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Chair

Mr. Leon Benoit

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● (1105)

[*English*]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good morning, everyone. We're here this morning pursuant to the order of reference of Monday, October 18, 2004, to examine Bill C-11, an act to establish a procedure for disclosure of wrongdoings in the public sector, including the protection of persons who disclose the wrongdoings.

As a witness today we have Edward Keyserlingk, Public Service Integrity Officer. With him are some other gentlemen. I'll leave it to him to introduce them.

Mr. Keyserlingk, would you like to make your opening statement?

[*Translation*]

Dr. Edward Keyserlingk (Public Service Integrity Officer, Public Service Integrity Office): Thank you, Mr. Chairman, for the opportunity to present my views and proposed amendments regarding Bill C-11.

[*English*]

I would be pleased to answer any of your questions, including those that may arise from these opening remarks or from the written documents I submitted last week for your consideration. Those documents comprise part two of my submission, entitled "Analysis and Specific Observations", and part three, entitled "Clause-by-Clause Comments and Proposed Amendments". Also distributed to you were copies of my recent annual report for the year 2003-2004.

[*Translation*]

I would like to introduce my colleagues accompanying me here today, Pierre Martel, Executive Director, and Jean-Daniel Bélanger, Senior Counsel.

[*English*]

In view of the brief time available, I will focus these opening remarks on just two points, if I may. The first has to do with what I believe, based on three years of experience as the public service integrity officer, are the fundamental and essential elements of a legislated disclosure of wrongdoing regime for the federal public sector. In the second and related point, I will briefly explain why I believe there should be a stand-alone agency, and why no existing department or agency is an appropriate locale in which to place a disclosure regime, given what it must be and do—and that includes, in my view, the Public Service Commission.

First, a credible and effective disclosure of wrongdoing regime and agency should, I believe, be established on the basis of legislation. That legislation should include a clear legal prohibition of reprisal against those who disclose wrongdoing, providing legal sanctions sufficiently severe to repudiate and deter any reprisal activity, whether overt or subtle.

Second, the regime should be independent of the public service and from the executive branch of the government.

Third, it should report to Parliament.

Fourth, it should be insulated from real and perceived conflicts of interest and conflicts of mandate.

Fifth, it should not focus on human resource, employment, or staffing matters, but on forms of serious wrongdoing against the public interest as specified in the present disclosure policy and Bill C-11.

Sixth, it should have a process that is uncomplicated, timely, and entirely managed by the disclosure of wrongdoing agency or office for both disclosures of wrongdoing and any potential complaint of reprisal.

Seventh, it should have robust investigative powers.

Eighth, it should be accessible to the entire public sector without exception.

Ninth, it should be directly accessible without a requirement or preference for first disclosing wrongdoing internally, leaving the choice of avenue entirely to the one disclosing.

Tenth, it should be accessible to those who are not public servants if and when they have credible information or allegations about potential wrongdoing by public servants.

All those ten essential elements, I strongly suggest, force a conclusion that for reasons of practice and principle the disclosure of wrongdoing regime must be stand-alone, not attached to another department or agency.

Those elements and that conclusion are not mine alone. They come from public servants themselves. Any disclosure of wrongdoing law is after all designed to encourage those in the public sector to come forward with credible allegations of wrongdoing. They have made it crystal clear what such a law and agency should be and do if it is to merit sufficient credibility and confidence for them to do that. Not to construct a disclosure regime accordingly would be like ignoring consumer preferences when designing a product.

In the final analysis, it does not matter much what I or deputy ministers or committee members or cabinet ministers think such a law should be, or what compromises we would be willing to make in designing the legislation. We are not the ones it is designed for or the ones being asked to take the risks. Public servants have told us in words and actions that a whistle-blowing or disclosure law and regime that are compromises or only second best will not suffice.

As you are well aware, Bill C-11 contains at least some of those essential elements, but it does not provide for an independent, stand-alone integrity commissioner. This brings me to my second point, namely, that to place the disclosure regime in any existing agency or department, including the Public Service Commission, would, I believe, inevitably compromise at least some of those essential components.

I fully endorse the view that says we should not needlessly multiply agencies but should use those already in existence when they can accommodate new functions. But that is after all the point. Could any of them accommodate the new and specific function of a disclosure regime without compromising it? I urge you to answer that question in the negative.

No existing department or agency has a mandate or structure or investigative process that matches the goals, targeted wrongdoing, source of information and evidence, protections required, and needed powers of investigation and resolution intended by Bill C-11 itself. For example, only a disclosure of wrongdoing regime gets its initial impetus to investigate from confidential allegations. Only a disclosure regime focuses on the widest range of serious public interest or wrongdoing, well beyond mere human resource grievances or financial audits. Especially, a disclosure regime needs to be, and be seen to be, completely impartial, accessible, effective, and protective against reprisal, or disclosers will not come forward.

● (1110)

Allow me to address in very summary form why in particular adding the disclosure regime to the other responsibilities of the president of the Public Service Commission, as proposed in Bill C-11, could not adequately encompass those special and essential features of a disclosure regime, and why therefore it would be at best a compromise and a second choice compared to a stand-alone, independent integrity commissioner.

First of all, the Public Service Commission's focus and mandate is a human resource one, primarily that of staffing, with the laudable and necessary mandate of ensuring that public service staffing is impartial, untainted, and based on merit. Bill C-11, on the other hand, is not about staffing, employment-related grievances, and conflicts in the workplace. By its own terms, this law is designed to address serious instances of wrongdoing against the public interest—for instance, breaking of laws and regulations, gross mismanagement, or serious threats to life, health, or the environment. Given that scope, those who make disclosures are more witnesses of wrongdoing than victims of it.

On the other hand, a proposal to locate the disclosure mandate and mechanism in the Public Service Commission, as well as elements of the proposed process involving the labour relations boards, reflects and is suited for a human resource context and mandate. I think it is safe to say that Bill C-11 is designed with the expectation that credible allegations about any future incidents, such as the sponsorship program, or the former Privacy Commissioner, or the tainted blood scandal, would be brought to and investigated by this disclosure regime. But surely these and similar activities cannot reasonably be labelled as or reduced to mere human resource matters.

Secondly, this proposal raises a serious and inescapable concern about conflict of interest. While in some of its functions—investigations and audits—the PSC is said to operate independently, in others—staffing and recruitment—it operates within the executive branch. Staffing is normally considered to be a management function. Since the president of the Public Service Commission has executive responsibilities within the government, if that president is asked to investigate and pass judgment on a public service employee or executive alleged to be a wrongdoer, it would amount to the government investigating and judging itself. I suggest a second level of potential conflict of interest would arise from the fact that the same president who is ultimately responsible for the appointment of executives, whether directly or delegated to departments, could be expected to pass impartial judgment on those same executives if they became the object of credible allegations of wrongdoing.

There is no surer way to impede confidence in an institution or process than by leaving it exposed to conflicts of interest. In our times, it is normally a first and primary consideration to design structures and procedures so that occasions and suspicions of conflict of interest are reduced to the absolute minimum possible. It is worth noting in this regard that in the corporate sector, internal corporate whistle-blowing offices are simply not used or trusted. The resulting trend is to locate these offices completely outside the corporation in order to avoid the reality and appearance of conflict of interest.

It has been suggested that there are plans for the Public Service Commission to eventually shift the focus increasingly in the direction of more delegation of executive staffing to the departments. But delegation of responsibilities still leaves the president of the Public Service Commission ultimately responsible for that staffing. To delegate a responsibility does not relieve one of it, or change the status of the delegating organization or increase its independence. The fact that delegated power can be withdrawn from departments by the PSC, as it recently was in two instances, makes that point. It has even been suggested that to accommodate the disclosure regime in the PSC and divest it of executive functions, all staffing responsibilities could be handed over to another agency. Not only would that require an amendment to its governing legislation, but more importantly that would seem to radically weaken the PSC. Why in effect remove the laudable and needed capacity to ensure impartiality in staffing only to accommodate a disclosure regime that would be more credible as a stand-alone entity?

Quite frankly, some of the ideas, conjectures, and scenarios of that kind sound very much like experimentation. We have already had three years of experimentation in the form of the disclosure policy and my office. I urge you not to support further experimentation by inserting the disclosure of wrongdoing regime into a commission such as the PSC on the basis that it is worth a try, since certain things may change in that commission at some point in the future to make the location acceptable.

None of my views and proposals are intended to reflect negatively on the professionalism and dedication of the present president of the PSC and her staff. I would like to emphasize the fact that I have enormous respect for the president of the Public Service Commission, Maria Barrados. I have no doubt whatsoever that if the disclosure regime is in the final analysis added to her present mandate, she would handle it with the utmost skill and dedication possible, given the structural limitations and complexities of the bill as presently drafted.

● (1115)

If the disclosure regime were to be placed in the PSC, I suggest that the only way to make it as credible and effective as possible, given those limitations of the context, would be to structure it as a separate branch of the PSC, to the point that it would almost look like a stand-alone entity. It would have to be at arm's length from the president's other responsibilities and functions; use investigative measures and protections adapted to the unique demands arising from allegations of wrong-doing and complaints of reprisal; have a separate and dedicated staff and budget, a different address, and confidential access; and be administered by a person who is credible in the eyes of public servants and has the relevant skills.

That sounds to me very much like an independent, stand-alone office, except for the critical factor that the office would be headed by the president of the Public Service Commission. Since that would arguably raise serious concerns such as conflict of interest, why not go one step further and make the disclosure regime stand alone and independent? To do so would not, in fact, be novel or radical entirely. In the disclosure of wrongdoing bill introduced in the previous Parliament, Bill C-25, the same government proposed essentially that—a stand-alone integrity commissioner.

In conclusion, I urge members of this committee to amend this bill and, as a result, enlist the confidence and support of public servants, the public, and many others. At present, the bill is a very second-best compromise, in my view, a collation of approaches and parts from other jurisdictions where they have already proven inadequate. Once amended in the respects others and I are proposing, I believe we would have a model piece of legislation and a disclosure regime that would match and surpass the best in other jurisdictions.

Thank you very much.

The Chair: Thank you very much, Mr. Keyserlingk, for your presentation.

We'll go straight to questioning, in a seven-minute round, and Mr. Preston.

Mr. Joe Preston (Elgin—Middlesex—London, CPC): Thank you for coming today, Mr. Keyserlingk.

Your opening comments say an awful lot about where you stand on this, so I'll get to it quickly. We've talked a lot at this committee about making Bill C-11 a bill that will work, making Bill C-11 a bill that protects whistle-blowers, and that's what it's meant to do. The fear is that if we don't do it right in the first place, we won't get a second chance. If the first whistle-blower who comes forward does not feel they were protected, that there were reprisals and they were not reacted against, then we won't get a second chance to do it. Some of what you're stating is putting that in this light.

You mentioned ten essential parts that are needed to whistle-blower legislation, and they're listed in there. I agree with each and every one that you mentioned. But you've been pretty straightforward in saying this should be a stand-alone agency. I didn't count the number of times you said it, because I quit counting after a little while.

Obviously, your view is that this is really what it should be. By the time you got to describing that it could be a separate piece of the Public Service Commission, you had put it through so many hoops that it ended up being a separate entity anyway in your comments. Can you describe to me what you think the agency that would take care of whistle-blowing would look like?

Dr. Edward Keyserlingk: I think it would look like a stand-alone —if I may use the expression again—agency in the sense that it reports to Parliament; has a staff that is entirely focused exclusively on this issue—an investigative staff with the particular skills needed to do that, with a mandate to particularly ensure the protection of those who come forward with credible, good-faith allegations; and would not thereby take on the impressions that people have that may be right or wrong about the agency to which it could otherwise be attached. That would be a crucial factor in ensuring the confidence in people to come forward while feeling they could be protected from reprisal, because it would be the exclusive focus of this particular agency. That is essentially what I see as the way it would look.

Mr. Joe Preston: Would it report to Parliament?

Dr. Edward Keyserlingk: Yes, it would.

● (1120)

Mr. Joe Preston: Can you forecast, in your mind, as a start-up, what annual budget would be needed for an agency of this magnitude?

Dr. Edward Keyserlingk: The budget, in my view, would not have to be different from the budget that we have now, which is about $1.5 million. It would be added to, of course, because of the fact that the umbrella of this agency would cover the whole public sector—and that fits with Bill C-11 as well. Clearly you would have to increase the budget for that reason, but not for any other reason. We have functioned with that budget, with the much smaller contingent available in terms of being under the umbrella right now, but the budget would simply have to be increased exponentially to cover that much wider public sector.

Mr. Joe Preston: You mentioned that given the scope, those who make disclosures are more witnesses than victims. I give you that at the outset. They really are witnesses to wrongdoing who come forward. They become victims when reprisals are taken against them, or even implied reprisals are taken against them. This commission—whatever we're talking about—this separate entity we're talking about setting up would need to have the power to also investigate reprisals, not just wrongdoing. It needs an auditing branch that is forensic on the wrongdoing side, but also on the reprisal side.

Dr. Edward Keyserlingk: That's absolutely right. That is why I have proposed that the same agency and commissioner—if that's what it will be called—would have control in terms of investigations over both the disclosures of wrongdoing and any subsequent allegation of reprisal that might come from that disclosure. If it isn't located in the same place, that's another way to have people wondering how this agency is going to function, how they will be protected, if, after all, the labour boards are going to deal—as proposed now in Bill C-11—with the complaints of reprisal, but the PSC, or let's say the integrity commissioner, with the disclosure of wrongdoing. You've right away got an extremely complicated process managed by two very different places. You cannot, therefore, give the assurance to the person coming forward about how this will function, and what methods we use, and so forth.

Right now what we do is we tell a person coming forward with an allegation of wrongdoing that from the time you come forward we tell your department that reprisals are not permitted and that we will be monitoring this. They can come to us at any point, even before the investigation of the wrongdoing is concluded, with an allegation of reprisal. You could not do that form of preventative protection unless the same agency handled both of these two sides.

Mr. Joe Preston: That's the danger. If it's two different places we don't get that protection. If we don't get it right the first time, we stand a chance of this agency never being used because no one else is going to come forward.

Dr. Edward Keyserlingk: That's right.

Mr. Joe Preston: Mr. Reid was here to speak to this committee on access to information. He stated there were a couple of sections in this bill he really had some difficulty with. Do you know of his testimony and of the pieces he said, and do you concur?

Dr. Edward Keyserlingk: I concur with his view that the reporting to Parliament should be as open as possible. It is my view as well as his that the present bill, in clause 49, I believe, is a little too limiting in terms of what can be reported.

Mr. Joe Preston: Great.

The Chair: Thank you, Mr. Preston.

There is a minute left if you'd like to take it, Mr. Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I will take the remainder of my friend's time here.

You made very clear to us that the current structure would not be adequate because of the failure to provide an independent office to which complaints could be reported. Mechanically, how would you see the amendment going forward? Which sections would need to be amended? How would the amendment be authored, generally speaking, to bring about the changes that you desire?

Dr. Edward Keyserlingk: There are two particular ones that I think I would propose. One would be to delete the reference to the Public Service Commission and make this instead a stand-alone agency. Secondly, there are the sections that cover the process insofar as it divides the jurisdiction between who would handle the disclosure of wrongdoing and who would handle the complaints of reprisal, which presently go to two different places. Those places, it seems to me, are the guts of what I would propose need to be revised. There are other things as well that I could discuss if you'd like, but to me those are the central places.

Mr. Pierre Poilievre: Can we just give your office the mandate, budget, and staff to carry out the job?

Dr. Edward Keyserlingk: It wouldn't be my office, first of all, because I won't be there. I will be leaving when we achieve the transition period into whatever it goes to. It also wouldn't be the PSIO because it would then be a legislative body, which is quite different.

I take your point: there would be some transition from one to the other, and clearly the budget would go to this new agency or new commissioner.

● (1125)

The Chair: Thank you, Mr. Poilievre.

Madam Thibault, seven minutes.

[*Translation*]

Ms. Louise Thibault (Rimouski-Neigette—Témiscouata—Les Basques, BQ): Thank you, Mr. Chairman.

I want to thank you and your colleagues for coming and for the detailed background material that you made available to us. I was quite impressed. This material will help us with our study.

I'd like to attempt to tie certain elements together. Your office has been in existence for some time now and a policy respecting internal disclosure has been established. If I understood correctly, your office receives complaints or hears potential allegations made by certain public servants, who can number up to 60,000 or 70,000, because 288,000 public servants are in fact excluded from the purview of the act. That's very important to note, in my estimation.

In your opinion, should all public servants, including persons who work for Crown corporations and agencies, be subject to the act's jurisdiction?

However, I'm really interested in something else. Your Office received and investigated a number of complaints. In Appendix D of your report, you state that further to your investigations, you came to the realization that your Office—you're a very honest, upstanding individual—did not have sufficient support or the confidence of public sector employees. You also mention some reasons for this state of affairs and note that in your opinion, this skepticism is not unreasonable and that you expect it to continue.

Therefore, as I see it, you've diagnosed the problem and are trying to propose a somewhat different approach for the future that will work. What do you believe to be the cause of this perception or belief on the part of public sector employees? Furthermore, before we find a remedy, how can we focus on the future? I'd like your comments on this matter.

I'm concerned about your comments on page 59 about the need to build supportive working environments. When you talk about recruitment, training, evaluation and so forth, are you saying that although some good things have happened in the past, these are the most contentious, or problematic areas?

Since we're all interested in the future, I'd like you to respond to my comments about the reasons identified in your report.

[*English*]

Dr. Edward Keyserlingk: Just to be clear, I'll answer in English.

The perception we have the analysis we have made of our experience is that the reason why people have not come forward with more of what we call public interest types of wrongdoing, which are the kinds of wrongdoings that are listed in the disclosure policy and also in Bill C-11, and are serious instances of wrongdoing, we might say for instance in the category of the sponsorship program, etc.... The reason we feel that people have not come forward with that, typically, though some have, is because of lack of confidence in our process, in our independence, and in what we can do about what they come forward with, including how well we can protect them, because we are attached essentially to the executive level of government.

We come to that conclusion on the basis of what they themselves tell us, because we talked to quite a few public servants in the course of going out and talking about the office and telling them how it works and so forth. We also conclude that from people who call us and are considering making an allegation and ask us how we function, what we can offer, what are our powers and so forth, and then decide in some cases not to come forward.

Thirdly, we base this conclusion on the fact that people are in fact going forward elsewhere with allegations of wrongdoing and in fact we have, as you know, a public inquiry going on right now on one of these matters. it is our contention that if this office had existed in the way we are proposing, that inquiry may not in fact be necessary, because people would hopefully have the confidence in the office, in the agency, to come forward without having to go to a long—one year or longer—public inquiry with all the monetary and other uncertainties that involves.

So that is what has led us to conclude that the kinds of cases we have been getting, which have been very largely in the employment-related area, are easier for people to come forward with because they don't take as much risk with that kind of allegation. They also hope to be the beneficiaries if we solve the problem.

In the other kind of allegation about public interest wrongdoing, where they are witnesses more than victims, it takes a lot more courage and determination and confidence to come forward, because they will not be personally the beneficiaries. The department might, and the public hopefully would, but not themselves.

● (1130)

[*Translation*]

Ms. Louise Thibault: You say that of all the cases investigated this year, approximately 20 involve allegations of mismanagement. You also mention an harassment complaint. A policy respecting harassment has been in place for some time and such a policy is essential. For example, let's say that one quarter of the 80 complaints filed involve cases of alleged mismanagement. You claim that public sector employees lack confidence in your office. I'm not saying that we need one, but no scientific study has been done. However, we sense that this confidence is lacking.

So then, public sector employees lack confidence in your office. But are they really aware of the recourse available to them? For instance, we could have on place trained managers who are very much aware of values and ethical considerations. I was concerned to hear you talk about recruiting people and training them to suit your requirements. I have to wonder if we should not be recruiting people who already have what it takes to do the job. In other words, we should be hiring people who already have such intrinsic values as integrity. Those already on the job could help them refine these qualities. However, when it comes to ethical and moral considerations, it's not always possible to change things.

[*English*]

Dr. Edward Keyserlingk: We are clearly not in a position to know how much wrongdoing there is in the public service. We meet an incredible number of very impressive people who clearly understand very well what their duties are, and do them very well.

My position is that even with all the training of managers in ethics, good management, accountability, and so forth—all of which we absolutely need—there will always be some instances of serious wrongdoing in as large a public service as we have. That's not a comment on the deficiencies of the public service; it's simply a comment on the reality of any large institution of this kind. There will always be people who will not measure up, and then the issue is how one deals with that.

I have absolutely no hesitation in endorsing all the efforts to train, teach, and improve people's managerial skills, accountability, auditing functions, and so forth. Those are all absolutely necessary. The issue here is simply when those don't suffice, what will we do? Will there be a place where people can go and say, “Something serious is happening in my department. Here is what I think is happening. Would you address it, and would you as well protect me from reprisal?”

We only pretend to be a very small piece of the picture here. I say that because sometimes people feel we are proposing to be the whole answer to all wrongdoing, all training, and all ethics—morality and so forth—but that's obviously not the case.

[*Translation*]

Ms. Louise Thibault: There are no miracle solutions.

[*English*]

The Chair: Thank you, Madam Thibault.

Seven minutes, Mr. Szabo.

Mr. Paul Szabo (Mississauga South, Lib.): Thank you, Mr. Chairman.

Mr. Keyserlingk, clause 12 is the principal clause, which states, "Any public servant who believes he or she is being asked to commit a wrongdoing, or who believes that a wrongdoing has been committed may disclose...". I stress the words, "may disclose". You've proposed an amendment to clause 12 that also includes the language "may".

I personally feel this bill can't afford to have a false start. As you mentioned, the confidence level of the employees is a big issue. This bill has to pass the employees' test. Why are you supporting "may disclose", as opposed to "shall disclose" so that the integrity of the bill is that every stakeholder has to, in good faith, be part of the solution?

● (1135)

Dr. Edward Keyserlingk: I would be more comfortable with a "should" if we had a mechanism that actually could protect them, but I don't mean "should" necessarily for everyone. Certainly for people in managerial positions who have responsibilities as managers—have professional responsibilities in view of their particular professions—I would have no hesitation whatsoever in saying they "should" report wrongdoing. In fact, that's a position their own associations and professional associations would encourage. That's been a deficiency in some of the incidents that have happened in recent times.

My problem with going more broadly with that to all public servants is that it calls for a lot of confidence for people to come forward with reports on an obligatory basis when they're afraid of reprisal. That's a realistic fear no matter what system we have. There will always be some degree of that fear.

I would have no hesitation, though, in saying that those who have managerial positions should come forward, because it's within their normal managerial responsibilities.

Mr. Paul Szabo: The language also says if the employee "believes" there's a wrongdoing. I don't know what "believes" means. I'm familiar with other regimes where reporting should be done—in fact it must be done in the case I'm familiar with in the Canadian Institute of Chartered Accountants if some information or knowledge comes to someone's attention. They don't have to know directly, or whatever, they just have to come into information. Their obligation is to simply pass it on to the responsible officer, and it's the officer's responsibility to determine whether or not there is a basis for some allegation. They might be able to get other information that might vet it out.

I raise this because one of the problems in the bill is dealing with malicious allegations. Why is the onus put on employees to somehow prove or to have full knowledge of a wrongdoing, as opposed to becoming aware of only some piece of the information? How do we deal with that?

Dr. Edward Keyserlingk: That's a very good point. I agree with the thrust of it. "Believe" might not be the right word here. I took this to mean the employee thinks, on some credible grounds, there has been a wrongdoing.

What we use in our office as an initial test is the credibility of the allegation. We call them "allegators" in some cases. When a disclosure comes forward, we always look first of all at the credibility of the allegation. The discloser may not be very certain at all, but may think it's worth looking at. We do exactly what you suggest. We don't expect them to have an absolutely airtight case, but simply that they think it is something serious and should be looked at.

That's much more important to us even than good faith, because good faith is a very hard thing to judge. We think it's very important that they be in good faith, but it's a hard thing for anyone else to judge. I think a more useful, practical criterion is the credibility. Even if there is a degree of resentment or bad will between the two people, the issue is whether it likely happened and is worth looking at.

Mr. Paul Szabo: Thank you for that.

I'm sure the confidence of the employee will be enhanced if they have all the assurances, not only in the legislation but in practice, that any allegation or information that may lead to an allegation is going to be taken seriously by the body that has been set up, and there will be a robust investigation to make absolutely sure, because it's in everybody's best interest.

I want to move on, though. In your experience with the working group and all of the other work you've done on this, you have an idea, I'm sure, of the number of allegations that may come forward. Let's eliminate all of the human-resources-related ones, where people have not quite understood the line.

Do you have an estimate of how many allegations the Government of Canada might expect to receive in a year, based on the experience of others, and of those, how many might turn out to be serious wrongdoings?

● (1140)

Dr. Edward Keyserlingk: It's very hard to say. We have been essentially reactive, and I think that would be essentially true of a new agency as well. But in the course of the past year we've had roughly 80 allegations. I think it would not be impossible, because of the wider umbrella over the whole public sector—and if we allow in, as I propose we do, allegations about public servants by people who are not themselves public servants if they cover the potential wrongdoings of public servants—to have 300 or more, just because of the larger group. It's hard to say.

Mr. Paul Szabo: I'm sorry, I only have about 30 seconds left and I want to ask one more question.

You stated in your comments that the PSC could do the job, but you went on to describe the scenario where we would in fact emulate a stand-alone agency within the PSC. That basically says to me there is no way you believe that anything other than a stand-alone agency, either real or emulated, could do this job properly.

If there are over 100 departments, agencies, crown corporations, etc., each with a supervisor, senior officer, and the PSC, and everybody else is going to be...it seems to me there will be hundreds of people involved who will have to be kept up to speed on all of the things that are going on—establishing ethics guidelines and codes, etc.

How does that make sense—if we knew the number we were looking at—compared to setting up an agency, maybe even something similar to your own office? Tell me how many people you have, and how much work you can do. If we could only find out the number of allegations that were real wrongdoings. Could an office your size be a more cost-efficient and maybe more credible vehicle to discharge those responsibilities?

Dr. Edward Keyserlingk: Yes, I think it could.

In terms of credibility, assuming that it's structured in the right way, the stand-alone agency would be more credible. That's part of my thrust here. It would be separate from anything else that might colour it, whatever that something else might be. This is not to denigrate any of the other agencies. It's simply to say this is what it is, judge it. You don't have to judge anything larger in which it sits, but judge this. Look at how it functions, and so on.

In terms of the cost effect, I don't think there would necessarily be a great deal of difference, whichever way it goes. If it goes into the PSC or another agency, there would presumably have to be a dedicated budget for this particular function. I don't think it would necessarily be different, quite frankly, whether it's stand-alone or not.

The Chair: Thank you.

Your time is up, Mr. Szabo.

Mr. Preston.

Mr. Joe Preston: I'm going to share my time with Mr. Poilievre, and he'll start.

[*Translation*]

Mr. Pierre Poilievre: Thank you, Dr. Keyserlingk, for appearing before our committee.

I want to begin by saying that I fully agree with you about the need for an independent office that would have a specific mandate to protect whistle blowers. I think your office would be the best entity to take on this task.

I'd also like to point out that you're the second person with some authority to come before this committee to argue that the Liberal's bill is flawed in many respects. The Information Commissioner identified some significant problems with the draft legislation and stated that the sponsorship scandal would not have come to light if the legislation had been in effect when the scandal occurred.

My question for you is more specific. When public servants become whistle blowers, they inevitably face some reprisals. They will always have to contend with the threat of reprisal, even if there is an agency and legislation in place to protect them. Why not consider compensating them for the reprisals they experience when they disclose a wrongdoing?

● (1145)

[*English*]

Do you support the idea of awards or financial rewards for those public servants who risk their careers by making disclosures?

Dr. Edward Keyserlingk: I certainly support the idea of awards. Whether they are rewards or awards, I have no hesitation whatsoever in subscribing to the idea that people who come forward should be noted, in some way, to have done a public service. We can discuss the various ways that could be done. Certainly if there's a question of saving money from exposing a contractual wrongdoing, some jurisdictions have actually awarded them with a percentage of the savings. In principle, I have no problem with that.

The more general point I would like to make is that some form of award should be provided. For instance, I have suggested that the public service could be included in the list of awards that are given every year by the public service. Include some of those who have come forward with allegations that have proven to be important, where serious wrongdoings were uncovered and, as a result, something important was done to fix the problem and make the public service healthier. At the very least, why not give that person an award?

At the moment, I think the impression the public service more typically has is that they are going to be in more trouble, rather than seeing it in a new light, if they come forward. Whatever way we choose, I think it's very important to do it in exactly the way you say, to provide some way of underlining the fact that they are doing a public service.

Mr. Pierre Poilievre: I think it's reasonable to accept that there should be some financial remuneration if significant dollars are saved. This is a regular practice in a lot of private sector companies, where individuals who expose waste, causing a cost-saving to result, are rewarded in some way. I think it should be a capped financial award, but it should be there so that there are some positive rewards for making disclosures, not negative punishment for having failed to do so.

Secondly, I want to know this. What application do you believe whistle-blower legislation should have for the private sector? How might those protections be administered?

Dr. Edward Keyserlingk: I think ideally it should certainly apply to people who have had dealings with the government and have something important to say about the potential wrongdoing of a public servant. That is why we propose that the bill, insofar as it does not admit those people to the disclosure system to disclose wrongdoing, should be amended to allow them to come forward. Clearly, that would normally include, for instance, people who are contracting with the government, the employees of the contractors, and it could include a person who has dealt with the government in terms of a grant and has had certain experience that needs to be disclosed and which might be wrongdoing, unfairness, or what have you.

Our basic point is that you should be able to get evidence of public service wrongdoing wherever you can find it. Sometimes that will come, more typically, from outside the public service.

Now, it's not impossible to provide protection from reprisal for those people, too, because if they continue to have dealings with the government, their fear might be, “What jeopardy does this put me in, if I'm going to make a disclosure of wrongdoing?” It seems to me that you ought be able to extend the protection from reprisal to those people as well. Insofar as you monitor what happens, they can come back to you and say, “We are experiencing reprisal for having come forward; we are suddenly and unexpectedly being denied something we feel we're entitled to on objective grounds”, etc., etc.

So yes, I think those would be ways I would suggest.

● (1150)

Mr. Pierre Poilievre: My constituency is full of people who provide goods and services to the government on a contractual basis. My riding is entirely within the city of Ottawa, so you can understand the direct financial and ethical interest I have in ensuring that these contractual relationships are upheld with the utmost integrity.

So if I understand your position correctly, those people who provide services and goods on a contractual basis should be protected from revenge with this legislation, and be allowed to bring forward complaints and disclosures without retribution. Is that your position?

Dr. Edward Keyserlingk: Yes.

Mr. Pierre Poilievre: And how should this law then apply to the private sector or independent companies that have no business in particular with the government?

Dr. Edward Keyserlingk: I don't see any way or any need to restrict who could have access of this kind. The issue would always be has this person got a credible allegation of wrongdoing about a public servant's wrongdoing, wherever that person comes from?

The Chair: Thank you. Your time is up.

To Mr. Kilgour, for seven minutes.

[*Translation*]

Hon. David Kilgour (Edmonton—Mill Woods—Beaumont): Thank you, Mr. Keyserlingk, for your opening remarks and for your written submission on the draft legislation's various clauses.

[*English*]

Were you consulted by Treasury Board on the drafting of Bill C-11?

Dr. Edward Keyserlingk: I was consulted after it was already done, essentially.

Hon. David Kilgour: Did they make any changes based on your recommendations?

Dr. Edward Keyserlingk: No.

Hon. David Kilgour: That says it all, doesn't it, Mr. Chairman?

Dr. Edward Keyserlingk: They already knew my views, of course, but I wasn't consulted.

Hon. David Kilgour: We heard the same thing from the Information Commissioner, and I would think you'd be the first two people the government would consult.

Have you looked at the government accountability project in the U.S?

Dr. Edward Keyserlingk: Yes.

Hon. David Kilgour: You're familiar with that?

Dr. Edward Keyserlingk: Yes.

Hon. David Kilgour: Don't you think we could have learned some lessons from their experience?

Dr. Edward Keyserlingk: Yes.

Hon. David Kilgour: Well, you know, sir, better than I do that people such as Joanna Gualtieri, who is here today, and Brian McAdam and Corporal Robert Reid and Alan Cutler have suffered enormously for their attempts to do the public a service. Do you think it's fair to say that your opening remarks focused a bit much on disclosure of wrongdoing, rather than on how to protect whistle-blowers?

Let me tell you what I'm getting at. You speak about prohibiting retaliation, but don't you think we have to spell it out how we would do that? Retaliation apparently happens, as you would know better than I would, about 85% of the time. Shouldn't we do things to say there's a locked-in process? You just spoke about rewards or awards, but shouldn't there be legal counsel, perhaps, for whistle-blowers? The wrongdoers get legal counsel, paid for by the taxpayers, from the Department of Justice or other agents. Shouldn't we go into these things, such as remedies, lost salary, harassment at the office, and so on, and lack of career advancement? Is there some way you can think of by which we can try to build in an institution that would protect public-spirited whistle-blowers?

Dr. Edward Keyserlingk: First of all, in general terms—I'll get to specifics later—we've argued that this is one reason why, exactly as you say, this should not be put into a human resource context. Because what you do then is you lock in the remedies to those available to labour boards, and that's a fairly limited range of things that apply essentially to a labour situation, an employment situation.

This agency or person, this disclosure mechanism, in my view should be extremely flexible about what it can offer to people, very much based on the specifics of that individual person and case. You might, for instance, want to say to a person who comes forward with an allegation that you investigate, as we do now, that the department may not take reprisal against you, and we tell that to the department. You may also want to go further and say that, given the circumstances, it would seem better if this person was allowed to leave that department and find another place, which we will help arrange, because of the absolutely impossible conditions that now might exist there between that person and the department.

The range of possibilities there I think is essentially unlimited, in a sense, because it would depend on the case itself.

We also have argued for being much more specific about the fear of reprisal being the central obstacle that almost has to be the principle upon which this structure is based. If you can't effectively deal with that, people won't come forward. So I think there also has to be something more specific and more severe in terms of penalties for reprisal.

The penalties-for-reprisal part in this bill is very weak. People looking at it would ask, how seriously does the government take reprisal if there are no severe penalties to deter from it and to sanction those who've done it?

● (1155)

Hon. David Kilgour: Whistle-blowers should continue to have access to the courts to seek a remedy?

Dr. Edward Keyserlingk: Yes, I think that should always be their right. I'm hoping, of course, if this particular mechanism is robust enough and gains the confidence of public servants, they wouldn't need to go to the courts. To me, going to the courts is usually a fallback, final, fail-safe position. Everybody should have that available to them, but if things are going properly, if the institution itself is investigating and protecting effectively, people would not have to go to the courts. It's a horrendously long, complicated, and expensive process. Even if the fees are paid, it's a much more direct approach to have this agency investigate and protect and resolve the issue itself.

Hon. David Kilgour: Ms. Gualtieri's case, as you probably know, was seven years, and it hasn't even gone to discoveries yet. You're aware of that, I'm sure.

Thank you, Mr. Chairman.

The Chair: You still have two minutes left, if one of you would like to take that.

Madam Marleau.

Hon. Diane Marleau (Sudbury, Lib.): I have just a couple of questions that flow from Mr. Reid's presentation to this committee. If I heard him properly, basically he said that the access to information provisions were sufficient to protect sensitive information. I believe that was one statement he made. One other statement he made was that Bill C-11 could not protect the identity of a disclosure of wrongdoing because the principles of natural justice would always require the identity to be revealed.

I'd like to know how you feel about these particular statements by Mr. Reid.

Dr. Edward Keyserlingk: I haven't seen those particular statements, but on the last point, I think I would not agree. The principles of natural justice would exceptionally require sometimes the identity of the discloser to be told to the alleged wrongdoer, but I would say that is probably more exceptional than routine.

I'm sorry, what was your other point?

Hon. Diane Marleau: It was about the access to information provisions, which he claims are sufficient to protect sensitive information.

Dr. Edward Keyserlingk: I rather like, actually, what this bill provides in clause 16. It provides for...

I'm getting all these notes from my adviser, sorry.

We have essentially argued that you should not disclose the identity of the wrongdoer despite any other act. There would be essentially only two situations where you might be allowed to do that. One would be essentially on grounds of public interest, for instance, where in exceptional circumstances that might be required. But I think the bill, which proposes to prohibit the release of that name, the way it is worded is actually quite good.

Hon. Diane Marleau: Even considering the 20 years?

Dr. Edward Keyserlingk: It goes further, in other words, than the access to information bill.

Hon. Diane Marleau: Even clause 55, which talks about keeping secret for as long as 20 years information that could show the identity of the person?

Dr. Edward Keyserlingk: No, the 20-years part is, I think, probably a bit excessive. But I think during the course of an investigation it's very important to be able to keep the identity confidential, and maybe for a while longer than that. But I think the 20-year part of that is a bit excessive. In that sense, I would agree with him.

It's always a question of balancing the confidentiality and what you're going to be able to report. If you can't get access to things that don't put anybody in jeopardy but provide important information for Parliament and the public, then I think we're going too far. It's a question of balancing those two things. That's why I have some problems, as I said before, with the reporting provision, which in clause 49, I believe, is too limiting in terms of what can be reported to Parliament.

It's a very blanket refusal that would, in effect, almost be a unique occasion, where that much is prohibited in terms of reporting.

● (1200)

The Chair: Thank you, Madam Marleau.

We have Madam Thibault and Mr. Boshcoff, if you could keep it as brief as possible.

[*Translation*]

Ms. Louise Thibault: Thank you very much.

I read with considerable interest your comments on page 56 of your report about the whole question of enforceable recommendations. Let me read the last paragraph of the text to you: “Findings and directives by this Office or successor agency should be subject to all normal challenges, appeals and court reviews ”. I'm wondering if you could explain to us briefly how this would work. You refer to enforceable recommendations. Who in fact is authorized at this time to make such recommendations? I don't have that information. That was my first question. I hope I get another chance later, because I have two other questions for you.

[*English*]

Dr. Edward Keyserlingk: Do you mean last year's report or this year's?

[*Translation*]

Ms. Louise Thibault: I'm talking about your 2003-2004 report. The excerpt in question appears on page 56 of the English version. It's the last paragraph on the final page of Appendix D.

[*English*]

Dr. Edward Keyserlingk: This is about the enforceable recommendations?

[*Translation*]

Ms. Louise Thibault: That's right.

[*English*]

Dr. Edward Keyserlingk: I think the enforceable recommendations part of this process is extremely important for the reason that if somebody comes forward with an allegation and fears reprisal, they're only going to do it if (a) they feel there is protection from reprisal, and (b) something will actually happen. It seems to me very important that the process encompass a method for action being taken when wrongdoing is found and a recommendation is made. That's why in the reprisal situation we argue for the commissioner having the power to enforce a remedy in the event that the parties don't agree.

The first stage of the effort of the commissioner should be to try to bring an understanding between the parties for an agreed-upon compensation remedy. If that isn't possible, then it should be possible for the commissioner to say "This must happen".

[*Translation*]

Ms. Louise Thibault: Is there a legal basis that should be refined?

[*English*]

Dr. Edward Keyserlingk: It exists already, but it will always be challengeable. It exists in the sense that there are agencies that have the power to make an order, and essentially, this is what it would be.

Now, in the case of the investigation of wrongdoing, we are not asking for that kind of power, but rather a recommending power to the deputy minister, with the follow-up that if that doesn't happen, if the recommendation doesn't get acted on, you go to Parliament and say, "This, we believe, was an important recommendation. Time has been given; nothing has happened. We believe you should now enforce this"—whatever committee we're dealing with.

So there would be even there, through that reporting-to-Parliament process, a final resolution possible.

The Chair: Thank you.

Mr. Boshcoff, the floor is yours if you have a short question or two.

Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.): How many minutes worth of shortness?

● (1205)

The Chair: Could you keep it to five minutes maximum.

Mr. Ken Boshcoff: Thank you, I just wanted to clarify.

Welcome.

If you were out there in the public and you saw that the Government of Canada had Mr. Reid for privacy, Mr. Shapiro for ethics, and yourself in integrity, and Ms. Barrados in the public service with her high standards, and the Auditor General's office doing their thing, would you not feel that at some point people are saying we're heading off in all these different streams, and shouldn't we just have some kind of ministry of protection and goodness that would really in effect address all of these types of things, so that there isn't any confusion or any cross-jurisdictional situation?

Dr. Edward Keyserlingk: I won't speak for the distinct features of those other places, but I think there is a case to be made for them.

In our case, there are several things that I think are distinctive and argue for a separate agency. One is the way the information comes forward. We are relying in this particular office, and in any agency that it becomes, on allegations by public servants who bring information forward. That's a fairly distinctive feature in itself, and those particular public servants have particular concerns if they're going to do that. One is protection from reprisal, and another is whether something will be done. It requires a particular kind of investigative approach. It requires particular preventive protection from reprisal at the moment an allegation comes forward. Of course, they cover serious public interest wrongdoing, as opposed to human resource issues, which are better handled within the PSC, and grievance mechanisms, harassment, and so forth.

You could make a case for saying put it all together under one roof, but the problem would then be that you would risk the confidence, for instance in this particular activity, because people wouldn't be able to see who's going to be doing this. Is it tooled to meet the needs, the fear, the protection, the kind of wrongdoing, and so forth? Is it shaped in every way to best guarantee their confidence? So this is why we've argued that we're not dealing here with human resource activities because they're best dealt with elsewhere.

Mr. Ken Boshcoff: Just for clarity's sake, some have suggested to me that the expansion of your mandate to include this particular piece of legislation would be the optimal way of proceeding.

Dr. Edward Keyserlingk: I agree with that in one sense. I think the nucleus of the new agency, if you will, should ideally be the group that is presently the PSIO, minus myself, because of the fact that we already exist, we're already involved in investigations and so forth, and those investigations would presumably have to carry over into whatever becomes the next stage. These people on my team are incredibly well qualified after three years of having done this kind of work, so we wouldn't be starting from scratch. That is what I think would be a good start. Then, of course, it would have to be enlarged because of the wider umbrella that covers the whole public sector and so forth. But yes, I think that would be a new entity, of course, because it would have a legal basis now, not just a policy basis.

Mr. Ken Boshcoff: In parallel, then, we're also 288,000 public servants short in terms of the jurisdiction you would cover. Would that also be somewhat of a good first start in terms of your own department as the PSIO?

Dr. Edward Keyserlingk: You mean by expanding to cover the wider—

Mr. Ken Boshcoff: Yes.

Dr. Edward Keyserlingk: Yes, definitely.

● (1210)

Mr. Ken Boshcoff: And the legislation itself for CSIS and the RCMP?

Dr. Edward Keyserlingk: My view would be that they should have access as well to this agency. I take the point that much of what they're dealing with are security issues, defence issues, and so forth. But what I have suggested is that most of the kind of wrongdoing they might want to report is not typically about security issues. It's about mismanagement, or it might be about the breaking of regulations or laws, and not necessarily touching on their mandate in terms of operational security issues. Even if some of that comes forward, along with whatever else comes forward, this agency should have the obligation to keep that confidential.

It seems to me it's not fair to deny roughly 100,000 people in those agencies, including the forces, access to this kind of operation. We already do, in fact, allow the RCMP to come forward now, by special agreement with the commissioner, and it's worked very well. I would assume they would probably want to continue that.

The Chair: Thank you, Mr. Boshcoff; your time is up.

Thank you very much, Mr. Keyerslingk, Mr. Martel, and Mr. Bélanger, for coming today. There's some indication from some members of the committee that we might like to have you back before we return the bill to Parliament, so we'll see how things proceed.

Dr. Edward Keyserlingk: Fine.

The Chair: I do appreciate the information you've given us through the questions, but also the written information. We appreciate it and it's very important.

We'll suspend for a couple of minutes to get the new witnesses in place.

● (1211)

(Pause)

● (1214)

The Chair: Good afternoon.

We'll resume the meeting with witnesses from the Working Group on the Disclosure of Wrongdoing. We have Kenneth Kernaghan, chair. He's a professor of political science and management at the University of Brock.

I'll leave it to you, Mr. Kernaghan, to introduce the people with you and to make your presentation and then we'll go straight to questioning.

Dr. Kenneth Kernaghan (Professor of Political Science and Management, Brock University; Chair, Working Group on The Disclosure of Wrongdoing): Thank you very much, Mr. Chairman.

Thank you very much for inviting us back to testify on this very important issue. I am happy to be able to introduce two of the members of our working group, Hélène Beauchemin and Merdon Hosking. You have already heard from Dr. Keyserlingk, who was also a member of our working group. The fifth member of the group was Denis Desautels, the former Auditor General of Canada, who sends his regrets that he is unable to be here today.

I hope, Mr. Chairman, with your permission that I can feel free to call on either one of my colleagues to intervene in order to elaborate on anything I might have to say. Thank you.

When we testified in April on Bill C-25, we said we were disappointed with that bill. We are happier with Bill C-11 but we still have some major concerns. We said in April that Bill C-25 was a weak and inadequate response to the need for an effective and credible disclosure regime. We believe Bill C-11 is a stronger response to that need but that some additional improvements should still be made.

Our working group recognized early on in its deliberations that there is no perfect solution to the contending considerations that must be dealt with in the design of a disclosure regime. There is, for example, no way of ensuring absolute, unfailing protection from reprisal for every public servant who comes forward with a good-faith disclosure, and there is no way of ensuring absolute, unfailing protection for every single person against whom faults or frivolous allegations are made.

While careful study of the disclosure issue, both in Canada and in other countries, suggests there is no perfect solution that can be devised, our working group strove to devise an optimal solution. We made a special effort to try to get the balance right among the contending considerations that are inherent in the development of a disclosure regime.

We did this by identifying nine major principles that must be fulfilled and balanced in an effective disclosure regime, and we made 29 interrelated recommendations to implement these principles. Our report sought to provide comprehensive and coherent coverage of the disclosure issue, both for the short term and the long term.

Bill C-11 meets nearly all of the working group's recommendations, either in whole or in part. However, aside from the concerns already expressed by Dr. Keyserlingk, the bill still does not take adequate account of our recommendations in two major areas; namely, the charter of public service values and the role of departmental senior officers.

I turn first to the charter of public service values. In our previous testimony we predicted that most witnesses coming before this committee were likely to focus on the ways and means of reporting and punishing wrongdoing, to the neglect of efforts to promote rightdoing by changing the public service culture over time. We have been pleased, therefore, to see that several members at this table, and some witnesses, have mentioned the desirability of a long-term change in public service culture, in addition to providing disclosure protection.

This culture change is precisely what we had in mind in our major recommendation that the mechanisms for disclosure should be set within a legislative framework that is wider than simple stand-alone legislation focused on disclosure. Values are the essence of organizational culture. Plus, a change in culture requires a change in values.

We believe that the disclosure provisions recommended in our report, and included in Bill C-11, should be placed within a positive framework of values and ethics rather than within a virtually exclusive focus on wrongdoing. We concluded that setting the disclosure of wrongdoing within this broader framework would send a clear and positive signal to Canadians that rightdoing, based on core public service values, will be encouraged and that wrongdoing, when it occurs, will be disclosed and punished.

What Dr. Keyserlingk said in his April testimony about Bill C-25 applies also to Bill C-11. He said that the bill contained no framework of ethics and values and that it contained no discernible reflection of the guiding principles and priorities that should infuse such a bill.

● (1215)

In the context of a discussion of disclosure arrangements, the primary purpose of a culture change is to encourage public servants to view disclosure of wrongdoing as a duty, a duty arising from commitment to ethical values like integrity and honesty, and to democratic values like accountability and transparency. The use of the term “disclosure of wrongdoing”, rather than the term “whistle-blowing” with its connotations of snitching and tattling, and so on, helps to foster this positive public service duty of disclosure.

Bill C-11, like Bill C-25, responds positively but not strongly enough to our recommendation for a values and ethics framework. The bill simply provides in the preamble that the government commits to establishing a charter of values of public service, setting out the values that should guide public servants in their work and professional conduct, and clause 5 of the bill requires that the Treasury Board establish a code of conduct applicable to the public sector. We urge you to give serious consideration to enshrining a statement of public service values and ethics in the legislation itself. The charter could take the form of an adaptation of the public service values and ethics code that already exists.

Clause 5 of Bill C-11, which deals with the development of a code of conduct, should be directly linked to the charter of values, since it is the charter that would provide the foundation of values on which this code of conduct must be based. This approach would provide a far superior context for dealing with wrongdoing, in part by making it clear what constitutes rightdoing. This is, in general, the approach adopted in both Australia and the United Kingdom.

This framework of public service values and ethics should, then, be followed in the bill by a disclosure regime that seeks to ensure that public servants will feel comfortable coming forward with good-faith disclosures of wrongdoing and that irresponsible allegations of wrongdoing will be discouraged.

We believe these objectives are more likely to be achieved if better provision is made for the extremely important role in the disclosure process of departmental senior officers. Indeed, in this respect, Bill C-11 is even weaker than the current internal disclosure policy that Bill C-11 is intended to replace. We want to emphasize that the role of senior officers is not only an essential component, but a central component of an effective disclosure regime.

The fact that Bill C-11 actually provides for a two-tiered approach is not made clear enough in the bill. Deputy ministers and chief executive officers are accountable for the quality of management in their organizations. We believe they should therefore have a reasonable opportunity, with the assistance of senior officers, to deal with public servants' concerns about wrongdoing before these concerns are taken outside the organization.

The need to make clear and careful provision for internal remedies to real or perceived wrongdoing is widely acknowledged in writings on this subject. At the same time, however, we recognize, and certainly Bill C-11 recognizes, that public servants must have the option of going directly to an external body such as a public service integrity officer.

Senior officers currently play a complementary but separate role to that of the Public Service Integrity Officer. They're already active in fostering rightdoing and providing advice on wrongdoing in their departments. We noted in our report that while the primary role of senior officers is identifying and addressing wrongdoing, in practice they also tend to act as a valuable single point of contact within a department or agency for employees to come to with both specific and general concerns, particularly those related to interpersonal conflicts. In this capacity, they help to steer individuals to the appropriate redress mechanisms.

We believe the disclosure regime will not be effective if the senior officer in each organization cannot play his or her role well. The ultimate success of a disclosure regime does not lie in having a large number of cases of wrongdoing exposed to public view. Rather, success lies in discouraging wrongdoing in the first place, addressing wrongdoing within departments where this is a reasonable option, and providing direct and secure access to an external investigative body when public servants see this as a preferable option.

We recommend that the senior officer function be staffed at a senior level, that senior officers be given adequate resources and support, and that the disclosure arrangements within each organization be at a standard comparable to those of the Public Service Integrity Office.

● (1220)

We recommended also that the duties of senior officers be clearly and comprehensively set out in the legislation.

The Public Service Integrity Office, to which I have made mention, is the independent body that we recommended for the credible and effective administration of the disclosure regime. We stand by that recommendation.

In conclusion, we want to say that at this point in Canada's political history there is a unique opportunity for Parliament to make an extremely important long-term contribution to the image and performance of public servants. Parliament can do this by providing the strongest possible regime for encouraging rightdoing and for discouraging wrongdoing in government. We believe that, with the improvements we are suggesting, Bill C-11 could provide a disclosure regime that would be the envy of other countries.

There is of course no guarantee that even a strong disclosure regime will be sufficient to encourage public servants to report all serious wrongdoings that arise. We cannot, therefore, afford to have a weak or insufficiently strong regime. We also need to foster a long-term change in the culture of the public service so as to promote a duty of disclosure.

I'll stop there, Mr. Chairman.

● (1225)

The Chair: Thank you very much, Dr. Kernaghan, for your presentation.

We'll go straight to questions.

For seven minutes, Mr. Poilievre.

Mr. Pierre Poilievre: Thank you very much for being here.

I want to get your viewpoint on a number of concepts I'm grappling with right now. What is your position on the prospect of rewarding public servants who save significant tax dollars by exposing substantial waste in government?

Dr. Kenneth Kernaghan: This is a matter on which we had some discussion in the working group. There seemed to be a general consensus that it was a good idea to recognize those public servants who did come forward with allegations of wrongdoing and did so in good faith.

There was less discussion of the component of rewards, in the sense of financial rewards, for public servants who come forward to reveal wrongdoings and end up saving the government substantial amounts of money.

This is, as you no doubt are aware, a feature of the system in the United States. Opinion is divided on this issue there. There are a number of people who feel that it would be inappropriate to in fact give public servants an incentive to always be looking around for some way whereby they could expose their colleagues in some fashion and then get rewarded for it.

My own view on this is that I think a more positive approach would be to ensure that public servants feel a duty to disclose on the basis of their obligation as public servants to the public interest. It seems to me unfortunate if we have to resort to providing financial rewards to public servants for exposing wrongdoing.

I don't know whether or not my colleagues agree with that point. Does anyone want to add to that?

Ms. Hélène Beauchemin (President of HKBP Inc., Working Group on the Disclosure of Wrongdoing): Just to add to that, I remember that as a committee we did mention it and we did discuss it. I agree with Ken. The end perception was that it wasn't the monetary reward that was what we were looking for.

If I can just share with you my experience as a former manager in the public service, in one large department I was in we had something similar to that. It was an innovation—I can't remember what it was called—but it was anyone who... Louise will remember those days, I think.

[*Translation*]

Ms. Louise Thibault: Incentive awards.

Ms. Hélène Beauchemin: That's right, Madam, incentive awards.

[*English*]

It became a nightmare, quite frankly, first of all in terms of managing it. If you start giving money to one, were they alone? Did someone else have the idea, or was it just one person who had the courage to go? It became very expensive to manage and very divisive, basically, because you stopped your other principles of trying to get team management and so on. Even awards get contentious at times, as we know.

Mr. Pierre Poilievre: How can we extend the protections of this bill to those who provide goods and services contractually to the government, or does the bill as it stands already do this?

Dr. Kenneth Kernaghan: I think the bill could be extended specifically to cover that. This is not a matter we talked about in the working group. I think it would be important to allow allegations to come forward from outside the public service; Bill C-11 does not. I think Bill C-25 was actually stronger on this point. I think that at least the person who is responsible for administering this regime should be able to receive and review and decide whether to pursue some of the allegations that come from outside the public service. I don't know exactly why Bill C-11 did away with this consideration, but clearly there are a number of actors outside the system who would not be embraced by Bill C-11 and who might want to make reports to the government on wrongdoing.

I'm not recommending that the bill be extended to allow for every single member of the public who has a concern about alleged wrongdoing in government to bring this, let's say, to the Public Service Integrity Officer; but I think there is room to broaden the bill a little bit to provide for the integrity officer to at least examine those issues or allegations that do come forward.

● (1230)

Mr. Pierre Poilievre: It's not just a matter of examination, though; it's also a matter of protection. Indeed, contractors to the government are susceptible and vulnerable to reprisal. They could, in the future, be refused contracts or other opportunities to do business with the Government of Canada if they were seen to have exposed wrongdoing by someone who had an interest in keeping that wrongdoing quiet. So it's not just a matter of investigating the accusations of contractors, but also of protecting those contractors from reprisal.

Dr. Kenneth Kernaghan: Yes, I believe they should be covered as well.

Mr. Pierre Poilievre: That concludes my questioning.

Mr. Preston, would you like to take it from there?

Mr. Joe Preston: Certainly, I'd be happy to.

Was your group asked for input on Bill C-11 before it was printed?

Dr. Kenneth Kernaghan: No.

Bill C-25 and Bill C-11 were both based, as I understand it, to a considerable extent on the recommendations we made in our report. But we were not consulted during the period between Bill C-25 and Bill C-11—although I have to admit that our views on all of the major issues are well known.

Mr. Joe Preston: Well known, but even in your preamble, not all of your ideas were put into Bill C-11.

Dr. Kenneth Kernaghan: That's true.

Mr. Joe Preston: Do you feel a bit of a misgiving, that your group certainly should have been asked for advice? We've got one group in the country working on wrongdoing and one bill coming forward on wrongdoing, and you'd think the two would meet at some point.

Dr. Kenneth Kernaghan: Well, having seen the tremendous improvement in Bill C-11 over Bill C-25, I guess it would be ungracious of me to suggest I was unhappy that I was not consulted. The two issues to which I make reference here are clearly ones that were not covered in either Bill C-25 or Bill C-11, but which I hope will certainly be incorporated in the final legislation.

The Chair: Thank you, Mr. Preston.

Madame Thibault, followed by Mr. Szabo, for seven minutes.

[*Translation*]

Ms. Louise Thibault: On the one hand, I'm intrigued by my colleague's suggestion regarding disclosure of wrongdoings by government contractors. I think we should explore this suggestion further. Before we propose the inclusion of a provision to that effect in the act, I think we need to be fully aware of all of the unspoken rules of competition. Pursuant to the act, we will be able to take action against individuals who might make false allegations for ulterior motives. I'm not so sure that we would be able to do the same thing where the private sector is involved, but the notion is very intriguing nonetheless.

First of all, I want to thank you for coming here. I have two questions for you.

Like other witnesses we've had the pleasure of hearing from, you call into question the notion of independence, in that you feel it's very important for the agency to be an independent entity. In your opinion, do you feel that human resources services, that is the people who will be conducting the investigations, should be centralized? Or, do you feel that this authority should be delegated to departments and agencies, within a base-centred organizational structure? I realize that's a somewhat awkward expression, but it's all I could think of right now. That's my first question.

Secondly, we've heard references to proactive investigations when certain facts come to light. How would such investigations be conducted? It's an intriguing notion, but practically speaking, how would these types of investigations be conducted?

Thank you.

● (1235)

[*English*]

Dr. Kenneth Kernaghan: Yes, Hélène Beauchemin is going to respond to the first question.

[*Translation*]

Ms. Hélène Beauchemin: Before I answer your first question, I'd like to clarify certain points, just so we understand one another.

We're proposing a two-tiered system. The top tier would be the office, or agency, and it would have the final say.

Moreover, in a healthy organizational culture, it's clear that if communication between management and employees can be improved—it's a fact that many managers at certain levels are also employees and unionized members—then some complaints will never proceed to the next level because the problem will have been nipped in the bud, so to speak. It's also clear that if departmental integrity officers cannot guarantee confidentiality, then employees will not confide in them. That's my first point.

Secondly, in the case of public servants who work for large departments, it's less of a problem because they can be more anonymous. However, anonymity isn't an option in small agencies. Therefore, there should be some way for employees to take their complaint to a joint department, to colleagues or even directly to the level of the integrity officer.

In our opinion, that's where the problem lies at this particular point in time. As I see it, if we don't allow for this possibility, two kinds of problems will arise. First of all, we're thinking about employees in the regions. Someone working in Sudbury, Kapuskasing or Rimouski can't possibly know the identity of the integrity officer in Ottawa, because that person is too far away. We need to find approaches that are closer to home, so as to instill a healthier workplace culture.

It's not a matter of delegating authority. Rather, it's a question of bringing in a multi-level system, so to speak.

[*English*]

Dr. Kenneth Kernaghan: Having, let's say, the independent executive or investigative body be more active in inquiries, is that your question?

[*Translation*]

Ms. Louise Thibault: I understand, but one that is proactive, so that a process is initiated as soon as information is received. In Appendix E of the report, among the recommendations made on January 29, 2004 by the Working Group, we find recommendation 10 which says this: “The Office should be authorized to undertake proactive investigations...” I find the concept rather interesting and I did put this question to one of the other witnesses. Practically speaking, what would a proactive investigation entail?

[*English*]

Dr. Kenneth Kernaghan: Yes. What we had in mind there is that when the independent body is investigating various allegations, it may get the very strong impression that some problems are tending to recur in a particular department or agency. While no one has brought all of them together as individual complaints, if the integrity officer or the independent body is concerned there is some systemic wrongdoing in some area of the public service, we thought it reasonable that the office have the authority to investigate. That's what we had in mind in terms of a more active—a proactive, as you put it—approach.

● (1240)

[*Translation*]

Ms. Louise Thibault: Thank you.

[*English*]

The Chair: Thank you, Madam Thibault.

Mr. Szabo and Madam Marleau are next, if you wish to share your time.

Mr. Paul Szabo: Thank you.

There are two objectives of the bill, among many. One is to enhance the confidence level of the public and the public service in the process. The other is to mitigate the possibility of reprisals. They're very serious objectives and we really have to hit the target. If we fail to hit the target this bill is going to fail, or this process is going to fail.

To enhance the possibility of being successful here, it is absolutely paramount that anonymity be respected. If you don't have a process and an instrument or a focal point that can effectively maintain anonymity, then you are mitigating the chance of ever being successful in having a good process.

Mr. Kernaghan, you referred to a single point of contact, but the bill provides for multiple points of contact, depending on certain circumstances, which is counter to the objectives. We also had the issue of supervisors. How can a supervisor serve two masters, one being an employee making an allegation of wrongdoing, and the other being the person to whom they respond, right up the chain? It's contradictory.

I'm saying this because I'm disappointed. You—and maybe even to some extent Mr. Keyserlingk—seem to be still discussing the issue. I don't think anybody has taken a definitive stance from the employee's perspective as to how we are going to achieve the objectives. I really think it's about time we even stopped talking about silly things like rewarding people for turning somebody in. That's part of the loyalty issue. It's a given; it's good faith. The preamble ought to state that clearly.

When are you going to stop thinking about this, and when are you going to start articulating the principles that probably should be in the preamble so absolutely everybody understands how this is going to work?

Dr. Kenneth Kernaghan: I would begin by saying we certainly haven't stopped thinking about this. We would agree with you that this is an extraordinarily important and central element of any disclosure regime to protect the identity of the "allegator", as Dr. Keyserlingk termed him or her.

We believed we were proposing a coherent and comprehensive regime that would balance all of these contending considerations and give special consideration—as we think our recommendations did—to the importance of making sure that, as far as possible, the identity of the complainant was kept confidential. But we have no absolute assurance that can happen in every case. All we can do is our best.

Mr. Paul Szabo: Okay. Since I'm splitting my time with Madam Marleau, I have one last quick question.

If you agree generally with the premise of my statements, do you think it is advisable to establish a process in which the public servant alleging or suspecting a wrongdoing would communicate that to this single focal point, and would then be left out of the process from there on? In fact, the alleger is not the employee, but rather the integrity commissioner of Canada, or the person set up to do wrongdoing, becomes the person making the allegation, based on the information they've been able to determine.

Dr. Kenneth Kernaghan: As I understand both Bill C-25 and Bill C-11, it is the responsibility of the Public Service Integrity Officer, after he or she has received the allegation, to go forward and do the investigation in the department on behalf of the person who has made the allegation.

● (1245)

Mr. Paul Szabo: Okay. Carry on.

Hon. Diane Marleau: Do you think that Bill C-11 has sufficient investigational powers to allow the integrity commissioner, whoever it's going to be, to investigate independently? Do you think Bill C-11 contains that?

Dr. Kenneth Kernaghan: Bill C-11 is set up with reference to the president of the Public Service Commission carrying out this responsibility. The president of the Public Service Commission does have powers of inquiry, and these powers should certainly be given to any mechanism that is responsible for administering the regime.

Hon. Diane Marleau: When you appeared on Bill C-25, you also asked that the new bill give stronger protection for the identification of whistle-blowers. Do you think Bill C-11 does that? Does it go too far? I'd like to have your view.

Dr. Kenneth Kernaghan: It certainly does that. It is an important improvement to Bill C-25. Bill C-11 makes much better provision in that respect. Does it go too far? I don't think so.

Hon. Diane Marleau: That's on the 20-year protection of information, which Mr. Reid highlighted when he came before our committee.

Dr. Kenneth Kernaghan: Yes. On that particular point, I think it's excessive.

Hon. Diane Marleau: Do I have more time? I can ask more questions.

The Chair: You do have time.

Hon. Diane Marleau: You've also suggested that there be an integrity commissioner in each department, who would do his or her own thing. Did I get that right? Would you prefer that?

Dr. Kenneth Kernaghan: No, this is not actually an option. This is an essential part of a two-tiered regime, which of course is provided for in the bill itself.

Hon. Diane Marleau: That's right.

Dr. Kenneth Kernaghan: Certainly the role of the senior officer is extraordinarily important. If you look at the discussions and the writing on this issue, this is certainly something where virtually everyone agrees there needs to be some opportunity to resolve these issues internally, while at the same time making sure that if people don't feel comfortable in that respect, they can take it forward directly to the investigative body.

Hon. Diane Marleau: Basically, we would have hundreds of people who are experts on this within departments everywhere.

Dr. Kenneth Kernaghan: Yes. The senior officer already exists in all of the regular departments of government. Under Bill C-11, this would be extended to crown corporations, agencies, and so on. We think this would be an excellent thing. I think that most people would agree this is a way of ensuring that the regime is going to be more effective and therefore more credible than it otherwise would be.

Hon. Diane Marleau: It would be nice if it actually worked. But all of my experience tells me there's a huge division between senior officials in departments and the rank and file. The information from the bottom does not always make it to the top in the way it should. There's a culture of do not rock the boat, give the answer they want, but not the real answer. I'm not sure this would address that, but it might. I don't know.

Dr. Kenneth Kernaghan: Could I make a brief comment on that, Mr. Chairman?

In our discussions with senior officers in the various departments, we were really impressed with the work they're doing and the fact that they are perceived by the employees in the department to be an independent source of advice. When they are not sure that what they are seeing is wrongdoing, they want to seek some advice or get some help in distinguishing whether it really is a serious public-interest wrongdoing or a matter that could be handled somewhere else, a human resource matter, an interpersonal problem, or something of that kind.

Mr. Chairman, I would emphasize the extreme importance of amending this bill to make sure that the role of the senior officer is elaborated and made clear.

The Chair: Thank you, Madam Marleau.

There is another spot for a Liberal member, or more than one, right after Mr. Preston.

Mr. Joe Preston: I'll carry on from where you are, and maybe that way we'll answer this.

Certainly in an organization as large as the Public Service of Canada there is a tremendous number of fantastic managers and supervisors whom most employees would be happy to go to under circumstances where they needed to—and they would get the right answer, and the right thing would happen, and perhaps quite often it would even be taken care of right at that spot.

Are you suggesting, though, that this has to be the route?

Dr. Kenneth Kernaghan: Oh, no.

Mr. Joe Preston: Okay.

Certainly in small offices—we talked about regional offices—it would be very tough. If the wrongdoing is happening in a three-person office or a five-person office, going to the boss in that office is almost a situation of "how can I?" They'll certainly know who is bringing forward the recommendation.

Okay, we're clear. It's one of the methods: go to your immediate supervisor; go to the integrity officer of the department you're in or the agency you work for; or go around to the independent integrity officer who is established by this. Right now it says, "the Public Service Commission", but you're suggesting it could be another office also.

Are you agreeing that the Public Service Commission is the appropriate...?

● (1250)

Dr. Kenneth Kernaghan: No, I'm not agreeing that the Public Service Commission should be the appropriate office. In my view, the appropriate office is an office that is independent—a stand-alone agency somewhat along the lines of what Dr. Keyserlingk described earlier.

When I think about this I always ask myself the question what disclosure arrangements are likely to be the best possible to make sure public servants who know of or suspect wrongdoing will come forward, and that they will be adequately protected from reprisal. My answer always comes down on the side of an agency that is independent of government. I think the president of the Public Service Commission has some disadvantages in that respect.

Mr. Joe Preston: I think we discussed the independence of that office if it is there. Yet in very small regional offices somewhere in rural Canada, being able to pick up a telephone or somehow get a whistle-blowing allegation to the integrity office we establish by Bill C-11 may also be intimidating, so we'll need to work on how that works from a regional or from an independence point of view. That is for another time, I suppose.

We talked about safety from reprisals. One of the reprisals I see in this bill arises when clause 3 gives the opportunity for the cabinet of the land to delete agencies from the schedule. I find it disheartening that cabinet could delete a department—and judging by this, maybe even after a wrongdoing comes forward.

What are your views on taking the word "deleting" out of clause 3, or somehow amending it so that it's not up to the cabinet as to whether a department is or is not covered by wrongdoing in the public service?

Dr. Kenneth Kernaghan: My colleague was just saying there must be a reason for this, but I'm not sure what it is.

Mr. Joe Preston: The only reason I've been given so far is that occasionally we disband agencies and they are no longer there. My point is that if they're no longer there, then who cares if they're still covered by this legislation?

Dr. Kenneth Kernaghan: That's a good point. I'm afraid I can't provide any additional information on this point.

Mr. Joe Preston: Well, in the little bit of digging we've done, all I could find is it's a great way to opt out an agency to protect the government after someone comes forward with wrongdoing. This certainly is an amendment we may need to look for.

Dr. Kenneth Kernaghan: I'd be surprised if that were the intention. I'm sure it isn't. There may be a rationale for it of which I'm not aware.

Mr. Joe Preston: Madam Marleau mentioned the access to information officer and his misgivings on some of the pieces in this legislation. Where do you stand on the comments he's made to this...?

Dr. Kenneth Kernaghan: I haven't read his testimony, but I understand that one of his two concerns is there was a certain amount of information that would not come forward to Parliament. I don't know enough about his particular concerns—unless one of my colleagues does—to elaborate on that. Certainly our concern in the working group and our current concern would be to make sure that all possible information comes forward so the process is as open and transparent as it possibly can be.

Mr. Joe Preston: The other piece in here that it has been suggested may need to be added relates to what we talked a bit about, awards and rewards. I understand your comment that a long-term change to the ethics of public service is what's needed, so that people, as you said, will do right rather than do wrong. I'm with you on the awards and rewards piece. But should it be laid out in here what the punishment is for reprisals against wrongdoers?

● (1255)

Dr. Kenneth Kernaghan: I think there is some reference in the bill in general to that, but normally—

Mr. Joe Preston: I believe it says we condemn them, but...

Dr. Kenneth Kernaghan: Normally, as I understand it, it provides for a range. Obviously in practice there will be a range of penalties, depending upon the nature of the offence. I don't know whether, practically speaking.... If I had some lawyers to consult, I would consult them on this, but I think in practice this is not likely to be a huge factor.

Mr. Joe Preston: I have about a minute left, so I'll conclude very quickly in asking your thoughts about setting this up as a rightdoing piece of legislation rather than a wrongdoing piece of legislation, and the lean toward good management in the public service and "we really will accomplish an awful lot more". Flawed legislation actually takes us the other way. If people are afraid to come forward to confess wrongdoing or to point out wrongdoing.... As we said, if it's a piece of flawed legislation they'll do it once, or one person will, and they'll be held up as a very bad example for many numbers of years.

Will this legislation, the way it sits, be flawed legislation or good legislation?

Dr. Kenneth Kernaghan: I would say it is not strong enough as it stands. I'm not sure whether you're agreeing with me with respect to the need for a change in culture or not, but this is something a number of witnesses and a number of members have mentioned as being extremely important. That's why I've returned and taken a fair amount of time again on this matter of the importance of beginning with an emphasis on right doing: so you don't in fact end up passing a statute which is in effect called "the wrongdoing of public servants". It seems to me that sends the wrong message to the Canadian public.

Many of you have said, and I agree, it's a very small number of public servants who are likely to be involved in wrongdoing, and we need to take account of those people. But I think what we really need to do is say "here is what the Canadian public service stands for; here are the values—democratic, ethical, and professional values—that public servants in this country stand for". Then, on the basis of setting out those values, we will set out a code of conduct, which is provided for here, and that code of conduct will be related directly to those values, so that public servants will understand why it is they're being asked to behave in a certain way—because these values of integrity and honesty and accountability and so on are important—so that we build on those values.

That promotes "rightdoing"; then, on those occasions when it doesn't work, following it we have provision for a "disclosure of wrongdoing" regime, and it all ties together beautifully. If you look at the Australian legislation, at their Public Service Act, for example, or even better perhaps the Civil Service Code in the United Kingdom, you'll see an eloquent statement there of the relationships between public servants and politicians that is something, I think, to admire, and something we should capture in our effort here. I gather some drafting has already gone on, so it wouldn't be that difficult to bring this forward to the committee.

The Chair: Thank you.

Mr. Szabo.

Mr. Paul Szabo: Ms. Beauchemin, you referred to the word "courage" relating to public servants coming forward. Do you think under the process being proposed by this bill it would require, in some cases, courage for people to come forward?

Ms. Hélène Beauchemin: I think it requires courage under any process. It is just part of being part of a group. You are already distancing yourself from a group's dynamics when you do that, so, yes, it does.

I've talked to a number of people. It's interesting—people, knowing I was on this working group, were calling me—to see the angst people go through in determining if this is valid or not, or if it's just their own perception or point of view.

Mr. Paul Szabo: The fear of reprisal is certainly one of the reasons for that. Can you imagine any case where someone would be comfortable making an allegation to their direct supervisor?

Ms. Hélène Beauchemin: It depends on whether the allegation deals with the immediate supervisor or whether it deals with someone else in the organization.

Mr. Paul Szabo: It does. So the supervisor has no loyalty above the chain, above themself.

● (1300)

Ms. Hélène Beauchemin: I'm not sure I understand.

Mr. Paul Szabo: No, I understand; that's the problem, I think. Based on the work that has been done, are there any credible statistics with regard to the number of allegations of wrongdoing as defined in this bill that we might expect in the government of Canada?

Dr. Kenneth Kernaghan: The brief answer is no, but there are no really hard data on this. It would be difficult, I think, to predict. One could look at the experience in other countries, but in the U.K., Australia, and New Zealand, their regimes are very recent, so it's difficult to—

Mr. Paul Szabo: I think Madam Barrados has already raised the same thing. I'm not quite sure about the dimension of what we're dealing with here. It's interesting that we have no experience in these matters that is not HR-related.

Madam Beauchemin, you said you talked to a number of people who were maybe reflective of the public service, to get their views. Why has this process not been engaged on a broader scale as to the needs, the concerns, the angst, or whatever you want to call it of the public servants, whom this bill purports to want to protect?

Ms. Hélène Beauchemin: I think it has, in a way. First of all, it was not our mandate to go and reach across the whole of the public service, but certainly, as my colleague was mentioning, we did speak to representatives in departments. We have Merdon here, who was there from the labour perspective, so our colleagues from labour were involved. APEX was involved, representing senior public servants, so I think there's a cross-section.

Mr. Paul Szabo: We'll hear from some individuals who are more intimately involved, but this bill should probably be addressing the interests of employees. The employees' criteria for whether or not this is a good process are really more important than anybody else's. We haven't done that and it's really unfortunate.

Finally, if we don't know how many allegations...and we certainly know how many departments and all the other people who are going to be involved, how do you rationalize that it would be better to engage all of these people—every supervisor, every senior officer, and their equivalents through crown corporations and agencies, etc.—and keep them up to speed and communicate with them? We're talking about hundreds of people and the cost, direct or indirect, of making sure they're all up to speed and have done their work.

How do you rationalize that this would be as cost-effective as starting up an independent, stand-alone report to Parliament with a commissioner who represents...? That person would earn the respect of the public service and stand the test of scrutiny, that they have been fair and robust in the investigation and taken it to the fullest extent possible to ascertain whether or not there's an allegation that is in fact correct. That one person would maybe have the same kind of respect our Auditor General has earned through her rigour. Why aren't you being champions for something that will be more attractive to the broader base of employees than the bureaucratic monster that's being proposed by some?

Dr. Kenneth Kernaghan: My view on that, as I noted earlier, is that if you want this system to work well, it's extremely important that you do in fact have people in each government department or agency who can deal with these concerns at an early stage. Otherwise, you would have first of all a larger number of people going directly to a public service integrity officer and perhaps bringing unnecessary embarrassment to the department, to management, and to employees.

If I as an employee have a concern now with the senior officers, under what we have proposed it's possible for me to simply go and say I have this concern, and I'll go to somebody in the department who is well respected. That person is independent, that person gives me advice, and that person can say that it is really a matter that should be dealt with by some other agency or that I don't really need to take this outside the department to an external investigative body. If a person doesn't agree, that person can still go directly to the external body.

I think one of the great benefits of the proposal in Bill C-11 and our recommendations is that in fact it satisfies all these contending considerations. If you look at the arguments people have made for the best possible system, you'll see we are getting very close to it in Canada, and we're getting close to having a better system than I've seen anywhere else because we've learned from experience elsewhere.

● (1305)

Mr. Paul Szabo: I need to just ask one more question if I may, Mr. Chairman.

The bill says the employee “may” report. Mr. Keyserlingk said better language might be “should”, and I suggested “shall.” There is some question there.

Is the integrity of the overall process enhanced by having it made clear that all employees have a duty and a loyalty and that it should be a two-way street to make sure we don't have a rush of whatever? Following that, with respect to this word “believes”, do you believe employees have to have absolute proof, or is it just that they have to have some information that causes them some concern? The bill is not clear on that. Do you think we should be clearer?

Dr. Kenneth Kernaghan: Well, my understanding of the word “believes” is that the public servant who thinks there is possibly some serious wrongdoing will take it forward; the public servant thinks there is a problem. I believe Bill C-11 provides well for that, in that, except for the need to make the senior officer role much stronger, there's an opportunity there for every public servant who thinks or believes there is wrongdoing to take—

Mr. Paul Szabo: Shouldn't the bill refer to disclosure of “suspected” wrongdoings rather than “alleged” wrongdoings?

Dr. Kenneth Kernaghan: No. You could add those words.

Mr. Paul Szabo: No, but “believes” means I'm not sure if there's a wrongdoing.

Dr. Kenneth Kernaghan: There will be some occasions, clearly, when public servants will have no doubt there is wrongdoing, and on other occasions they'll suspect there is wrongdoing.

Mr. Paul Szabo: Some may have second-hand information.

Dr. Kenneth Kernaghan: That's of course one of the advantages of having a strong senior officer role being played in the department, because the person can consult the senior officer.

The Chair: Thank you very much.

I'd just like to thank the three of you for coming this afternoon. I appreciate your input very much.

If any of you have anything you'd like to add, feel free to send it to the committee. We'd really appreciate that.

We'll just end this part of the meeting.

Just before you go, I'd like to remind you of two things for Thursday. We'll have Minister Alcock here to discuss the nomination process as it applies to the Feeney appointment—or beyond that. Also, we will be voting on the supplementary estimates on Thursday, so come prepared.

Thank you.

The meeting is adjourned.

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