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Chair

Mr. Leon Benoit

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• (1535)

[English]

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

As a witness today we have Shiv Chopra. He has two other individuals who will come to the table as well, I understand. Mr. Chopra can introduce them.

As they're coming, though, I just want to read something to the committee—a bit of a reminder, as Mr. Chopra has a case before the court. He understands it and is going to act accordingly, but just by way of information, I have some information that was given to me by the clerk that I think I should read. I'll do that.

Honourable members, before we resume our hearings on Bill C-11, I'd like to take a moment to raise the issue of *sub judice* conventions.

“*Sub judice*” means under the consideration of a judge or court, and “*sub judice* convention” is explained by Marleau and Montpetit as “a voluntary restraint on the part of the House”—and by extension its committees—“to protect an accused person, or other party to a court action or judicial inquiry, from suffering any prejudicial effect from public discussion of an issue.” In addition, as Speaker Fraser noted, it serves “to maintain a separation and mutual respect between legislative and judicial branches of government”.

So on the one hand it protects the individual and on the other hand it upholds the separation between Parliament and the courts.

I just thought I would read that statement for the members so that we have the advice from Marleau and Montpetit and from past-Speaker Fraser on the issue and so that you can conduct yourselves accordingly.

We'll start our meeting now with Mr. Chopra. I would like to thank you for coming today. You have a short statement to make, and then we'll get to questions. Please proceed with your statement.

If you'd like to introduce the others, and if they choose to come to the table, I welcome that and invite you to do so.

Dr. Shiv Chopra (As Individual): Thank you, Mr. Chairman.

I would like to invite my two colleagues, Dr. Margaret Haydon and Dr. Gérard Lambert.

The Chair: They have their names in front of them. If you would like to give a very short introduction, please continue.

Dr. Margaret Haydon (As Individual): I'm Dr. Margaret Haydon, and I'm a colleague of Dr. Chopra in the present court case as well as a labelled whistle-blower.

The Chair: Thank you.

Mr. Lambert.

[Translation]

Dr. Gérard Lambert (As Individual): My name is Gérard Lambert. I am a colleague of Dr. Shiv Chopra and Margaret Haydon. We have been fired by Health Canada and our case is before the Labour Relations Board.

[English]

The Chair: You can proceed with your opening comments, Mr. Chopra.

Dr. Shiv Chopra: Thank you, Mr. Chairman.

As I wrote earlier requesting to appear before the committee, I'm grateful to be invited, and I'm also grateful to the committee for consenting to allow my two other colleagues to be here. We actually come as a package, the three of us, because all three of us—as a result, we believe, of our ongoing and continuous speaking out on matters in our jobs at Health Canada—were fired at once. All three of us were on extended sick leave. A fourth person, Dr. Cris Basudde, left with us, but unfortunately, in the course of all these happenings, he died. His case is still before the Human Rights Tribunal for racial discrimination, and as far as I know, it will be the first time, probably, in the history of Canada, that a case of that sort would be heard posthumously.

Now, coming to the actual presentation—as I wrote earlier, we're pleased that there is a recognition of a need in our country to have legislation on whistle-blowing to safeguard the public interest. As a matter of fact, this is helpful, but we do know...at least, I know that I personally have touched every single button of whistle-blowing during the past 15 years. Everything that's proposed in the legislation, I've already done. I've gone through every single step of disclosures, internal disclosures...disclosures all the way up to three prime ministers during the last 15 years, three prime ministers with whom I've corresponded personally. I've corresponded with numerous ministers of health, the President of Treasury Board—more than one—and the chair of the Public Service Commission. I've left no stone untouched.

On reporting that there were things very seriously wrong in the public service, when I raised the issues, they were specifically all about what was happening in my own job and the job my wife did—also in Health Canada—and about the safety of the public due to one cause or another. Whether it was a breast implant, whether it was drugs like Vioxx, whether it was some vaccines, whether it was food safety, BGH, BSE, all those matters were directly in our hands. We raised those issues over those years; that goes on for a very long time—since 1987, when it started.

When I raised the issue, then it turned into racism. I was told that behind closed doors, it was said I was a foreigner, a visible minority, and visible minorities don't know how to work in the North American way of doing business. They don't know how to negotiate; they don't know how to communicate with companies, colleagues, and superiors. That's what resulted in a series of litigations by me against not only Health Canada, but also Treasury Board and the Public Service Commission, and that case was won.

It's in that context that I have never believed there is outright racism in Canada. I've lived in the country for 45 years; I studied here; and I am an honourable and honoured citizen. I have received a stack of commendations. I received the Governor General's medal for citizenship; I've got a human rights one-time award, fiftieth anniversary, from my union. They published pamphlets on me, on behalf of my union, which has a membership of close to 50,000.

● (1540)

I received a public service award on behalf of the Council of Canadians, the Sierra Club, the Canadian Health Coalition, the National Farmers Union, together. This award was given by the greatest whistle-blower on earth, Mr. Ralph Nader. I have pictures here.

The Chair: Mr. Chopra, if you could get to the bill, we would really appreciate it. Thank you.

Dr. Shiv Chopra: With due apologies, sir, I wanted to mention that I'm not just an ordinary whistle-blower; I've been doing it repeatedly and I have not gone away. I have been retaliated against all through these years, and finally I was fired eight months ago, together with my two colleagues. We were all fired for insubordination. The matter has not been heard. All three of us, for the last eight months, are without any income.

What we did was to safeguard the public safety, and this time it was specifically about mad cow disease. We predicted, back in 1997, that it could happen in Canada and we wrote an open letter to then Prime Minister Jean Chrétien. We predicted, and when it did happen, we wrote to our ADM, Diane Gorman. It was ignored. A few days later, we wrote to the Minister of Health, Anne McLellan: now that it has happened, here is how to stop it; it's a man-made disease, and we can stop it right away. No, instead of listening to that, we were suspended for scaring the public, and then finally fired. So I would leave that to this committee as a background.

Coming to the actual bill, we have read the bill. We would not have been protected. In fact, Margaret Haydon and I had gone to the Federal Court, which upheld our case, based on the Fraser decision, and said that we did what was required. Then I took a second case when I was suspended for five days without pay for criticizing Health Canada, and again this was on racism. I won that as well.

Since then, retaliation after retaliation has occurred. I'm 70 years of age. I have 35 years of service. I have all these stacks of awards, and then finally when I was fired I received a 25-year award from Jean Chrétien. Here's another award from Prime Minister Paul Martin, with a gold watch coming to me, and then something saying that I have served the country well from the very deputy minister who got me fired.

In the media, we hadn't said anything about the firing, and the Prime Minister says he accepts it and the matter is before the court. How could the Prime Minister, this Prime Minister—

● (1545)

The Chair: Mr. Chopra, with all due respect, I must ask you to deal with the bill. You've mentioned, for example, retaliation. If you would like to connect that with the bill, and what would be required in the bill to help prevent retaliation, then the committee will listen; otherwise we'll go directly to questions, Mr. Chopra.

Dr. Shiv Chopra: I think, sir, the retaliation is part and parcel.... It's habit. This is the way it has been happening, and it has happened now. That's why I was emphasizing this, for the committee to know how retaliation occurs. So therefore the bill we have does not protect against retaliation.

If the whistle-blower is saying that the pressure is coming from the Privy Council itself to pass drugs of questionable safety, and nobody is willing to listen to you, nobody is ready to sit down with you, the Prime Minister, the minister, or anybody, or even Dr. Keyserlingk.... We took the complaint there, too. That matter is in the Federal Court.

So I do not know how this bill would prevent retaliation when it's sent and put under the Public Service Commission. The reason I mention the Public Service Commission is because I've been to the Public Service Commission many times. We have many times, and we are taking them to court. How could the Public Service Commission, or Dr. Keyserlingk's office, the Public Service Integrity Office, protect? I don't know what could protect, unless this matter is put directly in the hands of a private organization reporting to Parliament.

So that's where I will stop, sir, for your questions.

The Chair: Thank you very much.

We'll begin our first round of questions with Mr. Preston.

Mr. Joe Preston (Elgin—Middlesex—London, CPC): Dr. Chopra, thank you very much for coming here today and sharing your story with us.

It seems almost unbelievable that someone with the recognized credentials that you have and the length of service that you've had in Health Canada could at some point be fired, almost without notice, for insubordination for bringing forward the types of things that you're supposed to be bringing forward. Your job in Health Canada, as I realize it to be, is to tell us the safety of our food products and our medicine. When you do that, you're treated as if it's an insubordination item.

As far as Bill C-11 goes, you've already stated that this wouldn't have protected you. You've already stated that reporting to the Public Service Commissioner, as this bill states, wouldn't have protected you. What would have protected you?

• (1550)

Dr. Shiv Chopra: Sir, for a bill, there are two aspects needed. First of all, it must be obligatory to report wrongdoing if it's within your own job, just as for a citizen who sees a crime on the road or in the neighbourhood, it's that person's duty to report the crime. If not, then they can be prosecuted for not reporting or for harbouring somebody who is doing the wrongdoing. That is understood. That's common law. That's part of the Criminal Code. Similarly, in our jobs, now there's an extra onus; if something happens in your own job, it must be an obligation.

As a matter of fact, the Supreme Court had already given an observation on that in the Neil Fraser case. Based on that we, Margaret Haydon and I, took this matter to the Federal Court, and that decision was again reaffirmed specifically. Therefore, that's one aspect, that there should be an obligation.

The second part of your question is that to encourage people to blow the whistle or report wrongdoing, there must be explicit protection. We, all three, were parliamentary witnesses in the rBGH case, and written guarantees were given to the Senate by the Minister of Health, Allan Rock, and the deputy minister, David Dodge. Written guarantees were given to the Senate of Canada, and I was still suspended.

Mr. Joe Preston: So you were given written verification by a cabinet minister that you would have protection if you testified, and after you testified you were still suspended.

Dr. Shiv Chopra: I was still suspended.

As you can see, the guarantees were given by the political head, the minister, Allan Rock, and the deputy minister, who's the head of the bureaucracy in my department, and these are eminent people.

Mr. Joe Preston: They were obviously still not worth the paper they were written on, though.

This committee has heard testimony from other whistle-blowers, and I'll ask you the same questions we've asked them.

Will it require an independent department reporting directly to Parliament as a place for whistle-blowers to go to help make this bill work?

Dr. Shiv Chopra: Personally, I have no objection to having people report through the channels, because that's precisely what I did, and I think that's fair.

Mr. Joe Preston: But, sir, I don't mean to correct you, but I don't believe that worked out for you.

Dr. Shiv Chopra: If the protection is given, there is nothing wrong in reporting through the chain of command.

Mr. Joe Preston: If there's a protection mechanism.

Dr. Shiv Chopra: Yes, if there's a protection mechanism, and it should be explicitly stated what that protection will be.

Don't take the person out of the job, as I heard in your last hearings. Madame Marleau had asked that question: should the

person be taken out of there? I think that would be wrong. It would be atrocious to take the person out of the job.

Your job, or whoever is going to look into this matter, is to receive the complaint, investigate the complaint and go into the matter, and then deal with whoever does the wrongdoing.

If it's the individual who's misreporting, sure, take action against that individual; but if there's a person or a series of persons, then take action against them.

Mr. Joe Preston: Then the action goes against the person who commits the reprisal. Is that what you're saying?

Dr. Shiv Chopra: Yes, absolutely.

Mr. Joe Preston: So put the mechanism into Bill C-11 where that would be the case, and that would make Bill C-11 a workable bill, in your mind.

Dr. Shiv Chopra: Yes, I think people need to be told that there will be protection explicitly, not implicitly. I have understood it to be implicitly defending. That's why I stayed around and tested the system. But implicitly is already there. What I'm saying is explicitly it should be provided.

Mr. Joe Preston: As a matter of good course, implicitly it should be there. We would expect our employers to treat us fairly. We see in your example that perhaps it isn't always the case, as we've also seen in other whistle-blowers' examples. However, you're saying explicitly, if it's written into the bill what the punishment will be for the reprisal, then that will be the mechanism that would click in, in the case where reprisal was taken, up to and even including termination in your case.

• (1555)

Dr. Shiv Chopra: Yes, sir.

Mr. Joe Preston: All right.

We have mentioned in this committee taking the person out of the job as one way of protection. You're suggesting it's not necessarily the best case. In a small workplace it may be the only way to protect the employee from reprisals, because as we've heard, the reprisals may not be as blatant as they are with you. They may also simply be not getting to go to the next workshop, not getting that next grade improvement, not having fun at the Christmas party—whatever it might be. Reprisals may take many shapes. In a small workplace, maybe not an Ottawa workplace, but in a small workplace outside, it may not be able to be done by leaving you in the workplace.

Dr. Shiv Chopra: Perhaps I'm tougher than most people. I don't consider those small things to be big things.

When there's a national public interest involved, then I can tolerate that. For 15 years I never went to lunch with anybody. I sat in my office and did my work. There was nothing ever wrong with my work.

Mr. Joe Preston: But that, to me, sir, is a reprisal. To you, a strong man, excellent. I commend your courage, but to me that's a reprisal. We'd like to put together a bill that would also protect people even from that type of reprisal in their workplace.

I mentioned the Public Service Commission before, and I'm not sure I got an absolute answer from you, as an independent office reporting to Parliament so that whistle-blowers can go there. You said you'd like to work your way up through the chain, but there would be some whistle-blowers who would have fear of confronting their superior if their superior was the one who was committing a wrong.

Dr. Shiv Chopra: What I am suggesting is if there is a wrongdoing in the workplace, it is automatic that you're not going to run out with a brown bag to some media person or somewhere. It's your duty to report to the first person in the chain of command. If there's a shift—

Mr. Joe Preston: But if that does not change? If that doesn't make a change?

Dr. Shiv Chopra: That should happen. Personally, I think that should happen. You should report. All the other witnesses you've had all did exactly the same thing—they reported to the people above them. But what needs to be protected is that at that point there must be action against the people who receive their complaint and then do the opposite. That's what needs to be protected.

The Chair: Thank you, Mr. Preston.

For seven minutes, Mr. Sauvageau, followed by Mr. Thibault.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): Gentlemen, Madam, welcome.

We can only salute your courage and your commitment. I wish to tell you, as my Conservative friend said, that the comments you made today as well as the evidence given by four other people who were victims of reprisals, like you, for having reported wrongdoings are certainly going to help us in our study of Bill C-11. In practical terms, it might help to improve this Bill and make it more acceptable for civil servants.

I also appreciate the fact that you are suggesting to give to a totally independent agent of Parliament such as the Auditor General or the Official Languages Commissioner the responsibility to investigate complaints.

You are also suggesting that a totally independent agent should table this report to the House of Commons.

You have answered a few questions concerning the fact that this procedure will be managed by the Public Service Commission. You told us about your personal experience to illustrate in what way it might not be such a good idea. You also answered a question on making it mandatory to report wrongdoings, which will help us a lot for the final version of this Bill.

As concerns employees performing quite specialized tasks as you did, you said that the legislation should only ensure them protection when they report a wrongdoing and that there should not be horizontal transfers, particularly in the case of our food safety specialists. I wonder how you could be transferred horizontally within the public service. It would not be easy.

How could you be protected if you stay in your job? I am thinking about the sponsorships scandal. People couldn't report anything to

their boss, because he might be involved as well as his own boss. Then how can we ensure your protection if you stay in your job?

Secondly, how can we transfer someone performing tasks as specialized as you did?

Thirdly, should we, in some cases, put that person on leave without pay until the problem is resolved?

I have another question, but I just forgot it. In the meantime, I will then let you answer those questions

• (1600)

[*English*]

Dr. Shiv Chopra: Thank you. Let me deal with the Auditor General, or wherever the actual management of the bill should be.

Since the bill is coming under the Financial Administration Act, and any wrongdoing, whether it's public safety or whatever, is always damaged through money... If we go back to King Charles I, where democracy begins, it was his taking money from Parliament to cause civil war; that's how the process began. When we come to our own Parliament today, the Financial Administration Act is the right place.

The management of the Financial Administration Act is placed in the hands of the Auditor General; therefore, the Auditor General, although with the recommendation of the Prime Minister, reports to Parliament. I think that is the right place, or some other body within it or on the side of it. But it should have similar responsibility to investigate the matter when it gets there. From there on they do what they're supposed to do under the bill using whatever authorities are given to that agency, and then finally also report to Parliament. Those are the procedures that we have.

You mentioned official languages. That's a similar sort of thing. I don't know whether they have the power to do anything to departments—they only report to Parliament—but what we are suggesting here is there should be powers given also to this agency to take action against a department or make recommendations against a department as well as individuals who have done whatever wrong they did. Those are the kinds of things that should be put in for protection.

In other places, such as Australia, they don't call it whistle-blowing; they call it the "corruption act", using "corruption" not in the sense that people are taking bribes and so on—though that may be involved, but not necessarily so—but corruption of the acts of Parliament for public interest, where there's wastage of money directly or indirectly, but still corruption.

So Australia took that route. Whatever we'd like to call it in our country, it comes to the same effect in the end, that there must be a complete and independent agency investigating it and taking action if they're authorized to do so, and then finally reporting to Parliament.

Your second question was about the case if you're sidelined. Well, I was sidelined all my life until I blew the whistle, and there was nothing I could do. Sometimes your boss recognizes, from your style of raising issues in your workplace and so on.... They may not like you; they may not like your raising those issues. And there's nothing you can do. I personally had no way of proving that it was because of this that they did that. There's no way to do that. You can't prove racism until you have direct proof, so I would leave that aside.

But when you have blown the whistle, and now something happens, this is where the protection needs to occur. Now you have to tie the two things. For example, in my situation right now, if I'm fired and I say I was fired for whistle-blowing, and they're saying no, it was for something else, at that point I think I should be placed—all of us should have been placed—in a situation where at least we are suspended without pay, rather than fired.

Now we have to sell our homes, without any income, which is what my situation is. For eight months the case hasn't even started, and we don't know how many years it might take. I'm seventy years of age. Some people hope I die, and I pray I don't; meanwhile, I have to live.

•(1605)

So this is the kind of protection that has to go into the bill, that somebody, some agency has to say, "All right, we're intervening."

In this case, intervention was requested by Senator Spivak, by writing to the Minister of Health. He didn't intervene. He wrote to the Prime Minister, and the Prime Minister wrote back that he accepts what has happened.

Well, I think that is bad. That's where the bill has to be strengthened.

The Chair: Sorry, Monsieur Sauvageau, your time is up.

Next we'll have Mr. Thibault, from the Liberals, for seven minutes, and then Mr. Martin, from the NDP.

Hon. Robert Thibault (West Nova, Lib.): Thank you, Mr. Chairman, and I want to thank all three of you for coming here.

I don't want to cast aspersions, lay blame, or say that you were right or that you were wrong. I'd like to set all that aside and benefit from your experience in the civil service to help us in how we can do this properly.

First, I should say that I wish you long and good health.

Especially in jobs like you have, there's a danger there; there's a risk. You have very critical information. You have very critical opinions—and I don't mean "critical" in the sense of you criticizing everybody, but opinions on the risk to the health of the people. Your opinions may vary, but in instances they can put people in fear and anxiety. So there has to be a system, I would think, where you have decisions or discussions among people of scientific persuasion as to what the course should be, and you make recommendations to a ministry or to a department that become the position of the department or influence the position of the department.

I'm trying to differentiate—and I'm taking that from what I'm hearing from Dr. Chopra—between what's whistle-blowing and what's dissension. If you have things happening within the

department that are illegal, you use the term "corruption". You have corruption happening within the department, and you report that. Clearly, to me, it's whistle-blowing. If you have racism and you report that, that clearly is whistle-blowing.

If you have an opinion, a scientific opinion that varies from the opinion put forward by the department after it has gone through a peer review process, a proper discussion process, and two individuals might disagree.... Two individual scientists will look at the same information and might disagree on the proper course of action. I personally don't see that as whistle-blowing. I see that as dissension, and I see that there may be a risk. If you put that other opinion forward and put it forward as the opinion of a scientist within a department that differs from the others but that is being withheld, that could put undue fear or anxiety in the population.

Do you share that view? Do you see that as a risk, and how would you deal with that differentiation from whistle-blowing, if you do, or professional discord or dissension?

Dr. Shiv Chopra: I'd like to dispel that confusion, because this is often said in our jobs, or any other jobs where there are government regulators of whatever law.

In our case, it happens to be the Food and Drugs Act. In another situation, it might be mine safety. In other places, it might be airplane safety. Whatever you consider, there are laws, acts of Parliament. In our case, the Food and Drugs Act is attached to the Criminal Code. Basically our jobs are not to give opinions, just simple opinions, because we're not laboratory scientists. We're not testing anything. We receive research data produced by the companies; by law, they are expected to submit the data to the Minister of Health. The law simply says, in one sentence, that data satisfactory to the Minister of Health must be provided for you to be able to sell such-and-such a product in Canada. It's as simple as that.

The submission is given to the department, and it arrives on our desks. We look at the data. We are basically science auditors. We're not scientists, in the sense that we're not testing anything. When we receive that, we audit it. Either we say that in our opinion enough has been done, and recommend a notice of compliance, or we say that not enough has been done, and, therefore, they must go back and do some more.

The pressure that's been coming upon us is that because the United States has passed it, or somebody else has passed it, we don't need to receive the data in Canada. That we have to differ with. We cannot do that, because the company did not provide the data required in the law under the Criminal Code, and if we sign off because the U.S. has passed it, then we are putting our signature to say we did receive the data, and it was satisfactory on behalf of the minister. If that happens, and any Vioxx-like situation arises, or BSE occurs in Canada, or some people die as a result, then it's my signature. I go to jail, because now I have implicitly and complicitly put my signature on it, because my boss or somebody else said to sign off. That is the difference. Therefore, there is no leeway in the law in the jobs we have.

In some of those jobs, if I'm just giving an opinion on a subject of a method—that it means this or means that—there you can have dissension. Then there should be debate. Even in our situation, when there are opinions like that, it should be incumbent upon the departments to bring public opinion, to bring other scientists, to have scientific debate. Don't tell them you can't talk about it outside or inside or anywhere—

•(1610)

Hon. Robert Thibault: Dr. Chopra—

Do I have one minute left?

The Chair: Yes, you have a minute and a half.

Hon. Robert Thibault: Dr. Chopra, would that not be the instance in the case of anthrax vaccines, when you, in that case, did express an opinion? It wasn't necessarily an evaluation, but it did express an opinion that what you thought the Government of Canada was doing at that time, in stockpiling that vaccine, wasn't the proper thing to do. Later we came to find out that it was a huge health risk, and that it was the proper thing to do, or at least it was believed to be. Wouldn't that time have been an expression of an opinion, rather than the analysis of data you referred to in the first instance?

Dr. Shiv Chopra: Sir, let me correct that situation right away, because that's a personal matter.

In fact, that's not true. I spoke...and it was clearly stated, in the media and in the courts, that I did not speak as a Health Canada official. I made absolutely sure that the reporter wanted to know an opinion from me, as a citizen. I said I was speaking as a citizen, because I referred them to the department. I referred them to the special laboratory in Winnipeg, and so forth.

I'm a microbiologist. I'm a veterinarian. I know the jurisprudence of that disease. There was no risk from anthrax. There is no risk from anthrax. There can be no risk from anthrax, sir, and so the stockpiling of antibiotics, especially such as Ciproflox, in my opinion, was the wrong thing to do. It was a waste of money. It was a dangerous thing to do, for my own personal family; therefore, I expressed my opinion for my own personal safety.

Hon. Robert Thibault: That was not as a scientist, but as an individual—

The Chair: Mr. Thibault, I'm sorry, your time is up.

Mr. Martin from the New Democrats, followed by Mr. Lauzon.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Mr. Chair.

Thank you, Dr. Chopra and Dr. Haydon and Dr. Lambert, for being with us today. I think I've made clear my view toward the three of you. I view you as heroes in many regards and as champions on this issue from an employee rights point of view. Perhaps you best illustrate the need for and the value of adequate legislation to truly protect whistle-blowers.

Having said that, I'd like to ask you, any of you, to expand a little bit from your own personal experience on some of the more subtle forms of retaliation, some of the more intangible things, that can happen to a whistle-blower in the workplace for which it may be difficult for us to put language in place to protect the employee. I think it would be helpful, as we try to craft language to help whistle-

blowers, to know some of the subtle things that happen in the course of your experience in the workplace, above and beyond something as overt as discipline.

•(1615)

Dr. Shiv Chopra: The subtlest retaliation against me is that huge amounts of money continue to be spent to prove that my charges of racism were wrong, when in fact it has been proven many times before the tribunals and courts that what was done and said was wrong. In my estimation, close to \$10 million has been spent by Treasury Board and the Department of Justice on fighting me, and still fighting me, on the issue of racism.

In other subtle forms, and I think Dr. Haydon will confirm that, because it happened through me, if a submission was brought to her and a company called me as her supervisor not to give that submission to her because she nitpicks, I'd tell them that's her job; that's exactly what she's supposed to do in her job—to nitpick—because she is the auditor of your submission.

The same thing happened to Dr. Lambert. He raised an issue, with my involvement, and also your colleagues, that approval shouldn't be given to this drug. We needed to all have a meeting—something as simple as let's have a meeting to discuss this matter. Instead of granting a meeting, the director general called him, demoted him, and issued a letter of reprimand to the late Dr. Cris Basudde.

These are subtle forms that are not so subtle. I'd like them to confirm what I've just said.

Mr. Pat Martin: Yes, or any other examples you may think of that made your life difficult in your workplace and that you felt was an aspect of the reprisals.

Dr. Margaret Haydon: Just by way of example, because our court case hasn't been heard yet, I won't go into too many details, but for the last year the four of us were in isolation in separate wings in separate towers on separate floors of the workplace, and any communication within the office, such as scientific articles that were shared with other people, usually never got to us.

Mr. Pat Martin: So you felt you were being isolated and ostracized even within the workplace.

Dr. Margaret Haydon: Yes. And of course we lost Dr. Basudde....

Pardon me.

Mr. Pat Martin: I understand how difficult it is.

My reason for raising this is that as a former union rep, I know that there are subtle, very hurtful ways that are far more difficult for us to put a finger on and to put language into effect to preclude that kind of thing.

Dr. Margaret Haydon: Just speaking on behalf of him, he had situations where he got further punishment from more senior bureaucrats in Health Canada, even higher above where the first reprimands were addressed. It went further and further up to the top, so he really couldn't cope with that.

Mr. Pat Martin: I understand.

Dr. Lambert.

Dr. Gérard Lambert: I was in the Public Service Integrity Office when four of us reported the wrongdoing to that office. In the final report they mentioned that there was retaliation against me because of raising an issue within the drug directorate. I was acting leader and I was removed from that position.

In the Public Service Integrity Office's first report to Parliament there was mention of one case of retaliation. It was my case. That case is still not resolved. There were some letters sent to the department to resolve the issue.

I am still in receipt of an offer to resolve that issue of retaliation, but if I accept that offer, Health Canada says there will be.... They didn't accept that there was retaliation against me. Because it looked like retaliation and they didn't accept that it was retaliation, if I accept that offer, it's as if I accept that there was no retaliation. I cannot accept that.

That offer was given to me after I was fired.

•(1620)

Mr. Pat Martin: I see.

The Chair: Thank you, Mr. Martin. Your time is up.

Mr. Lauzon is next, followed by Mr. Scarpaleggia.

[*Translation*]

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Thank you, Mr. Chairman.

Dr. Lambert, how many years of services do you have with the Government of Canada?

Dr. Gérard Lambert: I have been working with Health Canada for 31 years.

[*English*]

Mr. Guy Lauzon: Dr. Haydon, can I ask you how many years of service you have?

Dr. Margaret Haydon: Yes. I have approximately 22 years, and I was in private practice before that for approximately 10 years.

Mr. Guy Lauzon: And Dr. Chopra?

Dr. Shiv Chopra: Thirty-five years.

Mr. Guy Lauzon: And your colleague who has passed away...? I've forgotten his name.

Dr. Shiv Chopra: It's Dr. Cris Basudde. He was 56 years of age. He had 12 years of service. After 12 years of service the department had the audacity to write to his university in London to check whether he had a PhD in the right subject, or whether he had any PhD at all.

Mr. Guy Lauzon: My math isn't that great, but it would appear that the four of you have close to 100 years of service as members of the public service of Canada. None of you is employed with the Government of Canada as we speak. Have you all been fired?

Dr. Shiv Chopra: We were all fired on the same day, within 15 minutes of each other. We were all on extended sick leave on that day.

Mr. Guy Lauzon: Okay.

Now, Dr. Chopra, you have a very long and difficult history of voicing your concerns about wrongdoing in Canada. We're aware of that.

In 1998 you were punished with a reprimand and a suspension from work—just correct me if I'm wrong in some of this—after you went public about your lack of access to scientific data on the safety of bovine growth hormone. Actually, you were proven right, and your efforts resulted in a Senate inquiry and the removal of BGH from Canadian beef and milk.

I understand you also stood up to Health Canada's decision not to promote you because of your cultural background, and you could discuss that. Again you were proven right on that case.

My information tells me that in 2003 you expressed concerns about the measures being taken in Canada to prevent BSE—that they were not adequate. Again time has proven you right.

But in 2004 you were fired.

Now, BSE has cost so many Canadians their livelihoods; it has had such a devastating effect on the whole country, on the agricultural industry; it has also cost billions and billions of dollars.... If you had been heard or if you had been allowed, or if your information had been accepted with some credibility, do you think we would have this BSE crisis that we have now?

Dr. Shiv Chopra: Thank you, Mr. Lauzon.

This is a subject I wish somebody had listened to us about. Everything would have gone away. We wrote exactly that—if we do what Europe has done, as we're not inventing this thing, this disease will go away instantly. It's a man-made disease. The moment we say no animals.... That's what we recommended—do not feed any animals to any animals. The moment we do that, then in the next five or six years, which is the incubation period, we will have no BSE. Then we would not be begging the United States to open the borders to us. The whole world's borders would be open to Canadian beef, and our children and our grandchildren would be safer. Now our beef is the worst for our people. Our best beef, the safest, is now being exported.

•(1625)

Mr. Guy Lauzon: Would you suggest, Dr. Chopra, that we discontinue immediately feeding animals to other animals?

Dr. Shiv Chopra: Absolutely.

Mr. Guy Lauzon: Thank you.

You were fired eight months ago and you're still in the process of appealing that dismissal. For your sake, I hope there's light at the end of the tunnel, but of course your appeal already has taken far too long.

Bill C-11 does not create any new process for reporting reprisals. Do you think that an effective system for reporting wrongdoing should include a new process for reporting reprisals against whistle-blowers?

Dr. Shiv Chopra: Yes.

Mr. Guy Lauzon: What would have happened if in the nature of your work, your research, you'd have found something that was amiss and not reported it? What would have been your supervisor's or your manager's approach? How would they have treated that?

Dr. Shiv Chopra: Are you saying if I do not discover some...?

Mr. Guy Lauzon: If you discover something and you don't—

Dr. Shiv Chopra: Report.

Mr. Guy Lauzon: So you were stuck between a rock and a hard place.

Dr. Shiv Chopra: Absolutely.

Mr. Guy Lauzon: Your optimism or your belief in humanity is amazing, because you reported that Minister Rock wrote you a letter guaranteeing you protection when you appeared before the Senate.

Dr. Shiv Chopra: Yes.

Mr. Guy Lauzon: And that letter did not hold any credibility.

Dr. Shiv Chopra: As a matter of fact, when the Senate committee first invited me and my colleagues, we declined to go because there as a gag order on us. I was asked to change my own report by a newly hired director. When I refused to, and this was going on, I said I can't appear before the Senate committee; therefore, I need protection. That's why the protection was obtained on our behalf. Once the protection was given, within months after that, I was suspended.

Mr. Guy Lauzon: The protection was directed from the minister.

Dr. Shiv Chopra: From the minister.

Mr. Guy Lauzon: And you had this in writing?

Dr. Shiv Chopra: In writing, and from the deputy minister. As a matter of fact, I took this matter up with the Senate afterwards. The Senate passed a unanimous motion as a possibility of contempt of Parliament by the department. There is an investigation report. They said that they wanted direct proof. They asked, did somebody tell you, "I'm going to retaliate because you did such and such?" I said, "Sir, nobody tells you that ahead of time." And then they said, "Well, we can't find that, but what's happening at Health Canada is deplorable." That's in the Senate committee report. On that matter, we have again written to the Senate committee on rules.

So what else can you say? What else can we do? When you're riding a tiger you either die or you hold the tail.

The Chair: Thank you, Mr. Lauzon.

Now to the Liberals: Mr. Scarpaleggia, and if you don't use all the time, Mr. Boshcoff.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Yes, thank you, Mr. Chairman. I would like to divide my time with my colleague, Mr. Boshcoff.

Thank you very much, all of you, for being here today. It's very informative for members of the committee.

I want to clarify one thing, Mr. Chopra, regarding a comment Mr. Sauvageau made, to make sure that I understand. Would you have an objection to the Public Service Commission being the body to which wrongdoing is reported, if the Public Service Commission reports directly to Parliament and if changes were made to ensure that there

were firewalls within the Public Service Commission, and so on? Or are you like many people and dead set against that idea?

• (1630)

Dr. Shiv Chopra: Sir, I don't know what kind of firewall you can build. There are all kinds of firewalls in the Public Service Commission. There are different wings doing different things. We've written repeatedly to the Public Service Commission to investigate these matters, and in writing they've said "No, we're not going to". So they had those authorities and they've made appointments. They've been involved indirectly and indicted as perpetrating racism themselves.

Mr. Francis Scarpaleggia: I'm not talking about racism. I'm just saying that in terms of a report of wrongdoing, did they have that mandate? I don't think they had that mandate before to investigate whistle-blowing.

Dr. Shiv Chopra: No, they didn't have the mandate, but because they are the central agency of administering proper appointments, administering proper behaviour, we did report repeatedly to the Public Service Commission and we were constantly taking them to the Federal Court.

Mr. Francis Scarpaleggia: So you have no faith in that institution, then, as—

Dr. Shiv Chopra: I'm not talking about just the Public Service Commission. Any institution that reports to the Privy Council that's—

Mr. Francis Scarpaleggia: Let's say it reported to Parliament directly.

Dr. Shiv Chopra: If it reported directly to Parliament, then it doesn't really matter who it is. Then the name doesn't matter.

Mr. Francis Scarpaleggia: Fine, I understand.

You didn't specifically talk about the litigation cases you've won, but you mentioned there were a series of such cases over time. Could you mention a few and enlighten us?

Dr. Shiv Chopra: I think a witness appeared here last week, Mr. Selwyn Pieters. He has done a better job than I have on a web page on me and he has listed all the cases I've won and gone to the courts over. He's a lawyer. He's been following these things. I could provide that information afterwards.

Mr. Francis Scarpaleggia: Well, we can go and look at it. If it's under your name, we'll just do a search.

Dr. Shiv Chopra: If you do a search, search out Chopra on Google and you'll find a thousand write-ups by other people.

The Chair: Mr. Boschcoff.

Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.): Most Canadians are under the impression that public servants can't be fired, and it seems that in our system of government firings are very rare, so it must really take something actually for the government to act. Are you aware of the frequency of firings? Have you heard of it over the course of your career?

Dr. Shiv Chopra: Yes, I have heard. The most famous case is Neil Fraser, and he was fired. He was an individual who called the Prime Minister “Hitler” and then he remained fired, but the case went all the way up to the Supreme Court, and it gave an observation that Mr. Fraser was wrong in doing what he did. However, there may be situations where a public servant is obligated to blow the whistle, and the court gave examples such as the public interest and public health and safety. That's one case.

The second case is a follow-up to that, and I've been absolved of that, both by the Federal Court and the PSSRB. There have been many other cases, but it's not very common that people get fired. You heard Mr. Reid. You heard Mr. McAdams. They were fired the same way, and Madame Gauthier. There are a number of people like that. If people are fired for other reasons, we don't know.

Mr. Ken Boshcoff: Health Canada had been addressed by the Canadian Human Rights Tribunal to set up a series of corrective measures. It had 25 things it had to do. I'm going at this essentially from your statement that there is systemic racism. Health Canada complied with all of those and it was essentially cleared, or it met the requirements and exceeded them. So I think the concern we have is that you're saying there is racism rampant, essentially.

Dr. Shiv Chopra: That actually is not correct. You hear reports that the department complied and acceded.

There were two aspects. I was the carrier of the case. There were two cases. For the systemic case you'll read in the decision that I was the key carrier of the case, NCARR versus the Queen. I was the president of that organization. It was not an employment equity case. This was racism. There was a motion brought by the respondent that the case should be handled under employment equity. The remedy you were talking about was there was some employment equity and there was actual racism. I have a new case, which is still before the tribunal, that has gone back and forth. The department is now saying it should be dismissed because it's been too long. It's not my fault if the courts don't handle them the right way.

Racism is rampant in the department. You heard the President of Treasury Board admit before another committee that all other designated groups have made progress except visible minorities. Obviously there is racism not only in Health Canada but throughout the public service. There are very serious problems.

• (1635)

Mr. Ken Boshcoff: Are not the increases from 2% to 12% in terms of visible minorities in Health Canada some measure of progress?

Dr. Shiv Chopra: There is some measure of progress. It's the same kind of progress that occurred back.... They were saying there was a measure of progress, but the numbers and the proportions keep increasing too. The visible minority population has increased. Those measures were supposed to be set for the target of the census in 1991 by 2002, so the population has increased way beyond that.

Mr. Ken Boshcoff: But you are saying there is racism when indeed there is a huge increase in the number of hirings.

Dr. Shiv Chopra: You're talking about employment equity. I'm talking about racism. It's like with Cris Basudde. When somebody says there is too much visible minority mentality, when a director is appointed who says, “I see so many of you are visible minorities—I

like visible minorities”, those kinds of comments are direct racism. Those people are being rewarded. They are still drawing EX-2, EX-3, EX-5 salaries in the department. There's been an overseer of that particular case against whom there are serious criminal cases in the public service. There are serious problems.

The Chair: Thank you, Mr. Chopra.

For the last two minutes, Mr. Poilievre.

[*Translation*]

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Thank you, Mr. Chairman.

As two of our witnesses are my constituents, I have a particular interest for that issue.

As a member of Parliament, I would say that this case would be much easier if there was a law to protect whistleblowers. An agent of Parliament could give us all the relevant information on the case and investigate. Presently, it is more difficult because Health Canada will not share its information with an M.P. like me.

I recognize that we do not have much time. I will then put my question right away. If Bill C-11 is passed, what will be the most important change to protect people who find themselves in difficult circumstances within public service?

[*English*]

The Chair: Could we have a short answer from each of you, please?

Dr. Shiv Chopra: I would recommend that not necessarily whistle-blowing but the reporting of wrongdoing should be made an obligation, and at the same time there should be absolute protection provided in the bill. It should be defined exactly what that protection will be so that it is expected that everybody who is in the public service who sees wrongdoing, especially in their own job, must report that. They must have no objection if it's reported up the line. At that point, those are the strengths. Then the agency must be totally independent of the executive branch of the government.

• (1640)

Dr. Margaret Haydon: I would like to agree with Dr. Chopra. I'd like to add that I think there has to be something done to deal with the perpetrators of the wrongdoing. That's a very important issue.

Mr. Pierre Poilievre: About which the bill does nothing. This current bill does nothing to deal with that issue.

Dr. Margaret Haydon: That's right.

Mr. Pierre Poilievre: Thank you.

The Chair: Dr. Lambert.

[*Translation*]

Dr. Gérard Lambert: It would be important that the person responsible for the implementation of that legislation have the authority to apply the remedies required to correct the situation. This responsibility should not be given to the accused persons.

[*English*]

The Chair: Thank you very much, all of you.

Mr. Chopra, a very short final comment.

Dr. Shiv Chopra: Apropos to this, one of the things I would like to suggest is that when a report of wrongdoing is made up the line, that recipient should register that complaint with the authority who is going to manage it.

The Chair: Okay.

Thank you very much to all three of you.

We're going to suspend for two minutes while the next witnesses come to the table and then we'll resume at that time. Thank you very much.

• (1641)

(Pause)

• (1645)

The Chair: We'll resume our meeting this afternoon. In the second hour we have as witnesses, from the African Canadian Legal Clinic, Marie Chen, the acting director of legal services; and Nkiru Agbakwa, policy researcher. And if I murdered your name, please correct me.

Go ahead and make your presentation and then we'll get to the questioning.

Ms. Nkiru Agbakwa (Policy Researcher, African Canadian Legal Clinic): Thank you for this invitation.

On behalf of the African Canadian litigation community, who we represent, the African Canadian Legal Clinic, ACLC, would like to thank the Standing Committee on Government Operations and Estimates for inviting us to put forward our observations and concerns on Bill C-11, the Public Servants Disclosure Protection Act. I have with me this evening Ms. Marie Chen, the acting director of legal services of the ACLC.

The ACLC is a non-profit organization and is a part of the Ontario legal system. The ACLC engages in test-case litigation and works as a community legal clinic to address issues of systemic racial discrimination as well as government policies on legislation of interest to the African Canadian community.

First, I would like to say that the ACLC applauds the laudable objectives of Bill C-11. While the proposed legislation is a positive step, Bill C-11 as it stands falls short in some very important respects, particularly in the narrowness of the scope of clause 8, which spells out the wrongdoings to which the act will apply.

The ACLC takes the position that to be fully effective and to enhance accountability and transparency, Bill C-11 should cover the following critical concerns: the inclusion of discrimination and harassment as wrongdoing under clause 8; the protection of the charter rights of both whistle-blowers and alleged wrongdoers; and finally, the protection of whistle-blowers in the private sector.

First, I will start with human rights violations and discrimination not included as wrongdoing under clause 8. I want to say that as much as we wish it were otherwise, racial profiling and other forms of discrimination against African Canadians and other racial minorities remain pervasive, embedded in the socio-economic fabric of our society.

It is common knowledge that racial minorities compared to the dominant group in Canada are disproportionately underemployed,

economically disempowered, and overrepresented in the criminal justice system. These situations continuously threaten the health, life, or safety of the affected individuals, and by implication, the public, as do policies, decisions, acts, or omissions that give rise to their situations.

The ACLC believes that by failing to include discrimination as wrongdoing under clause 8, Bill C-11 effectively denies those who witness or experience discrimination in the workplace the legal protection they need to speak out. The ACLC believes that this should not be the case.

The inclusion of discrimination as wrongdoing under clause 8 would enable not just victims but other employees who witness wrongdoing to report it. This will serve an important public interest purpose by preventing the further entrenchment or creation of a subclass of Canadian citizens resulting from pervasive discrimination in our society.

We believe that without this protection, systemic racism or other discriminatory practices or policies may otherwise not be exposed. That is why the ACLC is extremely concerned that the proposed legislation fails to specifically and expressly include discrimination as wrongdoing under clause 8.

Again, the ACLC is equally concerned that harassment, including racial harassment, is not included as wrongdoing in Bill C-11. The ACLC believes that wrongdoing should not be limited only to financial misconduct, but also to the abuse of power, particularly harassment. For this reason, the ACLC urges that harassment be specifically included as wrongdoing under clause 8. Specifically, clause 8 should be expanded to include racial, sexual, and other forms of harassment. This will help to ensure that those who blow the whistle about such critical issues of public concern will not be left to choose between keeping silent or keeping their jobs.

We are therefore making the following recommendations.

• (1650)

First, clause 8 should be amended to include human rights violations and/or discrimination as wrongdoing. We are also asking that clause 8 be amended to include harassment as wrongdoing.

As it stands, Bill C-11 applies to wrongdoings in the public sector and not wrongdoings in the private sector. The ACLC believes a protection of persons who disclose wrongdoing should not be confined to government and its agencies, but should also be extended to employees who disclose wrongdoing in the private sector. For instance, the whistle-blowing legislation of the United Kingdom and South Africa equally applies to the public and private sectors. From all indications, the extension of protection to private-sector whistle-blowers in these jurisdictions has not adversely affected the private sector or led to loss of business. On the contrary, it has been most beneficial to all segments of society.

There are good reasons why federal whistle-blower legislation such as this should not be restricted to the public sector. First, we know increasingly that the so-called private-public dichotomy is blurring and progressively eroding. Many services traditionally rendered by the state are now provided by the private sector, but as we know, the change in control and ownership does not necessarily lead to a change in the nature of services or goods provided by these institutions to the public.

As events worldwide clearly reveal, corruption, malpractice, discrimination, and so many other vices that are inimical to the public interest can take place in the private sector as well as in the public sector. Bill C-11 as presently drafted assumes—incorrectly, in our view—that acts or omissions that threaten the health, life, or safety of the public or the environment can only happen within the public sector. We believe nothing could be further from the truth. We therefore make a recommendation that Bill C-11 be amended to extend protection to private sector employees who disclose wrongdoing in the workplace.

To conclude, we would like to say that the ACLC believes that if our recommendations are reflected, the bill will make it safe for employees to sound the alarm when they witness either misconduct that threatens the safety and health of the public or mismanagement of public funds, and also when they witness human rights violations such as racial discrimination.

We believe that if Bill C-11 is amended to include racial discrimination as wrongdoing, not just employees who are victims of discrimination but other employees who witness racial discrimination or other forms of discrimination in the workplace will be able to report such wrongdoings and get the legal protection they need to do that safely.

We respectfully submit our request that the standing committee consider the recommendations of ACLC and that the bill be amended accordingly.

Thank you.

•(1655)

The Chair: Thank you, Ms. Agbakwa, for your presentation.

We'll go directly to the questions.

Mr. Preston, for seven minutes, followed by Madam Thibault.

Mr. Joe Preston: Thank you very much for coming with your presentation today.

You started off by stating that the proposed legislation is a positive approach. After hearing from many witnesses, I'm beginning to think it may not be in and of itself.

You mentioned in there that it falls short under the wrongdoing categories covering racism basically, discrimination and harassment, and any other human rights violations. How would you word that if it were put in there? There are clauses in there now about setting a level of conduct. Would it fall under that?

Ms. Nkiru Agbakwa: Pardon me, but I didn't hear the question very well.

Mr. Joe Preston: You would like us to include the wrongdoing for discrimination and harassment in clause 8. Clause 8 currently has

in it a breach of the code of conduct that's established. I have not read the code of conduct, but I'm guessing that the code of conduct includes discrimination and harassment in cases of discrimination. Does that clause not cover what you're asking?

Ms. Nkiru Agbakwa: I'm thinking that there's need for this clause to be inserted expressly. This may not be so clear for a person who is an ordinary, everyday victim of racial discrimination. There is a need to include a specific, expressly stated subclause under clause 8. Inasmuch as the code can cover this, we are saying it is important for this clause to be inserted under clause 8 expressly.

Mr. Joe Preston: So simply for clarification, it may be covered under that, but it would be a much clearer situation in your mind if it stated it expressly.

Ms. Nkiru Agbakwa: Yes.

Mr. Joe Preston: You also talked about covering private corporations under Bill C-11. We've had some discussion at this committee about covering corporations that are doing business with the Government of Canada or subcontracting through the Government of Canada, so that if a whistle-blower came forward with something that was going on that really did affect the accounts of Canada, the employee might be covered. Are you expressing that we should go further than that?

Ms. Nkiru Agbakwa: Yes, because it's important. For example, an accountant who is in a private firm sees some wrongdoing, like fraudulent activities in his accounts. Even though he's in a private corporation, he should be able to report this wrongdoing without fear of reprisal.

Mr. Joe Preston: I agree that he should, but I'm not certain that we're not covering a Criminal Code section there more than we are whistle-blowing legislation, unless it is a corporation that is a subcontractor to the Government of Canada, unless it is somehow connected to the public use, so that Bill C-11 is connected.

Ms. Nkiru Agbakwa: We know we have certain situations in which we have private sector corporations that carry on activities that have great impacts on the public. Such private sector businesses or corporations should be covered under this legislation. If they carry on activities that have great implications for the public or that could endanger the health of the public or the safety of the public, such activities should be included.

Mr. Joe Preston: Certainly, and I agree with you on that piece.

I have one last question. This legislation currently has whistle-blowers going forward to the Public Service Commissioner as their method of whistle-blowing. Do you see that as the appropriate method?

Ms. Nkiru Agbakwa: Can you ask that question again?

Mr. Joe Preston: Yes. The bill, the way it's currently written, currently has the whistle-blower going to the Public Service Commissioner as their means of reporting the wrongdoings. We've heard a few witnesses tell us their opinions on whether that was a good or a bad route for whistle-blowers to go. What is your opinion?

Ms. Nkiru Agbakwa: I think there should be a step-by-step process. Reporting wrongdoings should occur internally first, before going further to the commission. If a matter can be settled within, internally, by reporting wrongdoings to a supervisor or a manager internally, it would be best to address that matter internally before moving forward. If it cannot be addressed, then somebody can move beyond that.

• (1700)

Mr. Joe Preston: Yes, and ideally that should be how it would work unless it was the immediate supervisor or manager the complaint may be about, who may make that case a little—

Ms. Nkiru Agbakwa: Yes, if the complaint is against the supervisor or manager, then that makes it a little difficult. You cannot be a judge in your own case. Somebody beyond that can address that situation. If there isn't a manager within the organization who is capable of taking care of that situation, then the complaints or the wrongdoings can be reported to the higher authority.

Mr. Joe Preston: Thank you very much.

That's all I have, Mr. Chair.

The Chair: Okay.

Madame Thibault, followed by Monsieur Godbout.

[Translation]

Ms. Louise Thibault (Rimouski-Neigette—Témiscouata—Les Basques, BQ): You propose to include the whole issue of harassment in section 8. This is, I suppose, because your organization is not satisfied with the measures presently in place within public service. If you are saying that it should be included is it because you do not trust the mechanisms already in place? Do I put words in your mouth?

[English]

Ms. Nkiru Agbakwa: Thank you so much for that question.

It's not because we don't trust the current system, but that in the current system you have a situation where it's just the victim who goes to make a complaint. What we're asking for would provide enhanced protection such that it's not just the victim who can be courted but also other employees, other managers. For example, decisions are taken within a workplace that not just the employees see but also the managers who take such decisions in the boardroom, who may also see discrimination or discriminatory policies. They should be able to.... It should not just be the victim but also other people; other employees should be able to report the wrongdoing.

Under our current human rights system, it's such that the victim has to bear the sole responsibility of the party's wrongdoing. What we're asking for here is an all-inclusive situation where more than just the victim should be able to do that.

It's a fundamental principle in the Canadian society that we have a collective duty to eliminate racial discrimination and harassment.

[Translation]

Ms. Louise Thibault: I certainly appreciate your answer. It was very clear.

Could you be more precise? I know that my colleague asked you a question, but I would like you to take a few minutes to explain how

this legislation should cover the private sector. A colleague who is not here now has asked that question. He said that he has many businesses which are dealing with the government in his riding and that their employees should be able to report suspicious or abusive practices, etc.

Are you talking of those issues in your organization? Are you also talking about other matters and what are they, please?

[English]

Ms. Nkiru Agbakwa: Yes, thank you so much.

We believe that other areas should be covered as well. Protection should be extended beyond just the public service, so that people who witness wrongdoing and are not employees per se of the public service should be able to report the wrongdoing because they have protection. The example I gave you was that of an accountant who is working and sees fraudulent activities in his work; he should be able to report this even though he's not a public servant.

• (1705)

[Translation]

Ms. Louise Thibault: Madam, are you talking about an accountant or a tax practitioner who would report someone who would file a phony tax return? Do you mean that he should report a taxpayer who is his client to the Canada Revenue Agency?

[English]

Ms. Nkiru Agbakwa: Yes, I believe such people should be able to report it.

[Translation]

Ms. Louise Thibault: It is the second situation.

Here is my last question. A witness has told us today that he was very concerned—as I am and maybe some of my colleagues here—by what I called transitional measures. I thought that there should be some provisions to protect whistleblowers when their identity is known. Someone told us today that we shouldn't do that, that we should absolutely not take that person away from her job. However, that witness considered that whistleblowing should be mandatory. He then had another view of the necessity to protect the whistleblower's identity. However, if I have proposed to include such a provision, it was in order to protect the person against reprisals.

Do you think that we would improve this bill if we included transitional provisions to protect an individual and his job? Do you believe that we should transfer that person or put him/her on leave to avoid reprisals or other difficulties?

Thank you, Madam.

[English]

Mrs. Marie Chen (Acting Director of Legal Services, African Canadian Legal Clinic): I'll answer that question.

We believe that, yes, there should be transitional provisions. The purpose of this bill should stress very much the protection of whistleblowers, and transitional provisions would be a crucial part of that protection.

As well, I think a choice should be left to the person who blows the whistle, whether or not.... I don't think it should be mandatory that once they blow the whistle they just run right through a set process; it should be left with the whistle-blower what measures he or she wants to access and what protections they want to access.

The Chair: Okay, thank you, Madame Thibault.

Monsieur Godbout, followed by Mr. Martin, for seven minutes.

Mr. Marc Godbout (Ottawa—Orléans, Lib.): Thank you, Mr. Chair.

I'd first like to thank the witnesses who are appearing before this committee.

If I understand correctly, you're not saying the bill does not address discrimination, but you want it specifically addressed in the definition of wrongdoing in clause 8. Am I understanding your position on this, that you want discrimination referred to explicitly?

Having said that, I'll follow up on some of the questions that were asked. For the rest of the bill, how do you feel about the mechanism or process concerning the whistle-blowing as such? Do you think the mechanisms are sufficiently clarified in the bill? Would you have any recommendations on them?

Madame Thibault has talked to you about retaliation. Are the witnesses protected enough under the act? Basically, what I'm asking is what would be your recommendations for the rest of the act? Is it sufficient as presently stated, or would you have any additional recommendations for us?

• (1710)

Mrs. Marie Chen: We can comment generally as to what the scheme of the act is at present. There seems to be room for added protection against reprisals; we believe the reprisals section, although it is set out, is quite limited. There definitely is room for improvement and added protection there, but we would leave it up to the witnesses who are able to speak from direct experience with whistle-blowing what they would like to see done.

We've come here with a very general access-to-justice type of perspective and wanted to see discrimination included or protected within this legislation.

That's how I think we would comment on that question.

Mr. Marc Godbout: You're talking about discrimination. There are other processes that are in place. You were referring to harassment and so on. There are other mechanisms. Are there any experiences from these other mechanisms that we should learn from so as not to repeat them in the present contemplated legislation? Obviously you're not satisfied with this legislation if you want this one to cover discrimination. I'd like to know what are these very aspects you're not satisfied with, so if we do agree with you, we make sure that this legislation is the best one that could be available.

Mrs. Marie Chen: Ms. Agbakwa has already pointed to one glaring lack in the current human rights system, which has to do with the distinction between victims and witnesses. Under the current human rights system, it's victims who file the human rights complaints. But there are also other limitations with the current human rights process, and that has been the delay facing people who wish to vindicate wrongs that have been done to them. That's

something that I think the legislation should try to avoid. It needs to provide a mechanism by which claims or whistle-blowing can be dealt with as expeditiously as possible, because we've found in the human rights system that attrition is a huge problem. People just drop off because they get tired. They don't see anything happening and they just give up. That is one pitfall I think this legislation should try to avoid.

The second thing is that any review body that's set up must be able to understand the nature of whistle-blowing. It must be able to understand what the problem actually is, because we've found in the human rights system a lack of understanding, particularly with respect to racial discrimination. What that means is that people do not end up getting the results they should be getting because of a lack of deep understanding of the issues. But generally it's been the issue of delay. And, yes, no system is perfect, but I think that given that we have the opportunity to try to provide added protection to people who report wrongdoing, it should be done properly.

Mr. Marc Godbout: I don't disagree with you except that we might have to fix the other legislation in order to have your point addressed in this specific legislation. I've also heard what you're saying from some of my constituents, and I tend to agree with you that the delays sometimes are very problematic and they should be addressed.

On the private aspect, this is a bill specifically addressing the public service. I have a hard time seeing this bill applied to everybody because we don't want to dilute what it's trying to do. That's a concern I have. We've talked about contracts, that this is something that could be examined. But to make it generally available to everybody I think could probably be problematic. I think there's other legislation that should address these matters. Is that a priority for you? That's basically what I'm asking.

• (1715)

Ms. Nkiru Agbakwa: I think it's an important issue. For example, in the U.K. its own legislation covers the private sector, and from every indication it has not proved problematic; rather, it has been helpful to all segments of society to have this kind of protection that extends to the private sector as well.

Mrs. Marie Chen: If I could just add very briefly, you're right. If we were to extend the protection of this act to the private sector, this bill would need huge rewriting because it is very focused on the public sector. But I think that the bill can still cover situations where a private company has extensive dealings with the public sector or depends on public funds to do what it's doing. I think the bill as it stands can cover that situation. We've come to signal that the public sector isn't the only sector where these situations arise and that there is a real need for whistle-blower protection in the private sector. While this may not be done within the confines of this bill itself, we're signalling the need for it and the importance of it.

The Chair: Thank you. We have the 15-minute bells just starting, so we have approximately 10 minutes.

Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chairman, and thank you, witnesses, for your brief.

I don't think I will use my whole time, but I too am focusing on your recommendation that it gets into the private sector. I think it's an interesting point you raise, and I don't remember any other witnesses coming to the committee with that recommendation.

You referenced other jurisdictions, like the United Kingdom and South Africa. I wonder, do you have any knowledge about the South African model that may include the private sector somewhat?

Ms. Nkiru Agbakwa: The South African model largely mirrors the U.K. position. The U.K. position broadly defines workers. The term "workers" includes a broad range of people. Unlike, say, the public servants, who are just people in the public service, workers can be people who are not in the public service, trainees who come into contact with wrongdoing. It does not include volunteers in this case, but trainees or accountants working outside the public service who come into contact with such wrongdoings have the protection to be able to report misconduct.

Mr. Pat Martin: And with some anonymity, I suppose, and full protection. Is anonymity a key aspect to a whistle-blowing model that you'd recommend if the person wishes to remain anonymous?

Ms. Nkiru Agbakwa: Yes. If the person wishes to, it may be good at the initial stage not to disclose that, but somewhere along the line it may become too difficult not to disclose that source. At that point....

Mr. Pat Martin: It is a real problem. At some certain point as the evidence is laid out it may become obvious what the origin or the source of the information was. This is all the more reason why we need firm protections built in, even if the person does become identified. I agree with you there.

There were private members' bills put forward to the House of Commons that we argue are in fact better than this—one of them is mine, in fact, I say modestly. But it does contemplate at least broadening it out. This is really under the Financial Administration Act. We believe it could be framed under the Public Service Staff Relations Act and the Canada Labour Code to at least encompass the private sector of those companies that fall under the federal Canada Labour Code, which would be the transportation sector, the banking sector, the communications sector, etc. That's one way, if this committee chooses, to have the principles of this bill expanded at least into the federal jurisdiction of the federal workforce.

I don't have any other questions. Thank you for a very powerful presentation and for raising two things that we've not had raised at this committee before, the racial discrimination aspect and extending the protection into the private sector.

• (1720)

The Chair: Thank you, Mr. Martin.

I just have a question on the issue of the Canadian Human Rights Commission. It's been referred to before. That commission is in place in fact to deal with issues like racial discrimination and harassment. It seems to me that if this is placed in this legislation, it will be a duplication of services and an unnecessary inclusion.

I'd like your clear comments on that. You did refer to it. You indicated that you didn't think the Canadian Human Rights Commission was effective, but I think that's a separate issue.

Mrs. Marie Chen: Ms. Agbakwa has set out our position with respect to that issue. We see this not as duplication but as enhancement. We've set as an example the people the current human rights act does not cover, witnesses and managers who are not themselves victims but who have witnessed discrimination occurring with respect to policies or practices.

The second point I think we should think about is not so much the systems that exist—because with respect to the wrongdoing that's been set out, there are Criminal Code provisions that could deal with these types of issues—but that these existing systems don't negate the need for whistle-blower protection. The fact that the wrongdoings in there are already covered under the Criminal Code, for example, doesn't mean that you don't need a piece of legislation that will cover whistle-blowers.

I think in the same way about human rights violations or discrimination. The fact that there is a system that can deal with certain types of complaints under that heading does not mean that protection under particular legislation aimed at whistle-blowers should not also apply to that area. It's a question of enhanced protection.

The Chair: Following up on that, in the preamble to Bill C-11 it states that this bill is to deal with the public interest, rather than, it seems to me, issues of personal interest. Have you looked at that section of the bill? What comments do you have on it?

Mrs. Marie Chen: My comment would be that the elimination of racial discrimination is in the public interest. I think part of what this bill does is to look at systemic issues. Small individual problems are issues that become systemic issues. I think it's the same with racial discrimination; you can have systemic problems. Addressing systemic racial discrimination is in the public interest. It's not limited to just financial issues.

The Chair: Okay.

Thank you very much. Thank you both for coming.

We have to go off to a vote. This meeting is adjourned.

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