House of Commons
CANADA

Legislative Committee on Bill C-2

CC2 • NUMBER 005 • 1st SESSION • 39th PARLIAMENT

EVIDENCE

Wednesday, May 10, 2006

Chair

Mr. David Tilson

Legislative Committee on Bill C-2

Wednesday, May 10, 2006

● (1535)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good afternoon, ladies and gentlemen. Let me call the meeting to order.

This is the Legislative Committee on Bill C-2, meeting number five. The orders of the day are for Bill C-2, which is an act providing for conflict of interest rules, restrictions on election financing, and measures respecting administrative transparency, oversight, and accountability.

Before we start with our guests today, I have two matters I'd like to raise with the committee. In fact, I'll give them both to you at the same time.

The Chief Electoral Officer, who will be appearing before this committee on May 16 at 9 o'clock, has asked the clerk that he be allowed more time than the allotted 40 minutes. The question I will be asking the committee is whether they would agree to extending the sitting on May 16 for the Chief Electoral Officer by a round. That would mean we would rise at 12:10, assuming we're on time, instead of 12 o'clock.

Is there unanimous consent for that?

An hon. member: Agreed.

The Chair: You didn't hear what I was saying? You have to pay attention when this meeting's called.

I'm asking for consent. The Chief Electoral Officer, on May 16, has asked for extra time, and I'm suggesting a round. That would take us to 12:10, if we allowed that extra round.

Mr. James Moore (Port Moody—Westwood—Port Coquitlam, CPC): Rather than our doing it, could you check the time and wait until he comes here and then see if he needs extra time?

The Chair: You can do that. If there's no unanimous consent, we'll move on to the next one.

The Australian Prime Minister will be in Ottawa on May 18. As you know, question period will be at 11 o'clock. The Information Commissioner will be appearing in the morning, so we'll be short by an hour.

I'm asking the committee if there would be consent for the committee to hear from the Information Commissioner from 9 o'clock until 10:30, and then we would adjourn.

Some hon. members: Agreed.

The Chair: Is there unanimous consent?

I hear no opposition to that.

Then it will be understood, as far as the Chief Electoral Officer is concerned, that we'll wait until May 16 to see how things are.

Thank you.

We have two guests before us from FAIR, the Federal Accountability Initiative for Reform: Joanna Gualtieri—I'll let you correct me—and David Hutton.

Good afternoon to you.

Ms. Joanna Gualtieri (Director, Federal Accountability Initiative for Reform (FAIR)): Thank you. Good afternoon.

The Chair: If you wish to make a few brief comments, you can.

Ms. Joanna Gualtieri: Thank you.

First, thank you, committee members and Mr. Chair, for having us. I have a few opening comments, and then we will deal with the six election promises regarding the promise of ironclad whistle-blower protection.

I think we all can understand that understanding is best acquired through personal experience. Fortunately, most of us will be spared the experience lived by whistle-blowers, but it is precisely this absence of experience that challenges us in understanding what we need to do to provide effective legal protection. I hope that through your deliberations this committee will nonetheless understand that ironclad whistle-blower protection comes not from rhetoric or illusory devices, but rather from locking in fundamental civil and legal rights.

I hope that none of you experiences the retaliation whistle-blowers do; likewise, I hope you don't experience the tragedy that can result when we all remain silent. Twenty years ago, 60,000 Canadians were infected with HIV and hepatitis C while the government secretly debated what to do regarding our tainted blood supply. Thousands of others kept bedside vigils as their loved ones died a long and painful death, while the government covered up. We owe it to them today to ensure that above all else we are guided by simple principles: the public's right to know and an employee's right to tell.

History has given us profiles in courage: Dr. Michele Brill-Edwards, Dr. Pierre Blais, the three veterinarians at Health Canada. All departed from the unspoken conspiracy of silence to alert Health Canada to dangers. Career diplomat Brian McAdam, who is here, and RCMP Corporal Robert Read alerted the Prime Minister about threats to our national security. Linda Merk, who heroically went up to the Supreme Court of Canada, advised about corrupt union bosses. And Allan Cutler, who you will hear from, spoke about the sponsorship scandal.

What they share in common is that their careers were destroyed or detrimentally affected, and that they have faced persecution in our courts by the Department of Justice.

My knowledge regarding whistle-blower rights and protection began when I started at the Department of Foreign Affairs and spoke about extravagance and waste. Multi-million-dollar residences sat vacant while the taxpayers footed the bill for houses more to the diplomats' liking. I alerted senior management and the minister and was stonewalled and my livelihood destroyed.

As a lawyer, I could not ignore the horrific abuses applied against conscientious public servants. We needed a voice, counsel, and information, and that was the beginning of FAIR.

Today, our operations as a non-profit, non-partisan organization are made possible by a growing group of dedicated volunteers, and we are grateful for advisers, including the Honourable David Kilgour, Dr. Gerard Seijts of the Ivey School of Business, and Dr. David Swann, Calgary MLA. Our mission is threefold: to assist whistle-blowers, educate the public about their indispensable role in combating wrongdoing, and provide commentary about effective legislation.

I've learned this: that we are utterly dependent as a society on the flow of reliable insider information to combat wrongdoing that threatens the public interest. There is tremendous goodwill among our citizenry, but governments are more reticent to embrace strong protection.

We are really encouraged by the consultative approach of this new government and are deeply grateful for the openness of Pierre Poilievre, the parliamentary secretary to the President of the Treasury Board. It reflects a substantial change from the previous government, where, for example, Minister Lloyd Axworthy threatened me with libel for daring to say there was anything wrong.

Let us look now at the six components of the election promise. I would refer you as a benchmark to the whistle-blower protection law of the Organization of American States, of which, incidentally, Canada is of course a member. They have ratified the Inter-American Convention Against Corruption. This model should be our model.

The first promise is to give the public service integrity commissioner the power to enforce compliance with the act.

● (1540)

We know that employees remain silent for two reasons: fear of reprisal, and the belief that nothing will change. In order to combat this, the commissioner must have order powers. Unfortunately, Bill C-11 fails. Regarding the wrongdoing, the commissioner can only report to Parliament and make recommendations, and we know that bureaucrats and ministers have ignored officers of Parliament, including the Auditor General and the Information Commissioner.

Regarding whistle-blower protection, the commissioner has no power to grant a remedy, but can refer the matter to a tribunal. This will invariably start a long and onerous process for the whistle-blower, who never has control over his or her case. Rights inherently include the authority to enforce them, but this legislation offers promises whose enforcement is beyond the reprisal victim's control.

By contrast, the ombudsman in the OAS model has such corrective powers and remedial powers. In order to meet this election promise, at the very minimum the bill should provide that the minister or head of an offending department or crown corporation or agency shall take prompt corrective action as recommended by the commissioner.

The second point is to ensure that all Canadians who report government wrongdoing are protected, not just public servants. This is an important point. There's ample and growing precedent to base protection on what information the dissenter is disclosing, rather than on the person's employment context. This reflects the OAS model and the False Claims Act in the United States. To meet this election promise, Bill C-11 should at the very least provide that any time the government retaliates against a citizen who exercises freedom of expression, it violates human rights.

The third point we agree with, and that is the government's inability to exempt crown corporations and other bodies. Our position is clear. No government department, agency, or crown corporation should be exempted. They are all stewards of taxpayers' money.

The fourth point requires the prompt public disclosure of information revealed by the whistle-blower. In this regard, we must say that Bill C-11 fails dismally. It obligates the commissioner to make secret forever all information gathered in the course of the commissioner's investigation. It is also exempt from Access to Information requests. This provision is in fact more draconian than what the Liberal Government proposed. Inexcusable and Orwellian, it turns Bill C-11 into an anti-transparency proposal. Any whistle-blower acting under the law is in fact gagging himself or herself and locking in secrecy exactly when the public has a right to know. The American and OAS models contain anti-gag provisions. Bill C-11 must therefore provide that any information acquired by the commissioner must be accessible under access laws; in fact, we state that reports and materials should be deposited with a public registry.

The fifth point is a very important one. It relates to the whistle-blower's access to courts and the provision of legal counsel. Bill C-11 again is wanting.

The first part relates to the restoration of access to our courts of justice, which the Liberal government stripped away. This was done in 2003 by virtue of the Public Service Modernization Act. As insiders at the Department of Justice and Treasury Board said, it was because the government was embarrassed at being sued by public servants for harassment and abuse of power. Bill C-11 sets up a special-purpose tribunal to deal with whistle-blower cases, but it fails to reinstate the right to sue in court.

Let me be clear. A fair day in court with a history of openness, transparency, due process, public accessibility, and court reporting is the bottom line for the validity of any remedial law. I must say that the net result with Bill C-11 in this regard is that Canadian whistle-blower rights are regressing, and this proposal institutionalizes this retreat.

● (1545)

It's worth noting that in the United States, which has 40 years of history with whistle-blower law and where radical improvements are being made, the whistle-blowers are allowed to walk into court with their heads held high and have jury trials, in which they will be judged by the public, the intended beneficiaries of whistle-blowing.

The other issue is legal representation. It is a cruel delusion if victims cannot afford to enforce their rights. At the very least, whistle-blowers must have the same access to counsel as wrongdoers who have the public purse to defend them. I urge you to invite the Minister of Justice to provide testimony on what steps he has taken to end the abuses being directed at whistle-blowers currently in the courts. The $1,500 for legal advice is wholly inadequate.

The last point, and I'll be very brief, is the establishment of monetary rewards for whistle-blowers. This garnered a lot of debate during the election campaign. I'd like to provide some clarification. Suing for damages should not be confused with monetary rewards. Our position is that reprisal victims must have the right to sue for comprehensive punitive and compensatory damages. The idea is to make available make-whole remedies to heal the scars of retaliation.

The issue of allowing whistle-blowers to take a cut of moneys that are recovered from those who commit fraud against government is another issue. I note that Monsieur Poilievre has said they will look into it, and we support this. I would merely say that society benefits when the business of fighting corruption becomes more profitable than engaging in it.

I'd like to conclude by saying that this committee has a historic opportunity to provide meaningful protection for employees who through their individual acts of courage serve us, the public. How are we to justify giving our first-class public service the second-class rights that Bill C-11 provides? This is not the time for political expedience. The deaths from Walkerton, the blood scandal, and Air India demonstrate powerfully what can result when we fail to promote and protect free speech.

I urge you to invite the testimony of the Government Accountability Project in Washington, D.C. They are the world's leader on both legislation and whistle-blower rights as a fundamental plank in government accountability. This is the time that we should do right and not rush to adhere to arbitrary deadlines, as Canadians are expecting no less.

Thank you, and I look forward to your questions.

● (1550)

The Chair: Thank you very much, Ms. Gualtieri.

Mr. Owen.

We have seven-minute rounds per caucus.

Hon. Stephen Owen (Vancouver Quadra, Lib.): Thank you, Ms. Gualtieri.

I think many of us, if not all of us, in this room understand that the horrific experience you went through has added force to the demand for whistle-blower legislation in this country, which is real and remedial in the way you've set out, but also serves the broader public interest. I think Bill C-11 and Bill C-2 at this stage are a testament to your courage, determination, and resilience in this process. So thank you for that, and thank you for the very comprehensive brief.

I have a couple of questions on points one and four.

With respect to the power to actually enforce with the commissioner, despite the OAS ombudsman model you've referenced, in most ombudsman systems you do not include the power to enforce, the power of sanction, because certainly in a parliamentary system the person is an officer of Parliament and there, in effect, to assist members of Parliament to get to the truth, make it public, and get some remedial action either through embarrassment of the executive or direct legislative action.

The difficulty, of course—and I suspect this is what the government was considering in Bill C-2—is that an officer of Parliament is not elected and does not operate within a quasi-judicial due process regime. So I suspect that the suggestion for the tribunal, while it may provide some delay, is to bring that aspect of procedural fairness into fact-finding and then a sanction.

I take your point about the delay and the need to expedite matters, but I suspect that's what's going on, and I'd like to have your view on that.

The other one is the question that—and you've mentioned it—as a second-best choice, if Parliament or the government is not going to respond to a recommendation of the commissioner, then the government should have to, in a deliberative and reasoned way, explain to Parliament why not. I think that is very much in the practice of ombudsman-type models around the world, certainly in Canada, and that can be helpful.

I'll give two examples where that is used quite effectively: first of all, in the Law Commission of Canada, where its statute sets out that it's a public but independent body on law reform, but when it gives a report to the Minister of Justice, it must be tabled in Parliament and the minister must respond in Parliament, in a reasoned fashion, within a certain period of time.

There are also models in judicial compensation provisions in different provinces that require that after an independent commission makes a recommendation on increased compensation—and I don't think they've ever recommended decreased compensation for judges—if that's not followed by the government, again a reasoned response must be tabled in the legislature and that can be reviewable by a court for its reasonableness. So there's an additional model there.

The other point I'll mention briefly concerns the discretion to release. I agree with you certainly that in Bill C-2 we have to look very carefully at those increased restrictions, or exemptions, really, on release in a number of provisions there. You should at least have a public interest override or consent—at least consent, but a public interest override as well—and also a demonstration of harm, so that it not just be a blanket exemption.

I wonder if you might respond to those observations.

Ms. Joanna Gualtieri: Thank you for those questions.

I must profess, you are far more an expert on the parliamentary system than I am. I know, I have friends who have spoken very highly about the work you've done.

I think the point that has to be made is that there has to be a strong signal that corrective action will be likely. And I think that Bill C-11.... We are weary, as Canadians, of seeing recommendations go to Parliament and having nothing happen. I don't know the modality, and it's difficult to say that an officer of Parliament is going to issue an edict or an order that a minister has to follow. Those are issues that I, quite frankly, don't have the absolute answer to. But I think that at the very least, ministers have to be held more accountable in some way in this act, and I don't see that yet. They have to at least be held to account for why they did not take corrective action.

Regarding the issue of the release of information, I think this is critical, because it basically slams the door on the purpose of whistle-blowing, which is ultimately to respect the public's interest. I think it's very dangerous. We saw in the Gomery inquiry, in which Canadians took a great interest, that the Prime Minister released a significant amount of cabinet material, and we learned a lot from that. That's another issue I haven't touched on.

I am going to provide to the committee a detailed analysis, which point by point will go through what should be an effective whistle-blowing law.

I do not believe there should be an absolute exemption on cabinet and solicitor-client materials. I think that's dangerous. We saw a president come down in the United States because of information that ultimately would have been kept private. I think the public had a right to know what was going on. Likewise, we had a right to know what was going on in the sponsorship scandal.

And finally, there are not exemptions that the commissioner has to evaluate; he has a duty. The language is that he "shall keep secret" all materials gathered, and that, I believe, has to be amended.

Thank you.

● (1555)

The Chair: Thank you very much.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): Good afternoon, Ms. Gualtieri. Thank you for coming and telling us about your tough experience. Some of us and a number of your colleagues had the pleasure and privilege of hearing your comments on Bill C-11, and they were highly instructive.

Correct me if I'm wrong, but I thought I heard you say that Bill C-11 did not provide enough protection. So you would have disclosed no information under Bill C-11? Is it true that bill didn't offer the necessary guarantees?

[*English*]

Ms. Joanna Gualtieri: Let me just break that down.

Bill C-11 prohibits disclosure, for instance, of cabinet confidences or solicitor-client privilege. So anybody who ascertains that there is evidence of wrongdoing in those documents must remain silent. I obviously have a problem with that.

The other point is—

[*Translation*]

Mr. Benoît Sauvageau: Pardon me for interrupting you. I'll simplify my question. If Bill C-11 had been in effect a few years ago, would you have disclosed wrongdoing or would you have thought you didn't have enough protection?

I ask you that question because, this week, 12 unions representing more than 90,000 public servants said they wanted Bill C-11 to go into effect immediately, even if it was not perfect, so that they would have a minimum safety net pending passage of Bill C-2.

Do you think it would be desirable to implement Bill C-11 before completing the study of Bill C-2—which Mr. Poilievre and I would like to finish as soon as possible—so that those public servants have some protection, even if it isn't perfect? I'd like to hear your comments on that subject.

[*English*]

Ms. Joanna Gualtieri: That's a very good question.

I feel that it is dangerous to implement Bill C-11 as it currently is. I feel that as a whistle-blower and as a lawyer. It's very hard to amend laws once they are in place and there develops a certain inertia.

The point that must be made about whistle-blowing is that many public servants don't even know they're whistle-blowers. This act offers protection only once the whistle-blower has formalized a complaint process. The fact is we know from talking to Dr. Shiv Chopra or Dr. Michelle Brill-Edwards or myself that we have been harassed relentlessly as a function of just doing our job.

● (1600)

[*Translation*]

Mr. Benoît Sauvageau: The amendments wouldn't been too hard to implement, since Bill C-2 amends 70 existing federal statutes. In addition, it already proposes amendments to Bill C-11. Perhaps I didn't understand something. Even the President of the Treasury Board said that imperfect protection was better than no protection at all. Wouldn't that suggest to the public service that we're moving ahead?

[*English*]

Ms. Joanna Gualtieri: I recognize your point, Monsieur Sauvageau, and I think it's a very logical one. However, speaking to whistle-blowers, I think you'll get a different response. That is because they have the experience of going through it.

If we pass a law that is inadequate, then we potentially give the false impression that people are protected. That is one point.

Secondly, we have the opportunity to do it right. I think we should. We have to remember that this is a country that has a common law background, and that public servants enjoy rights through their common law rights as well. We should not make exclusive defective rights contained in a defective bill.

I want to add one last point, and that is I think there is the will among the politicians to do the right thing but I'm not so sure that the drafters—and that is the lawyers at Treasury Board and at the justice department—are reflecting that spirit. That comes through my ten years of experience with this. I'm not trying to disparage anybody, but I think we have to be aware of that potential.

[*Translation*]

Mr. Benoît Sauvageau: I don't want to be impolite by interrupting you, but we only have seven minutes and I have other questions to ask.

I believe we're saying the same thing in different terms. Yes, it's preferable to have a perfect act. However, in my view, it would be good for us to have minimum protection before this legislation is passed.

I have just enough time left to ask you another question. Do you agree with the idea of offering whistleblowers a $1,000 reward? Off the bat, I think that's a bad signal to give them.

[*English*]

The Chair: You have time for one more question.

Ms. Joanna Gualtieri: No, I don't support that. My point is that you give rights to the whistle-blower to claim for damages. Damages are not unjust enrichment; you have to prove your damages. But I can assure you that the damage for most whistle-blowers far exceeds a trivial thousand dollars.

Merci.

The Chair: Thank you.

Mr. Dewar.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you very much.

It's good to see you again. Thank you for taking the time, and for the comprehensive overview you left us with. I look forward to the other recommendations and your analysis.

I actually want to take a different tack on the questions that have been presented, in that I'd like to ask a couple of factual questions on your case. I'm intrigued, or wanting to know a little bit more, about your case and when it started. When did you blow the whistle, so to speak? What year was that?

Ms. Joanna Gualtieri: Very soon after starting with the Department of Foreign Affairs I ascertained very quickly.... I started in February of 1992, and I started to speak out after my trip to Tokyo on the gross abuses against the public purse in Tokyo. I went there in July of 1992.

Mr. Paul Dewar: And after you blew the whistle, so to speak, what exactly happened with your case in terms of the court proceedings? I'd like to know what the status of your case is at present, vis-à-vis the courts, as much as you can let us in on that, and any costs that you've incurred.

● (1605)

Ms. Joanna Gualtieri: I spent years working within the system. I felt that was simply what one does. In fact, I didn't realize how much they wanted to get rid of me. I spent years trying to do my job. And this must be understood; this is the reality for so many whistle-blowers: they are merely doing their job. So from 1992 through to 1996 I went to see Jim Judd, who was the ADM. I wrote Lloyd Axworthy in 1997. Nobody answered me; nobody dealt with the substance of the complaints, neither the wrongdoing nor the retaliation. Finally, I was in very poor health as a result of this, and I commenced a legal action in 1998. We are entering the ninth year of the legal action, and I am currently in seven weeks of depositions. It's a long, very costly process.

As for costs, this is why I caution you. The government is very powerful. In one motion alone they asked me for $380,000 in costs.

So it's a dangerous undertaking for whistle-blowers.

Mr. Paul Dewar: Just for the record, they actually asked you for $378,000 for the costs that they incurred in dealing with your case? Is that how it worked?

Ms. Joanna Gualtieri: It's not in dealing with my case. They wanted that on just one interlocutory motion; for a one-day proceeding the government sought that.

Mr. Paul Dewar: When I look at your submission, I look at some of the analyses you've done to date, understanding there's more to follow. You mentioned in here some concerns in terms of oversight, and you have mentioned that you would like to make sure there is access to the courts.

Can you just expand on that a little bit, on your concerns about how it currently is being proposed and then your concerns about access to the courts?

Ms. Joanna Gualtieri: I think there's a tremendous amount of goodwill on the part of the government in establishing a special-purpose tribunal. That in and of itself may not be a bad thing. History shows that tribunals can become politicized. They've had a terrible experience of this in the United States. And of course we've had a bad experience, particularly in the last few years with the Human Rights Commission and other tribunals.

The bottom line is that the sunlight shines brightest in open ports. Why are we saying to our public servants that they can't have that right, which is the right that private citizens enjoy?

In other words, this right should be additive and not replace what is otherwise your common law right.

Mr. Paul Dewar: In other words, whistle-blowers have the right to seek remedy through the court system as well as in any other systems that are set up or present.

How is my time?

The Chair: You have another minute.

Mr. Paul Dewar: Good.

We touched on the $1,000. I think it's a straightforward consensus here that no one actually asked for this, so I'm not going to deal with it because I don't think it's a serious part of the bill. But the interim measures allowing the public sector workers, in particular, to access a neutral third party in the interim, so that when you're in that midst, where you were in 1992 to 1996.... Because you're quite right, the whistle-blowers I've talked to—to a person—talk about the isolation.

How do you think that could be dealt with for someone who blows the whistle? You're brave enough to come forward. How do you think the relationship that the whistle-blower has with their work environment could be remedied, or what kinds of supports could be put in place there?

Ms. Joanna Gualtieri: That's a very good point, Mr. Dewar. I think we have to demonstrate that when the wrongdoer retaliates there will be swift and immediate action against the wrongdoer. That will send the message that harassment is not the tried and true response against a whistle-blower. The isolation is profoundly troubling. I can tell you that what was most difficult for me was not being able to make a meaningful contribution as a public servant.

And it will happen. We have to really send a strong signal that what has happened up to this point will not be tolerated in this country.

Thank you.

● (1610)

Mr. Paul Dewar: Thank you very much.

The Chair: Mr. Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Okay, just call me Pierre. We're good enough friends by now, aren't we, Chair?

The Chair: How about Pierre?

Mr. Pierre Poilievre: Joanna, great to have you here today.

I'd like to clarify a few points that I think need to be said.

First of all, the tribunal will be composed of Federal Court and provincial Superior Court judges. So this is not just a random group of the Prime Minister's hand-picked favourites. This is a group of judges. And those people who believe in the independence of the judiciary must also believe automatically in the independence of this tribunal, because it is composed of the judiciary.

Furthermore, neither the Prime Minister nor the government will have the ability to decide which judges will sit on which cases. That will be selected by the head of the tribunal, who himself is a judge. So, again, if we believe in the independence of the judiciary, we must necessarily believe in the independence of this tribunal.

Secondly, the office of the commissioner will have order power. It will have the power to sanction and it will have the power to remedy. Those are two powers the office did not have under Bill C-11 but will have under the Accountability Act, because the office of the commissioner includes the tribunal, which has those powers.

I have the sections here right now: proposed section 21.7 gives the power to remedy; and proposed section 21.8 gives the power to discipline, for lack of a better word, the bully. The individual who is mistreating whistle-blowers can be disciplined directly by the tribunal in a totally apolitical proceeding separate from the political and the executive arms of government. All of those powers are given to an independent group of judges.

Those powers do not exist under the previous Bill C-11, but they do exist under this accountability act. I wonder if you agree that giving this power of enforcement to sanction and to remedy to an independent group of judges is an improvement over the previous Liberal bill, which left those powers in the hands of politicians and senior bureaucrats.

Ms. Joanna Gualtieri: First of all, I'd like to thank you. I thank you for the inclusive approach that you've taken. It has been most helpful, and I tell you that many whistle-blowers are very, very grateful for it.

Mr. Pierre Poilievre: Thank you.

Ms. Joanna Gualtieri: That's the first point I'd like to make.

I agree with your point about the tribunal being made up of a group of judges. The tribunal is comprised of judges, and of course we do respect the independence of the judiciary. Those judges, however, are appointed by the Prime Minister and he does have the authority to select who those judges are. Possibly an improvement for the tribunal is to have an all-party committee vet or question those judges before they are appointed. That is the same procedure that has been adopted for the appointment of the commissioner.

Regarding the corrective order powers and the remedial powers, I agree with you that the tribunal does have those powers. It is the commissioner who does not have those powers. Given that most whistle-blowers have to commence with the commissioner, that is why I refer to it as an onerous two-step process, because the commissioner can't do it, though of course the tribunal can.

So, yes, these are improvements, Pierre, but I still believe at the end of the day—and I think whistle-blowers will unanimously tell you this—you should, please, leave them the right, and leave the courts with their residual powers to hear these cases, as well.

Mr. Pierre Poilievre: I understand that point. You've made it very eloquently and very consistently. What I would point out is that these judges who whistle-blowers would face in courts are the same kinds of judges they would face in a tribunal setting. These tribunals will be held out in the open for public scrutiny. People will be able to see whether they're fair or not. The same judges you want whistle-blowers to have access to in courts are going to be made available to them in the tribunals. It's a fairly revolutionary invention of this bill to give that kind of order power over public decisions inside the government to a group of judges on a tribunal, as opposed to having it in the hands of the political and bureaucratic bosses. I think it's a very serious step forward.

On the issue of access to information, we should clarify that no documents whatsoever will be exempt from access to information under this bill. All documents, every single document related to a prospective scandal, are accessible at the department. So you can make your ATI request to the department, just as you would have been able to without the presence of this bill. We have removed all exemptions that existed under the previous Bill C-11. Exemptions only exist for the commissioner's office during an investigation so that the investigation is not interrupted by constant ATIs and so the identities of the whistle-blowers are essentially protected in order to defend against reprisals.

Do you believe honestly that those kinds of exemptions to protect the identity of the whistle-blower and to protect the integrity of an investigation should not be in the bill?

● (1615)

Ms. Joanna Gualtieri: No. Let me clarify my position on that. My position is that following the investigation—and I've put this in my presentation, which I've provided—all records must be released to the public. I further advocate that there should be a public registry where people can go and consult them. So it would not be during an investigation; you cannot jeopardize an investigation.

On the anonymity of whistle-blowers, again, I think we have to be cautious about being presumptuous about what whistle-blowers want. In my experience, most whistle-blowers have wanted to declare themselves. Studies have shown that they are often the brightest and the highest qualified in the organization. That should be up to the whistle-blower.

Thank you, Chair.

Mr. Pierre Poilievre: Am I out of time, Chair?

The Chair: You have no time.

Thank you very much, Ms. Gualtieri. That concludes our time this afternoon. I thank you for coming and providing us with your wisdom. Thank you very much.

Ms. Joanna Gualtieri: Thanks very much.

The Chair: The committee will recess for about 30 seconds while we rearrange things.

● (1615)

(Pause)

● (1620)

The Chair: We will reconvene, ladies and gentlemen.

Good afternoon, Mr. Cutler. Some of us have met you; some of us have heard of you. So I'm going to let you introduce yourself, and not cut down on your presentation. You'll have a few minutes to make some comments, and then there'll be questions from the committee.

Monsieur Petit, do you have a point of order?

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Mr. Chairman, it's stated in the document we have here that Joanna Gualtieri would testify until 4:50 p.m. However, currently...

[*English*]

The Chair: We're going from 4:10 to 4:15. We're ten minutes behind schedule. You're absolutely right. We're going to try to keep moving.

Mr. Cutler.

We're already behind schedule, Monsieur Petit.

[*Translation*]

Mr. Daniel Petit: That's not what we meant?

Ms. Monique Guay (Rivière-du-Nord, BQ): Ms. Gualtieri was supposed to finish at 4:10. That's in the notice of meeting.

[*English*]

The Chair: I don't want to start arguing about the times here.

Mr. Cutler, please proceed. Thank you.

Mr. Allan Cutler (As an Individual): Thank you, Mr. Chairman.

I'm not going to go into a long history of my experience. Suffice it to say that Joanna and I have talked many times. We have a very similar experience, and we know the isolation. We both bear the battle scars, even though you don't visibly see them.

One of the things I'd like to state is that I'm also here on behalf of the Civil Liberties Association. I'm a member of that association, and my comments have been worked out with them as well. So that's where I'm going to.

I'd like to thank you. I'd like to thank all members for hearing us and letting us speak once more on an issue that is extremely passionate and personal to us, and one we can't walk away from. We didn't originally, and we still can't.

I'd like to comment on Bill C-11, though, which is the precursor to this. I am on record as saying Bill C-11 is fatally and fundamentally flawed. And I fully believe that.

The predecessor to this committee tried extremely hard to create a good bill, but from a whistle-blower's perspective they just were not able to. But the attempts were made, and for that we all thank you.

When I read the bill—and I know Joanna does the same—I read it from the perspective of whether I would have been protected. And Bill C-11 did not answer that. There were a number of questions that weren't there.

The second question when I read this bill was whether the changes are an improvement. Bill C-2 contains improvements, but there are still important flaws that need to be addressed.

Two of my objections to Bill C-11 have not been addressed in this amendment at all. The first is that the bill—and this is critical from a whistle-blower's viewpoint—still leaves the burden of proof for reprisals on the whistle-blower. All management really has to do is say that the cases are different, and the whistle-blower is the one who has to prove that the two situations are linked—the whistle-blowing incident and the reprisal. There is no element of timeliness in the bill that says that when the time period is very close together management must accept the responsibility and the burden of proof shifts to management. That is still a fatal flaw in this bill, in my opinion.

The second objection—and this bill is not designed to address it—is that this bill only covers federal employees and people in work related to the government. It doesn't cover all Canadian citizens.

Think for a moment: if Enron had been a Canadian company, this bill would not have protected anybody or helped anybody to come forward and let them know what was going on in Enron. There's no protection. In fact, the Sarbanes-Oxley Act of 2002, which is the U. S. bill, is the main protection for whistle-blowers in Canada outside of the federal government. So we're protected by U.S. law, because there are no real Canadian laws that protect us.

With Bill C-11, I was on record as saying that no law is better than a bad law. And in my opinion, Bill C-11 was a bad law.

With the changes I've read in Bill C-2, it's far from perfect. I'm not going to give it a ringing endorsement, but I will give it a conditional pass. It certainly has a lot of improvements.

My background is in negotiation, and that is coming to joint resolutions. The conciliation approach in this bill is exactly the type of conflict resolution I'm familiar with, which I like, I enjoy, and which didn't exist in Bill C-11. That, to me, is a big step forward, to be able to try to reconcile situations and not let them get out of hand.

Litigation does have its place, but in my opinion it's the last recourse, not the first option. But if everything fails, the whistle-blower should still have the right to litigation.

I'm certain that Joanna would be able to say exactly the same thing, that she's been contacted and she's aware of a number of whistle-blowing incidents in the federal government right this minute. Some I have information on, some I've just been talked to on, and some I've been told about in the past.

This is systemic in large organizations. A large organization will always have problems, and almost all of these problems are what would be typified by either systemic problems or management abuse.

● (1625)

They're not political problems. They only become political problems if they're not addressed early enough, so if you have good legislation and you have the whistle-blowers coming forward, you will solve a lot of problems for whatever party is in power. It will help everybody.

I have read in the paper—I'm certain everybody has—that trust in the government is considered rather low. It needs to be restored.

Trust becomes a critical issue for the integrity commissioner. If this individual—male, female—is not trusted, this office will not work. Whistle-blowers need to trust to go to anybody else. They are isolated; they're being abused; they don't know where to turn or who to turn to. They need somebody they trust, and if trust does not surface very strongly, it just won't work.

But the ethics need to be addressed, too. In that regard, there is a clause in Bill C-11, clause 6, that was not changed in this bill, and that I would like to ask you to delete and change. The clause says that every government department will create its own code of ethics.

Are some employees of some departments more or less ethical than others? Why do they need a different code of ethics? Why is one code of ethics created by Treasury Board not good for all? Why is it that everybody should...?

To me, it's a make-work project. It's totally unnecessary. You only need one rule. This particular statement was in Bill C-11. It has not been addressed in Bill C-2; my request would be to have it changed so that you have only one code for the full government.

I have some other observations on the whistle-blowing section of Bill C-2, but before that I want to address a couple of other sections that are very near and dear to my heart.

Part 4 deals with the administrative oversight and accountability. To me, it is an absolutely excellent addition to make the deputy minister the accounting officer of a department and responsible for measures taken, including measures to maintain effective systems of internal control. I think making the person in charge at the top responsible and accountable in law, not just in policy, for doing the job right is an absolutely excellent set of recommendations.

The other one I have deals with the procurement and contracting function. My specialty is procurement. The procurement auditor is a good initiative; however, I would like to ask you to consider broadening it to a position similar to that of the Auditor General, and allowing this particular individual to audit the procurement practices in all government agencies and crown corporations.

There are inadvertent abuses and lack of knowledge all over the place. There are problems for a whole stack of reasons. This individual should be able to examine all contracting that involves government funds, not just the mainstream departments; this reads for just the mainstream departments of the federal government, so I would ask you to at least consider broadening the mandate of this individual, and, if necessary, making that individual an officer of Parliament—selected by Parliament, and reporting to Parliament. I would have no objection to that.

We'll go to Bill C-2, because I've said the part I wanted to on Bill C-11.

I would like to have in the preamble to Bill C-2 a statement to the effect that public servants have an obligation to report wrongdoing when in the public interest. If that's the purpose of the bill, then put what the purpose is right up front, because when I read the preamble, I don't get a sense of the purpose of the bill. This is just a statement of fact.

I'm going to read just some of the points I have. I'm not going to read everything. I've asked the clerk to get them translated so they can be passed out to everybody at a later date, but I'll read them—

● (1630)

The Chair: Mr. Cutler, I just want to remind you that if you're going to allow time for questions—

Mr. Allan Cutler: Oh, okay, then—

The Chair: There'll be a limit, but you can proceed for a couple more minutes.

Mr. Allan Cutler: I'll only take two more minutes then.

On page 128, proposed subsection 19(2), 60 days is the time period. I think you should allow one year—a good long time for the whistle-blower to realize what's going on.

In proposed section 20.3, the words used by the legal people who drafted this are “as soon as possible”, which my training says is an absolutely meaningless phrase. It can be anything you want. So I would like to recommend that be changed to “15 days”. Put a time period on it.

I believe in an open government—openness there. There are two comments that I'll make. One is on where it says that the hearing can be held in camera at the request of either party. I would state that it should be “only if agreed to by both parties”. My experience is that one party—generally the departments concerned—will request it all the time and try to make a case for it all the time, rather than “it has to be agreed to by both parties”.

The final comment I'll make.... I'm not talking about the $1,000, which is a meaningless issue in terms of a reward to anybody, because $800 as a bilingual bonus is nothing too. On the $3,000 given to a whistle-blower for a legal defence, you might get a lawyer for two days if you're lucky. The main government departments will allow $25,000 to an employee who is threatened. That's within the rules, regulations, and mandates right this minute. Why not give the whistle-blower $30,000 and let a lawyer help him with his whistle-blowing defence?

With that I'll be quiet. You'll get the rest as a handout anyway.

The Chair: If you have some comments, sir, you can provide them to the clerk, who will distribute them.

Mr. Owen.

Hon. Stephen Owen: Thank you, Mr. Cutler, for being here. I think all of us are very aware of the struggles you've had, and appreciate your forthright way of addressing them in attempting to assist government, frankly, to work better in the public interest.

I appreciated your remark about the conciliation approach. I think if we look at governance as a system—you mentioned your dispute resolution and negotiation background—you need to have a number of things across a range of government and negotiation dispute resolution. The first and most important thing—to save everybody a lot of time, money, and heartache—is to have an internal system that is open, accountable, and works properly, where problems are illuminated without whistle-blowing, in the sense of someone having to step outside the system.

No system will be perfect, but if you can lay the groundwork effectively for that management system you will shortcut a lot of problems. You'll make sure that people fully understand each other. You won't have an employee frustrated in thinking something is wrong, if they don't perhaps have full knowledge because the cohesion of government may leave some issues out of their knowledge, which had they known they might have felt better about. But it leads to better governance. Then you should always, in a system of dispute resolution, have a conciliation mediation approach, and then a determination—a fact-finding process, whether it's a tribunal, a court, or whatever. But I just want to get your reflection on that.

We're dealing with the downstream stuff, on how to solve it once there's a problem and someone's been pushed to a point of having to blow the whistle. I really think the upstream aspects need a lot of work as well.

I guess if you have a healthy internal system of management you will have processes that should be exhausted first, before someone goes immediately outside, so they might find out more information and not expose themselves to worry or reprisal. I guess when you do step outside, I see in this act—and I appreciate that it's repeated a number of times—that the whistle-blower be in good faith. That to me is sort of a bedrock condition.

I wonder if you might comment on those two issues of internal management structures that might be improved, as well as good faith when one does step outside.

● (1635)

Mr. Allan Cutler: An ethical government is the best way to go. If you have an ethical government, you will have a lot fewer problems, and that goes for management on down. The problem that faces everybody is that government is a huge organization and there are always going to be pockets.

The whistle-blower must have the prerogative to decide whether to go to management or to go elsewhere. Going to management doesn't always work, believe me. It doesn't always work. You can talk to Ms. Gualtieri. She knows it doesn't work too. You can't always go to management. You must have the decision whether you do or not.

The experience is that over 90% of whistle-blowers will have tried internal routes first and have got frustrated and been stymied. They do try, but they have to have the ability to choose whether they're going to trust management, and that word "trust" is a big word.

Hon. Stephen Owen: Okay. Can you help us with recommendations for internal management processes that are trustworthy?

Mr. Allan Cutler: I'll give you a point-blank recommendation for a management situation. It is that you have one set of rules, one set of ethical rules, a code of conduct, from the politicians to the ministerial staff to the civil servants all the way down, all the way through the crown corporations. If I can accept hockey tickets, they can accept hockey tickets. Nobody should be saying, "I am more ethical than you are; therefore I can be trusted more than you are." It's the message that's being sent, actually.

So if you're asking me for a recommendation, it would be one rule that goes through a complete organization and it's the same rule for everybody. By the way, the Saskatchewan crown corporations are looking at doing exactly that.

The Chair: You have two minutes, Ms. Jennings. Is that possible?

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): It's going to be real stretch of my abilities.

Mr. Cutler, I have to say it's a pleasure to see you again. I had the honour and privilege of listening to your testimony before the public accounts committee. I found you to be a credible witness, an honest witness, a witness who carefully weighed his words. Therefore I simply want to say that your recommendations are certainly something I will look at seriously and I will possibly bring forth amendments to the legislation in order to achieve what you're proposing.

Mr. Allan Cutler: I would appreciate it.

Hon. Marlene Jennings: I would give the little bit of my time, the one minute left, to Mr. Tonks.

Mr. Alan Tonks (York South—Weston, Lib.): Now that's really going to be a challenge. Congratulations, Madam Jennings.

Mr. Cutler, you had mentioned that Bill C-2 still leaves the burden in terms of onus of proof on the whistle-blower. You've heard the interchange between Ms. Gaultieri and Mr. Poilievre with respect to the public sector integrity commissioner having the power to enforce the compliance. Are you satisfied with the...? If you could turn the clock back—and I recall when you appeared before the public accounts committee, the question was the system broke down at a point when you expected it to intervene—would this intervention with this architecture have made a difference? Would you like to comment on that?

Mr. Allan Cutler: It would have made a difference, but the one issue that I have addressed would still have been there, because that is exactly what happened to me. One day I was reporting the problem and the next day I was being told I was being fired and the management said the two cases were totally unrelated.

To my knowledge, that particular problem has been established as a precedent in practice—because as soon as you've agreed to it, it's a precedent. I don't see that particular situation having been addressed, and it concerns me.

● (1640)

The Chair: Thank you.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Mr. Cutler, welcome and thank you for telling us about your experience, your bad experience.

Ms. Gualtieri, who preceded you, told us a lot about the legislation in effect in the United States and other countries. You've told us about that as well. Since the ultimate purpose of this kind of legislation is to restore public's trust in the political class, I'd like to know whether you think the public puts more trust in its political class in countries where such legislation appears to be superior to Bill C-2. Do Americans believe that their parliamentarians are honest people? Do they vote more in their elections? Is there a risk this kind of purpose may be undermined with Bill C-2?

[*English*]

Mr. Allan Cutler: I would not think the Americans have more confidence in their politicians because of their experience with their politicians. Their politicians are very isolated from their public, as you probably know, because of the vast populations. You're lucky if you ever meet your senator or House representative. It's a very different type of issue.

My understanding—and I'm not an expert in law or an expert in foreign things—is that the Scandinavian countries were the initiators of the whole concept. They're further ahead; their public is much more confident in their government.

[*Translation*]

Mr. Benoît Sauvageau: I sat on the committee that studied the code of ethics. At the time, we had been told that the code would restore public confidence. At the time, I asked—and this is virtually the same question—whether public trust had risen in countries and provinces where a code of ethics had been implemented. I suppose we develop legislation so that it is efficient and effective.

I'm asking the question without being convinced that it will achieve this objective, particularly since the Auditor General told us yesterday that there were probably far too many laws, rules and standards. She reminded us that, in the sponsorship scandal, the rules existed, but the government had decided not to enforce them.

Now I'd like to have your opinion on another question. The Conservatives want to pass Bill C-2 quickly. Senator LeBreton, who is the Leader of the Government in the Senate, said she hoped that we would complete the study of the bill, including clause-by-clause consideration, within eight days, excluding the break week. Note that this is a bill with 317 clauses and 250 pages.

You've suggested a number of very appropriate amendments to us. Based on your experience, do you believe that, without resorting to a dilatory motion, the committee could take the necessary time to examine your amendments, those of the person who preceded you and those of the people who will follow you? Do you approve of this expedited approach that the Conservatives want to impose on committee members with regard to passage of Bill C-2?

[*English*]

Mr. Allan Cutler: That's a hard one for me to answer.

The fact is that there is nothing in place right now. I'm pragmatic and a bit of a realist, and I would rather see a bill that will do something go into power than keep waiting for it forever and hoping that it gets improved.

The other part of it is that every delay could mean it goes down in defeat—it doesn't get passed, and it starts all over again. From a personal viewpoint, I would like to see this get passed.

Now, the issue of fast-tracking is your issue, not mine. I would like to see it passed without undue haste. Whether you call it fast-tracking.... I would like to see a sufficient study done, though.

● (1645)

The Chair: Thank you.

Mr. Martin.

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

Mr. Cutler, I've had the pleasure of having you as our witness many times in many different efforts to try to get whistle-blowing legislation through. Thank you for your continued advocacy and for being a champion on this issue.

I do have notes here, and I remember when you were in front of the government operations committee talking about Bill C-11 last time, clause 55 was one of your concerns. It amended the Access to Information Act to essentially enable government to cloak in secrecy for 20 years any information regarding the identity of the whistle-blowers—which I think is the objective, and the anonymity of the whistle-blower is a good thing—as well as the identities of the accused persons; the details of the allegation of wrongdoing; the details of any action taken to investigate the allegations; the details of any remedial actions taken to prevent future wrongdoings; the details of disciplinary action taken against wrongdoers; the details of disciplinary action taken against whistle-blowers; or the details of retaliation, the actions or retribution against the whistle-blowers.

I'd ask you to speak to this. Do you believe that as a by-product of trying to protect the anonymity of whistle-blowers it's right to close the door on this whole body of information associated with the incident that's being reported, or the wrongdoing?

Mr. Allan Cutler: A long question and a short answer: no.

Mr. Pat Martin: I'm sorry. It should be the other way around. I understand.

Well, I agree, and I'm very concerned. In Bill C-2 we see that, if anything, there's even greater secrecy created around—

Mr. Allan Cutler: Is that the access to information part of the bill?

Mr. Pat Martin: Yes.

Mr. Allan Cutler: I'm not familiar with it, but I believe in an open government and open information.

Mr. Pat Martin: So even though you're probably the country's leading champion of whistle-blowing, you would speak against this secondary consequence?

Mr. Allan Cutler: If that's the situation again....

I haven't read it, so I won't comment either way, because I don't know.

Mr. Pat Martin: Fair enough.

Mr. Chair, would you mind if I share my time with Mr. Dewar? He had to be out of the room.

The Chair: You're not even a member right now, Mr. Martin.

Mr. Pat Martin: I know.

The Chair: Mr. Dewar.

Mr. Paul Dewar: Yes. Sorry for that.

Thank you very much for appearing.

I did want to talk about, if it hasn't been touched on already, the section that had been in the previous bill, and I know you had talked about it in some critiques you had provided. That was clause 55 of Bill C-11, referencing section 16 of the Access to Information Act.

In a nutshell, there were concerns you had put forward before that were talking about provisions to enable government to cloak in secrecy for 20 years the information provided.

Mr. Martin might have talked about that already. Thank you.

I'll just then cut to a couple of other things, since he stole my good question.

The other thing I want to talk about, and I've asked this of other whistle-blowers—Mr. Chopra and others—is that when we look at what's in front of us presently, that's one side of the equation, but the other side of the equation is, what about all those whistle-blowers who have already suffered? I had asked in the House and talked to Mr. Baird about compensation for whistle-blowers. I'd like you to speak to that for a moment, and the importance of doing that, to make people whole and to make sure they're not forgotten.

Mr. Allan Cutler: There are actually two issues involved with that. One is the need to make people whole, and the word that I believe is used is “restoration”. That means restoring to the person what they would have had, with all the privileges and everything going with what they would have had, based on the balance of probability—because you can never prove everything—and making assumptions so that they now are made whole. I agree. That is totally separate from the issue of damages. That's making whole.

The other one, which is equally important to me, is precedent. I mentioned the word “precedent” earlier. No whistle-blower has ever had that happen to them. It would be an excellent precedent for a number of us to have that happen. I would strongly support it because it also gives a strong signal to the future that just because damage was done in the past, it can be fixed; therefore, the ones who have any information and want to come forward will be more likely to do so, because they will see results. Nobody has ever seen a result yet.

● (1650)

Mr. Paul Dewar: Am I out of time?

The Chair: It's very, very short.

Mr. Paul Dewar: I'd appreciate your input on that, because as I've said before, it's akin to dealing with the head tax issue and with the residential schools question. I certainly look at the whistle-blowers in the same light and the fact that they've suffered so severely.

I'd look forward to your input on that, and Mr. Baird has asked for that, so we'll talk later, hopefully.

Thanks very much.

The Chair: Thank you.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Mr. Chair, I'm going to cede my time to Mr. Poilievre.

Mr. Pierre Poilievre: Thank you, Mr. Cutler, for all the work you and whistle-blowers like Joanna have done for the cause over the years.

On the issue of the Access to Information Act, Mr. Martin has raised this issue, comparing it to clause 55 of Bill C-11. Clause 55 would have allowed departments to conceal any information related to a disclosure for many, many years. The section we have replaced it with removes that exemption altogether. All information related to a disclosure, all of it, is perfectly accessible under ATI if the Accountability Act is passed, with the sole exception of the disclosure itself—that is to say, what the whistle-blower created and gave over to the commissioner. So there are no new exemptions whatsoever in the Accountability Act for the government or any of its institutions.

I already see the stress level you're under diminishing and you're looking more relaxed now that you've learned that, because that is a very important point and I'm glad you have made it.

Additionally, as it relates to the commissioner himself, the commissioner may refuse ATIs on his investigation. But those are the same exemptions that exist for any investigatory body. All sorts of other bodies that conduct investigations have exactly the same exemptions. So there are no new exemptions in the Accountability Act.

I wanted to put your mind at ease, because I know Mr. Martin's question would have caused you considerable distress. So are you happy to see that clause 55 of the previous Liberal bill has been removed entirely?

Mr. Allan Cutler: If clause 55 is gone and the information is more open, I'm quite happy.

Mr. Pierre Poilievre: That's excellent.

Secondly, on the issue of burden of proof, you've been making the argument for some time that the burden of proof ought not to be on the whistle-blower. And I agree with you. My understanding of common law is that in tribunals of this sort it is predicated on a balance of probabilities. So the burden of proof will not be on the whistle-blower in this tribunal of judges; it will be a balance of probabilities in which both sides will make their arguments and the tribunal will decide.

If it were based on the balance of probabilities, would you agree with that as a fair approach?

Mr. Allan Cutler: It is a fair approach, but since you've brought up the tribunal, I also believe that there should be some non-judicial members on that tribunal who bring a different perspective, rather than just a legal perspective, to the situation.

Mr. Pierre Poilievre: That's a fair point. I think the advantage of having judges is that they are unimpeachably independent.

Mr. Allan Cutler: And I didn't say not to have them; I was saying in addition to.

Mr. Pierre Poilievre: Okay, that's a fair point. Maybe the committee will want to examine the possibilities for other people.

I'd like to turn it over to Mr. Lukiwski now, if he has any questions to add to that.

Mr. Tom Lukiwski: I want to explore a little.

Thank you very much, Mr. Cutler. This is the first time I've had an opportunity to meet you. I'll try to tell you how proud I was of what you've done in the past when we're off-line.

I just want to address your comment that your concern is really that the reprisal is still there, because I think it's very important. You can blow the whistle, or someone can blow the whistle, and the management or the party that you've blown the whistle on can bring reprisal against you and there's a disconnect. You can't prove that the reason they are harassing, haranguing, or bringing reprisal against you is because you can't connect the two.

Mr. Allan Cutler: That's right.

Mr. Tom Lukiwski: What would you suggest? How do you solve that?

Mr. Allan Cutler: My understanding is that there is legislation in either the U.S. or in the world that covers that, so it can be legislated into law that the burden of proof shifts.

Mr. Tom Lukiwski: So you're suggesting that's really all it would take?

Mr. Allan Cutler: All it would take.

● (1655)

Mr. Tom Lukiwski: Could you give me an example, perhaps?

Mr. Allan Cutler: I'm afraid I can't. I'm not a lawyer. I can tell you the need; I can't tell you how to word it.

Mr. Tom Lukiwski: But you're confident in your own right that this alone—the shift of burden of proof from one to the other—would take care of all the concerns you have.

Mr. Allan Cutler: It would take care of an enormous amount of concern, yes.

Mr. Tom Lukiwski: Okay. Thank you very much.

Mr. Petit might have a question, Chair, if there's time left.

The Chair: Yes, there is.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Thank you, Mr. Chairman.

Mr. Cutler, I don't know you either, but, after comparing Ms. Gualtieri's testimony and yours, a question arises in my mind. You are, from what I understand, all members of the public service, and all federal government employees have a union or professional association.

When one of you is dismissed, does your union support you or does it simply abandon you?

[*English*]

Mr. Allan Cutler: I'll have to speak more in generalities for a number of other people who are involved with whistle-blowing.

The unions are a little bit erratic on this situation because they support some whistle-blowers more than others. In my particular case my union supported me tremendously. That may or may not be the case in everybody's situation, but I did get good support.

The other thing that should be noted is that over time things have evolved. Whistle-blowing was something nobody knew, nobody had heard about, 10 to 15 years ago, to the extent they hear about it now. Joanna and I didn't have anybody to talk to at that time; we were absolutely isolated. At least now we can phone each other and others phone us. People have alternatives now, which they didn't have, and they don't always trust their union even. They have to have somebody they can go to and somebody they trust, and trust is a word I use an awful lot.

[*Translation*]

Mr. Daniel Petit: Thank you.

[*English*]

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

That concludes our—

[*Translation*]

Mr. Benoît Sauvageau: I have a point of order.

[*English*]

The Chair: A point of order.

[*Translation*]

Mr. Benoît Sauvageau: I thought we said that, after 40 minutes, with unanimous consent, we could...

Ms. Monique Guay: ...allow someone to ask questions.

Mr. Benoît Sauvageau: We had a gentleman's agreement, as it were, that we would have a second round of 10 minutes if other members had questions to ask. I therefore ask for unanimous consent.

[*English*]

The Chair: You can do that, sir. I understand that we do have another delegation, which is supposed to end at 5:30. If you want to go beyond 5:30, we would have to have unanimous consent for that as well.

[*Translation*]

Mr. Benoît Sauvageau: I know, Mr. Chairman, but the fact that we're running short of time is a problem for us. We have the rules that we set for ourselves. However, we also said that, with unanimous consent, we could...

[*English*]

The Chair: I'm in the hands of the committee.

Do we have unanimous consent to go another round?

Monsieur Poilievre.

Mr. Pierre Poilievre: On a point of order, Mr. Chair, our constraints have nothing to do with the rules we've imposed. The fact is we have two rounds of witnesses we have to get through before votes tonight. That's the constraint we're faced with.

In order to satiate the committee's desire to hear more from Allan Cutler and to hear the other witnesses, I think our side would be willing to give unanimous consent, as long as there is consent that we will extend beyond 5:30 for as long as it takes to hear the other witness.

Is there consent for that as well?

The Chair: That was my request. We've invited another delegation to come here. We're already ten minutes late. To be courteous to that group, I think we would have to go past 5:30. If you're all in agreement with that—

Mr. James Moore: Do we need another whole round? If Mr. Sauvageau wants five minutes, let's take five minutes.

[*Translation*]

Mr. Benoît Sauvageau: Mr. Chairman, I especially wouldn't want to start a debate on this subject. However, unless we can call back certain witnesses...

[*English*]

The Chair: Does Madam Guay have another five minutes?

Some hon. members: Agreed.

The Chair: It is agreed.

Madam Guay, you are on the air for five minutes.

[*Translation*]

Ms. Monique Guay: Thank you, Mr. Chairman.

It's hard to gain the floor here, Mr. Chairman. This is the first time I've seen these kinds of rules in the committee. There's not a lot of understanding or cooperation here. I hope the situation will improve with time.

Mr. Cutler, I want to ask you some technical questions that are fairly important for us and that we will have to consider.

First, in your brief, you referred to certain amendments. You didn't have the time to present them all to us. I would very much like you to send them to us so that we can examine them in depth and see what we could improve in the bill with amendments. You witnessed a situation that you had to disclose. So you went through all the stages in this process and you can help us improve the bill. Send us as much information as possible.

Second, you mentioned $20,000 in legal fees. That's not a small amount. I'd like you to explain to us why those fees can rise to $20,000.

Third, I'd like to hear your opinion on the $1,000 reward that would be given to anyone making a disclosure. We have doubts on that subject.

● (1700)

[*English*]

Mr. Allan Cutler: First off, in terms of the causes or the amendments I've proposed, I already gave them to the clerks, but I know the rules—that until it's in both official languages, it doesn't get handed out. That's why you didn't see it.

I'll do the $1,000 first, and then we can go back to the other one.

The $1,000 is not going to make or break anybody. It could be equivalent to a pat on the back and saying a thank you. The grief that a person undergoes in whistle-blowing is enormous, and it may be just a simple way of saying thanks. On the other hand, if it is removed from the bill, it really doesn't bother me on a personal level. I did not do anything for cash in any way, shape, or form. I wasn't looking for a reward, and I would think very few are actually looking for rewards.

The other question concerned lawyers. The figure I actually used was $30,000, and the reason I used $30,000—and the only reason I used $30,000—was that this bill had used $3,000. It was to create some balance with what departments can.... If there is a whistle-blower coming forward and accusing a manager, for example, the manager will be given a lawyer by the department—their own choice of lawyer, probably—with up to $25,000 paid. To say $3,000 versus $25,000 would not be fair. I just picked $30,000 as a balancing figure. It could be $25,000. You determine what you consider fair.

[*Translation*]

Ms. Monique Guay: All right. However, we know that employees are protected by their union in some cases. This one could do its share and pay a portion of the expenses of the person who acted as a whistleblower. I don't think that a person who makes a disclosure should be rewarded. That person does so because it's his or her duty to do so. That's part of the job. If that person witnesses questionable practices at his or her department, that person should not expect to be rewarded if he or she discloses them. I think we're sending the wrong signal to people when we tell them we're going to give them $1,000 if they make a disclosure. I believe that should be done professionally. It's simply part of their job to do that.

[*English*]

The Chair: Do you have a point of clarification, Mr. Owen?

Hon. Stephen Owen: Thank you, Chair.

Mr. Cutler, while you're still here I would like to clarify what might have been a misunderstanding, with Mr. Poilievre's comment about the burden of proof and your recommendation that the burden of proof should reverse and not be with the whistle-blower, if there is a short time period that raises suspicion of a reprisal. The burden of proof still means 51 to 49; the burden still sits as it does, with the whistle-blower. So your recommendation still stands: even though it's on a balance of probabilities, that still means the burden is with you. So your point still is valid.

I just wanted that on the record, so we didn't think it wasn't necessarily.

The Chair: Thank you, Mr. Owen.

I'm in the hands of the committee. People—Ms. Guay and others—are criticizing me for time, and people keep interrupting. But....

Mr. Martin.

Mr. Pat Martin: Mr. Chair, I just wanted to add one point of clarification as well before this witness leaves, if I'm allowed to do so.

The Chair: Okay. As long as you're prepared to sit past 5:30, it's up to you.

Mr. Pat Martin: I'll be very brief.

Mr. Poilievre mentioned, I think, that the information in my questioning wasn't correct. I went over and checked with the lawyer and I'd like to qualify it somewhat. Just as a point of clarification, Bill C-2 will now read that

> The Public Sector Integrity Commissioner shall refuse to disclose any record requested under this Act that [is]...obtained or created by him or her or on his or her behalf in the course of an investigation...

So any body of information that he has sought in conducting his investigation won't be disclosed under any kind of.... That's right.

That was the "veil of secrecy" that I was raising, and I stand by it. In the course of investigating what happened to a whistle-blower, they may create a room full of information that would not be subject to access to information requests.

● (1705)

The Chair: We're here to hear witnesses.

Thank you very much, Mr. Cutler, for coming.

We'll recess—and I'm not kidding this time—for 30 seconds.

● (1705)

(Pause)

● (1705)

The Chair: We'll reconvene.

We have—I hope I'm correct—three representatives from Export Development Canada. I have Rob Wright, president and chief executive officer; Jim McArdle, who is the senior vice-president of legal services and secretary; and Pierre Gignac, senior vice-president of insurance.

Mr. Wright, you can speak for a few moments. We're way behind schedule. I don't mean to cut you off; it's just to let you know. And it's not your fault; it's our fault. Proceed, please.

Welcome to the committee.

[*Translation*]

Mr. Rob Wright (President and Chief Executive Officer, Export Development Canada): Thank you, Mr. Chairman. We're pleased to be here with you and we thank you for this opportunity to attend such an important meeting.

● (1710)

[*English*]

You have introduced my colleagues.

We have a prepared statement, which is being circulated. I won't read it, in the interests of time.

Mr. Chairman, switching gears from whistle-blowing to access to information, we've highlighted I think some important background points in the statement that's being circulated. I just want to highlight three key points.

First, this bill will have a very important impact on EDC. We have never before been subject to the Access to Information Act, and it's a big and important change for us. I want to assure the committee that we are devoting the appropriate resources and planning and we will fully respect the letter and the spirit of that bill in the way we respond to requests for what we're about.

We've already started. We have voluntary disclosure of various summaries of transactions. We released 1,200 transactions in summary form last year. We release expenses and hospitality by our board of directors and myself twice a year. Doubtless that will come out more often under Access to Information.

We release voluntarily. The Auditor General of Canada is our auditor of record. We release her special examination of EDC and other audits, including our environmental programs, and we release a number of internal documents that we feel are of public interest.

All of that being said, I've worked in the Government of Canada for over 30 years and I've worked with the Access to Information, and there is no question that this bill will represent a major change in our approach to the way we do business and will result in a great deal of disclosure. That's a good thing and we're working very hard to be ready for it.

The second thing I thought I should do up front, Mr. Chairman, is to highlight a bit about Export Development Canada. We're a commercial crown corporation. We haven't been covered by the Access to Information Act for many, many years. There are reasons for that. We are covered by some special provisions of the act, particularly section 24 and section 18. There are some reasons for that as well.

In terms of the context for what we do, last year we provided and supported over $57 billion in trade and investment from Canada through our insurance programming, loan programs, political risk insurance, and other events. We have 7,000 clients across the country in every sector of the economy from the resource sector, service industry, and manufacturing, and 90% of our clients are small business. Last year we had a record high client satisfaction rating for our programs. Canadian businesses like what we have and they need more of it, particularly given current world market conditions and a 90-cent dollar.

So we're a commercial crown corporation that is very different from a government department, not only in the way we deal with the clients we serve. We are financially self-sufficient. We manage ourselves to generate enough revenue to sustain our business and grow our business without any appropriations from government. We have not had appropriations from government for over 10 years. There is still scope to be more open and transparent about how we use the revenues we raise from our clients and this bill will force that. It's a good thing.

Not only do we deal with our clients on a commercial basis and protect their commercial information, over 60% of our business is done in partnership with other financial institutions in Canada and around the world. Those institutions also operate on a commercial basis.

That leads to my final point. We very strongly support the approach in this bill of applying access to information to EDC, but not to our clients. It's essential that we continue to protect commercially confidential client information from release.

Section 24 has been in place. It's worked effectively for the Business Development Bank of Canada in protecting the information they have from their clients, and it will work well for us as well.

Without it, thousands of Canadian companies would be at risk of losing our service. We must obtain a great deal of commercially sensitive information from our clients as we deliver our services well, generating a commercial return. We serve it directly from our clients, and as part of our due diligence we work as well, as I mentioned earlier, with a number of international private sector commercial institutions.

With over 60% of our work in partnership abroad, these institutions simply will not engage with us unless we can assure them that we're going to protect the information we obtain in confidence. In fact, we are regularly asked, as part of our normal due diligence, to sign non-disclosure agreements and to confirm that the information is not subject to the Access to Information Act.

I can give you a couple of examples of the nature of that information. One example might be where we're offering to lend money or insure a business to a U.S. airline. As part of the diligence we have to ensure that we're protecting Canadian exporters' investments in that market, we may rightly demand to see code-sharing agreements with other commercial airlines in the United States. This is extremely sensitive information, and frankly, if there's any risk of that becoming public, we won't obtain that information. It doesn't just hurt EDC, it means we're impaired in our ability to support exports of Canadian engines, helicopters, or airplanes. So it's a very important example.

Secondly, we lend money, on occasion, to foreign companies. The Codelco copper mine is an important case. It's the largest copper mine in the world. We've been involved in financing with Codelco to encourage them to procure more of their goods and services from Canada, an especially vital relationship for smaller business. Five years ago, Codelco had only two or three Canadian suppliers. Currently we have managed relationships to the point where we have 125 Canadian suppliers, and Canada is the second largest supplier to Codelco—the largest copper mine in the world.

This simply won't work if we go to a group of financial institutions and say, “We want all the due diligence to protect our investment, but we can't assure you that this won't be made public.”

Given the nature of concerns and the way we do business, the way Canadian companies must work to succeed internationally, Canadian exporters were very, very concerned about our programming being subject to access to information.

Given the bill that's before this committee, my advice to all concerned businesses is that this bill properly focuses on EDC information and protects client information.

I'm really pleased to have the occasion to meet with you and just give you a little more context of why it's so vital to protect Canadian business interests in these very challenging export times. My colleagues and I would be very open and welcome your questions in that regard.

● (1715)

The Chair: Thank you. We're pleased to have you here, too.

Mr. Tonks.

Mr. Alan Tonks: Thank you, Mr. Chairman.

Thank you, Mr. Wright and your colleagues, for being here.

I have just one question. Is there anything in this legislation that compels you to do something that you weren't doing under your own disclosure information or disclosure act?

Mr. Rob Wright: Absolutely. We have talked about a number of voluntary disclosures of the Auditor General's audit of us. That would now be subject to disclosure.

Our internal audit reports are not subject to our voluntary disclosure. Obviously they would be subject to disclosure.

Our internal policies and more detail on how we spend the resources, $190 million a year that we raise from exporters, would now be subject to access to information.

All the ways we manage ourselves would be subject to access to information. So there'd be much more disclosure, and I think it would have a very significant impact on our organization.

We've organized a task force under Mr. McArdle's leadership, we've engaged outside legal counsel on how to prepare, we've engaged some expertise from the Government of Canada that can help us prepare, but it will be a major change for us.

We welcome that. I don't think that's a bad thing for an organization like ours. Our preoccupation has been to ensure we continue to do business as a commercial entity, because that's who we're competing with internationally, to help win jobs for Canada.

The safeguards under sections 18 and 24 in particular make that very, very clear. I just want to underscore that when we offer our support for this bill.

Mr. Alan Tonks: Thank you.

I think those initiatives would come under the category of best management practices, and I take it from what you've said, Mr. Wright, that you're already engaged in making those improvements to the checks and balances within your own practices, without this bill.

Mr. Rob Wright: I think we have. I've mentioned that we have some examples of voluntary disclosure of certain things. There's no doubt in my mind that the breadth of this bill would require a much more substantive and serious look at how we do business, so there would be much more disclosure.

Mr. Alan Tonks: So the bill was an incentive for you to initiate those practices?

Mr. Rob Wright: I guess what I'm saying is I think you'll see us fully incented over the coming year in terms of looking at a broader set of things to release. I think, as good practice, we've obviously been disclosing what we're doing. We have in fact a very good record in terms of the way we report to Parliament. We've been recognized by the Auditor General seven of the last eleven years as having the excellence award in reporting among large crowns. So we have very strong practices. I think this bill will require us to be more open to the way we do business and we're ready to do that.

The key thing we flagged with the officials working on this for the last year or two is, if you're doing this, do it in a way that protects our capacity to work and compete commercially, because that's what we're about.

Mr. Alan Tonks: Your report is very accurate and precise with respect to those issues and I thank you for that.

Those are all the questions I have, Mr. Chair.

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Mr. Wright, and the gentleman accompanying you, good afternoon and welcome.

I listened to you very carefully, and I'm not sure I understood. I'd like some clarification.

The text of your presentation reads:

> EDC customers and their foreign buyers should not have to worry that their commercially sensitive information could risk falling into the hands of their competitors. Section 24 puts those fears to rest.

And yet, from reading your presentation, it seems to me you fear that your clients' information might become accessible under the Access to Information Act. Does section 24 put those fears to rest? Do you still have any fears on that point?

[*English*]

Mr. Rob Wright: Section 24 is the most important thing to put the fears to rest.

[*Translation*]

Exactly the same is true for the Business Development Bank of Canada. I had some meetings with the President of BDC, Jean-René Halde, and

[*English*]

section 24 requires us—in fact, it would make it against the EDC Act for us to release information we receive from our clients and about our clients in a way that might affect their commercial interests. This ensures that clients know they can approach us, give us the information we need to support them without risk of international competitors taking advantage of that.

● (1720)

[*Translation*]

Mr. Benoît Sauvageau: So the text should read: "Section 24 should put those fears to rest," not "Section 24 puts those fears to rest."

From what I understand—and I'm not sure I understand that clearly—there's no longer any problem, but I get the impression from hearing you that there is a problem. Am I to understand what you tell me or what I read?

[*English*]

Mr. Rob Wright: No, no, I'm sure it's me. All I want to underscore is that our concerns are fully met through section 24 and section 18. That will permit us to continue to protect client information. Now some have suggested that EDC should be covered by this access act without such sections. That would create major problems for Canadian exporters.

So with the bill as it is currently structured, we were very pleased and we were very supportive, but we wanted to underscore how vital those sections are for us, as they have been for other commercial crowns like Business Development Bank of Canada.

[*Translation*]

Mr. Benoît Sauvageau: In short, you're suggesting the status quo with respect to Bill C-2 because you think no amendments are required.

[*English*]

Mr. Rob Wright: That's correct. We understand and we were very supportive of Bill C-2. We very much appreciate the government's decision to structure it in this way. It will apply Access to Information to us as a corporation but allow us to protect our clients' information.

We wanted to appear here because there are some people who have spoken saying that isn't necessary and I wanted to give a context from us working there that we think it's absolutely vital.

[*Translation*]

Mr. Benoît Sauvageau: Thank you very much.

Mr. Rob Wright: It was a pleasure for me to speak with you.

[*English*]

The Chair: Mr. Dewar.

Mr. Paul Dewar: Thank you very much, and I should thank you for a briefing I had with EDC not too long ago. It was very informative for me as a new member.

I just want to go back and refresh my memory as to what you consider and define as small business in terms of your context—just roughly.

Mr. Rob Wright: Under $5 million in revenue.

Mr. Paul Dewar: Thank you for the reminder. That was given to me before when I had the briefing from EDC.

Mr. Rob Wright: I thank them for the reminder as well.

Mr. Paul Dewar: You did mention concerns about having the freedom of information touch clients. I'm certain we can all appreciate why that might be a problem.

As a question—and I'm not sure whether you'd have this in a comparative format—if you look at other jurisdictions, is there an occurrence in any other jurisdiction where that freedom of information is available?

Mr. Rob Wright: That's a very important question. EDC is Canada's export credit agency. There is a current set of structures to provide support for exporters along a set of rules that are minimalist subsidies called concessional and consensus financing. Some governments, some countries, only do that.

In our case, over 90% of our business for the last several years, but 95% of our business last year, was done on market terms. So if a country has a department administering export credits, as the U.S. has—it's a department of government, it's not a commercial entity—then it is subject to access to information. I think the U.K. has just brought their department—they have 23 clients, not 7,000 in the U.K., and they provide only consensus support, not market support. But the competitors we have in the private sector internationally and in countries like Germany and Australia are deliberately excluded entirely from the Access to Information Act.

Mr. Paul Dewar: Both sides?

● (1725)

Mr. Rob Wright: Both sides.

Mr. Paul Dewar: Thank you.

One of the things that impressed me in the briefing I had earlier was that you have an environmental assessment procedure that you now have put in place when you're dealing with clients.

I have a question. I'm not quite sure how to frame it. If there were a concern brought forward on environmental standards of one of the clients or there were labour standard concerns, which is a question maybe for another time in terms of its scope, and it was brought to the attention of EDC that there were unfair labour practices—I understand your environmental assessment process would hopefully pick up the environmental concerns that one might have, particularly in mining, because we've heard a lot about that—we would be reliant upon the EDC to disclose that information if it were a concern.

I'm just trying to figure out, if that information of the client isn't available to us and it's known by EDC that there were concerns around environmental or labour practices, would that mean that under this bill that information would be available to us and to the public?

Mr. Rob Wright: We have committed to disclose particularly our environmental reviews for certain categories of new investments. We also are committed to making sure we benchmark the environmental review and our approach to these projects to the highest world standard. If it's a government approach, it would be to the standards of the World Bank and higher, and if it's a non-governmental approach, it would be to the local conditions of the marketplace. We have committed to category A.

Jim, why don't you summarize what disclosure we have now under the way we structure our environmental review?

Mr. Jim McArdle (Senior Vice-President, Legal Services & Secretary, Export Development Canada): Under our disclosure policy now there is a section that requires EDC to ask for and receive *ex ante* disclosure in certain categories of projects from the sponsor. It's all the sponsor's information, so we have to ask the sponsor to do it. If they refuse to do that, our policy says we clearly refuse to do the project. The sponsor will be making its environmental assessments public on its website and we'll have links to it. In the really serious category A projects, we require that in all countries except for the G-7, where there is disclosure in any event.

That's how we've tried to approach it.

Mr. Paul Dewar: Just to understand then, if information were given to you about environmental concerns or perhaps about labour standards, then under this act it would be available to us. Or would that be considered something separate? Would that be the client relationship you were referring to?

Mr. Rob Wright: It would be a client relationship. If we were getting something to help us decide whether to engage in a project.... We want information to come to us. We don't want people to be afraid to share information. We would make a consideration of whether we were going to support the project. If we do support a project, it is going to be available, and it will be available.

I should say, on the whole area of corporate social responsibility, the way we work on anti-corruption, environmental issues, and all issues in that area, is something that we have great profile on and we work very hard on. If we use it at the other end and people are afraid to give us information, it might come out other than through a process to get our support and it would turn off some business. But if we're going to engage in that project, we will make that information available as part of our due diligence.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you.

Mr. Wright, I have a pretty straightforward and simple question. One of the things, obviously, that we've been trying to do in this committee is to examine the bill, talk to witnesses, and see whether there's anything that needs to be done to strengthen the bill.

Based on all of the pieces of this legislation, the Federal Accountability Act, that relate to Export Development Canada that you've examined, what, if any, suggestions or amendments would you propose that could make this bill better with respect to your activities?

Mr. Rob Wright: We're pretty comfortable without being covered by it.

I think it's important to take the step you're taking, and we support it. We would want sufficient time before it becomes effective to make sure we can act professionally. It will take some time, because it affects our systems.

The clients we work with made their concerns known to us and to members of Parliament. I think the way the bill is structured will serve well to protect their interests. The act will apply to what we do and how we operate as an organization. It's well structured to protect Canada's commercial interests. We're in a tough market right now. Canadian companies need to know that.

We're not recommending any change. We said to our colleague from the Bloc that we know people are suggesting simplistically you could just cover everything we're doing. There would be enormous Canadian economic impact in that event. That would be very negative.

We think this is a balanced approach. It's a big step for us. We will make sure we do our diligence appropriately.

● (1730)

Mr. Tom Lukiwski: Thank you very much.

I think Mr. Petit has questions, but that's all for me.

The Chair: Thank you.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit: Good afternoon, Mr. Wright.

You said you're satisfied with section 24 of the Access to Information Act, as well as the proposed clause 18.1. You admit that commercial information must be protected because it is invaluable to your clients, that you're doing business outside Canada, and so on.

EDC can conduct a transaction with the United States, and we know that the U.S. has its own legislation. I can obtain information on you through the U.S. legislation. I can get insurance information and commercial information. I do it regularly myself.

In what way do you think section 24 is strong enough? I'm trying to understand. Having worked in this field, I know that, if I want to get information from you, I don't ask you, but rather the client, who is subject to other legislation. I get the information. How am I to interpret the fact that you accept section 24?

[*English*]

Mr. Rob Wright: Section 24 will essentially make it against the law for us to release information we receive from and about clients. So we will not be releasing that information on clients.

It's especially important for a country like Canada and an organization like EDC, because what we're offering is a service to Canadian exporters. We don't want to discourage them from coming forward. Unlike very large countries—and Ex-Im Bank is a very large agency of the U.S. government—when we're working internationally, we're working with partners that can choose not to work with us. Being able to protect the information we secure is absolutely vital for us; otherwise, we will lose out on opportunities to build bridges for Canadian companies to endure.

I believe that section 24, by making it against the law for us to release client information, will assure Canadian business that their information is going to be safe. We do a lot of due diligence in obtaining very detailed information that even financial markets and others don't know to make sure we structure our balance sheet and our approaches to protect our risk. Again, being able to protect that information means we have a better chance to balance ourselves prudentially for the future of Canadian business.

I think that section 24 and section 18 recognize that we have commercial systems in place to assess risk, determine our pricing, and assess different markets. Again, this gives us a provision to provide additional protections for those systems.

I wasn't here to ask for an amendment. I was here to say that we strongly support the way the bill is structured. It very much reflects what we've heard from Canadian business. We think you may get alternative views; we wanted our views on the record.

[*Translation*]

Mr. Daniel Petit: Thank you.

[*English*]

The Chair: Thank you very much, gentlemen, for coming this afternoon and commenting on the legislation.

Believe it or not, ladies and gentlemen, we are on time. We will proceed with some delegations tomorrow. Unless something else happens, we do have time to proceed with the notice of motion that Mr. Poilievre served us yesterday.

The meeting is adjourned until tomorrow morning at nine.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
http://www.parl.gc.ca
