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Mr. David Tilson

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● (0905)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good morning, ladies and gentlemen. I'd like to call the meeting to order.

This is the legislative committee on Bill C-2, meeting seven. The orders of the day, pursuant to the order of reference of Thursday, April 27, 2006, are Bill C-2, an act providing for conflict of interest rules, restrictions on election financing, and measures respecting administrative transparency, oversight, and accountability.

Our witnesses today are from the Office of the Registrar of Lobbyists: Mr. Nelson, who is the registrar, and Bruce Bergen. Good morning to you.

We have also the Canadian Society of Association Executives. With us are George Weber, who is the chairman of the board, and Michael Anderson, who is the president and chief executive officer.

Finally, we have, from the Government Relations Institute of Canada, Leo Duguay, president, and there is someone else, who may or may not be involved.

Mr. Leo Duguay (President, Government Relations Institute of Canada): And Lisa Stilborn, the vice-president.

The Chair: Thank you, and good morning to you. Thank you all for coming.

Normally what we do, as you know, is we have some preliminary comments, and then members of the committee would have an opportunity to ask you questions.

So I would look first to Mr. Nelson.

Mr. Michael Nelson (Registrar of Lobbyists, Office of the Registrar of Lobbyists): Thank you, Mr. Chair. I'll make some brief comments.

Members of the committee, Mr. Chair, I'm very pleased to be here today. As a point of departure for questions you may have for me regarding the lobbying provisions in Bill C-2, I thought it could be useful to you if I were to provide a brief synopsis of the operation of the current legislation, from my perspective.

First, I'll offer some statistics from the registry of lobbyists. Members will recall that the Lobbyists Registration Act defines three categories of lobbyists: consultant lobbyists, who are hired by individuals, businesses, and others to communicate with public office holders; in-house lobbyists for corporations, who are employees of entities that operate for profit; and in-house lobbyists for organizations, who are employees of organizations that operate on a non-profit basis. There are various provisions in the act that require registration in one of these categories, but the most important of these are that communication with public office holders takes place and that there is compensation involved.

As of May 15, 2006, there are 4,752 lobbyists registered. The breakdown of this number is as follows: 699 consultant lobbyists, with 2,330 registrations; 1,764 in-house lobbyists working for 274 corporations; and 2,289 in-house lobbyists working for 376 non-profit organizations. This breakdown shows that although it's often consultant lobbyists who have the highest profile in the media, there is actually a great deal of variety among those required to register under the act. I mention this because I have observed that the act has broad application.

For example, measures in the act that may have been intended to target the activities of former public office holders who lobby on behalf of large corporations can also apply to a staff member at a university who is discussing policy with Health Canada, or the CEO of a ten-person company who is applying for financial assistance from ACOA.

[*Translation*]

The registry itself is available through the Internet 24 hours a day, seven days a week. There is no charge to access it and staff have been working hard to improve the search capabilities. The registry is well known among lobbyists and it is the most used registry by public office holders.

That said, my assessment of awareness of the act, how it operates and who needs to register is that it is low. With public office holders in particular, I see a need to clarify the requirements of the act through education and awareness. I am convinced that this will go a long way towards increasing compliance with the legislation.

For example, even with the limited awareness and education efforts my office has been able to undertake over the past several months, combined with the higher profile of lobbying in the media, I know that there are more public office holders checking the registry before they agree to meet with lobbyists. More education will pay dividends in registrations. So will more enforcement.

As members are perhaps aware, there is virtually no evidence that there are consequences for ignoring the Lobbyists Registration Act or the Lobbyists' Code of Conduct, no convictions, no fines, no jail terms, no code of conduct reports tabled in Parliament.

While the current act provides significant powers to the registrar to conduct an investigation under the Lobbyists' Code of Conduct, there are virtually no powers currently provided that would enable the registrar to gather the evidence required to either launch a Code of Conduct investigation or to construct a solid base from which the RCMP can investigate possible breaches of the act.

● (0910)

[*English*]

I will stop here, Mr. Chair.

I look forward to contributing to your deliberations on this bill. I hope to see a legislative outcome that will help to ensure that confidence in Canadian federal institutions increases to enhance accountability and transparency in the lobbying of public office holders.

The Chair: Thank you, Mr. Nelson.

Mr. Weber.

Mr. George Weber (Chairman of the Board, Canadian Society of Association Executives): Thank you very much, Mr. Chairman and honoured members of the committee.

Good morning. Bonjour.

The Canadian Society of Association Executives, commonly called the CSAE, welcomes this opportunity to comment on Bill C-2, the Federal Accountability Act, and is pleased to participate in its review on our members' behalf.

As the chairman mentioned, my name is George Weber. I'm the current chair of the CSAE. In my day job, I'm the executive director of the Canadian Dental Association. With me this morning is Michael Anderson, the CSAE's president and chief executive officer.

The CSAE is the professional organization of 1,600 men and women who manage many of Canada's most progressive trade, professional, occupational, philanthropic, and common-interest organizations, which in turn consist of 14.5 million individual and two million corporate members. An additional 600 business members that provide services and products to the sector also comprise an integral part of the CSAE's membership.

The CSAE and its member organizations support government initiatives to strengthen the rules and institutions that ensure an increased transparency and accountability to Canadians. We share those goals, and with the exception of two concerns are pleased to support the overall legislation commonly short-titled the Federal Accountability Act.

Our first concern relates to the restriction on lobbying activity that enshrines a five-year prohibition on lobbying activities for ministers, their staff, and senior public servants. We believe that government officials should maintain the right to move freely from government service to the not-for-profit sector in view of the unique relationship that non-profit organizations currently enjoy with the federal government.

Senior staff and CSAE member organizations who lobby government are defined by the Lobbyists Registration Act as in-house organization lobbyists. They lobby government officials, and their primary focus is to seek common good for all their constituents.

It is our position that eliminating this five-year moratorium or replacing it with a more reasonable period would ensure the continuing maintenance of a unique exchange of information and consultation that currently benefits both the government and the sector. Failure to remove this time constraint will ultimately dissuade government officials from working for not-for-profit organizations that provide societal benefits to Canadians.

Our second concern is the obligation to report all contacts with designated government officials. The act requires that in-house organization lobbyists record all registerable activities—with certain exceptions, such as chance encounters that may take place with senior officer holders—including who was met and what was discussed, and lobbyists must file regular reports with the registrar. And it will be monthly, as noted in the proposed legislation.

The CSAE is concerned that new and more frequent reporting requirements may lead to situations where contact with government officials is severely curtailed or avoided altogether. The free flow of information—research, knowledge, and consultation—between the government and the sector will be curtailed, and as a result, the informed decision-making process that currently exists will be weakened.

Will recording contacts with senior public office holders truly advance the public policy process to address issues in the public interest?

As you know, many not-for-profit organizations currently register twice annually—and Mr. Nelson has just noted the numbers, which are larger than for corporate or consultant lobbyists—through the Lobbyists Registration Act registrar. They provide updates on the issues and subject matter discussed as well as the government department or institution contacted.

We are concerned that increasing this compliance requirement will prove to be an onerous, time-consuming burden that will result in a loss of productivity for the many not-for-profit organizations currently facing resource constraints. As an aside, we should be aware that one-third of our membership have one to four staff members, so we're just adding an additional burden to their already heavy workload.

We encourage the committee to maintain the current reporting status for in-house organization lobbyists.

Honoured committee members, on behalf of the members of the CSAE, I would like to thank you for the time you've allowed me to express some of our concerns. We would be pleased to respond to any questions or points of clarification you may have.

Thank you.

● (0915)

The Chair: Thank you, Mr. Weber.

Mr. Duguay.

[*Translation*]

Mr. Leo Duguay: Thank you, Mr. Chairman.

Ladies and gentlemen, members of the committee, we are pleased to appear before you here this morning. I am the President of the Government Relations Institute of Canada and I am accompanied by our Vice-President, Lisa Stilborn.

[*English*]

Members, we represent the lobbyists you don't read a lot about. The members of our association are registered lobbyists, and you already know who we are, what public offices we've held, who our clients are, and what policies, rules, regulations, or legislation we're trying to effect. You already know quite a bit about our membership.

Our board has an interesting cross-section of pretty much all the people who lobby in Canada. We have people on our board who represent Bell Canada, the Canadian Medical Association, the Canadian Cancer Society, the Canadian Council of Professional Engineers, the Credit Union Central of Canada, and a bunch of others who, like me, are consultant lobbyists. We represent in some fashion almost all the people who are registered lobbyists.

To begin, I want to express our strong support for the principles underlying Bill C-2, namely transparency and accountability. Since its inception, our association has supported every attempt to make lobbying more transparent. We are supportive of almost all the elements of the changes that you're proposing to strengthen the Lobbyists Registration Act.

Before I get into specifics of the act, let me go back to the preamble of the Lobbyists Registration Act as it was initially formed. If you accept these principles, then you'll easily be guided to what can and should be done.

The preamble said:

> WHEREAS free and open access to government is an important matter of public interest; AND WHEREAS lobbying public office holders is a legitimate activity; AND WHEREAS it is desirable that public office holders and the public be able to know who is attempting to influence government; AND WHEREAS a system for the registration of paid lobbyists should not impede free and open access to government....

This preamble reinforces the government's ongoing position that the lobbying profession is legal, ethical, and in the public interest—and we couldn't agree more.

We also support the majority of the changes in the act, including stronger investigative and enforcement provisions. The vast majority of the people we represent are fully compliant with the law. It's been our position for some time that more resources should be dedicated to enforce this law so that the actions of a small number don't tarnish the reputation of the whole industry. As a matter of fact, I would point out that none of the people involved in the Gomery commission had in fact registered.

Clearly, I can only say to you that we represent the lobbyists who register. We all know that over time there have been some who don't register. But I don't think the concept of resolving the problem of those who don't register by adding more requirements to those who do register is going to be of much help to you.

We support the creation of an independent and empowered commissioner of lobbying who is accountable to Parliament.

In terms of the other changes to the act, we really only have two comments that we would like to make, and then I'd like to propose an amendment.

On the five-year rule, everyone in industry understands that a cooling-off period is necessary. Will a five-year period be much better than a four-year period, a three-year period, or a two-year period?

The question that you are required to answer, as we are, is this. Will this prevent good and experienced people from entering the public service? That's the first part. As George Weber pointed out, will this prevent good public servants from working for good corporations, good associations, or good lobby firms that service good corporations or good associations?

The second one is the matter of recording contacts with senior public office holders and the concept of who, what, where, and when. If you ask your colleagues, I think you will find that our concern is legitimate. The question we ask all the time is this: Will this put a chill on meetings that are in the public interest? Will civil servants who should meet with clients we represent, with associations, and with corporations say they don't want to meet with people because it may be misconceived?

The more telling problem is this: Will this compromise commercial confidentiality? In my career, and others can attest to this, we have had examples of confidential conversations with deputy ministers and with ministers.

● (0920)

I'll give you two examples. When a corporation is considering a sensitive merger or acquisition, there have in the past been discussions with senior officials about the possible implications of these mergers or acquisitions and other more technical matters, particularly affecting drug companies or new vaccines on the market. To these, competitors should not be privy.

Least of all is the matter of everyone wanting to know who's doing what in Ottawa. There's a lot of that, and not all of who wants to know and what they want to know is in fact in the public interest.

You may want to ask yourself these questions. Who is it wants to know with the greatest of detail what a company and a deputy minister talked about, when it's already on the public record which policies, regulations and rules, and legislation these companies are trying to affect? When is the public interest to know balanced with privacy and commercial sensitivities? The other one, which we can only dream of as being a horror, is what level of speculation will follow disclosure, and how will everyone respond to the inquiries? What great number of access-to-information requests are we going to get after the tabling that company X met with department B? How many of these kinds of requests are you going to face?

Clearly there are some people in this community who want to know everything. They want to know everything that everybody ever says, and if you made a presentation concerning this legislation, they will follow up these normal requests by asking what the deputy minister said, and what you said, and what the deputy minister said in response.

The other ongoing consideration for you is that we want to ask you to consider your role in this process, because a lot of you are integral to public policy. It's interesting. I was once a member of Parliament, so I know a little bit about the kinds of things you do. We are not in competition with you. As a lobbyist I don't compete with members of Parliament; I do a very different job. You are faced, on a constant basis, with hundreds of inquiries in your offices. I represent five to seven or ten clients in a given year. I have the time to spend two days with a company to discuss matters with them. As my colleague has pointed out, associations have similar amounts of time. You don't have that amount of time to devote to a particular file. Very often the first thing we do on any particular level of interest is to deal with the local members of Parliament on that issue.

We want to move forward and ask you to consider whether the burden of these regulations will be increased for all registered lobbyists, for not-for-profit lobbyists, and for organizations and corporations. We want to propose that a lot of things have not yet in fact been absolutely settled.

In relation to one section—the section dealing with filing a return 15 days after the end of the month to describe the who, what, where, and when of the meeting—it seems to me that better legislation considering privacy requirements and commercial sensitivities would be for Parliament to adopt a law that says these things shall be done—none of us is opposed to doing them—but instead of writing down all of the details of how it should be done in the legislation, you might want to say that the individuals shall file returns in such fashion and time as are set out in the regulations and leave it to the commissioner of lobbying to determine whether it should be three months or whether there should be some exemptions for commercial sensitivities. We're very fearful that if you write the rules in as much detail as you have proposed in this legislation, then common-sense things and sensible requests to keep a matter confidential for two weeks or three months may not be possible.

● (0925)

The Chair: Perhaps you could wind up, Mr. Duguay.

Mr. Leo Duguay: That's my presentation, sir. Thank you.

The Chair: Thank you.

Mr. Leo Duguay: Your sense of timing and mine are pretty good.

The Chair: I hope that wasn't a coincidence, because I didn't mean it like that. Thank you.

Mr. Murphy.

Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.): Thank you, Mr. Chair.

Thank you, witnesses.

This is an open question to each of you. I'm very concerned about the type of communication and reporting. To people out there, to our stakeholders, the word "lobbyist" hasn't got a clear meaning, and it probably has a pejorative one. Thank goodness I'm a lawyer and a politician, because I know how to deal with pejoratives daily.

I think people in the country are wise enough to know that talking to your MP, your mayor, or your city councillor on the steps after church, at a hockey game, or in the supermarket is a form of lobbying. It's just done by private citizens who vote.

What has been done in the past in the Lobbyist Registration Act is to keep this lobbying—politicking, if you like—when it's for remuneration, which none of us deny, in the open: make it transparent. That's what you, as professionals, are all about.

My concern is that by making these amendments to the Lobbyist Registration Act—in fact, just calling it the Lobbying Act, which is the amendment—we will significantly cut down on the legitimate type of communication that can take place.

In the *Ottawa Citizen* yesterday, Prime Minister Harper may have been a guest at the CFL before he was Prime Minister; Carol Skelton was at the Grey Cup as well, for Telus; and Jay Hill was there, or somewhere, for Bell Canada. Who is to say they weren't just talking about the hockey, baseball, or whatever?

Do you envisage that if the Prime Minister or Mr. Poilievre or Mr. Tonks goes to a hockey or football game—I bet you there won't be too much of that, by the way—and they pay for their own ticket and their own drinks and refreshments, but there is a pre-arranged discussion or phone call, is all of the discussion reportable that takes place at a hockey game or at the bottom of church steps, if you happen to bump into your MP, even though you're a paid lobbyist but working on a file?

How will that stultify the public process? I'm not going to say that it's easy to sell this if it's Exxon trying to drill holes in the north of the country, as much as if it's the Sierra Club saving some birds on the east coast. I mean, it's a laudable goal. How much is it going to hinder you, when I presume these things are in process, if you have to put down every detail of a discussion and report it, as required?

How much will that hinder your job, Mr. Duguay?

Mr. Leo Duguay: It's not what it's going to do to me and to the people I represent. We're quite prepared to provide whatever information you ask for. We have done that since the beginning, and we do it now.

The question really isn't about us. It's about the people we represent and the clients that Mr. Weber's group represents. As you started out saying, there's a myth out there about the pejorative lobbyist, but the people I represent aren't pejorative at all. You know a lot about them already, and we're prepared to give you whatever you ask.

The myth is that because I know somebody or because I talk to somebody, we must be doing something bad. In fact, in most of what we do, we go to the government—sometimes to you—and point out that the advice you're getting from the bureaucracy has these holes in it. I think the balancing of the advice you get from the bureaucracy, which is closed and has its own responsibilities, and the advice you get from us, and particularly from our clients, is necessary.

We can already report that the mere thought and talk of these kinds of regulations has made a lot of senior civil servants leery of talking to anybody. In our view, it is not in the public interest in the long run that legitimate conversations between citizens, which is really who we are, and the government be curtailed.

Mr. George Weber: Mr. Chair, may I add a little to that from a different perspective? I'd like to follow up on that.

I don't know whether all the members of the committee are aware of what we're already reporting every six months, and I believe there will be barriers. Every six months, we briefly describe the organization's business activities and lay out the subject matters and areas of concern. We lay out the particulars: prospective names, government institutions, and the funding we're getting—that's all in there now. In this new bill, that's being asked for monthly with much more detail. I don't understand why more detail is necessary beyond this.

● (0930)

Mr. Brian Murphy: Just briefly on another topic, and I think it might be—

The Chair: May I interject?

Some of you have given us documentation, and some of it is in just one official language. We will distribute all of your material to the committee when it has all been translated.

Mr. Murphy, go ahead, please.

Mr. Brian Murphy: Mr. Nelson, you gave us the overall scope of the number of lobbyists, in-house and consultative. There are amendments here pointing towards eliminating percentage pay for successful lobbying. How extant is that? Maybe you can't tell me, but what amount of remuneration is not on an hourly basis?

Mr. Michael Nelson: On the form that currently has to be filled in when you register, there's a tick-off box that says, "I'm receiving a contingency payment". We could do a search on the registry. It would take a little bit of time to find out exactly how many, but from what comes across my desk, I would say it is not a large number. Right now there's just an indication of whether or not there is a contingency fee payment.

Contingency fees are not banned currently. There are, with respect to certain types of government contracts we're aware of, regulations in the government that prevent companies from entering into contracts with lobbyists who are receiving contingency fees, transfer payments and that sort of thing. Right now they're not banned.

I could certainly get back to you with the statistics on that, if you'd like. I could do that.

Mr. Brian Murphy: Thank you, Mr. Chair.

The Chair: Thank you.

Madame Guay, go ahead, please.

[*Translation*]

Ms. Monique Guay (Rivière-du-Nord, BQ): Thank you, Mr. Chairman. I would like to thank the witnesses who are here with us today. We have had to limit the time for each group to 40 minutes, and I regret that we could not provide more time for you.

I am aware that you have submitted briefs. Do they contain any proposed amendments? It would be important for us to know that.

Mr. Leo Duguay: I proposed in my oral presentation that the future commissioner be given responsibility for establishing regulations.

Ms. Monique Guay: Mr. Duguay, you are a former member of Parliament. You therefore understand our role here. Under this legislation, people would bring their complaints to their member of Parliament. The MP would weigh the merits of the complaint and decide whether or not to submit it to the commissioner. What do you think of that approach? I personally think that it politicizes the complaint resolution process.

In the case of the Canadian Human Rights Commission and the Office of the Commissioner of Official Languages, people make their complaints directly to the commissioner. As a member of Parliament, I am very uncomfortable with the idea of receiving these complaints. I would like to hear your opinion on this.

Mr. Leo Duguay: It seems to me that any reasonable complaint should be addressed to the commissioner. That is quite clear. Under the current system, when a case is brought to us, we submit it to the commissioner, who is responsible for dealing with it. That is the approach I would take if I were a member of Parliament.

Ms. Monique Guay: We are being asked to analyze the complaints, but that is a responsibility that members of Parliament do not necessarily want to have. A given complaint may not be justified. But it is not our role to make that decision.

Mr. Leo Duguay: If it were me, I would simply send all the complaints along to the commissioner.

Ms. Monique Guay: But we could correct this problem before the process is finished. That way, we could ensure that the legislation is credible and transparent.

On another topic, you currently submit a report every six months. They are now talking about monthly reports. I would like to have an idea of the extra workload that that would create for you. My question is for all the witnesses.

[*English*]

The Chair: Mr. Nelson, go ahead, please.

[*Translation*]

Mr. Michael Nelson: We would have to create a new data base. The one that we have is obsolete. We would have to create a new system for that purpose.

● (0935)

Mr. Leo Duguay: I would simply add that there are 5,000 lobbyists reporting every month right now, for a total of 30,000. If they reported every month, the total would be 180,000. If the number of people reporting continues to increase, there will be an overwhelming amount of data.

Ms. Monique Guay: Five thousand lobbyists is certainly a lot of people.

Mr. Leo Duguay: The workload is not actually a problem for us. It is not reporting that creates the problem, but the question of whether we will have to report on confidential files.

Ms. Monique Guay: Confidentiality is an extremely important issue for you. You have all talked about it. Perhaps you could give us a little more information on that, since it is not very clear.

I also hope that you have proposed amendments in your documents, since it is important to protect confidentiality. You gave the example of the pharmaceutical industry. That is extremely important. There are other areas where the same thing goes. Some information is legitimately confidential and does not need to be known. Can you give me more details on that?

Mr. Leo Duguay: We have given a few examples, but there are a hundred others that we could give as well. I will try to find some and send them to you. I will give you a list.

Ms. Monique Guay: I would appreciate that, if it is possible.

Mr. Leo Duguay: I will contact the committee clerk about sending the text of an amendment and some other examples that could help you.

Ms. Monique Guay: That could help us improve the bill. If you could also send us information about the costs involved in implementing this legislation, it would be helpful to us. You could send us the figures, since when you have to apply the provisions of the act, you will end up having to assume certain costs. We have been asking all of our witnesses if they could send us that information. Thank you.

Mr. George Weber: We are prepared... [*Editor's Note: Inaudible*] [*English*]

The Chair: If that could be sent to the clerk, it would be helpful.

Mr. Martin.

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

I'd like to start from the premise that a lot of us feel that the current regulations governing lobbyists are completely toothless, useless even, because we keep getting faced with examples like the David Dingwall affair, which so horrified committees when they found that he had a contingency fee to get a technology partnership loan of $450,000. When he was reminded by the commissioner or somebody that you're not allowed to take contingency fees, they restructured it so that it was a fee of the exact same dollar figure called something else. So how is that helpful?

I understand some of the points that Mr. Duguay is making, but some of us are coming from the starting position that lobbyists have bastardized democracy in the U.S. and we're not going to let that happen here. The revolving door of influence peddling is offensive to Canadians. Mr. Duguay is trying to paint it in a positive light that he's an ordinary Canadian and he has a right to talk to any politician. The fact is ordinary Canadians shouldn't have to talk to politicians through lobbyists. You aren't real estate agents. It's not like you need an agent to buy a house. We should never have a system where you need one of you guys to go and access the people who represent you.

I don't know, but I get really angry when I hear both the tone and the content of your remarks that there's nothing wrong with the system, it's just a bunch of good guys accessing their elected representatives. There was a famous case where a Liberal cabinet minister went on to work for big pharma and was lobbying big pharma at the same time that the Liberals were talking about the drug patent review and the 20-year patent period. So here you had a high-profile, famous Liberal minister lobbying the Liberal chair of the committee that was going to rule on the biggest corporate giveaway since the CNR, the 20-year patent protection for pharmaceutical drugs. That was offensive. That was influence peddling of the highest order, and people want it stopped.

So some of us feel this act doesn't go far enough. If it's too onerous for you to write down who you're talking to and when for the fees that you collect, there's something wrong with your side of the table, not ours. That tells me we're doing the right thing when you're complaining about that level of accountability.

This bill does ban contingency fees, and I would hope that the enforcement process would be such that you can't just call it something else and charge the same amount of money based on whether the deal goes through. But do you also believe that companies that are engaged in lobbying shouldn't be allowed to get any other kinds of contracts from the government while they're lobbying the government? This is a way to get at the Earnscliffe revolving door situation where it's common practice for a lobbyist firm to also be selling other services to the government that they're lobbying. Do you believe that's one of the changes we should put in place here?

● (0940)

Mr. Leo Duguay: Let me answer. Let me draw a couple of observations, first of all.

The United States has not had, and does not have even in the latest suggestions for registering lobbying activities, the regulations we had 15 years ago. They do not have in place the regulations we currently have.

I'm not involved and our association members are not involved in arranging meetings for people. That's not what I do. I can only make that point to you—

Mr. Pat Martin: What do you do for your clients, then?

Mr. Leo Duguay: Let me explain.

There are a lot of companies in Canada and a lot of individuals in Canada who can do their own income tax, but they hire an accountant. There are a lot of companies that can wind their way through a piece of legislation, but they hire a lawyer. There are a lot of people in Canada who can wind their way through what is a very complicated federal government, but they don't do it, because they don't have the resources or they don't have the time. They often look to someone who, by experience or practice, knows a little bit about how the government works.

What we do with our clients is to help face often difficult problems and to understand their business, to develop strategies that will allow the public interest to be served as well as the interests of our clients. We're not always successful at that, but when we approach people like you we try to make the case of a problem that needs a solution and we hope you will try to help us do it.

Let me just raise one last point.

Mr. Pat Martin: Not to interrupt you, sir, but could you answer my question?

A voice: No, you can't interrupt him. Let him finish.

Mr. Pat Martin: I have very little time and I want my question answered. I don't want a report from Mr. Duguay about how great lobbyists are.

Mr. Leo Duguay: I'll give you ten seconds more.

On the matter of influence peddling, influence peddling in this country is a criminal offence. If you know someone in our group or any other group who is peddling influence, report them as soon as possible to the RCMP and we'll be right behind you.

Mr. Pat Martin: Okay, that leads me to my next question.

The Chair: Before you get on to that, Mr. Nelson has requested to say a few words.

Mr. Michael Nelson: I have two very quick responses in support of two parts of the act that I think are very, very important.

In your earlier comments about no convictions and no consequences, two extremely important parts of this act, I believe, are the extension of the investigation powers of the commissioner of lobbying from just the code of conduct to the act itself, so you can actually go after people quickly with powers that mean something, as opposed to asking people to cooperate voluntarily, which is the case right now; and the second one is the duty to educate.

Unregistered lobbying takes two people. It's very, very important to educate public office holders to know what the obligations of lobbyists are. Those are two extremely important parts of the act in terms of going some way to alleviate your earlier comments about no convictions, because I agree with you.

Mr. Pat Martin: I also agree that Hy's and Café Henry Burger, and these outfits, would be out of business if public office holders turned down lunches from lobbyists, because at any given lunch time, that's who fills all the tables.

Justice Gomery said the registrar should have the ability to both investigate and prosecute and give fines under the act, because the RCMP doesn't bother to follow up on most of these complaints. So while Mr. Duguay says we should send any information we have to the RCMP, they neither have the time nor the resources to go after what they would see as a very low priority. It's only in the province of Quebec where the registrar there has in fact issued a fine recently. That's a very, very rare occurrence. It's the first one ever.

The RCMP hasn't the time to follow you guys to Café Henry Burger and check your expense accounts. That's not going to happen.

● (0945)

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

We have a problem. The Conservatives have a little over a minute. Do I have unanimous consent that they have a full seven minutes? Agreed.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you, Mr. Chair. I'm going to be very brief. I want to split my time with Mr. Poilievre.

To Mr. Weber and Mr. Duguay, if I interpret your remarks correctly—and please correct me if I'm wrong—you think the five-year ban on lobbying by ministers and ministerial staff is too strict or goes too far. Is that correct?

Mr. George Weber: Yes, I do. It's much too strict.

When you talk to employment lawyers on non-compete clauses, normally non-compete clauses are anywhere from six months to two years. So why are we going to five years?

Also, for unregistered individuals, former ministers, when you look at the conflict of interest guidelines now in the act, they talk about not talking to former colleagues, and so on, for a year, or former public servants, or two years for ministers. So there seems to be, for me, an inconsistency between the conflict of interest guidelines in the act and the lobbyists act. So there's where we're off.

Mr. Leo Duguay: Five years is beyond what is normal in commercial interests, but at the end of the day you will find out with experience whether this prevents good people from coming into the public service or prevents good public servants from going into companies. So if you go ahead with this, I'm sure with some experience you'll be able to make the determination of whether this is good policy or not.

Mr. Tom Lukiwski: Thank you.

Mr. Poilievre, go ahead, please.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): I want to address some of the misconceptions that are developing with regard to this particular act. First of all, it's been suggested here that somehow incidental contact is going to be thwarted. Someone said that discussions that happen on the steps of a church or at a hockey game, where people bump into each other, are going to become regulated. In fact, that's not true. The act was written in a way that specifically does not cover incidental contact. So if you bump into someone at a supermarket, it will not be necessary to register those conversations.

Furthermore, someone raised the issue of what happens when someone attends a concert or a hockey game and spends an entire event with a lobbyist or a firm that does lobbying, and whether the person is then going to suffer the injustice of having to have that registered and put on a website somewhere. Frankly, I went to a concert with the Bank of Nova Scotia recently—I paid my own way—and when this act comes into effect that encounter should be on a website, because if I'm up in the House of Commons a week later giving a speech about why I support bank mergers, I think the public has the right to know that some moneyed interest was connected to me and that I've been meeting with them and that they're influencing my thinking. Frankly, I would have no problem having people know that I communicate with the Bank of Nova Scotia, because they have a branch in my riding that does a lot of local good, but there's no reason why I shouldn't have to defend that. There's no reason whatsoever why public office holders shouldn't have to defend who they meet with, especially when those people they're meeting with are paid to lobby them.

Imagine if a government came out with liberalized policies with respect to the tobacco industry and you found out that in fact the health minister had met on 33 different occasions in the past six months with the tobacco lobby. I think the public should have the right to know who's being paid to lobby our decision-makers.

Frankly, I don't care if the public finds out what was said in those meetings. People are paid to go in and influence the decisions of government. That should be done out in the open, and I'd like to know why you have a problem with that.

● (0950)

The Chair: Mr. Anderson, go ahead, please.

Mr. Michael Anderson (President and Chief Executive Officer, Canadian Society of Association Executives): Mr. Chair, may I respond?

When I take a look at the situation with respect to the membership that is part of our organization—it may help to give a fast overview—these are people who are running and leading charitable organizations, trade associations, professional associations, and issue-specific groups, and part of their job in representing their volunteer constituents is obviously to interact with government. But I think the primary concern that we raised with respect to the reporting area lends itself to a situation where I think a chill would settle in with respect to ongoing contact between not-for-profit executives and government officials.

When we take a look and we use the word “lobby”, I think what we have to keep in mind is that a lot of these discussions are for sharing information. A government official will ask one of our members to provide them with information with respect to the industry—

Mr. Pierre Poilievre: So why shouldn't the public know about that?

Mr. Michael Anderson: —we report already. The issue is that if we're looking at every detail, in terms of every time the phone call is made and interaction comes the other way from a minister to an association, you have a situation in which a number of these not-for-profit organizations have very small staffs and you run the risk of an inordinate amount of time being spent detailing every phone call that's made, when in fact, as Mr. Weber mentioned, under the Lobbyists Registration Act they're already reporting twice a year.

Mr. Pierre Poilievre: You know, I—

The Chair: No, Mr. Poilievre—

Mr. Pierre Poilievre: My question has been answered. My question has been answered.

The Chair: I don't care. Mr. Nelson has a few words to say.

Mr. Michael Nelson: Just to make it clear, Mr. Chair, the way the act is currently applied, informal lobbying is a registerable activity, and if someone is being paid and they've said that they're going to use informal methods and that includes meeting at a hockey rink, then that is something they have to register.

What is different now concerns the frequency of contacts, but it is clearly a registerable activity at this time.

Mr. Pierre Poilievre: The lobby firms actually bill based on the number of interactions they have with public office holders. So they manage to keep those records nice and up to date when it comes to sending the invoice to the client.

I don't understand why it would be so difficult and onerous for them to keep those exact same records. In fact, they could merely be photocopied for the purpose. I'm talking about the comment made earlier here, which was that it's so onerous now to record that 15-minute phone conversation. Well, you bill for that 15-minute phone conversation, so your firm is obviously recording that somewhere already for commercial purposes.

Mr. Michael Anderson: I have a point of clarification. I do not work for a lobby firm. I run a not-for-profit association.

Mr. Leo Duguay: Let me just add one thing. I don't disagree with anything you have said about the public's right to know about the contacts and the discussions. I only raised one single possibility, and that is that there are times when the discussions are confidential, and everyone agrees that they are confidential, and the act ought to make some provision for the exclusion of those irregular activities, like merger-acquisition discussions. That's all we're asking.

The Chair: Thank you, Mr. Duguay.

We've run out of time. I thank all of you for coming and giving us your thoughts. Thank you very much.

Mr. Leo Duguay: Thank you.

The Chair: We will recess for a few moments.

Mr. Leo Duguay: If you get into this some more and you would like us to come back, we'd be very happy to come back.

● (0955)

The Chair: I again repeat, because there is a time restraint, if you have any further comments as a result of the questions that were asked of you, feel free to put them in writing and send those comments to the committee, and we will distribute them to the members.

Thank you.

The Chair: We'll call the meeting to order, please.

We have two groups of witnesses before us this morning. We have the Professional Institute of the Public Service of Canada, Michèle Demers, president, and Jamie Dunn, a negotiator. We have a second group, the Public Service Alliance of Canada, John Gordon, president, and Edith Bramwell, legal adviser.

Good morning to all of you. Each group has up to ten minutes if you have comments to make, and then committee members may have some comments.

[*Translation*]

Ms. Michèle Demers (President, Professional Institute of the Public Service of Canada): Thank you, Mr. Chairman.

I would like to thank the committee for adjusting the time allocated to us for this presentation.

For more than 85 years, the Professional Institute of the Public Service of Canada has been representing the interests of employees in the federal public service, a claim almost unparalleled in the sector or indeed in this nation. PIPSC now represents 50,000 professionals across the federal public sector and several provinces in almost every profession imaginable.

It is because of the Institute's unique role as a bargaining agent for professional public service employees that it is particularly positioned to comment on Bill C-2, the Federal Accountability Act. Thank you for allowing us this opportunity.

Accountability is the hallmark of professionals. Through their associations, societies and colleges, our members adhere to a code of ethics independent of their roles in the public service. These ethics sometimes force them to make difficult decisions when faced with situations in their work where wrongdoing may be present. Yet it is this characteristic of professionalism on which the government and Canadians depend to ensure the efficacy and security of the programs and services on which they rely.

As an omnibus bill, the Federal Accountability Act is comprehensive and complex and will have far-reaching effects. Therefore, it must be deliberated carefully and thoughtfully. Canadians and public service employees deserve no less. It is in this spirit that the Institute offers the following observations and recommendations.

● (1000)

[*English*]

There are many aspects of this legislation the institute welcomes and we've listed them in our brief. Improvements to protection for whistle-blowers are chief among them. However, there are still some areas of concern where we question the impact of this legislation on our members. Among the various changes, the proposed legislation creates a parliamentary budget officer to provide reliable advice and guidance to parliamentarians in understanding government spending proposals and estimates. Given the requirement under the Public Service Labour Relations Act for both arbitration and public interest commissions to give consideration to the financial situation and the policy of government, it is important that this information be available to bargaining agents for the purpose of making their arguments during the collective bargaining process. It is not clear when or if the information for this new office will be shared with the public. It's not sure if what will be shared will be executive summaries or estimated forecasts or the full disclosure of all the information.

Also, the bill brings changes to procedures for procurement, which will undoubtedly have an impact on the thousands of PIPS members directly involved in the process of government procurement. We welcome all measures that improve the transparency and reliability of these systems, but must ensure that our members and their knowledge and experience are not overlooked. You will find more information on these aspects on page 4 of our submission.

The institute's primary area of focus with respect to Bill C-2 must be the amendments to the legislative regime for the protection of whistle-blowers. Due to the limited time we have, we have focused our comments on six areas. You can follow in our submission beginning on page 5.

With respect to the purpose of the investigation, as stated in clause 204, the new subsection 26(1)of the Public Servants Disclosure Protection Act, the purpose of an investigation is still to bring wrongdoing to the attention of deputy heads and to make recommendations. The institute sees this as a flawed foundation for the disclosure process. While wrongdoing within departments certainly is the responsibility of deputy heads, the accountability for safeguarding public funds and programs rests with Parliament. As an agent of Parliament, the commissioner cannot be relegated to the role of departmental babysitter, and there can be no presumption of innocence for senior management. His or her purpose must be to act as the eyes and ears of Parliament and, by extension, the people of Canada. The commissioner, therefore, must have the ability to order chief executives to correct wrongdoing, in addition to bringing wrongdoing to the attention of Parliament.

[*Translation*]

With regard to the Public Service Disclosure Protection Tribunal, section 201 of Bill C-2—new clauses 20 to 21.9—calls for the creation of the Public Service Disclosure Protection Tribunal composed of Superior Court and retired Superior Court judges to hear reprisal complaints. Under Bill C-11 this role was vested in the Public Service Labour Relations Board.

From the Institute's perspective it is not apparent why there was a need to create this new body. Clearly the PSLRB already has the structure and expertise to deal with complaints of reprisals. In addition it is a forum with which the government and bargaining agents have a great deal of familiarity and is experienced in the customs and standards of labour law. It also offers a mediation service which is referred to in Bill C-2. Whatever the rationale for this new tribunal, it cannot be a reason to delay protection for whistleblowers.

Therefore, the Institute recommends that the Public Service Labour Relations Board be vested with the authority to deal with complaints of reprisals and given the necessary resources to fulfil that role.

Bill C-2 has not dealt with the shortcoming we addressed in all preceding whistleblower legislation; that is the lack of an explicit role for bargaining agents. While bargaining agents are included on a consultative basis in the development of the code of ethics as prescribed by Bill C-11, section 5(3), they still have no explicit standard under this act with respect to disclosures, with the exception of the generic representation described in the act.

It may be that this has been avoided so as to not open the door to bargaining agents disclosing on behalf of the members. The legislation is clear that this is not an acceptable method of disclosure. The issue is a really simple one. The bargaining agents of public service employees have a special role in the process of protecting whistleblowers and the integrity of the public service. They have legislated obligations to protect employees under a broad spectrum of circumstances and a duty to act with diligence and fairness. They have a legislative obligation to be consulted in organizational change in the public service. These obligations have expanded the role of bargaining agents and woven that role throughout the fabric of the work environment of government workers.

We are legally recognized partners with management in tending to the work lives of our members. It only makes sense to explicitly recognize that relationship in this legislation. Bargaining agents are not generic representatives of employees but live under a legislative umbrella making them partners in this issue.

Therefore the Institute recommends that the bill be amended to read:

> Nothing in this legislation is to be interpreted so as to limit the right of employees to be represented by their bargaining agent at any time during the processes contained within this Act.

● (1005)

[*English*]

In clause 203, the new subsection 25(1), Bill C-2 proposes that the commissioner may provide access to legal counsel for advice only when public service employees are considering making a disclosure, or are involved in an investigation of a disclosure with a general cap of $1,500—which may be increased to $3,000 at the discretion of the commissioner.

Advice is not representation. Unionized public service employees have the benefit of the support of their bargaining agents; non-represented employees do not. Given the likelihood that powerful politicians and senior managers implicated in a disclosure would be supported either directly or indirectly by departmental or government counsel, are whistle-blowers then to stand alone before the onslaught of legal maneuvering and accusations? It is absolutely essential that employees taking the risk of blowing the whistle be provided with full and complete representation. To do otherwise is simply to put a price tag on accountability.

Therefore, the institute recommends that legal representation, not merely advice, be included in the resources made available to those involved in the disclosure of wrongdoing, and that the $1,500 and $3,000 limits be amended appropriately.

In clause 220, the new subsection 53(1), Bill C-2 prescribes a reward of up to $1,000 for whistle-blowers. In 2004 the institute conducted a wide survey of its membership on values and ethics in the public service. This survey was followed by focus groups from coast to coast. Overwhelmingly, the answer from our members was clear: no rewards. Several reasons for this response speak volumes as to the character of our members and the reality that they are your best resources in heightening the culture of ethics and “rightdoing” in government.

First, they want the work they do every day in providing and safeguarding services and programs for Canadians recognized and profiled—not on the rare occasions when things go wrong.

Am I out of time already?

The Chair: No, but could you go quickly?

Ms. Michèle Demers: The institute recommends that clause 220 of Bill C-2 be deleted.

I'm sorry that this is amusing to you; it's very serious for us.

● (1010)

The Chair: No, I didn't laugh, Madame Demers. I didn't laugh at all. I'm trying to move along and I've given you permission to finish. I did not laugh at all at what you said.

Ms. Michèle Demers: Thank you very much. Thank you.

[*Translation*]

The Institute's major concern respecting the government's strategy respecting passage of the Federal Accountability Act is the delay in proclaiming Bill C-11. The Federal Accountability Act may take a long time to put in place and will represent a major delay in the protections for which we have been fighting for over 15 years.

The government's argument for their strategy is that they don't want to put in place the apparatus for Bill C-11 only to have to perform a major overhaul once Bill C-2 is passed. In fact, with the exception of the tribunal, there are very few structural differences between Bill C-11 and the amendments under Bill C-2.

Since the Public Service Labour Relations Board is already in existence for its usual work, there would be nothing to tear down and replace with the creation of the tribunal, only the need to transfer any outstanding files. In addition, the details of putting the tribunal in place and communicating and operationalizing the complexities of its processes will further delay the full implementation of these protections. This is not an acceptable argument for a delay in implementing these protections.

Therefore, the Institute recommends the immediate proclamation of Bill C-11 so that public service employees have protections in place now.

[*English*]

In conclusion, the main concern posed by the Federal Accountability Act for the institute is, by far, the delay this strategy represents in seeing protections for whistle-blowers put in place. Bill C-2 is ambitious omnibus legislation and should not stand in the way of the long-awaited protections of our members who need to disclose wrongdoing in government. The government should proclaim Bill C-11 and amend it through Bill C-2.

Thank you very much.

The Chair: Thank you, Madame Demers.

Mr. Gordon.

Mr. John Gordon (President, Public Service Alliance of Canada): Thank you.

The Public Service Alliance of Canada wishes to thank all members of the committee for the opportunity to appear on Bill C-2. This legislation will touch the working lives of tens of thousands of public sector workers who are members of the Public Service Alliance of Canada.

The PSAC has called for legislation that provides guidance, support, and protection for public sector workers who wish to speak out against wrongdoing. For over three decades we've made extensive submissions and taken every opportunity that we can to address protection for public sector workers who wish to serve the public interest by speaking out against wrongdoing in the public service.

While Bill C-2 seeks to amend a number of pieces of legislation in areas of concern such as conflict of interest rules, election financing, and procurement, during this statement I will concentrate on the provisions dealing with whistle-blowing.

We believe that Bill C-2 falls seriously short in delivering in key areas such as protection against reprisals. In particular, while the PSAC acknowledges that there has been an attempt to address some of the Bill C-11 shortcomings, we do not believe that the amendments go far enough in addressing our concerns.

The Public Servants Disclosure Protection Tribunal: We have long taken the position that our members ought to have the right to pursue issues related to whistle-blowing through their collective agreements and indeed have negotiated clauses around whistle-blower protection in some of our collective agreements. Given this, the independent tribunal created by Bill C-2 duplicates functions that are already performed by labour relations boards; it is unlikely that the tribunal will be able to match the labour relations expertise of those bodies, which is repeatedly deferred to by the courts. Yet Bill C-2 requires a tribunal to deal with sensitive matters of discipline and on-the-job reprisals. We question the need for the tribunal to deal with matters already addressed by other boards.

When it comes to pain and suffering, damages awarded by the tribunal are capped at $10,000, whereas the Canadian Human Rights Act has a limit of $20,000. We are also concerned that the bill does not contemplate systemic remedies or orders relating to terms and conditions of employment other than money. The sole exception to this is the power to order reinstatement. We do not believe that the tribunal can fulfill its mandate without authority to change departmental practices and reporting structures. The PSAC is also profoundly concerned by the tribunal's power to order damages in lieu of reinstatement. The relationship of trust between the parties cannot be restored.

It is our position that those who come forward despite reprisals should never have to pay for doing so by losing their livelihoods. It is unclear what the outcome will be if the tribunal finds that the action isn't a reprisal but is nonetheless clearly grievable as an alleged violation of the collective agreement. There needs to be greater specificity as to how the jurisdiction of the tribunal and labour relations boards would overlap. Powers are needed to give whistle-blowers access to interim reinstatement when they come forward to make disclosure.

Furthermore, not only is the bill silent on the right to choose a representative in reprisal complaints, but the amount of money provided for access to legal advice is inadequate. Given the sensitive and confidential information before the commissioner and the tribunal, union responsibilities in respect of this information must be clearly established.

Finally, we are concerned by the new tribunal's exclusive authority to discipline for wrongdoing. The right to grieve discipline is fundamental in the unionized setting. In the past we have seen workers scapegoated for the wrongdoings of managers. The recourse of these collateral victims of wrongdoing has always been the grievance process. All grievances against discipline must continue to be reviewable by labour relations boards.

On the issue of reasonable grounds, the right to file a complaint should not include the requirement for reasonable grounds to believe. In allowing commissioners to refuse to deal with complaints not filed in good faith, the stage is set for needless preliminary objections. Similar language in Bill C-11 was the subject of vigorous union opposition. This language opens the door to stall tactics and switches the scrutiny from the wrongdoer to the whistle-blower. No evidence from the Public Service Integrity Officer suggests that this approach is warranted.

● (1015)

In Britain, this approach has been sharply criticized in the Shipman inquiry report. In our opinion, reviewing the substance of a complaint determines adequately whether the complaint has merit.

On awards for whistle-blowing, the PSAC is fundamentally opposed to the provision of cash awards for whistle-blowing. They are at best unnecessary, and at worst are harmful to whistle-blowers. Paying people to come forward allows abuse and leaves all whistle-blowers open to unfair insinuation. Rewards make whistle-blowers vulnerable to attacks that they are motivated by greed. What is needed to protect whistle-blowers is real compensation for financial losses and real protection from reprisals.

In regard to reprisal no longer defined as wrongdoing, under both previous unenacted whistle-blowing bills—Bill C-25 and Bill C-11—a wrongdoing included a reprisal. Subclause 197(2) of Bill C-2 amends section 8 of Bill C-11, the Public Servants Disclosure Protection Act, by deleting paragraph 8(f), which brought reprisals under the wrongdoing umbrella. The change is entirely inconsistent with Bill C-2's stated objectives.

Finally, the bill should include all public services. The PSAC criticized previous proposed legislation for not covering all federal public sector workers. We were particularly concerned about the full exemption of the Canadian Forces, the CSE, and CSIS. Bill C-2 continues the exemption, and we believe this to be unnecessary.

I'm not going to read the recommendations. They are there before you. But we'll also be sending you more detailed information on the recommendations in a brief that will come to you as soon as we can.

The Chair: Thank you, sir.

Thank you for your presentations. We will have some questions from members of the committee.

Mr. Tonks has some comments.

Mr. Alan Tonks (York South—Weston, Lib.): Thank you, Mr. Chairman, and thank you to the witnesses for being here.

Ms. Demers, you have pointed out on behalf of your association, on page 8, with respect to the implications of delaying Bill C-11:

> ...with the exception of the Tribunal, there are very few structural differences between Bill C-11 and the amendments under Bill C-2.

It is on this basis that you would recommend we go ahead with Bill C-11.

Mr. Gordon, you have indicated that you also have problems with respect to the tribunal. Both of you put forward the fact that the labour relations board would be better vested with the authorities, that in fact you would like to see the accountability flow through. Would you agree with that particular position that Ms. Demers has taken with respect to passing Bill C-11?

● (1020)

Mr. John Gordon: We feel that Bill C-11 doesn't go far enough, and we look for stronger protections. We have negotiated collective agreements that allow us to address the issues on behalf of our members. So the fact of the matter is that, concerning the labour boards in this bill that's coming up—and Bill C-11 doesn't have it either—we feel that we should have the protections built into the whistle-blowing legislation allowing us to go to the labour relations board, because that's where our collective agreement prevails.

Mr. Alan Tonks: Ms. Demers, would you like to, in rejoinder, make a further comment on that, in view of that?

Ms. Michèle Demers: Yes. We are a labour organization. We have a tribunal that has been in place for a long time that has dealt with situations like reprisals or other forms of discipline in the past. The new tribunal that's being created poses many questions for us. It's a judicial process, and we have labour relations officers who represent our members in labour relations situations. Everything is interlinked in my comments here, but the advice that is being provided for by legal counsel—$1,500, or three to five minutes—then leaves the person in limbo with respect to representation.

If you look at the list of people in attendance at the tribunal in the legislation, which was pointed out to me very recently, you have the employer, the former employer, the legal counsel of the employer.... Everything is stacked on one side. But the employee will get 15 minutes of legal advice, and then what? There is nothing that demonstrates what the role of the bargaining agent is. There is nothing that demonstrates what the process will be and the representation that this employee will be entitled to should he or she be subject to reprisal. So there's a big vacuum of process there, and of role defining, in our point of view, with respect to the tribunal.

Mr. Alan Tonks: Thank you.

The Chair: Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): First, I would like to congratulate Mr. Gordon for his election as President of the Public Service Alliance of Canada. My colleagues and I would like to apologize to the witnesses for the very short time that they were given. In my opinion, all the representatives of your organization deserved more time to express their views.

The idea for the Accountability Act came on the heels of the sponsorship scandal. Later on, last November, there was Mr. Justice Gomery's report.

One can say that you are the people most directly affected by this issue. Based on your knowledge of the workplace in the public service, I would like you to tell me what changes this bill will bring about. In fact, I would like you to tell me whether this bill could have prevented the sponsorship scandal had it been implemented 10 or so years ago.

[*English*]

Mr. John Gordon: I think if there had been a strength in whistle-blowing protection for our members, there's a possibility that all of them—not all of them, but a good 100,000 of them working in the public service in various areas—could have uncovered issues that were going on in government long before. But they may or may not have had the ability to come forward.

Obviously we've been fighting for protection for, as I said, three decades on this, and I think what we need is strong whistle-blowing legislation with strong protection for people who bring it. These are the key areas that we feel are absolutely necessary.

Would it have prevented the sponsorship scandal? With or without a crystal ball gaze, I think there may have been some indications of something going wrong had we had some ability to come forward without reprisal.

[*Translation*]

Ms. Michèle Demers: In my opinion, when these incidents took place, mechanisms had been put in place but were not in force. There weren't sufficiently strict controls over the way public funds were spent or the way contracts were awarded. I think this bill provides for better control measures, which is reassuring for the people we represent. Indeed, like it or not, the sponsorship scandal had an adverse effect on them, even if the direct decisions and directives were issued by people at much higher levels than themselves.

What is in fact new in this bill is that it makes it illegal to engage in reprisals against people who denounce those engaged in wrongdoing. In the final analysis, it gives public service employees and senior management mechanisms enabling them to exercise better control over the use of public funds.

● (1025)

Mrs. Carole Lavallée: Do you think that this bill will mean that a situation like the sponsorship scandal could not occur again?

Ms. Michèle Demers: In my opinion, public service employees regardless of their level are essentially honest people. There are bad seeds everywhere and there always will be. To avoid that kind of situation what you need is a sufficient number of control mechanisms that are applied.

Mrs. Carole Lavallée: What do you think of this, Mr. Gordon?

[*English*]

Mr. John Gordon: I don't think there's any guarantee that this bill will do that. I say this because our members are very skeptical of government and how the system works with respect to them bringing forward issues they see at the workplace.

Given that they know they have a collective agreement and their collective agreement is not going to come into play if this bill is enacted, what they will see is that you've taken away a protection they already have, however minimal, and put it into this tribunal, which is an unknown area. They believe that they should be dealt with through the Labour Relations Board system and we can represent them in that respect.

The thing is, if the bill is designed to try to assist getting information out there so that sponsorship scandals will not take place, I'm not so sure that the people are going to feel very comfortable with this legislation as it presently is.

Mr. Jamie Dunn (Negotiator, Professional Institute of the Public Service of Canada): Can I just add something, Mr. Chair?

There are two issues. Primarily from our members' perspective, worried about protection, you have to look at the Allan Cutler situation to make that judgment. If there had been a process whereby Mr. Culter could have been advised how to safely disclose, the obligation to hear that disclosure, an outside agent, an agent of Parliament to hear it, and then protection from reprisal and a prohibition on reprisal, absolutely, from our perspective that's a protection. If those protections discourage wrongdoing then certainly they go a long way.

The other piece of this bill that is aside from whistle-blowing, but definitely plays in this issue, is the changes to the report to the procurement process. The sponsorship scandal was a procurement issue. Our concern and the concern of our members in procurement is that through the certification process and other processes, responsibility is being downloaded to the lowest level. When procurement wrongdoing happens, whether or not it's instigated at a higher level, the blame will rest on our members.

Right now in the procurement area there's something like a 40% shortfall in staffing. Not only are we putting in place these huge changes, but there may not be enough people to handle these changes. You can't build in an assumption of innocence at the top levels. If you're going to bring in accountability, it has to be reciprocal throughout the ranks.

The Chair: Thank you.

Mr. Dewar.

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

Thank you for taking time today.

Just for the record, I think it might be worth having you back. I think the accountability act we're talking about is the accountability of government to the public, certainly, and there's more to do there. You represent the majority of the men and women who work every day. I think we should invite you back for a longer time period because you have a lot of expertise, obviously.

Congratulations to you, Mr. Gordon, on your new appointment, or your election, I should say.

A couple of things I want to touch on.... The comments you made about what the whistle-blower act should do are precise. Hopefully that's been captured here, because you're bang on.

What we don't want are rewards. I'm getting to the point where I think rewards are unethical. They're unethical, and you send a contrary message to everyone. I think that's something I've said before; it will fall off the table, as it's going in the reverse direction of where we want to go—it's unethical.

Providing a remedy to those who have blown the whistle is absolutely critical. You talked of the Shiv Chopras of the world and have seen what has happened to their lives, and that is something I think has to happen.

Here we are with the legislation in front of us, and you made some very interesting comments. I'm looking to the committee to get a legal opinion—and maybe we're going there already—on the sequence of representation here. I'm very concerned this would supersede bargaining rights. What this committee has to grapple with, look at, and get an opinion on—and maybe that's going on as we speak—is the role of collective agreements and the bargaining agents superseding this process. I don't think there was intent from anyone—I would hope not—to have that supersede people who are elected to represent employees. That would be a tragic irony, if we had a piece of legislation that would supersede people who are elected to represent employees. That would be more than a step backward. I think that's an important point you both underlined.

The other thing I want to follow up on is this notion—we heard it from Mr. Cutler and Ms. Gualtieri—of the isolation that occurs. You touched on something in terms of, at least if you have a union representing you, the role they can play—and they certainly said sometimes it's extremely helpful, other times less helpful, who knows—the role of the bargaining unit of the union to support during the period when someone makes that courageous act to blow the whistle is absolutely paramount.

I'm wanting to know from you, in terms of the onus on the whistle-blower and the supports—and we touched on it a second ago—what can be put in place to make sure they are indeed protected? Often you can deal with these things through language and through going to a fair tribunal or labour relations process, but how do we protect those men and women so we do have the culture of integrity that everyone is talking about?

Second, when you're looking at legally providing support and remedy, how would you advocate doing that, or is that something we'd pause and think about?

There are two questions there.

Thank you.

● (1030)

Ms. Michèle Demers: With respect to protection, I think the role of the bargaining agent needs to be clearly defined in the legislation, and the presence of the bargaining agent or representative ensured for the whistle-blower throughout the process, from the disclosure onward.

With respect to representation, as I said, we have the expertise and the experience of representing our members in front of the Public Service Commission. If this is to be a judicial tribunal that will hear cases of reprisal, is legal assistance going to be provided to the members who need to appear in front of that tribunal to the same extent as maybe the other side or the person accused of having conducted the reprisal?

Mr. John Gordon: Clearly, the whistle-blower has to be protected right from the get-go; as soon as they come forward, they should have the opportunity to have someone with them, so that they're not standing alone before any superior in divulging information. I think they need that right from the start, so they themselves have their own witness of what they're bringing forward. It then has to be documented, it has to be carried through, and it has to be an open process in which they feel very comfortable.

With respect to representation, that's our job, and we do it very well; we appear before labour boards, and when we don't address the labour board we appear before the courts. We have the capacity to do all of those things in protecting the rights of members we represent. So the unions have to be recognized as an integral part of this whole process. If you want people to come forward.... This is something that we want as well: if there's wrongdoing in government, our members want this brought to task. It always reflects on them, because if they're working in a section of government or in procurement, or wherever there is wrongdoing, the fact that they're there, whether they actually witness it or not, puts the spotlight on them as individuals, and they feel bad about it. If they go out and they're with their friends and they mention their work, the friends say, oh, it's your place that was in the newspaper this week. It makes them feel like they're part of any wrongdoing. So they would rather be front and centre, and be able to bring it forward and have protection. Clearly, that's what needs to happen here.

● (1035)

The Chair: Thank you, Mr. Gordon.

Mr. Lukiwski.

Mr. Tom Lukiwski: I'll cede my time to Mr. Poilievre.

Mr. Pierre Poilievre: I'm curious why unions who represent employees would want to take away a new right for employees that this bill has created. The bill creates a tribunal of independent judges who are on the bench and who would comprise the tribunal to hear cases when necessary. This is an entirely new right. It doesn't take away any existing right because under existing bargaining agreements employees will still have the right to go the labour relations board. The only change is that they now have a choice; if the employee is suspicious of the labour relations board or does not believe that it is the correct setting for their case to be heard, they can now choose to go to the tribunal. That choice is entirely the employee's. I cannot imagine how it could possibly be good for your members for you to want to take away that choice. Why would you want to take away that choice from your members?

Ms. Edith Bramwell (Legal advisor, Public Service Alliance of Canada): If I could answer that question, it appears to be a choice, but I'm not sure it is.

First of all, I understand what you're saying about the fact that the tribunal is established to be staffed with judges who are obviously highly legally competent individuals.

To give a little perspective on this in terms of how it really works for our members, the courts themselves and the same judges who would be appointed to this tribunal constantly defer to the expertise of labour relations boards. It is a standard feature of a judicial review of a decision from a labour relations board to have the judges say they're not going to interfere in this or overturn it because they feel this board has the expertise. The intersection between that and the way in which wrongdoing actually plays out, and is experienced by our members in the workplace, is that reprisal and wrongdoing are very often done in ways that either touch on or really directly use articles of the collective agreement. I, as a wrongdoer, am a little bit worried that you, as a worker, might speak out against me, so I'm going to start docking your hours and I'm going to start playing with your vacation and I'm going to start doing things, all of which involve the collective agreement. Or maybe, if I'm setting up a scam, I'll encourage you to file false overtime and give me a cut of it. All of those things have happened and have been dealt with by the labour relations board already; they are scenarios in which the labour relations board has real expertise.

Mr. Pierre Poilievre: Why not just let the employees choose, then?

Ms. Edith Bramwell: It's not a choice. The problem is once you go to the tribunal your choice is over, and furthermore, the choice—

Mr. Pierre Poilievre: But you can choose at the beginning.

Ms. Edith Bramwell: The exclusive right of discipline is there in the legislation for the tribunal, and that really concerns us.

Mr. Pierre Poilievre: That's not true, because the labour relations board will still have all of the same powers that it currently has—

Ms. Edith Bramwell: It will not have the right to review discipline of a wrongdoer; that has been put in place for the tribunal.

Mr. Pierre Poilievre: —and it doesn't under Bill C-11.

The Chair: Mr. Poilievre, I want to remind you, I'm up here, and you should address your comments through me to the witness, please, and the same.... I don't want to get into a debate or an argument here.

Go ahead.

Mr. Pierre Poilievre: Okay.

Under Bill C-11 the board does not have any special powers to discipline the wrongdoer; so we're not taking away a power that already exists, we're adding new powers to the tribunal to discipline.

Just to clarify once again, we have created a new choice for employees in Bill C-2 that allows them to decide if they wish to have their case heard by a tribunal of judges, and if they wish instead they can have it heard by a labour relations board. I still haven't heard a convincing argument from the panel as to why they would take away that choice from the employees.

● (1040)

The Chair: Ms. Bramwell, and then Ms. Demers, please.

Ms. Edith Bramwell: With respect, I disagree with the position put forward. The section of Bill C-2 that's at issue is clause 219, and in our written brief I'll be addressing that in more detail.

The Chair: Ms. Demers.

Ms. Michèle Demers: I just wanted to add to this debate that the Public Service Staff Relations Board does not have the authority to give out compensation for pain and suffering. You're talking about the authority of the board versus the new authority of the tribunal. What we're saying is the board has the experience of the labour world, so why not confer to them the authority to deal with reprisals and with awarding moneys for pain and suffering, and why not use the expertise and the knowledge of the people who are at the board currently? While these new judges have a lot of legal expertise, they do not have a lot of labour relations background and knowledge of how things actually occur on a day-to-day basis in the work lives of our members.

Mr. Pierre Poilievre: I think you made a convincing argument that the board should be given those additional powers if the employee chooses to go the route of the board, but I still think this is a GIC-appointed board—it's appointed directly by the cabinet, by the Prime Minister, effectively—and if I were an employee and I did not trust the government in power, I would not want to go to a group of GIC appointees and ask them to protect me or to discipline the wrongdoer. I would rather, personally, go to a group of judges.

My respectful argument is you have made the case and convinced me that the board should be given those powers as well, and then you could have the choice left in the hands of the employee. Would that be reasonable to you?

Ms. Michèle Demers: I'm a little bit disturbed by some of your comments because I feel that it's like a vote of non-confidence vis-à-vis the Public Service Staff Relations Board, or a lack of confidence in their ability to deal with this on a non-biased basis. That, to me, is very disturbing.

Mr. Pierre Poilievre: That's what whistle-blowers have told us.

I want also to clarify that the bill does not take away your right to represent your members in any of these settings. If the employee wants you involved, your unions will have that right.

Ms. Michèle Demers: That has to be spelled out, though. It's not good enough the way it is now.

Mr. Pierre Poilievre: Sure. If we can amend it to make it clearer, I think that's very reasonable.

The Chair: Thank you, Mr. Poilievre.

That concludes the first seven-minute round.

Ms. Jennings.

[*Translation*]

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): How much time do I have, Mr. Chairman?

[*English*]

The Chair: Five minutes.

[*Translation*]

Hon. Marlene Jennings: Thank you very much for your presentations. I would like to focus on the issue of the Public Service Labour Relations Board and its great expertise as opposed to a new tribunal.

Despite the questions and comments of some of my colleagues, both organizations have pointed out on numerous occasions that all the required expertise already exists within the Public Service Labour Relations Board. Although these are appointments, if I'm not mistaken, these appointments are done in consultation with the employer, the unions, the professional associations, etc. and the people appointed have to have great expertise in labour relations. They might be lawyers who practice in the field of labour relations, and so forth. Therefore, these are people who have academic training or professional training in this field, or both.

In addition, if I understood correctly, you are saying that we should give the Public Service Labour Relations Board the powers that Bill C-2 gives to the new tribunal as well as certain new powers that you've suggested or recommended. Therefore, an employee would have a real choice, because he would have assurance that he's dealing with people who have expertise in the area of labour relations. If we were to create a new tribunal made up of judges who don't necessarily have expertise in this area, the employee wouldn't have much of a choice. In a way, this choice would be illusory.

● (1045)

[*English*]

It's a sleight of hand.

Am I understanding your positions clearly?

Mr. John Gordon: I think you've captured our position very clearly. That's exactly where we feel they need to go.

The board is an experienced body and the people who are appointed to that board come from a variety of different backgrounds, mostly labour relations, either legal or working for unions or other bodies. They come from the employer side as well, who have worked in these areas. It has a wide range of abilities.

Hon. Marlene Jennings: So in fact the insinuation some might make that because the members of that commission are GIC appointments might be a sleight of hand as well, or unfair, because those people are appointed following recommendations and consultations with the bargaining units and with the employer. So it's not some politician who takes a name out of a hat and says "I'm going to appoint my buddy, my friend, or whatever." It's the bargaining units and the employer who put forward the names. Is that correct?

Mr. John Gordon: That's how I understand it happens. We make recommendations. They have a list to pick from, and they pick from the list.

Ms. Edith Bramwell: Further, the bill itself provides for increased scrutiny of all those appointments, which would address the issues that are being raised.

Hon. Marlene Jennings: Exactly. So notwithstanding some of the comments you've heard from some of the members of this committee, you continue to maintain that the best possible choice for employees, for their protection if they whistle-blow, would be to take the powers that Bill C-2 proposes for a new tribunal, and rather than create the new tribunal, give those powers to the existing Canadian commission.

Mr. John Gordon: The Public Service Labour Relations—

Hon. Marlene Jennings: Yes. I don't know the name in English.

Ms. Michèle Demers: You may want to invite representatives or the chairman of the Public Service Staff Relations Board as a witness to explain their role and their knowledge of the milieu.

Hon. Marlene Jennings: If I have 30 seconds, I would simply ask whether the commission is on the list of witnesses.

Thank you.

The Chair: Thank you.

Mr. Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): My question is for whichever witness can answer.

You've said that there were two types of whistleblower. The one that you described is always from the top down or the bottom up: the employee is opposed to his immediate superior. This is the type of whistleblower we're used to. There's also a horizontal type of whistleblowing: an employee will blow the whistle on a colleague who is engaged in wrongdoing.

You represent both people. One of them has committed wrongdoing that is sufficiently serious for the other to file a complaint. First of all, how can you defend both of these people, since you are the bargaining agent for both? Secondly, how can you direct them to the Public Service Labour Relations Board when decisions handed down by the Montreal Bar Association have shown that judges at the Quebec board, undoubtedly like those of the federal board, do not have the same kind of independence as judges in a tribunal such as the Superior Court? In Quebec, we have this important problem, and it is currently moving to other provinces.

Given that Bill C-2 provides for the creation of an independent tribunal, wouldn't it be better to opt for this independent tribunal which has already passed the test of the BNA Act, when labour relations boards, even that of Quebec, because they are headed by administrative judges, have serious problems of independence and are even challenged?

So my question is in two parts. First of all, how can you represent both people? Secondly, why don't you agree with the creation of an independent tribunal? Doesn't Bill C-2 solve the problem of the independence of the Public Service Labour Relations Board?

● (1050)

[*English*]

Mr. John Gordon: Quite frankly, as a labour organization, we already do that. On questions of harassment, when there's harassment in the workplace, we have a responsibility to get to the bottom of it and to get the employer to investigate the harassment, and then disciplinary action is sometimes taken. It doesn't take away the responsibility for the union to represent a person on that discipline, and it comes through the penalty that's put out.

Under the tribunal, if they issue a penalty, as I understand it, there's no recourse and there's no recourse to a redress mechanism. If the penalty meted out by the panel of three judges is felt to be too severe, there's no redress mechanism to cover that.

Mr. Jamie Dunn: I would add that this is the difficulty we're facing with this new model, represented by the tribunal. On issues of harassment, a complaint is made and there's an investigation. If both were members, we would represent them both in the investigation. There are findings in the investigation and then management disciplines. That discipline can be grieved and is heard before the PSLRB, and there's then a process of judicial review.

What we're faced with under this model is this inquisitorial board hears the issue, decides if there's been a reprisal, and then disciplines. The person disciplined is then faced with a judicial review process. It is a more difficult process and a much higher test, criticizing the Superior Court judges, than simply going to the Public Service Labour Relations Board or through the grievance process. We're faced with two completely different models.

I don't think anyone's trying to say that reprisals are worse than harassment. I think harassment is equally horrible. But we're faced with this new model and this idea of how to deal with the disciplines that flow out of it.

The Chair: Thank you.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: I don't think that giving workers a choice is necessarily the best solution. The Public Service Staff Relations Board does its job very well and I do not see why it could not continue to do so.

Mr. Poilievre stated that an individual who had a dispute with the government would not trust the Labour Relations Board because its members had been appointed by the government. I do not see how the individual would have more confidence in another tribunal whose judges would also be appointed by the government.

I would like to go back to the section dealing with the lobbying. Prior to your appearance, we heard from the Registrar of Lobbyists and other individuals interested in the topic of lobbying. The registrar presented us with an interesting argument that we often hear.

According to this argument, the fact that all activities pursued by every lobbyist must be reported and made public could deter public servants, professionals or non-professionals from making, keeping and establishing contacts with lobbyists, from answering their questions or meeting with them for fear of being named in their reports. Even if they have done absolutely nothing to warrant any criticism, even if everything that they have done is perfectly legal, they could decide, in order to avoid finding themselves in a situation that could eventually be made public, to not answer this type of telephone call or e-mail or to not meet with lobbyists or their representatives.

I would like to know what you think about this and whether or not these fears are real or faceless.

[*English*]

Mr. John Gordon: Number one, I don't think our members are essentially at the level to be meeting the lobbyists. It would normally be people who are more senior than them, because our members implement decisions and, at a very minuscule level, make decisions. We were listening to the lobby group this morning, and they were talking about decisions at higher levels than our members would make.

I think there should be a lot more openness, but I'm not going to speak to that issue, other than to say that our members, generally speaking, are at a very low level of decision-making, more in line with implementing the decisions. Quite frankly, implementing the decisions taken by senior managers leads to the whole issue of whistle-blowing because if they're asked to do that and they recognize it as being wrong, they have to have a place to go. Obviously it's not going to be to one of the persons telling them to do it.

● (1055)

[*Translation*]

Ms. Michèle Demers: I share Mr. Gordon's opinion on the matter, with a few minor differences. Lobbyists will not try to meet with our members in order to influence them. I do not see who in the public service could be approached by lobbyists. I do not believe that that would apply to our members.

[*English*]

The Chair: Thank you.

Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you, Mr. Chair.

I have a quick comment first, just to add my voice to this debate on whether an independent tribunal is necessary, as opposed to the current system with the labour relations board. I echo my colleagues' comments, because I honestly don't see where the problem is in allowing your members to have a choice.

It would appear to me that if, as you suggest—and you may be quite correct—because of the expertise contained in the labour relations board, we gave them, as you suggested in your amendment, more authority to deal with complaints, I still don't see where the problem is in allowing a member to make the choice themselves. We have had some whistle-blowers come to us and suggest this very thing that we've included in the act. It would appear to me that if your members are asking for it, then you should at least consider it.

I would also suggest that if, in fact, what you're suggesting is true—that the labour relations board is best qualified to deal with these issues—the majority of your members would automatically choose to go before them rather than a tribunal. So I just don't see where the problem is in allowing your members to have a choice, but again that's just my comment. You've made your case, and I'll wait for Ms. Bramwell's written argument on why you believe your position is correct.

I have a specific question and then I have an overriding comment I'd like you both to respond to.

Ms. Demers, you have stated that in the section on access to legal counsel, the $1,500 to $3,000 limits are too low, but you haven't really suggested an amount. You say they should be amended appropriately, whereas PSAC has suggested that the limit should go up to $10,000. Did you have any figure in mind that you think would be suitable for employees?

Ms. Michèle Demers: I don't have a figure to suggest to you, but I think it should be in accordance with the merit of the case and the necessity for legal advice and representation. It shouldn't be an arbitrary cap of $1,500.

Mr. Tom Lukiwski: Right. You're quite clear that that's too low, and again, PSAC has said it's too low as well, but they're saying that $10,000 be a cap. You're suggesting that from time to time a case may come forward where legal advice far exceeds $10,000 and that there be no top-end cap?

Ms. Michèle Demers: I can tell you that the Professional Institute has spent hundreds of thousands of dollars in representing whistle-blowers, and continues to do so. So $1,500 is peanuts and it goes nowhere. I can tell you that much.

Mr. Tom Lukiwski: No, I agree. I'm just trying to determine whether or not you wanted it open-ended or if you think it would be necessary to put a cap on it.

Ms. Michèle Demers: It depends on the case. I hesitate to put a cap because it could be $10,000, it could be $15,000, it could be $20,000. I don't know. It depends on the magnitude of the case.

I wanted to comment on what you said before and now I've lost it.

Mr. Tom Lukiwski: I was saying that I don't understand why you're opposed to having members be given a choice. If the labour relations board was absolutely, in the minds of your members, the best route to go, they would automatically choose that, so what's the problem with giving them a choice?

Ms. Michèle Demers: I just wanted to caution that the process for whistle-blowers needs to be simple and straightforward; it cannot be convoluted. Already it's difficult for members to come forward, to build up the courage to blow the whistle on any kind of situation. There has to be a clear path in front of them that they're comfortable with. To me, to have choices already makes it a little bit more convoluted.

In addition to that, the board currently would not be a choice, for example, for damage for pain and suffering because they don't have that authority. So they would have to go to the tribunal. So it would not be a choice.

● (1100)

Mr. Tom Lukiwski: Unless we amend the legislation, as per your suggestion.

A final question, and I know we've only got a few seconds left.

Ms. Edith Bramwell: I'd like to comment on that one issue you raised.

Mr. Tom Lukiwski: Oh, certainly.

Ms. Edith Bramwell: I think you really have to draw a distinction between unionized workers and non-unionized workers. There are some non-represented workers in the federal public service who would not have the right to go forward to the Public Service Labour Relations Board. Certainly, although we obviously don't represent those people, we would like them to have access to a tribunal. We just don't feel that the tribunal has the labour relations expertise needed to deal with these issues, and we're deeply concerned by the fact that discipline can be awarded by that tribunal, and the labour relations board has no role to play in the consideration of that discipline.

The Chair: Both clocks are going off and Mr. Dewar hasn't had a chance yet to speak. Do we have unanimous consent that Mr. Dewar can speak?

Some hon. members: Agreed.

The Chair: Mr. Dewar, you have five minutes.

Mr. Paul Dewar: I'll try to be brief.

When we're referring to and I think we're getting a bit of a consensus on the understanding of what the issues are vis-à-vis the tribunal versus the Public Service Labour Relations Board, I hope we can make some more progress on that, because I think that's bringing people up to date on what the labour relations board does and perhaps by default what the tribunal's role is or isn't.

I'd like to touch upon the whole issue of ensuring that protection is provided for everyone, and I note here, in terms of the PSAC submission, who's not included. Of course, when you mention the Canadian Forces, CSIS, and so on, there will be the national security spectre as an issue, and I'd just like your comments on that.

The other thing I want to touch on is that when we look at whistle-blowers and you go back to the reason people blow the whistle—and I can go back to the Health Canada example—the fact of the matter is the billions of dollars that could have been saved if they had been listened to, never mind public health, that acknowledgment after the deed has been done and there has been acknowledgment that there has been wrongdoing. One of the concerns I have here, and this is to contemplate, is what happens after the fact. We've heard from others who have blown the whistle and said it has been extremely isolating. They've paid the price, and it's not a material equation they're looking at but also the mending, making one whole. That's just a comment.

One last thing is that when we look at what was stated by others around the table about the best place to go in terms of where remedy can be sought, I think the issue is about what octane everyone is flying on. That's the same when you're talking about legal representation. So I think the argument is a correct one, to say it might be tricky to put a cap on it, because as I think you've mentioned before, Ms. Demers, if you look at the Department of Justice and at Joanna Gualtieri's case, they have a lot of lawyers and she was on her own. I think that's important to keep in mind, that it's hard to put a dollar on it when you have a whole department, with the legion of their staff, compared to one person on his or her own or even with the representation of a union. It's not an equal playing field, and I think that has to be noted.

But I was curious about the exemption, if you could answer that, please.

Thank you.

Ms. Edith Bramwell: Under the legislation as proposed, there is absolutely no public access to any investigation that is made by the public service integrity officer, which is something we're quite concerned about, and as I'm sure the members of the committee are aware, the Information Commissioner has raised a real red flag around that issue. I think in most cases that's entirely inappropriate, and the Public Service Alliance of Canada does not support that.

However, in the case of the Canadian Forces, CSE, or CSIS, it may be that a restriction like that is appropriate and necessary in order to allow an investigation of wrongdoing to occur but still protect what may be sensitive information that concerns public safety and issues of national security. So I don't think those areas should be shielded from accusations of wrongdoing simply by raising the spectre of national security. There are ways the national security issue, which is certainly an appropriate one, can be addressed and handled.

● (1105)

The Chair: Thank you very much.

Mr. Dunn.

Mr. Jamie Dunn: I have just one quick comment.

We have thousands of members who work at DND, and they've raised this over and over again: where do they stand? If the forces are excluded, but DND isn't, and DND deals with such matters of national security, then when do they know it's safe to go forward? When do they know that one of these red flags isn't going to be brought up? What if one of the people they need to blow the whistle on is a member of the armed forces but acts in a supervisory role to them, which is very common?

So they have a lot of concerns about where that arbitrary line gets drawn and how they're protected if suddenly those issues are raised to exclude what they're trying to bring forward in the process.

Ms. Edith Bramwell: Certainly Bill C-11 was amended in order to bring the RCMP off the list of exemptions. It would seem to me that the same rationale could apply to any of these other three organizations. We don't see why they're excluded.

The Chair: Thank you very much, ladies and gentlemen, for coming and spending some time with us this morning.

The committee will suspend for a few moments.

● (1110)

The Chair: I'd like to reconvene the meeting, ladies and gentlemen.

Our final guest this morning is the Office of the Chief Electoral Officer, and we have with us the Chief Electoral Officer, Jean-Pierre Kingsley, and the deputy chief electoral officer and chief legal counsel, Diane R. Davidson.

Good morning to both of you.

We'd be pleased to hear a few preliminary comments, if you have any, and then members of the committee will perhaps ask some questions.

Mr. Jean-Pierre Kingsley (Chief Electoral Officer, Office of the Chief Electoral Officer): Thank you, Mr. Chairman.

I do have a few comments, but they won't exceed the ten-minute time allocation.

My presentation will focus on five main topics: the appointment of returning officers, the proposed contribution rules, the application of the Access to Information Act to my office, the prosecution of election offences by the Director of Public Prosecutions, and the proposed treatment of gifts.

Bill C-2 will transfer the authority for the appointment and termination of returning officers from the Governor in Council to the Chief Electoral Officer. This is consistent with recommendations I had been making since I became Chief Electoral Officer. The bill provides that this transfer will take place after royal assent on a day specified by the Governor in Council.

As I will be ready to implement this new authority well within the six-month period following royal assent, the committee may wish to consider the appropriateness of providing for the traditional Canada Elections Act formula for the coming into effect of these provisions; that is to say, six months after royal assent, unless the Chief Electoral Officer announces he is ready to implement them earlier, which I will.

The bill proposes to remove the current ability of corporations, trade unions, and unincorporated associations to make contributions to the local level. This will greatly simplify the eligibility rules.

The bill would also change the existing cap on contributions by individuals from $5,000 to $1,000 to registered parties per year, and a further $1,000 in total per year to the candidates, the registered electoral district associations, and the nomination contestants of a registered party. That means $2,000 per year.

Contributions to leadership contests, which would be reduced to a maximum of $1,000, would remain separate from all this, which means that in a year like this year, the Liberal Party would be $3,000.

The bill's provisions respecting contributions would come into effect on royal assent, which presupposes there is no need or opportunity for Elections Canada to inform the public of the change.

The bill proposes to make the Office of the Chief Electoral Officer subject to the Access to Information Act. The only specific electoral access exception proposed by the bill provides that the Chief Electoral Officer shall refuse any request to disclose a record that was obtained or created in an examination or review under the Canada Elections Act.

The Canada Elections Act currently expressly prohibits access to specific election documents after an election without the consent of a judge. The committee may wish to consider maintaining this current protection—

[*Translation*]

Ms. Monique Guay: Could you slow down a little bit? I'm finding it difficult to follow the interpretation.

Mr. Jean-Pierre Kingsley: All right, but you have the document in front of you.

Mr. Chairman, I will speak more slowly.

[*English*]

The committee may wish to consider maintaining this current protection afforded election documents and, in addition, providing that the Commissioner of Canada Elections be recognized in the act as an investigative body so that his investigations will have the same protections respecting access afforded to other bodies performing a similar investigative role respecting offences.

● (1115)

[*Translation*]

It should be noted that Parliament has long recognized the vital importance of public access to information in the democratic process. Elections Canada was first made subject to a broad right of public access to almost all electoral matters in 1927. It may have been the first federal institution that recognized the importance of access rights, which are vital for public confidence in the electoral process. However, that same public confidence has traditionally resulted in such access rights being tailored to the specifics of the electoral process within the elections statute itself.

For these reasons, in its deliberations, this committee may wish to consider expanding access rights to electoral matters through the Canada Elections Act rather than through the application of the generic Access to Information Act to elections. If it is the wish of the committee, I could suggest some amendments to the Canada Elections Act which would meet this need.

Bill C-2 transfers the responsibility for the prosecution of offences currently conducted by the Attorney General to a new organization, to the Director of Public Prosecutions, or the DPP. Prosecutions of offences under the Canada Elections Act, which currently are the responsibility of the Commissioner of Canada Elections, will also transferred to the DPP. The commissioner will continue to conduct investigations and pursue activities, but alleged breaches of the Elections Act will be referred to the DPP. The DPP could therefore be subject to the directions of the Attorney General. The current legislation does not allow for this situation in the case of the commissioner. That is the sole difference.

My last prepared comments will be in respect of the proposed Canada Elections Act provisions respecting gifts to candidates. In my view, in order to achieve the purpose of this statute, the gifts provisions should be redrafted. I will leave the committee notes on how this redrafting may be carried out. In fact, I will leave with the committee a series of minor amendments. I will discuss them shortly.

This redrafting is necessary in order to avoid some contributions being considered gifts and having to be reported two or even three times. Redrafting could also ensure that gifts are reported by candidates for the entire time that these candidates are collecting contributions rather than simply the 36 days of the election period or from the date they may be nominated by a registered party.

The bill also proposes that a candidate not be permitted to accept any gift or other advantage that might reasonably be seen to have been given to the candidate to influence the candidate in the performance of his or her duties and functions as a member if elected. This ban will apply only for the period that begins at the drop of the writ, or the day a candidate was nominated by a party, rather than from the date the candidate started to collect electoral contributions.

The bill will require that candidates file a confidential statement with the Chief Electoral Officer setting out all of the "gifts" exceeding $500 received by the candidate from the drop of the writ or the date the candidate was nominated, whichever is earlier, until polling day. This is in contrast with the public declarations required under section 25 of the proposed Conflict of Interest Act respecting gifts made to ministers and other public office holders.

In concluding, Mr. Chairman, I would like to note that there are a number of other more technical issues respecting the drafting of the bill, which I will not deal with in these remarks. I will leave with you a list of these matters, which are of a technical nature only, and which also includes the drafting suggestions respecting gifts that I mentioned earlier.

Should the committee wish, I will also be pleased to make my officials available to work with the drafters of the bill regarding any amendments you may wish to make to it.

This concludes my remarks.

[*English*]

The Chair: Mr. Kingsley, you are well within the ten minutes, as promised. Thank you.

On behalf of the committee, thank you for your offer. We'll leave that in the hands of the committee.

Mr. Owen.

Hon. Stephen Owen (Vancouver Quadra, Lib.): Thank you and welcome, Mr. Kingsley and Ms. Davidson.

Let me get directly to a couple of points that you raised, which I think are critically important. The first is with respect to the release of documents that might have been collected during a review you were doing on an alleged breach, or whatever it might be. There is a complete exemption being suggested on the release—thou shall not disclose—in this legislation. I'm a little troubled by the concept of absolute exemptions as opposed to having the normal situation in which we would have an injury test or a public interest override that might be provided.

You refer to the current situation in which the approval of a judge must be sought for release of documents. I'm not aware of the standards that a judge applies in making that decision, but you've also suggested that perhaps with the commissioner could lie the responsibility to apply the normal test of injury or public interest override. I'd like to get further information from you on the importance of allowing that discretion under strict conditions.

The other situation about which I'd benefit from your comments is with respect to the Director of Public Prosecutions. It's not clear to me what problem such an office is meant to deal with. We know that the Attorney General remains the chief law enforcement officer of the crown, with quasi-judicial responsibility to conduct prosecutions in an impartial and independent way. I'm wondering if you're aware of any situation where the failure—if there has been a failure—or the conduct of a prosecution by the Attorney General under his prosecution service has arisen. Is that a problem? Is there something we're trying to remedy by having an independent so-called Director of Public Prosecutions?

● (1120)

Mr. Jean-Pierre Kingsley: First of all, what I would want to mention is that in both cases—as a matter of fact, in all five cases—I'm mentioning these things and bringing them to your attention so that people understand when they're passing a law what the consequences are, at least to the extent that I can read the consequences. That doesn't mean that the change is necessarily undesirable. It just means that people have to be aware of the consequences of what they're doing. That's why I focused on only five areas. They are the five main ones.

In terms of access to information, it may well be that one could make it a test under the statute that the Information Commissioner would have to apply instead of a judge in terms of access to documents. That may well work.

The other aspect of the access to information consideration that I want to bring to your attention is under the present system there is some access to information, but it's determined by the Chief Electoral Officer. What will obviously happen is that during an election there will be access requests and they will be processed through the Information Commissioner under this scheme and not under the Chief Electoral Officer. If you understand this and agree with it, it's not a problem. I know that the Chief Electoral Officer, whoever he or she will be eventually, can make this happen. That is not a concern.

With respect to the Director of Public Prosecutions, again, the comments were made in the same spirit—to bring this to the attention of the committee, Mr. Chair, so there is a recognition that there is a slight change. I do not foresee that there would be abuse, but there is a condition that would exist that does not exist at the present time, even though it would have to be done in writing by the Attorney General, if somehow he or she wished to provide direction on a prosecution specifically or general instruction. I cannot say that I'm aware of any case where there has been abuse of this in the past in terms of how our system has worked so far. All I know is that our system has worked well under the commissioner, so it behooves me to bring this to the attention of the committee.

Hon. Stephen Owen: Thank you, Mr. Kingsley. I'd just like to ask for a clarification. Simply, the one issue that I'm not properly understanding is the criterion that would be applied by a judge in providing the authority to release documents at the moment. What sort of a test is it?

● (1125)

Ms. Diane Davidson (Deputy Chief Electoral Officer and Chief Legal Counsel, Office of the Chief Electoral Officer): The test is in the statute; it's in subsection 540(8). The judge would have to be convinced that the inspection of those election documents would be useful for instituting a prosecution of an offence and/or for purposes of a contested election. So the test is very limited. It would have to be demonstrated to the court.

Hon. Stephen Owen: Okay. Thank you.

The Chair: Thank you.

Madame Guay.

[*Translation*]

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

Thank you, Mr. Kingsley. This is the second time I meet you in the space of a few weeks.

My question deals with the appointment of returning officers. I would like to know how they will be recruited and assessed. Will appointments be based on merit? Will this be a public system? Will there be a competition? I would like you to clarify the appointment procedure for returning officers.

Mr. Jean-Pierre Kingsley: In Canada, the Chief Electoral Officer has been recruiting and appointing returning officers for a long time. This has been going on in Quebec for about the last 25 years, as well as in Manitoba, British Columbia and elsewhere. In fact this is the way it is done in most jurisdictions. The federal government is one of the last ones to adopt this process.

The wording of the bill — which I fully support — calls for a merit-based-appointment process. Merit must be the key factor, and this means that, when a position becomes available for whatever reason, a public notice of competition will be made. At that time, we will provide selection criteria and a description of the process on our website and elsewhere. By virtue of the legislation, this information will also be given to the Speaker of the House. A selection committee composed of stakeholders in the electoral process will be struck. I did not use the word “public servants” because the people who sit on the committee will probably be people who already work in the electoral system in their areas. As well, a staffing expert probably from the private sector, will be recruited based on need.

To qualify for the competition, for which we will establish selection criteria, a candidate will also have to sit a written exam so that we can be sure the candidate is familiar with the Elections Act. Furthermore, we will also assess the political impartiality of each candidate.

Ms. Monique Guay: That's all very good. The process looks a lot like the one in Quebec.

Mr. Jean-Pierre Kingsley: That's how we will proceed. I might also add that current returning officers whose mandate will end and whose performance was good could have their mandates renewed without a public competition being held.

Ms. Monique Guay: You are referring to current returning officers.

Mr. Jean-Pierre Kingsley: I'm talking about people who currently hold the position and whose mandate will end, but whose performance was very good. In other words, if no major issues arose, the person could see their mandate renewed without a new competition being held.

Ms. Monique Guay: I have a few questions about the transition. When the bill will be passed, the transition will take a certain amount of time. How long will it take? How do you intend to appoint the 308 returning officers? We currently have a minority government, and we might be in election mode sooner rather than later. So you need to have a fairly specific plan. I would like you to tell the committee about this plan.

Mr. Jean-Pierre Kingsley: Mr. Chairman, under our plan — and I've already talked about it to another committee — we will consult members and parties to see whether they think the current returning officers who wish to serve again were impartial and whether they did a good job. You can have a perfectly impartial person who is completely incompetent. We are seeking feedback on two aspects of the job. Various committees established under my stewardship would take these comments into account when they review the list of officers. If a major objection is raised with regard to certain officers, that person will not be reappointed even if he or she wants to be, unless a competition is held and that person comes up on top.

● (1130)

Ms. Monique Guay: Is that process already underway?

Mr. Jean-Pierre Kingsley: The process is not underway yet. However, we have started thinking about it and we have begun preparing certain documents. We have obviously not written to the parties or the candidates yet, because the bill has not yet been adopted.

Ms. Monique Guay: I would like to ask a final question.

How does dismissal happen? How will you proceed with that?

Mr. Jean-Pierre Kingsley: Subsections 178(1) and 178(2) list a series of criteria. I would apply the same criteria, but only once it has been shown that a person is incompetent or politically biased. In my opinion, those reasons alone would be enough to dismiss someone. In other words, it would be a judgment call.

The person could also be dismissed for something as obvious as leaving their position in the middle of an election campaign. It might be because that person left for a holiday and forgot to tell us about it, for instance.

Ms. Monique Guay: Has that ever happened?

Mr. Jean-Pierre Kingsley: Would you like to know how many times it happened during the last election?

Ms. Monique Guay: That's unbelievable!

Mr. Jean-Pierre Kingsley: This type of thing would be taken into consideration. In other words, we would act like an employer would. Our performance criteria would be the same. If a person's performance was not satisfactory, other measures apart from dismissal could be considered. Dismissal is not the only possible option. We could give a warning, for example, because we have to respect the rights of the person in this process.

Thank you.

[*English*]

The Chair: Thank you.

Mr. Martin.

Mr. Pat Martin: Thank you, Chair.

My questions stem from this idea of when the director of prosecutions will in fact take over and assume that role from the independent commissioner of Elections Canada.

First of all, is there any statute of limitations on Elections Canada offences, such as a candidate overspending on their elections?

Mr. Jean-Pierre Kingsley: The present statute of limitations is seven years—up to seven years, I should say. The commissioner, after he—it is a he at this time—has obtained knowledge of the thing, must institute prosecutorial measures within a year and a half of finding that out.

Mr. Pat Martin: Must?

Mr. Jean-Pierre Kingsley: Must, within a year and a half of finding out.

Mr. Pat Martin: What happens if he fails to meet that threshold?

Mr. Jean-Pierre Kingsley: By the way, this is a new threshold from January 1, 2004. Before that, it was a year and a half for the whole shooting match. This bill would increase that to ten years—

Mr. Pat Martin: This bill will increase that to ten years.

Mr. Jean-Pierre Kingsley: —and increase the period within which the prosecution must take place to five years. So it becomes a five and ten issue, which is much better in terms of seeking to obtain the prosecutorial purposes of the statute.

Mr. Pat Martin: That's interesting. So if there were a grievance stemming from the 2004 federal election, the passing of this bill may in fact make that complaint viable; if otherwise, it would be expiring soon had we not acted on it by now.

● (1135)

Mr. Jean-Pierre Kingsley: No. The statute of limitations for anything that occurred up to the point of passage of legislation would remain up to seven years, because no law can be made retroactive in that respect.

Mr. Pat Martin: I'm thinking of one specific example. Can you confirm or deny that you referred the matter of Belinda Stronach's $240,000 campaign expenses to the independent commissioner?

Mr. Jean-Pierre Kingsley: It is not the custom to confirm or deny any referral made to the commissioner on any matter, even if reference was not made.

Mr. Pat Martin: It isn't a matter of confidentiality because the official agent who has been dealing with—

The Chair: Mr. Martin, I'm very nervous about getting into specific cases. I don't think it's appropriate for this committee to get into specific cases. I think we can talk in generalities and ask questions in generalities, but I don't want to get into specifics.

Mr. Poilievre.

Mr. Pierre Poilievre: On a point of order, Mr. Chair, I think Mr. Martin has the right to ask any questions that he chooses. If the witness cannot answer them for any particular reason, I think he's more than capable of telling the committee that.

The Chair: Well, I don't.

Please proceed, Mr. Martin.

Mr. Pat Martin: I will keep a lid on it, Mr. Chairman. I'm only asking because we've been increasingly frustrated with the elections commissioner, even though it says in our briefing notes that there have been no complaints, and everybody seems satisfied with the status quo and that the independent commissioner is doing all he can. A lot of us are starting to feel that there's one set of election rules for the rich and one for the poor—or the rest of us, at least—because we were always told that if we overspent our election financing by $10, we would not only lose our seat but also not be allowed to run again for *x* number of years. There are drastic consequences, yet we have a well-publicized, graphic illustration of overspending by a factor of three times the spending limits, and they're willing to take the word of Magna, who was the official agent, that the $75,000 for the party was indeed for the party, because they had to do a lot of "wiring".

The Chair: Mr. Martin, you're going there again. Please restrain yourself.

Mr. Pat Martin: Okay, I will. I'm only asking.... I suppose the context is the retroactivity of that particular case. It would worry me greatly if we were to lose our opportunity to prosecute Belinda Stronach for exceeding the spending limits.

The Chair: You know, we're going to have to move on. You're ignoring what I'm saying: I don't want to talk about specific cases at this particular—

Mr. Pat Martin: It isn't up to you, Chair, with all due respect.

The Chair: Well, until someone challenges me, that's the ruling I'm making.

Mr. Pat Martin: Well, we have the Chief Electoral Officer here. This is our opportunity to talk about matters within his office.

The Chair: Please proceed, Mr. Martin, and keep in mind what I said.

Mr. Pat Martin: I will, in fact.

It strikes me that we're enforcing religiously, or with great vigour, the rules on those of us who are trying to stay within the spending limits, but that it's really up to the official agent. It seems to be on an honour system. If the official agent says this $75,000 bill for this one victory party was limited to election night after the polls closed, that's okay with the independent commissioner.

Would that be in keeping with the rules as you see them?

Mr. Jean-Pierre Kingsley: Mr. Chairman, I wish to assure the committee and I wish to assure Parliament that the rules are enforced equally for everyone, whether they're MPs, rich, poor, in-between, or just candidates who didn't make it to the House. The rulings are all consistent. Whether they're made by the commissioner in his interpretation of the statute or by the officials who review these things—and one is not the same as the other—I want to assure Mr. Martin and to assure all Canadians, because we're on TV, that there is no favouritism of any kind demonstrated in the administration of the Canada Elections Act.

I can understand the concern, but I want to make that very clear.

Mr. Pat Martin: But when the official agent in this case has spent.... He said himself that he had spent the last year dealing with audits and with filing people from Elections Canada investigating the extraordinary file.... And I have copies of two binders full of all the receipts from that particular campaign.

I still find it shocking that it takes that long to apply the rules to that individual, when I've been told that if I overspent by $10, I would lose my seat, or that something swift—a lightning bolt—would come down from Elections Canada and be the end of me as an MP. But others seem to be able to drag this out.

So the director of prosecutions will now, I suppose, have better prosecutorial—

Hon. Marlene Jennings: I have a point of order.

The Chair: Thank you, Mr. Martin. Your time is up, and we have a point of order.

Ms. Jennings.

Hon. Marlene Jennings: I was simply going to ask you to recall the ruling you just made about the line of questioning being out of order.

The Chair: As time's up, we're going to move to Monsieur Petit.

Sir.

● (1140)

[*Translation*]

Mr. Daniel Petit: Good morning, Mr. Kingsley.

First, I would like you to know that I believe you are impartial. Don't worry, this is not an issue I want to raise with you.

In your document there is a summary of the provisions in the bill which you take issue with. For example, donations made to candidates go from $5,000 to $1,000. All kinds of limitations have been placed on donations and companies and unions are not allowed to make donations anymore.

I have a fairly specific question for you, and then I will share the rest of my time with my colleague.

Can you tell me what changes have been made regarding the transfer of funds from provincial parties to federal parties? This happens a lot more often than we might think. It is done through individuals. The provincial party gives $1,000 to one of its faithful voters, who in turn hands the money to the federal party. It also goes the other way. Is there anything in Bill C-2 to prevent this type of thing from happening? Unions, which supported certain parties, particularly the NDP, are not allowed to make political donations anymore. The same goes for companies, which supported the Liberal Party. But what about support from provincial parties? Is there anything in Bill C-2 which addresses that matter?

Mr. Jean-Pierre Kingsley: I don't know if Bill C-2 specifically addresses that issue, but it is illegal for a provincial party to transfer funds to a federal party. However, if a federal party organization donated to a provincial party organization, that could be done. But a provincial party which only operates at the provincial level cannot transfer money to a federal party under the current legislation.

Mr. Daniel Petit: Fine, but you have not answered my question. You have reduced donations to $1,000. Let's say I belong to a provincial party and that my party has enough money to help its federal counterpart. My provincial party gives me money — I am an individual — and I hand that money over to the federal party. That does not go against the law. From now on, unions are not allowed to make donations to the NDP anymore and private companies are not allowed to donate to the Liberals, but you have not said that provincial parties can't support their federal counterparts, which comes back to exactly what the unions and private companies were doing.

Mr. Jean-Pierre Kingsley: First, I'm not the one who created the legislation. You are the ones working on it. Whatever you do, I will apply the provisions of the legislation with vigour and impartiality.

I'll repeat what I said, because I don't understand the question any other way. A provincial party is not allowed to make donations to a federal party. If it does so through individuals, that is against the law because an individual can only make a donation with his or her own money, and any donation over $200 must be declared. That's what the current legislation says to make sure that what you have described does not happen. If it does, it is a violation of the law.

Mr. Daniel Petit: Thank you.

[*English*]

The Chair: You have a couple of minutes.

Mr. Moore.

Mr. James Moore (Port Moody—Westwood—Port Coquitlam, CPC): Thank you.

You commented a bit on the new limits on spending available to individuals when it comes to political parties and local constituencies and a leadership contest. That is a major change, we know, from the way financing has been done in the past. You didn't mention the limit on cash donations. We've heard there's this public perception arising out of events recently on cash exchanged in envelopes and so on. That's something we don't want happening. Can you comment a bit on some of the practical considerations you may have thought of on our limit—the limit that's proposed in the Accountability Act on cash donations?

● (1145)

Mr. Jean-Pierre Kingsley: With respect to cash donations, there already is a requirement that there be a receipt for any amount over $20. This would have, then, a double protection, in the sense that no contribution could be made in cash any more—it would have to be through a traceable instrument—but the requirement to provide a receipt would also be maintained.

In effect, the bill introduces a further safeguard against cash donations finding their way into the system, while protecting something that I consider to be reasonable, which is the ability at a particular meeting to pick up $20 per person from those in the room—the passing-of-the-hat phenomenon.

I can only say that this double protection I view in a favourable light and I personally don't think—even though you may have a different view—it will add an extra burden that is not worth its weight.

Mr. James Moore: Okay.

The only other question I had is on page 4. You mention in the context of gifts that gifts exceeding $500 are in contrast with the public declarations required under the proposed conflict of interest act that our public office holders will be subject to.

Do you see that as a conflict or just a contrast or...?

Mr. Jean-Pierre Kingsley: Well, I see it as a problem for me as the Chief Electoral Officer. What am I going to do with these secret reports about gifts? What am I going to do with these things? Do I maintain the secrecy around them? If they look fishy, do I refer them to the commissioner for investigation?

I haven't been able to understand how this would function in terms of what role I'm expected to perform. If it were to be a public disclosure, as it is on the other side, then there would be public opprobrium attached to the thing if it were viewed not to be acceptable, or the judgment that the Chief Electoral Officer would be called upon to pass would also be subject to public approval or disapproval.

The secrecy is something I don't understand, and I haven't been able to clear that up with our people. I will be pursuing this matter further with the people who have drafted the bill. It's just that I don't know what to do. I don't know what to do with this.

By the way, I used to run a conflict of interest regime in times past, and these documents were public. So I'm wondering if there is something that has escaped my understanding about why it's secret, and that's why I thought I'd raise it here.

The Chair: Thank you, Mr. Kingsley and Ms. Davidson. You've raised some interesting points, which the committee will consider. So I thank you for coming.

Mr. Jean-Pierre Kingsley: Thank you, Mr. Chairman.

I'll send to you this afternoon the further documents, which you can peruse at your leisure. They're not very long and we're trying to make them as punchy as possible.

The Chair: Thank you, sir. If you could send those to the clerk, we'd appreciate that. She will distribute them to the members.

Mr. Jean-Pierre Kingsley: We'll do that. Yes.

The Chair: Thank you very much.

We will recess for a few moments and then we will reconvene to discuss some committee business in camera.

[*Proceedings continue in camera*]

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