadvantages the whistle-blower, so in consideration of PSIC's performance, the voice of whistle-blowers is completely absent and unavailable. This amendment would make data available and make public servants feel the protection and support, which would serve as an important direct indicator of PSIC's performance.

The purpose of the PSDPA and Bill C-290 are to protect and support whistle-blowers, so whether or not public servants feel protected and supported is obviously absolutely central to whether the PSDPA is functioning as it needs to. Any review of the act that doesn't consider these metrics is an incomplete review, and if public servants don't feel supported and protected in making disclosures, far fewer of them will report wrongdoing and wrongdoing will continue to fester unreported, damaging the public interest.

The reporting of this data would also motivate integrity commissioners and their staff to ensure due process for whistle-blowers. This would not require additional funds, because the evaluation of the performance matrix for the PSDPA requires measurement of whether employees feel supported and protected when reporting a wrongdoing under the act. In fact, the PSIC promised to conduct but has never conducted a client satisfaction survey of whistle-blowers.

I'm hoping we can just vote on this too.

**The Chair:** Go ahead, Mr. Fergus.

• (1725)

**Hon. Greg Fergus:** Reasons similar to those for NDP-16 also apply to amendment NDP-17, in ensuring that there is consent from the whistle-blowers to be able to provide that private information. The second thing, again, is that this also covers a case where you're dealing with complaints that have gone to the commissioner, as opposed to ones that have been resolved internally or that the complainant has decided to pursue internally.

This will effectively require an annual survey to be conducted by PSIC. Again, we're very concerned about how we might run the risk of releasing people's confidential situations and their current status, so the same reasons that we opposed NDP-16 apply to amendment NDP-17.

**The Chair:** Is there anything else, Mr. Johns?



**Mr. Gord Johns:** No.

**The Chair:** Can we go to a vote on NDP-17, Madam Clerk?

**The Clerk of the Committee (Ms. Aimée Belmore):** Mr. Chair, the count is five yeas and five nays.

**The Chair:** I will vote yes.

(Amendment agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

**The Chair:** On NDP-18, it's Mr. Johns.

**Mr. Gord Johns:** I will try to go as fast as I can. No additional funds are required.

It requires the periodic gathering and publication of indirect performance indicators. There is little to no information available regarding public servants' perceptions of the effectiveness of the whistle-blowing system, the frequency of perceived wrongdoing, which is supposed to expose and deter, and the effectiveness of corrective actions.

This makes it impossible to determine the trends that would tell us whether the legislation is having the intended effects. With this amendment, data would be available showing levels and trends in indirect performance indicators related to public servants' perceptions. These would provide a basis for a review and improvement of the legislation and its implementation, which are necessary for the regular reviews of the act to present a realistic picture of how effective the act is.

This would not require additional funds. The public service employee survey questions are reviewed every cycle and there's no obstacle to adding these types of questions to it. In the U.S., the Office of Special Counsel has conducted three cycles of this type of survey, demonstrating an improving trend.

**The Chair:** Next is Mr. Fergus and then Ms. Kusie.

**Hon. Greg Fergus:** I really disagree with my colleague on his statement that this would have no additional costs. In fact, this will have a significant additional cost. This is providing another survey of public servants, which is similar to the public service employment survey that is done every year.

In digging deep on this, we found that each piece of PSES, the employment survey, costs well in excess of a million dollars a year. The entire budget for PSIC is just over a million dollars a year. To run the survey alone would increase the cost of the commissioner's office by 100%. This would be in addition to having a new function and responsibility for the commissioner, who doesn't do this. They would have to make sure they have new authorization to spend this money to conduct this survey.

To let you know, the public service employment survey is only done biennially, every two years, for the purposes of finding out what we do, where public servants are at, how they are feeling, the status of their jobs. To have PSIC double this work will create additional costs and significant additional costs.

**The Chair:** Go ahead, Mrs. Kusie.

**Mrs. Stephanie Kusie:** Chair, I want to make a subamendment to the amendment, which I hope might be friendly, and that is elim-

inating paragraph (d). We have concerns about anonymity if keeping paragraph (d).

I would be looking to remove paragraph (d), please, Chair.

• (1730)

**The Chair:** Can we vote on Ms. Kusie's subamendment?

Hold on one moment, please. We need to suspend for a moment for our legislative clerks to look at an issue.

• (1730)

(Pause)

• (1732)

**The Chair:** Colleagues, our legislative clerks are advising me that subamendments have to be provided in writing.

We can either rule it out of order, or we can suspend for a couple of moments and you can put the subamendment in writing for us, Mrs. Kusie.

**Mrs. Stephanie Kusie:** Yes, I'm happy to put it in writing.

Is it just two sentences, or what does the extent have to be? I can loosely translate it as well, but I don't want to hold up the process.

**The Chair:** We'll suspend for a couple of minutes for you to put it in writing.

• (1730)

(Pause)

• (1740)

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

Mrs. Kusie's subamendment, of course, is to eliminate proposed paragraph (d). Proposed paragraph (c) has the word "and" at the end, so we have to change that. I will read it in. If everyone's fine with it, we'll adjust Mrs. Kusie's subamendment to say, that the amendment be amended by adding "and" after paragraph (b) and removing the following from paragraph (c): "and".

We'll get into Mrs. Kusie's subamendment, then.

Mr. Fergus.

**Hon. Greg Fergus:** I have no comment, sir.

(Subamendment agreed to)

**The Chair:** It carries unanimously.

We are back to the actual amendment itself.

Mr. Fergus.

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

I do have difficulty with this. I would like to thank Mrs. Kusie for making the change and removing some of the confidentiality parts of it. However, in regard to NDP-18 as a whole, as you can see at the very beginning, it says, “(2.01) The Commissioner must conduct an annual survey to determine”, and then it goes on for now three provisions.

That annual survey has to happen. I mentioned that to survey all public servants in relation to the way they feel disclosures are managed under this act would be analogous to the public service employment survey, which does cost a considerable amount of money, probably in excess of the entire budget for the commissioner's office as it stands now. That is a significant expense.

There you go, Mr. Chair. I think it would be better off for this amendment not to happen to Bill C-290.

**Mr. Gord Johns:** I would ask about the costs and whether it would require royal assent.

• (1745)

**Ms. Mireille Laroche (Assistant Deputy Minister, People and Culture, Office of the Chief Human Resources Officer, Treasury Board Secretariat):** Do you mean a royal recommendation?

**Mr. Gord Johns:** Yes.

**Ms. Mireille Laroche:** In terms of a royal recommendation, as before, I'd say that's not in my purview, so I will leave it to the legislative clerk to say something. However, in our view it would create a cost, because if you look at your proposed subsection (2.01), you see it says, “The Commissioner must conduct an annual survey”. This doesn't say to work with the PSES and include questions, so he or she would have to create their own survey that would be applied to all public servants in order to get this information. Therefore, it would require methodology, question design, applying it and so on.

The other thing I would like to say is that the PSES currently asks a number of questions that are covered by proposed paragraphs (a), (b) and (c) in terms of awareness and the ability, so there could be an opportunity for collaboration to include some of the key questions of the PSIC in the current PSES.

**Mrs. Stephanie Kusie:** I just want to say that I've done that survey he talked about and I believe what he's saying. If you were to amend it to include it within the public service survey, I feel that would also be sufficient, which, according to his reasoning, would suffice, because then you're folding that survey into the bigger survey.

That would be my suggestion, if he's sincere, which I'm sure he is.

**Hon. Greg Fergus:** I am sincere. Perhaps I could riff off of Ms. Kusie's suggestion. By folding it into the PSES with the appropriate questions and then removing the requirement for it to be an annual survey, that would really work, but if you make it annual, you're just doubling the cost of the PSES.

I will leave it to you to do so, to making sure that it captures....

May I make a suggestion that you might withdraw it, but then maybe the committee can make it clear in its report that we would expect that the PSES would include questions that would....

**Mr. Gord Johns:** Okay. I will go with that. I am going to withdraw it.

(Amendment as amended withdrawn)

(Clause 33 as amended agreed to on division)

**The Chair:** Great.

Clause 33.1 is a new clause. We have it in NDP-19, which is page 39 of the package.

Go ahead, Mr. Johns.

**Mr. Gord Johns:** Again, no additional funds are required. It requires appointees to the position of Integrity Commissioner to be independent of the bureaucracy and to be qualified to lead an agency whose primary mandate is investigation.

Integrity commissioners who are from the bureaucracy are in a serious conflict of interest between the investigative mandate of PSIC and their future career prospects in the public service. Three successive integrity commissioners, all drawn from the bureaucracy, have demonstrated similar behaviour in consistently favouring the rights and the interests of bureaucrats over the protection of whistle-blowers, contrary to the purpose of their position.

This behaviour has been reported both by the Auditor General and by judges and judicial review decisions. According to a focus group report commissioned by PSIC in 2022, few public servants trust the agency, and a commissioner must be appointed who does not have a conflict of interest that might deter them from investigating suspected wrongdoing through fear or favour.

A commissioner must be appointed who will be motivated, most of all, to ensure that whistle-blowers are protected as witnesses essential to their investigations.

With this amendment—I'm sorry if I'm speaking a little bit ahead—the PSIC will have greater credibility. Public servants will be more likely to trust the commissioner and to come forward with disclosures. There will be greater public confidence in PSIC, and more wrongdoing will come to light and will be remedied.

I've spoken on, I guess, NDP-19, NDP-20 and NDP-21 altogether, but if we could just vote on NDP-19 first, and then....

**The Chair:** We will go to Mr. Fergus and then Mrs. Kusie.

**Hon. Greg Fergus:** Mr. Johns, I'll speak to NDP-19, NDP-20 and NDP-21.

In regard to NDP-19, I do think it's a little bizarre that you would bring in someone who has no experience with the public service to try to understand what happens in the public service and to better understand where the complainant might be coming from. It just seems that would be like asking a judge not to be a lawyer first.

• (1750)

**The Chair:** Can we stick to NDP-19 first?

**Hon. Greg Fergus:** I'll stick to NDP-19. This is where I'm going on this one.

It just doesn't really add up. I'm not certain where the conflict of interest happens. The person is no longer holding a job in the public service when they're appointed commissioner. That is their job. They're not double dipping, so I'm not certain where this comes from at all.

**The Chair:** We will go to Mrs. Kusie and then to Mr. Johns. We're on amendment NDP-19.

**Mrs. Stephanie Kusie:** I was going to ask that we change “not employed in the public service” to “not employed in the Public Service of Canada”. I think it's better defined.

Would the government be open to...? As I understand it, they're currently objecting to this. I guess they would still object to it if we put “the Public Service of Canada” versus “the public service”. In that case, if all opposition parties vote to support it, then it is not significantly material but it is material.

I guess that would be my subamendment then. One moment. Let me just confer with my desk.

**The Chair:** Again, the subamendment would have to be in writing to our legislative clerk.

**Mrs. Stephanie Kusie:** I'm going to withdraw the subamendment. It doesn't feel material enough to spend time on it at this point.

Thank you.

**The Chair:** Okay.

We will go to Mr. Johns and then Mrs. Vignola.

**Mr. Gord Johns:** I'm going to be really quick.

We heard many times from the witnesses about their concerns around this. It's funny, because we write laws. I know I'm one of the few “not lawyers” at this table here. Okay, I'm sorry. There are only a couple of lawyers, but I think you get my point.

**The Chair:** We're into lawyer-bashing now, I see.

**Some hon. members:** Oh, oh!

**The Chair:** We'll go to Ms. Vignola and then Mr. Fergus.

[*Translation*]

**Mrs. Julie Vignola (Beauport—Limoilou, BQ):** The commissioner this committee wants to meet this week is not a member of the Canadian public service. She's an expert from New York. The government is applying the NDP amendment before it's even been passed. So I don't see why this amendment would be an issue right now.

[*English*]

**The Chair:** Go ahead, Mr. Fergus.

[*Translation*]

**Hon. Greg Fergus:** Just because this candidate is not a Canadian public servant doesn't mean that no candidate should ever be a pub-

lic servant. We're neutral on that concept, and Harriet Solloway's appointment simply proves that we're seeking the best possible candidate. However, this makes it impossible to appoint someone who's had a career in the Canadian public service. It's just a little strange.

I'd like to ask the witnesses whether this criterion creates a conflict of interest in the amendment.

**Ms. Mireille Laroche:** Thank you for your question.

• (1755)

[*English*]

Just in terms of the trust, I want to point out that those working for the Auditor General, those doing internal audits for the government, are public officials, and I think we all strive, as public servants, to be impartial and to do the best job possible. That's one thing.

Second, when you read the amendment, it says that, at appointment, the person should not be employed in the public service. Let's say that I apply. If I quit government the day before I am appointed, I can still be appointed as a PSIC. I don't think that this will have an impact at all, given how it's written because it says that the Government in Council appoint “a person not employed”. No one is employed because they will have given their notice to the federal or provincial government, wherever they work, in order to take on that job.

**The Chair:** It's Mr. Housefather, and then over to you, Mr. Johns.

**Mr. Anthony Housefather:** Mr. Chair, I was going to ask a question about what the witness just clarified.

My understanding—and I just want to get it repeated—is that, essentially, someone who is in the public service can apply for the job. What this amendment would require is that the person from the public service, if they were indeed selected, would simply have to resign from the public service immediately prior to their appointment and they could still be appointed.

Is that a correct understanding?

**Ms. Mireille Laroche:** Yes, it is, and that's what happens now, because you cannot both work for the government as a federal public servant and be appointed by the GIC.

**The Chair:** Go ahead, Mr. Johns.

**Mr. Gord Johns:** Just to wrap up again, I've outlined the case around the concerns raised by the Auditor General, judges in the judicial review and the focus group.

I'm going to move to a vote, but this is something we've heard loud and clear, so I'm hoping that we'll support it.

**The Chair:** Please conduct the vote, Madam Clerk.

**The Clerk:** The vote is five yeas and five nays.

**The Chair:** I'm going to vote against on this one. Thank you.

(Amendment negatived: nays 6; yeas 5 [*See Minutes of Proceedings*])

**The Chair:** We have NDP-20.

Mr. Johns.

**Mr. Gord Johns:** NDP-20 is no longer relevant, so I'll withdraw NDP-20 and NDP-21.

**The Chair:** We just won't put them forward.

(On clause 34)

**The Chair:** We are now on G-10.1, which is on page 41.1 of our package.

**Mr. Majid Jowhari:** I'm sorry, Chair. What happened to clause 33.1?

**The Chair:** It's not a stand-alone clause. We have already voted on it.

**Mr. Majid Jowhari:** Okay.

**The Chair:** On G-10.1, I assume we have Mr. Fergus.

**Hon. Greg Fergus:** Very briefly, Mr. Chair, this is a consequential amendment to a vote that we took much earlier in our first meeting and was carried by the committee. This is just ensuring that we have the ability to refer this to more than one person, so that a complainant has more than one person to access to disclose their complaint to if they have a complaint to make.

**The Chair:** Okay. We'll move to a vote.

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

(Clause 34 as amended agreed to on division)

**The Chair:** Colleagues, clauses 35 to 40 have no amendments.

Can we have UC to bunch them, or do we wish to address them individually?

• (1800)

**Hon. Greg Fergus:** If the chair would seek it, I only have a couple of.... I have one clause that I'd like to negate. It would be clause 38. I'd be happy to speak to that if appropriate.

**The Chair:** We need to discuss clause 38.

Can we have UC to carry clauses 35, 36 and 37 and group them together on division?

(Clauses 35 to 37 inclusive agreed to on division)

(On clause 38)

**The Chair:** We have Mr. Fergus on clause 38.

**Hon. Greg Fergus:** Clause 38 is one where I think we have to ask a question. It proposes that the bill seek consent from individuals to disclose their involvement in an investigation. I can easily understand why the complainant wouldn't mind disclosing, but the person who's being complained about I doubt would give their consent. I'm just not certain of the utility of this provision of the act.

**The Chair:** I have Mrs. Vignola.

[*Translation*]

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

I would ask for a moment to review the proposed text. It states: "The Commissioner and every person acting on behalf of or under the direction of the Commissioner may disclose the identity of any person involved in the disclosure process, including that of a person making a disclosure, a witness...". Further on, with respect to the disclosure of information obtained in the course of an investigation, it states: "Subject to other provisions...".

What was your concern, Mr. Fergus?

**Hon. Greg Fergus:** If the consent of each person is required, I find it hard to see why a person involved in a reprisal complaint would have any interest in giving their consent to have their identity disclosed.

[*English*]

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

We'll give Ms. Vignola a few moments.

[*Translation*]

**Hon. Greg Fergus:** Mr. Chair, I'd like to know if the officials can answer the question.

[*English*]

**The Chair:** Yes, of course. We always welcome their input.

[*Translation*]

**Ms. Mireille Laroche:** Thank you for the question.

Basically, clause 38 says that the people involved in a disclosure should be asked if their name can be disclosed. We expect they won't give their consent.

As for the other items that can be disclosed, obtaining the consent of the interested parties makes sense. However, we don't see how the people against whom allegations are made would want their names made public.

**Mrs. Julie Vignola:** Right now, everything is sealed. That said, I understand your argument that the person involved will necessarily refuse to consent to the disclosure of their identity if they are asked for permission to do so.

The purpose of getting everyone's consent was really to respect people's integrity and protect the whistleblower and other public servants. If the name of the alleged wrongdoer is disclosed, it forces that person not to do it again because they are now exposed. Second, it can allow other victims to say loud and clear that they have experienced the same thing. However, I understand your point that the alleged wrongdoer could refuse to have their name disclosed.

If all people except the wrongdoer consent to their names being disclosed, can the disclosure still be made?

**Ms. Mireille Laroche:** Do you mean disclosing all names except the name of the person against whom the allegations are made?

**Mrs. Julie Vignola:** That's right.

• (1805)

**Ms. Mireille Laroche:** Yes. That said, we would never expect the alleged wrongdoer to give their consent. It would be very surprising if someone in that position were to say yes.

So this provision in the bill is somewhat unnecessary. You could take that out and the rest could work.

**Mrs. Julie Vignola:** Okay.

I'm going to ask that we quickly draft a motion.

[*English*]

**The Chair:** Are we ready to vote?

[*Translation*]

**Mrs. Julie Vignola:** No. Can we just ask that those words be removed, or do we have to introduce a motion in writing right away?

[*English*]

**The Chair:** If you wish to do a subamendment, yes, we'd require it in one language in writing for the analysts.

[*Translation*]

**Mrs. Julie Vignola:** Okay.

So in proposed clause 44.2, we would be removing—

[*English*]

**The Chair:** I'm sorry. Give me one moment.

Ms. Vignola, I have some advice from our legislative clerks.

You can move the subamendment, but there are issues where it may have a flow-through effect for the rest of the bill in its entirety. They're suggesting something like this should come from the law clerk, and it may not be, bluntly, a good time or the right time to be proposing a subamendment. They're not able to weigh in on whether it would be a valid subamendment or not.

Mrs. Kusie's was a very straightforward and simple one. Yours is probably not, and it could have multiple effects throughout the bill. It probably should have gone through the drafting clerk.

It's up to you, but it's probably not the best to move a subamendment on this one, at this moment, considering the time.

[*Translation*]

**Mrs. Julie Vignola:** So let's vote on the clause as is. The worst thing that can happen is that people who are alleged to have done something wrong will not let their names be disclosed. That's the worst that could happen. The report will not contain their names. This will not have disastrous consequences.

I move that we vote on clause 38 as it's currently worded.

[*English*]

**The Chair:** We're six minutes away from our hard stop. Frankly, we could actually adjourn now and give you time to have it drafted properly, or we can stand it and come back to clause 38 at a later time.

We'll stand it? We need unanimous consent to stand it.

(Clause 38 allowed to stand)

(Clause 39 agreed to on division)

(On clause 40)

Go ahead, Mr. Fergus.

• (1810)

**Hon. Greg Fergus:** I'm certain our legal experts will agree that we should—

**The Chair:** This is on clause 40?

**Hon. Greg Fergus:** This is on clause 40.

There are consequences to whether or not the debate that we skipped earlier on G-6 in clause 10, which we were going to get back to.... Depending on what we do there, it will have consequences for clause 40.

May I suggest that we move along and skip that as well until we get to that end part?

**The Chair:** Okay. Mr. Fergus is asking to stand clause 40 based on the outcome of G-6. Do we have unanimous consent to do that?

(Clause 40 allowed to stand)

**The Chair:** We're now on a new clause, clause 40.1, which is CPC-5. With luck, we can get through CPC-5 and LIB-11 before we have our end.

We have Mrs. Kusie for CPC-5.

**Mrs. Stephanie Kusie:** This is simply a coordinating amendment to allow for definitions mentioned through our other amendments to be determined through regulation.

**Hon. Greg Fergus:** Mr. Chair, we agree with that amendment.

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

**The Chair:** On LIB-11, I understand you are not putting that forward?

**An hon. member:** No, we are not.

(Clause 41 agreed to on division)

**The Chair:** On clause 42, which is a new clause, we have G-11, on page 43 of the package.

Go ahead, Mr. Fergus.

**Hon. Greg Fergus:** There are two amendments that are coming before committee, G-11 and G-12. In G-11. We're looking for this coming into force by a Governor in Council change, and of course, in G-12, we're looking for coming into force two years after this receives royal assent.

I don't know if you want to have a debate together or if you want to have it one by one.

**The Chair:** If G-11 is adopted, G-12 cannot be moved.

**Hon. Greg Fergus:** That is correct.

**The Chair:** I'm advised you have to decide, Mr. Fergus, whether you wish to proceed with G-11 or G-12.

**Hon. Greg Fergus:** Then we'll start with G-11, sir.

**The Chair:** Do you wish to address it, Mr. Fergus, or are you done and we'll go to Ms. Vignola?

**Hon. Greg Fergus:** I'm really done. It speaks for itself. This is an amendment that would allow the bill to come into force through the Governor in Council, taking into account all the elements that are here. Things that are done that can be implemented quickly will get implemented quickly. Those that require some working out of whatever budget implications that there are would come into force later.

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

Go ahead, Mrs. Vignola.

[*Translation*]

**Mrs. Julie Vignola:** I'll be brief.

On amendment G-12, I feel two years is a very long time. I would prefer six months to 12 months. If it were six months, it would probably mean that the bill would receive royal assent around June of next year, after third reading and consideration by the Senate.

As for amendment G-11, I don't agree, because the decision could be postponed indefinitely. I can't accept that the order be postponed indefinitely.

By setting a date for royal assent, whether it be six, 12 or 24 months, depending on what we decide, that would enable the machine to put in place what it needs to enforce the provisions set out in the bill. It would also set out a clear timeline. If the date were set by order in council, the timeline wouldn't be as clear. We would rely on the goodwill, or ill will, of the government in power at the time.

I certainly don't agree with amendment G-11. I am more open to amendment G-12 than amendment G-11.

• (1815)

[*English*]

**The Chair:** Is there anyone else?

We'll have a recorded vote.

**Mr. Anthony Housefather:** Mr. Chair, can I just ask for a precision?

G-11 is coming into force by GIC, which Mrs. Vignola was against. Is that correct?

**The Chair:** That's correct, but we're voting now, Mr. Housefather.

I'm sorry. You missed your opportunity, because we're voting now.

**Mr. Anthony Housefather:** Thank you.

(Amendment negatived: nays 6; yeas 4 [*See Minutes of Proceedings*])

**The Chair:** We'll try to get to G-12 before we have to adjourn in a couple of moments.

Mr. Fergus.

**Hon. Greg Fergus:** Again, this will come into force two years after royal assent.

**The Chair:** Mrs. Vignola, do you wish to address that?

[*Translation*]

**Mrs. Julie Vignola:** I just stated my opinion. I feel that 24 months is a long time. I could move a friendly amendment to make it six months. Under the current bill passage process, it would receive royal assent around September. That would give the officials time to put in place what they need.

Do I need to draft the motion?

[*English*]

**The Chair:** Mrs. Vignola, I'm going to suggest, seeing as we're past our hard stop of 6:15, that perhaps you put that in writing, and we will address that at our next meeting.

Colleagues, before I adjourn, I'm going to seek some resources to see if we can fit in some time tomorrow. I'll advise everyone late tonight, or first thing tomorrow morning, if we can continue Bill C-290.

If there's nothing else, we will adjourn, and I will see everyone on Wednesday, or perhaps tomorrow. I'll let everyone know first thing in the morning. Watch your emails. Thank you very much.

Thank you again for your help, Ms. Laroche, Ms. Stevens and legislative clerks.

• (1820)

The meeting is adjourned.









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