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Chair

Mr. David Tilson

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● (1805)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): I call the meeting to order, ladies and gentlemen. Could we have some order.

This is meeting 12 of the legislative committee on Bill C-2, an act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability.

Our first witness is Neil Finkelstein, partner at Blake, Cassels & Graydon. We have your curriculum vitae. I don't know how we got it, but we have it here. You certainly have some impressive credentials. Lately we've recognized you as a TV star in the Gomery commission.

Mr. Neil Finkelstein (Partner, Blake, Cassels & Graydon LLP, As an Individual): They cancelled my show, sir.

The Chair: That's too bad. In any event, we're honoured that you have come here tonight to share your thoughts with us. You know the rule. You have a few introductory comments and then the members of the committee will have some questions of you.

Welcome, sir.

Mr. Neil Finkelstein: Thank you, Mr. Chairman and honourable members, for inviting me to appear before you.

I should say I don't have any expertise or experience in many areas of the bill. I assume I was invited here because I was co-counsel to the Gomery commission. I may have some thoughts on several parts of the bill as a consequence of that. I examined panels headed by the Clerk of the Privy Council and by deputy ministers of Treasury Board, PCO, Finance, and PWGSC, which gave me some insight into the interrelationship between the public service and elected members. That may help me comment on various parts of the suggested amendments to the Financial Administration Act. I examined Mr. Chuck Guité. You'll recall that in three days of cross-examination he told me a story different from the one he told the public accounts committee, about who made what decisions and what his reporting relationships were. Again, that may help me comment on the accountability provisions in the FAA.

I examined Mr. Allan Cutler, who was the whistle-blower, and that may enable me to comment on the whistle-blower provisions in the act.

I have comments on three parts of the act. The first is quite discrete. It deals with the removal of the right of employees in ministers' offices to be appointed without competition. Under the Public Service Employment Act, Mr. Gagliano's chief of staff, Mr. Tremblay, was appointed without a competition to Mr. Guité's group and succeeded him as head.

There's no question that there have been a number of excellent public servants who have come through ministers' offices and gone into the public service who are now deputy ministers. That being said, in my view this is a good provision. There is a perception of favouritism and there is a perception of conflict. Certainly I think that was the case in front of the Gomery commission.

The second area I would like to comment on is the whistler-blower protection provisions. It is important to have a fair process to resolve whistle-blower cases. There's a real need to balance a fair and open process for whistle-blowers, including freedom from reprisals, on the one hand, and the legitimate needs of public servants to perform their functions without intimidation or fear of witch hunts on the other. So you have to have a legitimate avenue for complaints. You have to have a decision-maker who has expertise in all of the aspects of government who can balance the interests, and you have to have a fair and expeditious—and I'd underline expeditious—procedure. I think the bill, by and large, is a good process.

I would like to focus on the reprisals part. Complaints are made to the commissioner who presumably has expertise. Proposed section 19.3 on page 130 of the bill provides that the commissioner can refuse to deal with a complaint where it's been adequately dealt with elsewhere, or it's not made in good faith. I think that is a very important gatekeeper function to perform for the health of the public service generally. I should say that gatekeeper function is a lot like the one established in the Competition Act. I see in this bill dealing with whistle-blowing many analogies to the Competition Act, a statute that I'm quite familiar with and have litigated many cases under.

I also would point to the provision in proposed section 20.4 on page 136 of the bill, where only the commissioner may apply to the Public Servants Disclosure Protection Tribunal. The tribunal itself is staffed by judges, which on the one hand is good. They're above reproach; they're above conflict. The concern I have—and I'm a litigator—is that the litigation process can be time-consuming and can have a great deal of machinery associated with it, and that has to be avoided.

● (1810)

I'll say that in this bill, proposed section 21 on page 139 is important, and I underline it. It says that the proceedings have to be informal and expeditious. Notwithstanding that they're in front of judges who are used to court-like processes where the rules of evidence must be followed, it nevertheless provides for an informal and expeditious procedure. As long as that's followed, that would deal with this concern.

The third area I'd like to make comment on concerns the amendments to the Financial Administration Act that make accounting officers—essentially deputy ministers—accountable before Parliament.

The amendment contemplated in proposed section 16.4 of that act, which is page 174 of the bill, makes the deputy minister accountable before Parliament within a framework of appropriate ministerial responsibility and accountability to Parliament.

Again drawing on my experience at Gomery, there is a need to at least answer to Parliament. The fact is that deputy ministers answer to Parliament and parliamentary committees now; deputy ministers can be called in front of a committee now. But this codifies the obligation to answer, and I think this might—I say "might"—create a situation where there is less likely to be communication and reporting on a regular and continuous basis by a mid-level bureaucrat outside the chain of command.

There has to be, however, a clear distinction between answerability and accountability, because you should not set up a dichotomy where you have duelling between the public service—unelected people—and elected representatives. The responsibility for policy has to be with the elected representatives. In principle, there must be great care taken not to blur the lines of responsibility and to inadvertently make deputy ministers accountable for policy decisions.

I think this bill largely deals with that problem. This bill in that regard is carefully drawn in three respects. First, it provides that the accountability of the deputy minister is within the framework of the appropriate minister's responsibility and accountability to Parliament. That underlines the constitutional principle of responsible government.

Second, proposed paragraphs 16.4(1)(a), (b), (c), and (d) of the Financial Administration Act provide that the deputy minister is accountable in relation to the organization of resources of the department, internal control, signing of accounts—he should be responsible for that—and, the one I would be concerned about, duties "in relation to the administration of the department".

In my experience in this case, administration can shade into policy. I think it's clear from proposed paragraphs (a), (b), and (c) that the intention in proposed paragraph (d) was that the accountability not shade into policy. But one of the things you might want to consider is making that explicit.

Subject to that, Mr. Chairman, in my view this is a very good effort to balance the interests. Care must be taken, though, not to inadvertently blur the lines. As far as I'm aware, this is the first time —I stand to be corrected—in a common-law country such as ours that the obligation has been codified as it is here. That's not to say we shouldn't be stepping into unchartered waters. Columbus never would have discovered America had he been afraid to move into unchartered waters. But it is to say that care has to be taken not to deal with anything more than the problem this is established to deal with.

● (1815)

Thank you, sir.

The Chair: Thank you, Mr. Finkelstein.

Mr. Thibault.

Hon. Robert Thibault (West Nova, Lib.): Thank you, Chair, and thank you for appearing and for your comments. I have a couple of questions and then I'll leave it to the official critic.

One of the suggestions you made—not that I necessarily disagree with it, but I would like to discuss it a bit—is that question of appointing without competition staff who have worked in the minister's office for three years, and that question of perception of fairness or of competition. For argument's sake, I would challenge that they did have a competition. I would argue that these employees, these exempt staff, did go through competitions. They went through competitions to get hired in the minister's office. They survived three years of competition to maintain that position, which is a very difficult area of work.

Mr. Neil Finkelstein: There's competition in politics, sir.

Hon. Robert Thibault: I understand that.

The other thing is these individuals do gain incredible knowledge in that area that you referred to later in your comments as that grey area between policy and responsibility or administration and definition or elaboration of policy. I'm reminded a little bit about the law clerk. When he or she graduates, they are invited by competition to article with a firm such as yours. Once they go through their articling process and achieve their admission to the bar, they may be invited to remain with that firm without competition, that is, without having to go through a formal competition process that somebody who might be coming into that firm as an associate would go through.

Those are the distinctions I make. I'm fearful that we will have a position where we do not encourage young women and men of great capability to come into political service, working for ministers and MPs, with the knowledge that there is one advantage they would have: that they would not be losing those years they worked on the political side of public service, that those years would not be lost to them in a career that they might have as a public servant.

I've always found that it maintains a good balance. I've had the opportunity to work with very good women and men who evolved in the Mulroney age and who are now at the deputy minister and ADM level and have the full capability of operating their department or their branch of a department without political consideration in service to the public.

I'd ask that you comment on those points.

Mr. Neil Finkelstein: Yes, sir. I opened on that point by saying that it is my understanding that there are some excellent people at the senior reaches of the public service right now who have gone through the ministerial office route. I guess, though, I would reiterate the points I made. I'm not from government. I'm an outside lawyer and I arrived in Ottawa for a time, stayed, and left. I won't speak for the people in the commission. You can read the report yourself, but there was at least a perception of favouritism and conflict. That's the perception.

On your particular points, you say there's a competition already. It's a different competition. It's a competition in front of ministers rather than the public services. That's point one. You say these individuals obtain incredible knowledge. I accept that, and I've said that there are some excellent people in the process, but there's more than one way to obtain that knowledge.

You speak about clerks. I had the great good fortune to be law clerk to Chief Justice Bora Laskin at the time of the patriation case. There was only one law clerk per judge in those days. It was a wonderful year, and when I completed my term as his clerk, the rule was that I was not to appear in front of the Supreme Court of Canada for two years, and I didn't, because of the perception of conflict.

● (1820)

Hon. Robert Thibault: The other point perhaps that is missed in your comments is the fact that once they leave a minister's office and apply to the public service, these individuals are evaluated by the Public Service Commission. They must meet the criteria for entry, and they enter at a level in accordance with the criteria. It's not as if you leave a minister's office after three years as a junior staff member and you're deputy minister the next day.

Mr. Neil Finkelstein: No, but my understanding is there isn't a competition. You may be qualified but be less qualified than somebody else. That's my understanding of what a competition is.

Hon. Robert Thibault: Well, you could argue that, but you could say there is nobody who could possibly be as qualified as you are, because the experience you gained working in a minister's office can't be replicated in a university or work setting other than that. So I think it would be difficult to make the competition. That's the only consideration I would have on those points.

It's not a deal breaker to me, but I find it discouraging or worrisome that we would lose in the future those young women and men of all political stripes from ministers' offices who are of great ability and are willing to work long and hard hours under difficult circumstances and to contribute greatly to the process—but with the perk and understanding that they will be able to have access to the public civil service if they are capable. If they are not capable within three years, they will have either brought their minister down or will have been replaced. So I don't think from the capacity side that it's that huge of a problem.

The Chair: I'm sorry, but we're out of time. You'll have to wait until the next time—if we have one.

Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): It is an honour and a privilege to have you with us today, sir. Thank you for being here, and for having agreed to share your experiences of the Gomery Commission with us; although, I understand, of course, that that does not constitute the sum total of your experience. My questions will seek to establish a parallel between the conclusions of the Gomery report and the content of Bill C-2.

When she appeared before the Gomery Commission, the Auditor General said that the sponsorship scandal happened because, although rules existed, they were contravened, flouted and disregarded. She reiterated this sentiment to the committee when she said that the problem was not a lack of ethics rules in the government, but a lack of commitment to enforcing them.

The Conservative government is proposing Bill C-2 as an antidote to a problem it believes exists within the public service. Do you think this bill is seeking to rectify a real problem or, rather, the perception of a problem? In simple terms, are more rules needed, or is it simply a matter of enforcing the existing rules?

[*English*]

Mr. Neil Finkelstein: I've only commented on three areas of the bill. I regard those areas as extremely important, but none of them imposes additional rules, as I understand it. What they do is provide additional process. Ms. Fraser was right: there were substantive rules in place and they weren't followed; there were reporting relationships that weren't followed; and there was a reprisal against Mr. Cutler, which has highlighted the lack of a process.

So on the whistle-blower point, there is now a process, and you heard my comments on it.

On the respect for the rules, there is this codified process, where the deputy minister is accountable before Parliament and must answer to Parliament in relation to the administration of his department. Would that change the outcome in the sponsorship scandal? It's very hard to tell in any one particular case what would happen. But I think what would certainly be the case is that the deputy minister would understand that on a regular and continuing basis he has a statutory obligation to answer, and that might—might—have made him more careful to ensure there wasn't the reporting relationship between Mr. Guité and others that there was.

● (1825)

[*Translation*]

Mr. Benoît Sauvageau: Treasury Board also knowingly failed to implement the oversight mechanisms that it ought to have applied. Ms. Fraser told us that, at that time, there were about 72,000 rules in place on accountability, responsibility, and so forth — I do not know whether that is an exaggeration — and yet additional ones are now being introduced.

Firstly, with your indulgence, I would like to address the matter of perception. According to the Conservative government, Bill C-2, amongst other objectives, aims to correct both problems relating to poor public service management and public perception. I asked a witness who is an expert in this field whether other countries or other Canadian jurisdictions had introduced similar pieces of legislation that had successfully resolved problems of public perception, an outcome that is, after all, a stated objective of the bill. His answer was no.

When we studied the bill that created the post of ethics commissioner, as well as introducing both an ethics code for members and ministers and an ethics code for senators, some people said that it was an attempt to improve public perception. It has now been two or three years since the post of ethics commissioner was first created, but I do not think that the Canadian public now have a more favourable image of Parliament. You argued that ending the practice of making appointments without holding competitions would correct the problem of public perception. To my mind, it may improve the image of Parliament in the eyes of those who are following the committee's work, but not in the eyes of the public in general.

I therefore think that there is a world of difference between the bill's stated objective and what it will actually achieve. That does not mean that we should do nothing. I would like to hear your views on this.

You told us about those aspects of the bill that you believe constitute positive measures, such as protecting whistleblowers and putting an end to the practice of making appointments without holding competitions. However, should you consider some of the bill's provisions to be less desirable, even if you have not mentioned them today, I would ask you to send your comments on them to us, through the chairman or the clerk, so that we can improve Bill C-2. Although you made some positive comments, I am certain that you do not consider the bill to be perfect.

I would therefore ask you to send us any comments or suggested amendments that you would like to make.

[*English*]

Mr. Neil Finkelstein: To be fair, sir, I think I said that by and large I thought the provisions I commented on were positive. I don't think I used the word “perfect”; I think that may be your word.

What I did say in relation to whistle-blowers is that there must be care taken that the process be expeditious.

What I said in relation to the reporting to Parliament was to suggest an amendment that for greater certainty the answerability not extend to policy issues.

In terms of your comments about perception, I'm not a pollster. I can't really help you there; that's your job. All I can do is suggest that there are areas where there might have been a problem, and that this might be a step in the right direction.

The Chair: Okay, we're going to have to move on.

Mr. Dewar, Mr. Martin, which one of you wishes to speak?

Mr. Dewar.

● (1830)

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Chair, and thank you for your presentation.

I would like to go through the three areas you commented on. I'll start with the first topic you brought up, and that is the politically exempt staff and how that works.

For the record, in fact, I disagree with my friend down the way. I would like to have seen retroactivity in this, particularly when we saw just after this election, yet again, people being dropped into various ministries. I'll tell you, as someone from Ottawa, as someone who represents public servants, it creates within the public service, to put it mildly, a little bit of resentment to watch people cut the line and without merit—we talk about competition, it's about the merit principle here—be able to get positions that other people have to wait for and apply for. That's just a comment.

The other area we haven't talked about is the reverse situation, and that is where people are brought from and seconded to political staff. I'd like you to comment on that. That's happening. There are people in this town, and I've actually talked to some, who—and I'm not sure we know how many—aren't political staff who go into the public service, but they are public servants who are seconded and brought into a political job. I'd like your thoughts on that.

Secondly, we've talked about the fact that we need a fair process, an expedient process, to protect whistle-blowers from reprisals. I'd like to get your comments on the composition. You touched on it and Mr. Cutler touched on it—the fact that maybe we shouldn't just have judges, but maybe others could be involved, and also, as a last resort, that the courts be an option. If so, what kind of support would a whistle-blower have? Should it be beyond $3,000 or beyond $1,500, considering that sometimes whistle-blowers are fighting a department that's fairly well stocked, if you will, with resources?

The final one is about your comments about policy and accountability. I note that in the Gomery recommendations there are various things that could deal with that. When we look at codifying, having a public service charter is part of recommendation 2, but there are also some comments about the length of time a deputy minister serves. There's been a real concern in this town about the fact that deputy ministers aren't around long enough. I can certainly see a problem if you're asking deputy ministers to be more accountable. It's very difficult if you've only been there for six or eight months. How can you be accountable if you haven't been there? I'd like your comments on that, because it was in Gomery and it's been identified by other policy-makers and people who look at policy. They also talked about committees having enough resources, so that the public accounts committee, in particular, can have a deep enough well to draw from to do their job.

I'll stop at that.

Thank you.

Mr. Neil Finkelstein: On your question about public servants going into political jobs, I have no comment. My experience was the other way, and my comments really were limited to that. Without commenting on whether it's a good or a bad thing, it raises different issues.

When a political person goes into the public service, it raises an issue different from when a non-partisan person goes into a partisan situation. There may be issues if that civil servant goes back, but that's beyond the scope of this bill, as I understand it.

Concerning the composition of the tribunal, I told you about the Competition Tribunal. The Competition Tribunal is made up of Federal Court judges and lay people with expertise, so that's the tribunal I'm most familiar with. They sit as a quorum of three. There must be one judge; one lay person, who is generally an economist; and then one other person, who is either a judge or an economist. There are either two judges and one economist or one judge and two lay people.

That would be another way, certainly, to go here—people with expertise in government and judges forming a heterogeneous panel.

In terms of court as an option, my view is it would not be a good option. In fact, my comments were actually the opposite. My comments were that the difficulty with a court is it takes a very long time, it's public, and in many situations you can do terrible damage to an innocent person's reputation—either the whistle-blower or the person upon whom the so-called whistle was blown. It would be very unfair to that person to have that made public over a long process. These things have to be dealt with expeditiously.

So I would not have court as an option.

In terms of the recommendation that there be a hard and fast rule that deputy ministers be changed, again I don't see that as being part of the Federal Accountability Act. I think it really would work on a case-by-case basis, though.

It's always the issue of experience versus the need for change. Sometimes you want experience and you wouldn't want to be forced to rotate it out; sometimes you want change, and there you are.

● (1835)

The Chair: Thank you, sir.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Mr. Finkelstein, I have a question for you. As you know, a whistleblower would be more comfortable appearing before independent judges than he would be appearing before a government body, which could be subject to pressure from the government. We know full well that such bodies do not have the same independence that superior court judges have long enjoyed.

Bill C-2 recommends that the tribunal comprise independent judges, such as Justice Gomery. Justice Gomery was chosen partly because he was independent of political power or influence. Relying on a government body, no matter which one it is, could create a problem. Take the example of somebody who is appointed for four or five years; when he reaches the end of his mandate, he could be offered a renewal of his contract, a higher salary, a bigger office, and so forth, on the condition that he toe the party line. A lot of pressure can be brought to bear on a government body. In Quebec, we experienced a similar situation with the administrative tribunals.

Have you reflected upon the fact that a whistleblower would undoubtedly feel more comfortable before superior court judges, given their long-recognized judicial independence?

[*English*]

Mr. Neil Finkelstein: We're talking about reprisals now. This tribunal deals with reprisals, not with the original complaint. The first complaint about the reprisal goes in front of a commissioner, who is not a judge and who has the authority to either not follow through on the investigation—I pointed out that provision—or not to bring proceedings. So it's not dealt with by a judge at all levels, but only when it gets to a certain level in the process.

When it gets to the tribunal, you'll recall that in my opening comments I said there were advantages to using a judge. The one I gave was the independence, the tenure.

My real comment was that care has to be taken to make sure that proposed section 21 is applied, that the process is expeditious and effective. And there are overly court-like procedures. That's not the bill. The bill says proposed section 21 should be informal and expeditious.

I simply caution you that there's a similar provision in the Competition Tribunal Act, that proceedings should be informal and expeditious but consistent with fairness.

I have done four contested merger cases in the Competition Tribunal. The longest one, by the time it got to the Supreme Court of Canada, took seven years. The shortest one, which didn't go past the tribunal, took a year and a half. So that's not an issue with judges; it's an issue of making sure that "informally and expeditiously" means just that.

● (1840)

[*Translation*]

Mr. Daniel Petit: Mr. Finkelstein, I know that you have read the bill and that you know that a whistleblower is somebody who has not been involved in a crime, but who has disclosed a crime or an act of wrongdoing. What is your view on what we refer to as the Repentant Witness Act? By repentant witnesses, I mean people who were involved in the crime in question, but who testify against others to get a shorter sentence. This is something that happens. How do you perceive the two pieces of legislation as being related? Have you studied this aspect of the question?

[*English*]

Mr. Neil Finkelstein: I'm sorry, sir, in what respect? I don't mean to be facetious. I don't understand the question. My comment really was on the process. I'm not sure that whether a person is an innocent or a repentant wrongdoer really makes a difference in the sense of the way the process plays out.

[*Translation*]

Mr. Daniel Petit: Very well. Thank you.

[*English*]

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Is there more time?

The Chair: Yes. You have less than two minutes.

Mr. Pierre Poilievre: On that same point, the staff relations board, which was proposed to protect whistle-blowers under the previous whistle-blower protection bill, Bill C-11, does not have the ability to discipline someone who has punished a whistle-blower.

One of the things we've tried do with the tribunal we're creating to protect whistle-blowers is to have an independent body that can actually discipline someone who has bullied a whistle-blower, because it's not realistic to expect politicians or bureaucratic leaders to discipline someone, or to discipline themselves, in fact, when they might have been the one who is actually doing the bullying in the first place. So we've taken that totally outside the executive branch of government, and the only place it can realistically reside is with the judiciary, which has obvious experience in disciplining—they hand out sentences, after all.

So that is a function that cannot exist in the staff relations board. I'm wondering if you agree with me and with the government that it should be an independent body that disciplines bureaucratic and political bullies, as opposed to having the bureaucratic and political leadership carry out that function.

Mr. Neil Finkelstein: The short answer is yes.

Mr. Pierre Poilievre: Thank you. That's a very good answer.

Mr. Neil Finkelstein: I tend to try to avoid the short answers, sir, but in this case it seems appropriate.

The Chair: You're finished, Monsieur.

The committee has two minutes, if we're taking rounds.

Mr. Dewar has enough for two minutes, if he wishes. If not, we'll give it to someone else.

Mr. Paul Dewar: Thank you.

I want to follow up on the whistle-blower thread. We've talked around this table about having parallel streams, if you will. One is the tribunal. Others who are coming at it from the union side of the equation have said that perhaps the labour relations board is another stream they could go down—and certainly the preference being available to any one individual—but the difference is that they would have to be given additional powers so that both the tribunal and the board would have the same kinds of tools. The reason is just one of trust and culture, in that the labour relations board is something unions are used to, and so are their members.

I just wonder if you'd like to comment on that, because it's a discussion we've had around the table here.

● (1845)

Mr. Neil Finkelstein: As a general proposition—as a litigator now—I feel more uncomfortable in front of a judge than a board.

The Chair: I think that's it, sir. Thank you kindly for coming.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Just a quick point of order, Mr. Chairman. I'm wondering if we will have time in tonight's agenda for committee business. If not, when will we be able to find some agenda time for some brief committee business?

The Chair: It's up to the committee. We're scheduled until eight o'clock.

Why don't you talk about it with the caucuses in the break? I'll do whatever the committee wishes.

We'll take a short break.

● _____ (Pause) _____

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● (1850)

The Chair: Ladies and gentlemen, we will reconvene the meeting.

Our next guests come from the Public Service Labour Relations Board. With us this evening are the acting chairperson, Sylvie Matteau, and the executive director of the board and general counsel, Pierre Hamel.

Good evening to both of you. You can make some preliminary comments, and then there will be questions from the members of the committee.

Thank you very much for coming.

Ms. Sylvie Matteau (Acting Chairperson, Public Service Labour Relations Board): Thank you very much, Mr. Chairman.

I have a preliminary statement to make. I will make it in both French and English and alternate between the two languages. Mr. Hamel will assist in our discussion later on with your questions.

On May 8, 2006, I was designated to act as chairperson of the Public Service Labour Relations Board by the Minister of Canadian Heritage until a chairperson is appointed. The Minister of Canadian Heritage is the designated minister for the purpose of the Public Service Labour Relations Board.

[*Translation*]

I am honoured to appear before the committee in this capacity and am pleased to provide information on the board's mandate and responsibilities under various statutes, mainly the Public Service Labour Relations Act.

[*English*]

The Public Service Labour Relations Board is an independent, quasi-judicial statutory tribunal responsible for administering the collective bargaining and grievance adjudication systems in the federal public service and the parliamentary service.

The board's success in the important mission that Parliament has conferred on it depends in large measure upon the neutrality and impartiality, both perceived and real, with which we deal with matters coming before us. To ensure that we safeguard this neutrality, which is vital to our independence and credibility, you will understand that I must refrain from expressing views on the substantive provisions of the bill, which you are current reviewing, or indeed the legislative provisions of any statute that may come before the board for adjudication at any time. It will also be inappropriate for me to comment on any particular case presently before the board. Consequently, I feel that I am under an obligation of reserve with respect to the matters that are discussed here at the committee, and I trust the committee will understand this imperative.

I appreciate that the committee is particularly interested in the amendments to Bill C-2 that affect the Public Servants Disclosure Protection Act and that have implications for this board. The act confers on the board the responsibility to deal with complaints made by public servants against reprisals. Amendments to that act, which are contained in Bill C-2, would remove this responsibility from the board and establish a new public servants disclosure protection tribunal to hear and decide these matters.

[*Translation*]

I realize it has been suggested in some quarters that the board should serve as the forum before which employees may present complaints against reprisals. For the reasons I just mentioned, I have no view to express on either of those proposals. However, in order to assist you in your deliberations on these questions, allow me to briefly describe the board's existing mandate and responsibilities.

As you probably know, the board was originally established in 1967 as an independent, quasi-judicial statutory tribunal, and since then it has accumulated an important body of jurisprudence and knowledge in all matters related to labour relations in the public and parliamentary service.

While a new board with an expanded mandate was established on April 1, 2005 with the coming into force of the Public Service Modernization Act, in fact it serves to continue the work of the former board.

As an independent entity, the board is a separate employer and it reports directly to Parliament on its activities to a designated minister — currently the Minister of Canadian Heritage.

Members of the board are appointed from two lists, one of which is provided by the employers and the other by the bargaining agents. Appointments are to be made to the board so as to ensure that, to the extent possible, an equal number of individuals are appointed from each list. Even though a board member may have been recommended by one party or the other — either the employer or the bargaining agents — the legislation specifies that members do not represent those parties and requires them to act impartially at all times. Board members are further guided by the board's code of conduct and guidelines, reviewed and updated in 2005.

Finally, the legislation requires that, to be eligible to hold office as a member, a person must have knowledge or experience in labour relations.

In carrying out its mandate, the board is called upon to hear and determine applications and complaints of various kinds, including complaints by a public servant that he or she has been subject to reprisals for having exercised a right recognized by law, or for having participated in the legitimate activities of an employee organization. The board is also responsible for dealing with complaints made by public servants who allege that they have been victims of reprisals for having exercised a right under part II of the Canada Labour Code, in other words, the occupational safety and health provisions. The board has been vested with this jurisdiction since 1986. Thirty-three such cases are currently before the board.

● (1855)

[*English*]

The vast majority of the board's work is to adjudicate on grievances filed by federal public servants that relate to the application or interpretation of a collective agreement, to disciplinary action imposed on employees, or to the termination of employment for disciplinary or non-disciplinary reasons.

The act provides that board members hear and determine grievances and sit as adjudicators as assigned by the chairperson. In board matters, a panel of three members can be appointed at the discretion of the chairperson.

The board's jurisdiction covers approximately 221,000 public servants grouped under 86 bargaining units and represented by 30 bargaining agents. The Treasury Board is the employer for over 162,300 public servants. Other public servants, of course, work for the remaining 23 separate agencies. In addition, parliamentary employers hire a total of approximately 2,700 employees.

There are 4,037 grievances currently before the board under both the Public Service Labour Relations Act and the Parliamentary Employment and Staff Relations Act.

Under the new Public Service Labour Relations Act, adjudicators of the board can deal with human rights aspects of grievances they are seized with, something that was not possible under the former act. This jurisdiction exists in parallel with the right of federal public servants to file a complaint before the Canadian Human Rights Commission, and it gives the commission the right to make representations before the adjudicator when the issue of human rights is being considered.

The board also provides mediation and conflict resolution services to help parties to resolve differences at the bargaining table or to settle their cases without resorting to a formal hearing.

As part of its newly expanded mandate, the board has established compensation analysis and research services to support the employers and the bargaining agents in their collective bargaining. The board is also responsible for administering the labour relations collective bargaining and grievance education framework for employees of Parliament.

As you can see, the board's mandate is multi-faceted and covers a wide range of labour- and employment-related matters affecting federal public servants and parliamentary employees. It is involved in redress procedures for persons employed in the federal public and parliamentary services, and it operates very much in a court-like fashion, although it strives to operate in a more informal manner.

To enable the board to carry out its mandate effectively, the statutes give the board and adjudicators a wide array of powers akin to those of a court of law, including the power to summon witnesses, order the production of documents, order pre-hearing conferences, hold hearings in person or sometimes in writing, and summarily dismiss a frivolous or vexatious application or complaint.

It can order remedies such as reinstatement and damages to correct any wrong that demonstrably occurred.

● (1900)

[*Translation*]

Decisions rendered by the board and adjudicators can be judicially reviewed under the Federal Courts Act on a question of law, natural justice, or jurisdiction.

Over the years, the courts have set a high threshold of review of the board's decisions — that of patent unreasonableness — on the grounds that the board is a specialized and expert tribunal in the field of labour and employment relations.

Over the years, approximately 10 per cent of the board's decisions have been reviewed at the request of one or the other parties. Of this number, the Federal Court has upheld the board's decision in 80 to 90 per cent of cases. The decisions rendered by the board are binding on the parties and may be filed in the Federal Court. An order so filed becomes an order of the Federal Court and may be enforced as such.

As I have already mentioned, over the years, the board has also encouraged the parties to resolve their cases and differences with the assistance of mediation. The board has staff mediators who assist the parties in their efforts and can also utilize outside experts for that purpose.

[*English*]

Mr. Chairman, I hope this overview of the mandate and responsibility of the board under existing legislation has been useful.

I reiterate that I express no opinion on the legislative proposals that are before you or the scheme provided under the Public Servants Disclosure Protection Act. I can assure the committee that the board will be pleased to carry out, with the suitable level of resources, of course, whatever role Parliament considers appropriate to confer on it as the labour tribunal for the public service of Canada.

[*Translation*]

That concludes my remarks, Mr. Chairman. I would be pleased to answer any questions the committee may have.

[*English*]

The Chair: Thank you, Ms. Matteau. I know there will be some questions.

Mr. Tonks.

Mr. Alan Tonks (York South—Weston, Lib.): Thank you, Mr. Chairman.

Thank you for a very excellent overview with respect to how the board operates.

Inasmuch as a disclaimer has been made in terms of making comments on the legislation, I'm at a bit of a loss as to how to question Ms. Matteau.

What really is before us is a challenge that was put by the Public Service Alliance and a professional organization, which left the proposition thusly: if the labour relations board architecture was vested with the additional powers that are being suggested to the tribunal, it could, in their opinion, work with its corporate memory and its ability to act expeditiously; it could do the job, and it would not be necessary to recreate a system that in fact is there. That was basically the proposition that was put forward.

I'm not sure whether I'm stepping beyond the boundaries that Ms. Matteau is comfortable with, but I think she can see and feel the dilemma. In order to explore the validity of the alliance, it would be necessary to extract an opinion at least. So I guess I'm going to phrase the question in this way. Given the terms and conditions with respect to the tribunal, do you believe it would be in the interests of the employee and the employer—because you said the arbitrations board is a balanced board, that it applies precedents, the labour relations act, and all aspects of collective agreements—to create an additional body, as suggested in this legislation? If not, do you feel you could make suggestions as to how the labour relations board could do all that this bill makes it accountable for?

● (1905)

Ms. Sylvie Matteau: Thank you, Mr. Tonks.

I fully understand the dilemma we're faced with. I think you do understand the dilemma we are in as a tribunal, and I thank you for that. We will try to answer the question as best we can. Your effort in trying to phrase it in that light is very much appreciated.

Under the existing legislation, I think I have tried to give you a broad idea of what the board is familiar with, has experience with, and has the power to deal with in terms of remedies and conducting hearings. As you are looking at the possibilities of a new tribunal, these are obviously the things you're looking at, so you will be able to hopefully compare and make a determination as to what you, as a committee and Parliament, think is best.

I also hear that we have been invited to the committee following some suggestions from the two parties that you mentioned. Even in that light, I believe that one of the advantages these organizations may see with this board is the experience and their familiarity with it. I could leave it at that. The board, however, does not have an opinion, as I was saying, as to whether we should deal with this.

Mr. Alan Tonks: I think my colleague, Ms. Jennings, would like to follow up.

Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.): Thank you very much, Mr. Chair.

Thank you very much for your presentation.

I understand very well that given the mandate, authority, and responsibilities of your board, you aren't able to say, we can do the job that's been suggested by other witnesses that Bill C-2 currently would give to an entirely newly created organization. That's very clear to me, and I would hope to any impartial listener—whether they're in this room or watching by television—when you describe the expertise that your board has, the qualifications, the types of cases you deal with, the authority you have. You make the point that your authority was expanded under the modernization, and you dealt with it and you've handled it.

The underlying point—I will say it, you can't—is that if this committee in its wisdom decides that rather than creating an entirely new structure, we take the powers that would have gone to that structure, that tribunal, and we invest your board with it, your board will be able to handle it more than adequately, more than efficiently. You've got the expertise, the experience, the qualified people—you've got it all. There's no difference in terms of the appointments, because judges are appointed by Governor in Council, as are the members of your board. The difference is that they're there for life, until they're 75, whereas you guys aren't. If you're going to stay there, you have to be qualified and you have to continue to be qualified.

Have I taken up my two minutes?

● (1910)

The Chair: You have indeed.

Hon. Marlene Jennings: Thank you.

The Chair: Thank you very much.

We'll move on to Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): I would like to begin by thanking you for your excellent presentation. I was very glad to hear you say that you did not want to give an opinion on the choice to be made between the Public Service Labour Relations Board and the famous Public Servants Disclosure Protection Tribunal. You said that the board reports directly to Parliament through a designated minister. You also explained the way in which appointments are made to the board. I think that is very relevant to our discussion. Obviously, the fact that you already handle complaints made by public servants who allege that they have been victims of reprisals, and the fact that 33 such cases are currently before the board, attest to your experience in this field.

Firstly, I would like to know whether public servants have expressed reticence about taking a matter to the board for fear of being treated unfairly? Secondly, you spoke about additional responsibilities. However, in light of what you have told us, I wonder if it could really be described as a broader mandate. Let us say, for example, that Bill C-2 mandated a new body to carry out the work that you currently do. Would it truly have a broader mandate, or would it not simply be carrying out your current mandate?

Ms. Sylvie Matteau: I would first like to state that, to the best of my knowledge, there have been no instances of public servants complaining or expressing concern about their complaint being treated unfairly.

Mr. Benoît Sauvageau: Mr. Poilievre seems adamant that he has heard of such cases. Perhaps he would care to enlighten us?

[*English*]

The Chair: Let's not have a debate here. Ms. Matteau is trying to answer a question, so let her do that, please.

Please proceed.

Things happen from time to time; just ignore them.

[*Translation*]

Ms. Sylvie Matteau: Thank you.

To our knowledge, no one has told the board about any concerns of this kind.

Moreover, we have to make some distinctions regarding the additional responsibilities to which you alluded. Under the Public Service Modernization Act, the board has been given new responsibilities with respect to the processing of human rights complaints. It used to be that the board no longer had jurisdiction as soon as human rights were involved in something such as, for example, a grievance.

The Public Service Modernization Act and the new legislation will ensure that the adjudicator responsible for hearing a grievance will now be able to continue exploring the entire issue. Basically, it was decided that this was an issue of labour and labour relations law and that things were occurring in the workplace. If a grievance pertains to both human rights and disciplinary measures, the board now has the authority to continue reviewing the file. This is what I was referring to when I spoke about an expanded mandate.

Clarification is required for certain aspects found in Bills C-2 and C-11. For the time being, that matter does not fall within our jurisdiction. As I already explained, we have a great deal of experience in retaliation measures. The 33 files we are currently studying were submitted pursuant to the Canada Labour Code. However, we are also analyzing retaliatory measures associated with practices occurring during the negotiation of collective agreements. We are responsible for this aspect as well as for analyzing various files.

● (1915)

Mrs. Carole Lavallée: Are we to conclude that if Bill C-2 were to be adopted today, with this amendment, you would be obligated to send the 33 cases you are currently examining to the tribunal?

Ms. Sylvie Matteau: No, because we are examining these files pursuant to the Canada Labour Code and the legislation clearly assigns this responsibility to us.

Mrs. Carole Lavallée: Would you agree to deal with other cases where public servants complain about retaliation?

Ms. Sylvie Matteau: We do not deal with retaliation cases further to whistleblowing.

Mrs. Carole Lavallée: Thank you.

[*English*]

The Chair: Mr. Dewar.

Mr. Paul Dewar: Thank you very much.

Thank you very much for your presentation. It was a request to the committee, just to have an idea.... As you've already heard, there was some mention from one of the other panels to look at your responsibilities, your scope, what you're able to do. You've clarified a number of the questions already, so thank you.

I have a couple of questions. To start off with, the work you're presently doing...right now, roughly how many cases are in your backlog? If you've already mentioned it, I apologize. But to clarify, roughly what is your backlog? I know this is hard because every case is different, but on average, how long does it take for a case to make its way through the board?

Ms. Sylvie Matteau: Thank you.

The definition of a backlog would be an interesting one, I think, for everybody to know. We have over 3,000 cases carried forward from the previous year. Right now we are handling and managing all of those cases. A great majority of the cases will be settled or will be scheduled very briefly. If you're hearing of a backlog at the board, I think it would be more accurate to look at what we are experiencing right now as regular management of our files, in that what is coming in and going out is within the norm and is not adding to....

We are successful in scheduling cases for termination, for example, within four months. We will endeavour to schedule all other cases within five months. So at this point what is happening is that the resources on both sides—the two parties, the bargaining agent and the employer side—are short, and we have requests for postponements due to that.

In response to that, we are trying to innovate and provide both parties with new procedures. We've developed the expedited adjudication process. We are regularly using pre-hearing conferences in order to have the parties maybe narrow the number of days they may need, and those sorts of things, and to try to get a date from them to see when we can proceed.

So we're being very active in this regard, and we don't feel that we're overwhelmed at all. As I said, the numbers are stable and we're managing all of those files.

● (1920)

Mr. Paul Dewar: With regard to your new responsibilities—in fact, you would have had others if other legislation had been put through—you're telling us in your document here that you are able to call witnesses and to investigate and to provide some remedies. You'll note from the legislation that's in front of us that there are similar kinds of powers to be given to the tribunal.

What additional tools would you require to meet the same kind of standard that is being set out in Bill C-2, or would you require further tools than resources? That's why I asked you the question. You obviously need more resources, and that's maybe for us to put on the table and not for you. I appreciate your position.

I'm curious, but if you were given this responsibility or a similar responsibility as the tribunal, what additional tools or scope would you require in terms of remedy and investigation...? Well, you have abilities to investigate and to hold hearings, etc., but what additional powers would you need?

Ms. Sylvie Matteau: In terms of the cases that would then come to us, all of the powers we have as a quasi-judicial tribunal.... That's the way we look at it. We do have these powers. By directing these cases to this board, if you will—if that's a good way of describing it—we will be handling the cases with the powers we have, and that's the way we look at it.

Mr. Paul Dewar: [*Inaudible—Editor*]...as far as we know. But take a look at it and let us know if you would—

Ms. Sylvie Matteau: Right. We can take a more precise look at it.

As far as remedies are concerned, we do have extra remedial powers with the human rights cases, which equates to the one the Canadian Human Rights Commission has, which is the $20,000 and....

The Chair: Thank you, Mr. Dewar.

Mr. Poilievre.

Mr. Pierre Poilievre: We had hearings on Bill C-11 for well over a year and we heard from a host of whistle-blowers, and not one of them said they wanted the staff relations board to be the mechanism to protect them from reprisal—not one. I took the liberty of contacting a host of them this past week to find out if they've changed their point of view, and I have a list, which Mr. Sauvageau asked for, of public servants who are whistle-blowers who do not believe the staff relations board is suitable for this function.

In fact, I have here Joanna Gualtieri, who says she does not believe the board was of any use at all in her case. I have additionally Shiv Chopra, Margaret Haydon, Allan Cutler, Brian McAdam, Selwyn Peters, and Joanna Gualtieri, who have all said they would prefer to have a tribunal of judges oversee cases such as their own instead of the board.

This is what whistle-blowers are saying. Unions, who have some control over the composition of your board, might feel otherwise, but I'm taking the word of whistle-blowers, for whom this bill was drafted and whom it is meant to serve. That's the first point.

I should also point out that Dr. Keyserlingk, who has been overseeing whistle-blower protection in this country, although with limited powers, also is of the view that a tribunal of judges, and not the board, is perfectly suited to do this.

Finally, I should note that it's a false dichotomy, because what the Accountability Act proposes is to give public servants the choice of whether they want to go to your board or to a tribunal of judges. We are of the view that whistle-blowers should continue to have that choice, and if other parties want to take away that choice from whistle-blowers, that will be their decision, and they'll have to explain it to whistle-blowers.

I want to get more clarity on your mandate as it stands now. Do you have the power to discipline?

● (1925)

Ms. Sylvie Matteau: We do not have the power to discipline.

Mr. Pierre Poilievre: Do you have the power to grant protection to organizations that receive grants?

Ms. Sylvie Matteau: We don't have that power.

Mr. Pierre Poilievre: Do you have the power to protect people who contract with the government but who are not employees?

Ms. Sylvie Matteau: No.

Mr. Pierre Poilievre: So if the whistle-blower protection components of this act are designed to do all of those things and your board would not have the power to do those things.... Moments ago you said you would do this with the powers your board already has, but you've just told me it does not have the powers to do any of those things I've just listed.

Ms. Sylvie Matteau: That is correct.

Mr. Pierre Poilievre: We've heard from a number of others that this board is perfectly suited and has all this experience, but I've just listed three areas where the board has no previous experience dealing with this matter.

I also note—

The Chair: Do you have a point of order, Ms. Jennings?

Hon. Marlene Jennings: Thank you.

There is a mischaracterization going on, at least as it pertains to my statement.

Mr. Pierre Poilievre: I didn't mention your statement.

Hon. Marlene Jennings: My statement was clear: that if the powers that would be given to the newly created tribunal were instead given to—

A voice: That's a point of debate. Give me a break.

Hon. Marlene Jennings: It's not a question of debate; it's a question of mischaracterization, and I'm asking the chair to rule on it.

The Chair: Order, Mr. Poilievre.

Proceed.

Hon. Marlene Jennings: Thank you, Chair.

At least as it pertains to my statement to the witness, it was clear that should this committee in its wisdom give all of the powers to the board that currently under Bill C-2 would be given to a tribunal, the board would be able to adjudicate whistle-blower complaints.

For a member of this committee to now state that there's a whole list of powers under Bill C-2 for the tribunal that the board does not have is a misrepresentation. The question was, if the board were given all the powers this newly created tribunal would have, would the board be able to adjudicate?

The Chair: Another point of order, or is this the same point of order?

Mr. James Moore (Port Moody—Westwood—Port Coquitlam, CPC): Similar. My point of order is that—

The Chair: One second. If it's a similar one, it's not the same. So I'm ruling that your point of order is a point of clarification; it is not a point of order.

Mr. James Moore: Thank you. My point of order was along the same lines, that members—

The Chair: Well don't go there then.

Mr. James Moore: I briefly want to say, Mr. Chairman, because you allowed Ms. Jennings to speak for a few minutes, that points of order are raised when the rules of order that govern the committee have been violated. They were not. Ms. Jennings felt that her position was being misrepresented, and that's fair; perhaps it was, and that's fine. She can clarify that when her time is allotted in the rotation of questions. Points of order—

The Chair: Well, we haven't had one of these in some time, so we're now going to stop. We're going to continue on.

Did you have some more to say, Ms. Matteau?

Okay, you have the floor.

Mr. Pierre Poilievre: All right.

As I correctly pointed out earlier, the powers do not currently reside with your body, and it is not clear whether they ever could reside with your body. In fact, it is impossible for grant recipients and contractors to ever get protection from your body, because your body does not deal with non-public servants, does it?

Ms. Sylvie Matteau: That's correct.

Mr. Pierre Poilievre: That's correct. So the point Ms. Jennings raises is completely irrelevant, because your organization could not, as she suggested, be vested with those powers.

Now, on the matter of harassment, I've spoken to whistle-blowers who say that the principal form of reprisal is actually not job loss or pay cuts or smaller offices, or any issues that deal with the terms of their employment; it's actually harassment.

As I've been briefed, is it not correct that your organization cannot intervene in alleged harassment unless it actually affects the terms of employment?

● (1930)

Ms. Sylvie Matteau: The board currently does address the question of harassment through our conflict resolution program. We are called regularly to provide mediation services in this regard. So it is definitely something this board is currently doing.

Mr. Pierre Poilievre: At what point can you get involved in a harassment case?

Ms. Sylvie Matteau: We are called upon to provide mediation services.

Mr. Pierre Poilievre: But at what point can you get involved in those? Is it right when there's an allegation of any form of harassment? Is it immediately?

Ms. Sylvie Matteau: It varies.

Mr. Pierre Poilievre: Okay, it varies.

I have here a letter from PSAC that actually says your board cannot get involved in matters of harassment. With Ms. Gualtieri's case, for example, PSAC wrote her saying that your board did not have jurisdiction over harassment cases unless it actually led her to leave her job, which would be a case of constructive dismissal.

So a whole host of harassment situations could occur prior to the board even having jurisdiction over dealing with it. So the board would not have the ability, under the current situation, to rectify those situations where someone has not lost their job but they have experienced serious harassment.Those are a whole series of situations that under the status quo the board would not be able to deal with. I'm glad we've had those clarifications.

I'd also like to address the issue of expertise, because some have suggested that judges will sit there with a blank stare because they won't have the expertise. Judges deal with DNA evidence, scientific information, criminal issues, divorce, forensics, financial accounting, environmental issues, health-related matters. From one case to the next, they change on a dime, moving from one area of expertise to another. So would you not agree that it's perfectly reasonable to expect that a judge could interpret matters related to a reprisal against a whistle-blower?

Ms. Sylvie Matteau: Certainly, but that is not the question.

Mr. Pierre Poilievre: Thank you.

The Chair: Your time is up.

Thank you very much. You've had a rough go tonight, and I thank you very much for putting up with us. We appreciate your coming and giving your comments. Thank you kindly.

We'll break for a minute before our final witness.

● _____ (Pause) _____ ●

● (1935)

The Chair: We're going to start.

This is our final presentation this evening. We have two representatives from the Canadian Federation of Students, Angela Regnier and Ian Boyko. Good evening to both of you.

You can make some preliminary comments if you wish, and then members of the committee will have questions for you. Thanks for coming.

Ms. Angela Regnier (National Deputy Chairperson, Canadian Federation of Students): Thank you.

My name is Angela Regnier. I am the national deputy chairperson of the Canadian Federation of Students. This is our government relations coordinator, Ian Boyko.

I'd like to thank the committee for the opportunity to speak today about this legislation and about the academic community.

Our federation unites over one-half million university and college students from coast to coast. That membership includes over 60,000 graduate students. These graduate student numbers are in part why we requested to testify this evening.

Graduate students and faculty researchers receiving federal grants are excluded from Bill C-2, an oversight that we strongly recommend be considered by this committee. The federal government allocates well over $1 billion a year to researchers at universities and research-affiliated institutions every year. Canadians know the value of world-class research as they see the short- and long-term dividends of research every day—better and safer medication, made-in-Canada technological innovation such as the Research In Motion entrepreneurial success story, and as a result of social science research, the general public and its policy-makers obtain a deeper understanding of the social, economic, and cultural forces that shape our world.

Canadians are making a large investment in knowledge, and in most cases they are enjoying a wonderful return. Unfortunately, there are many examples of federal research policy that have distorted the development of university-based research. Increasingly, a narrow view of commercialization, bringing new products to the market, is becoming the predominant mission for federally sponsored research. Tying university research outcomes too closely to short-term, private sector needs is not only bad for innovation, it's simply bad science.

We are hearing more and more first-hand accounts of researchers who have had to alter their results in reporting in order to satisfy their industry sponsors. One example that comes to mind involves a public drinking water experiment in which a graduate student made efforts to expose data suppression and falsification of research results. Two researchers allegedly misrepresented results of the drinking water study to yield favourable results for the sponsor. Health Canada guidelines are being updated using these allegedly falsified conclusions. What is astounding in this case was that the university did not stand up for good science. Instead, the university attempted to shut down all efforts to shed light on the interference, including threatening the graduate student with a defamation suit.

Canada lacks a federal watchdog for research integrity. While the federal granting agencies have a policy on ethical guidelines for research that regulate the institutions they fund, they have no mandate to protect whistle-blowers. Sometimes universities have been complicit in research misconduct, especially when students have come forward with allegations. Other countries have implemented federal agencies to oversee public research. For example, the United States Office of Research Integrity explicitly states that the whistle-blower is essential to protecting the integrity of government-supported research.

The Federal Accountability Act provides the structure and the opportunity for the government to ensure research integrity through the following simple amendments: extend the protections offered by the proposed Public Servants Disclosure Protection Act to researchers, including students in public, post-secondary, and research-affiliated institutions. To reflect this expanded scope, the act should be renamed the Public Interest Disclosure Protection Act and the commissioner should be renamed the Public Interest Integrity Commissioner. We propose that a deputy commissioner on research integrity be established to work closely with universities, research institutions, and the federal granting agencies to promote research integrity. We further propose amendments to the lists of reprisals and wrongdoings to greater reflect the realities of research misconduct in universities as well as expansions to the remedies available to the tribunal.

Also, as a student, I would like to congratulate the government on putting the Millennium Scholarship Foundation under the bright light of public scrutiny, since soon after its inception, students have had concerns with the foundation.

Thank you for the opportunity.

I look forward to your questions.

● (1940)

The Chair: Mr. Tonks.

Mr. Alan Tonks: I don't have any questions.

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Thank you and congratulations on the high calibre of your presentation. It was really very interesting.

Bill C-2, in its current form, enables so-called ordinary citizens who are neither government contract workers nor public servants to lodge a complaint through their member of Parliament. We would like to replace this provision with a complaint procedure similar to the one used by the Official Languages Commissioner. I find it difficult to imagine who, aside from a contract worker or a public servant, would file a complaint. However, your presentation enabled us to understand that you were part of a large and significant category of individuals who could lodge complaints of this type.

Are you satisfied with this part of the act, which would enable you to file a direct complaint with the Integrity Commissioner? I thought I understood that you would like to benefit from the same protection against retaliation that is afforded to the people covered by this act. Is that correct?

[*English*]

Ms. Angela Regnier: Let me just get the question straight. The question is whether we would want academics to be able to have the same opportunity to come forward, as listed in the act. Is that correct?

● (1945)

[*Translation*]

Mr. Benoît Sauvageau: Under Bill C-2, citizens, students and public servants can whistleblow. However, only contract employees and public servants are protected against retaliation. You are asking that students be protected as well. This is a very interesting amendment.

[*English*]

Ms. Angela Regnier: On what we're concerned about, first of all, we think that universities are public institutions with a great deal of public funding, and the work that's being done there is in the public interest. People who are working in that field need to be afforded the same kind of protection from reprisals as public servants under the act. Currently there are certainly mechanisms for making complaints, both at the university level and at the granting agency level, but we don't feel there's enough teeth there to really provide students and researchers the opportunity to come forward.

Mr. Ian Boyko (Government Relations Coordinator, Canadian Federation of Students, Canadian Alliance of Student Associations): May I add to that?

University research is a fairly specific field that would require some degree of expertise on behalf of the commissioner, which is why we're calling for a new office to strengthen the act that way. We also want to look at the bill as an opportunity to begin a dialogue about how we can establish an office for research integrity—like many other countries already have and that Canada is lacking totally—along the lines of what the United States or the U.K. have done. We want to see this legislation go beyond creating some space for citizens at large to file complaints and actually create a specific bureaucracy for public research.

[*Translation*]

Mr. Benoît Sauvageau: Thank you.

I will be splitting my time with Ms. Lavallée.

Mrs. Carole Lavallée: I listened to your comment, observations and request with a great deal of pleasure. In my opinion, it is important that we take time to review this bill. My question is addressed primarily to Mr. Poilievre, who seems very anxious to be finished with this. More than anything, he wants to give the public the perception that this is a bill that is cleaner than Mr. Clean. However, we have to give this bill some depth. We must therefore take time to analyze it, take a good look at it and determine whether or not other measures that may be beneficial to society can be added to it. You have just shown us that such an approach is relevant.

Thank you very much.

[*English*]

The Chair: Mr. Dewar.

Mr. Paul Dewar: Thank you.

Thank you for your presentation. You've kind of illuminated a couple of issues. I'm going to start with perhaps an observation. When we look at the role that researchers play and people who innovate, really, in our society and in our economy, it's at the graduate level in universities, not exclusively but certainly primarily. I think getting at the source of a problem would help, obviously, and your analysis provides that.

I think of the three people who are sitting in the audience here, Monsieur Lambert, Ms. Hansen, and Mr. Chopra, who prevented many things, the least of which is the bovine growth hormone in our milk. As the father of two kids, I'm really glad that happened. They did that because they were at the table being vigilant about our health. If we had been listening to them, we could have avoided the BSE crisis, and I say that in all seriousness. I think what you're identifying is an issue that most people here wouldn't know anything about, and that's the drinking water example you provided for us.

You have amendments, and I think they are sensible, common-sense ones, certainly with extending whistle-blowing to people who are touched by federal dollars. Why not? I'd like to know a little bit more about the example you provided us, because I didn't know about it. I'd like to know what exactly happened? How much money, roughly, was being afforded? Also, what was the outcome? These people, you were suggesting, basically had duct tape put on them and they were told to be quiet. I'd like to know what happened. What was the case scenario, and where is it at right now?

● (1950)

Ms. Angela Regnier: We were approached by a former graduate student about two years ago who had been trying to expose this particular experiment that was done in a small town in Ontario, where he and other graduate students had witnessed research misconduct throughout the process.

The experiment happened in Wiarton. What they were doing was trying out a new chemical in the water distribution system as an alternate disinfectant to chlorine. After about two months of testing this new chemical...the residents of the town did not know there was an alternate disinfectant being tested and they started discovering a number of irregularities with their drinking water. There were bleach stains on their laundry; the odour and taste of the water had changed; and a number of them had immediately, of their own volition, gone to boiling all their drinking water. The residents actually demanded the termination of the study and asked for a door-to-door survey to be administered. That door-to-door survey was designed by the researchers who had been funded to do the project. The results were overwhelming that the residents had discovered all sorts of problems with their drinking water, including significant odour and taste complaints, despite the fact that this was not even a question asked on the survey. This all came out in the "Comments" section.

It's important for me to flag that specific complaint because further publications—academic and otherwise—that came out of the study called it a "novel success" and explicitly stated there were no odour or taste complaints throughout the course of the study.

The Chair: Mr. Dewar, this is an interesting topic, but I'm wondering what it has to do with Bill C-2.

Mr. Paul Dewar: Oh, I'm sorry. I think it has everything to do with Bill C-2. What's being explained here represents a concrete example of public health being put in jeopardy because there was an oversight and there wasn't, from what I'm hearing in this example, a concrete example—

The Chair: So you're talking about whistle-blowing. That's really what you're getting at.

Mr. Paul Dewar: That's what their presentation...that's why it's connected.

The Chair: Okay. Then we'll go on a little more.

Mr. Paul Dewar: Thank you for your indulgence.

Ms. Angela Regnier: I'm sorry; maybe I'll just move forward a little more quickly.

There was federal granting agency significantly funding both the graduate student, at one point, and the process. NSERC could have actually awarded this study a Synergy Award, which is one of their very reputable awards. All attempts for the graduate student to request an investigation, both at the university level and to the granting agency, were denied. He was never afforded an opportunity to even make any kind of testimony to any sort of committee, and at one point the university's senior legal counsel also wrote to him and threatened him with a defamation suit if he was going to be talking to any more third parties regarding the case.

We find this really problematic. Health Canada has now made reference to some of these publications for their review of their drinking water quality guidelines on the byproducts of this particular chemical. Approximately a year ago we stepped in to try to, first of all, take the granting council to task for the fact that a proper investigation was in the public interest. We felt frustration that there really hasn't been any kind of mechanism to address the fact that the student has been threatened and that this research continues to go on without any kind of scrutiny.

● (1955)

The Chair: Okay.

Monsieur Poilievre.

Mr. Pierre Poilievre: In your fifth point you propose that students be given explicit access to the tribunal for protection. If that were the case, and I think that's a very interesting idea. If there was a—

An hon. member: [*Editor's Note: Inaudible]*

Mr. Pierre Poilievre: This is the document that the student body distributed.

An hon. member: Is it translated?

Mr. Pierre Poilievre: I don't know. This is a summary of recommendations I have here.

I hope this isn't running against my time, because I'm being interrupted here.

I just have this document here.

The Chair: The clock is stopped.

There has been no document distributed. He may be referring to something; I don't know what he's referring to, but there is no document before the committee.

[*Translation*]

Mr. Benoît Sauvageau: Thank you for telling us that there is no documentation. I thought that Mr. Poilievre was referring to one of the students' documents. I must have made a mistake.

Mrs. Carole Lavallée: He doesn't have anything in his hands.

Look: you have a document that we do not have.

[*English*]

The Chair: Okay, enough. Wait a minute.

Mr. Poilievre.

Mr. Pierre Poilievre: Okay. I don't have a document in my hand, apparently.

You did suggest that you would like access to a tribunal. If the act were amended to remove the existence of the tribunal and replace it with a body called the staff relations board, how many of your students are staff of the federal government and would have access to that board?

Ms. Angela Regnier: Very few, if any.

Mr. Pierre Poilievre: In other words, the staff relations board would have no jurisdiction to give any of your students any protection whatsoever.

Ms. Angela Regnier: That is correct.

Mr. Pierre Poilievre: That's my only question.

The Chair: Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Good afternoon, Ms. Regnier. Thank you for joining us.

I understood that you were pleased that the millennium scholarships were going to be monitored. Is that correct? Could you tell me why that attracted your attention and how that is reflected in your comments with respect to Bill C-2?

[*English*]

Ms. Angela Regnier: I'm going to pass this over to Ian.

Mr. Ian Boyko: From what I understand from my reading of the legislation, government foundations such as the Millennium Scholarship Foundation would then become subject to freedom of information searches. We would find this to be an important tool for us, basically because we've had very deep concerns with the operation of the foundation since its inception at the turn of the century in 1999; just by its very nature, it operates outside the purview of Parliament, which is problematic given that it was given $2.5 billion of taxpayers' money to administer grants. It's failed to do that.

Our concern with respect to this legislation comes from the fact we've had serious questions about the way in which the foundation administers its research contracts. It has a $10 million-plus research budget now. Former employees have been given research grants with no discernible bidding process that we can tell. So if we could get access to the internal operations of this foundation, then I think it would be of great public service.

[*Translation*]

Mr. Daniel Petit: Ms. Regnier or Mr. Boyko, earlier you referred to monitoring researchers subsidized by all kinds of federal money. Given that education is primarily under provincial jurisdiction, I was wondering how you would have the federal government monitor this issue, since it is a matter of provincial jurisdiction. Have you given any consideration to this aspect of the question?

● (2000)

[*English*]

Mr. Ian Boyko: I generally agree with your premise, but the federal government plays a vastly more important role in financing university research than do provincial governments. So this is in many ways a federal domain, very clearly, in terms of the three granting councils and other foundations.

The Chair: Mr. Rob Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you for being here today.

I certainly appreciate that you came with a concrete suggestion about an office of research integrity.

You mentioned the millennium scholarship fund. I was wondering if there are specific examples that come to mind of problems that individual students have had, because as a member of Parliament I have heard some complaints, but as a student body, you would have heard a lot more than I have. So can you give just one or two or three specifics of the kinds of problems people ran into with the millennium scholarship fund?

Mr. Ian Boyko: I think it's an indisputable fact that the foundation has failed abysmally at offering needs-based grants to students, primarily as a result of its basic structure as a foundation, in a gimmicky way. We have a Canada student loans program that's been in place for 40 years. I don't know why the federal government wouldn't want to work through the Canada student loans program.

So it's failed at providing grants, but our specific issue with the foundation under Bill C-2 is its transparency. Thousands, perhaps tens of thousands, of students have received grants from the Millennium Scholarship Foundation, but are now receiving less money from the provincial government as a result. So the individual problems with the grants are distinct from the transparency issues we wanted to raise under Bill C-2.

I hope that helps.

Mr. Rob Moore: The other quick question I have is about your mentioning researchers and pressures that can be brought to bear on people who are conducting research through funding from the federal government, directly or indirectly. Could you give examples of what types of pressures could be brought to bear on an individual researcher, so they would feel their work was being compromised and the integrity of their research was being undermined?

Ms. Angela Regnier: Sure. We are primarily concerned with private pressures on university research and are increasingly finding cases where there has been interference by a private sponsor on either the accurate representation of results, as in the case with this Wiarton experiment, where it seems quite apparent that the results were suppressed in the interest of promoting this new potential disinfectant for drinking water....

We're also concerned with the fact that there are a number of research contracts being signed with secrecy clauses, which was the case with Nancy Olivieri's scandal. She was put in a position where she felt that the lives of her research subjects were potentially endangered and that she was not in a legal position to expose those results. Now, she was brave and decided it was important enough to move forward with them.

I think for students in particular it's increasingly a problem, because they are not the ones who are in a position, often, to be signing the research contracts with private sponsors; they're subject to the influence of their supervisors.

In fact, *The Chronicle of Higher Education*, a publication that does a lot of writing on issues around research in education, predominantly in North America, has actually published a number of survey results recently on the increasing incidence of misconduct in university research. In the United States, they are reporting that one in three researchers has admitted to research misconduct or some kind of wrongdoing.

● (2005)

The Chair: We have to move on.

We're going into the second round, which is five minutes.

Ms. Jennings.

Hon. Marlene Jennings: Thank you.

I have several questions. I appreciate your presentation.

My first question is, have you prepared any written document or notes for your presentation today? If you have, have you provided a copy of same to any member of this committee, to a staff of any member of this committee, to a staff of any minister or the President of the Treasury Board, or to a member of the public service who works for Treasury Board or another federal department? That's my first question.

My second question is this. I missed your presentation of Mr. Ian Boyko. Could you repeat what position Mr. Boyko holds in the Canadian Federation of Students?

My third question deals with the issue of.... I think the point you raised about having an avenue for graduate students—or any student who is working on a particular research project and is receiving federal funding, whether it's directly to that student as a grant or through a university because some professor has applied for moneys for research, etc.—to whistle-blow if they see something wrong is excellent.

My question is this. You were asked previously whether you currently have the possibility to file a complaint with the Public Service Staff Relations Board. Obviously you do not. However, Bill C-2 would create a tribunal that would have the authority to deal with whistle-blowers who work in the federal public service and also who work with a variety of crown corporations federally, and it would also be able to deal with complaints coming from contractors, in the private sector, for instance, or in the not-for-profit sector, who contract with the federal government through either requests for proposals or tenders.

We have had submissions from organizations saying they would like the authorities Bill C-2 would give to a new tribunal to be given to the existing board. The existing board's mandate, authorities, and powers would expand to deal with complaints from the private sector, because they say the call for tenders was biased or whatever, or from the non-profit sector, or from a member of the public service.

Given that you're requesting that you have an avenue, if this committee in its wisdom decided you should have an avenue and we carved out the authority with, for instance, the existing Public Service Staff Relations Board—whose name might undergo a change, because it would be expanded—would you feel that, whether it's with that board or another board, the issue is the authority to receive the complaint, to adequately investigate, conduct a hearing, and to actually make orders that would be executory? That's what you're asking for. Is that correct?

The Chair: Ms. Jennings, you have five minutes, and you've given the witness about a minute and a half to answer the question.

Hon. Marlene Jennings: She has done so well, I know she will be able to answer all the questions.

The Chair: Just keep in mind when you're asking questions that it's your dime, and you can do as you wish with it, but she has a minute and a half to answer.

Hon. Marlene Jennings: And you know, Chair, if she doesn't have sufficient time, she can complete her answer in writing and send it to the members of the committee through the chair.

The Chair: Here we go. Do your best, Ms. Regnier.

Ms. Angela Regnier: Okay.

Concerning your first question, we have produced a document, and we apologize that we haven't had an opportunity to have it available in French as well at this point.

Hon. Marlene Jennings: It has been distributed to at least one member, and—

The Chair: Stop the clock.

You know the rules of this place. She can give it to whomever she wishes. If she wishes to give it to all the members of the—

Hon. Marlene Jennings: I didn't say she couldn't. I'm asking a question.

The Chair: Ms. Jennings, as you know, a witness can give a document to anybody she wishes to. If she wishes to give it to the entire committee, she files it with the clerk. You know that answer—

Hon. Marlene Jennings: Yes, I do.

The Chair: —so stop picking on her.

Hon. Marlene Jennings: I'm not picking on her. I asked the question, and she is free to answer the question.

An hon. member: She already did.

An hon. member: Not fully.

Hon. Marlene Jennings: No, she didn't complete her answer.

● (2010)

The Chair: Enough.

Ms. Angela Regnier: I'm going to introduce Ian Boyko, my government relations officer.

Hon. Marlene Jennings: Thank you.

Mr. Ian Boyko: A document was circulated to a former colleague of mine, who I think works for Mr. Poilievre, so it was given directly to him and I guess passed along to Mr. Poilievre. It's not translated, which is why the entire committee didn't get it. So if that's a breach of protocol or not, the document will be available shortly.

The Chair: Okay.

Ms. Angela Regnier: I think there was a third part to the question, regarding the authority of the tribunal or the board in the launching of complaints.

We would like to see the complaint launched in the most appropriate format. I think our ideal situation would be where there was some research and review done with some of the others—perhaps Australia, the tribunal in the United Kingdom, and the tribunal in the United States—which would hopefully inform the best avenue.

The Chair: That's the chair's clock.

Mr. Poilievre.

Mr. Pierre Poilievre: Does it make sense to you that we would rewrite the entire mandate of the staff relations board so that the staff relations board now would deal with student issues, with contractors, with grant recipients, with a whole host of individuals and bodies with which it has absolutely no experience and for which its mandate makes absolutely no provision, or would you prefer as a student body to go before a panel of independent judges, to bring whistle-blowers before a panel of independent judges who had specifically developed expertise in the area of whistle-blower protection?

Ms. Angela Regnier: I don't feel that we actually have enough information at this point to make a judgment call.

Mr. Pierre Poilievre: All right.

I think there are some others who don't have enough information either, but if they do believe that the staff relations board should be changed and it should no longer be a staff relations board and that its mandate should be extended to every Canadian in the country, I would presume that they will actually bring forward amendments that literally redefine the very nature of the staff relations board, if that is how in fact they think this should function.

My question then would be, would you feel that a panel of judges specifically comprised to protect whistle-blowers would be sufficiently independent from the government to give protection to students?

Mr. Ian Boyko: I would imagine, but there are questions that overlap. I just want to say, in terms of the recipients of federal grants and the board's jurisdiction over contractors, while many faculty members who are receiving grants from one of the three granting councils could be construed as contractors, if you are a graduate student working under that researcher and you are not the recipient of that federal grant, I'm afraid you wouldn't be protected by what was just described. You're effectively an employee of the contractor, not the contractor.

Mr. Pierre Poilievre: Actually, it is still a crime under the Accountability Act for your employer to punish you for making a disclosure of wrongdoing, even if that employer is not the government. That is going to be a specific statutory prohibition in the Accountability Act—presuming that it is passed.

The Chair: Monsieur Petit.

[*Translation*]

Mr. Daniel Petit: My question is for Mr. Regnier or Mr. Boyko.

You talked about university research. However, let us imagine a situation where National Defence gives a Quebec university a two or three million dollar contract for research. The money would come from the federal government, the university would be located in Quebec; the professors, from Quebec as well, would be governed by Quebec collective agreements and would have their own structures.

In your opinion, how would an individual receiving such an amount of money from National Defence be subject to Bill C-2? You're hoping that this will be the case, but how can you reach this conclusion since the province of Quebec wouldn't want this to happen? Have you given any thought to any provisions which would enable people from Quebec to be subject to Bill C-2 when money from the federal government is involved?

● (2015)

[*English*]

Ms. Angela Regnier: Ultimately, what we've proposed is that through the deputy commissioner on research integrity there would be an overarching policy across Canada. That would ultimately apply to all public research institutions in Quebec, as it would apply to research institutions and universities across the rest of the country.

[*Translation*]

The Chair: Mr. Sauvageau, you have three minutes.

Mr. Benoît Sauvageau: Earlier you referred to the Canada Millennium Scholarship Foundation, among other things. I don't know whether or not you know this, but further to an initiative from the Bloc Québécois, it was decided that the Auditor General would have the right to examine all foundations receiving more than $500 million dollars, which includes the Canada Millennium Scholarship Foundation. These foundations may from now on be audited by the Auditor General. That may reassure you somewhat. In case there is an appearance of misappropriation or any other type of activity of that kind, it would be possible to send a letter to the attention of the Auditor General in order to inform the latter of the matter.

I would like to ask Mr. Boyko a question. Your name does not appear on the witness list. I am, therefore, wondering when you were invited. Moreover, you referred to a former colleague. Was that individual a member of the Canadian Federation of Students or any other organization?

May I ask you that question?

[*English*]

The Chair: You know, I'm just getting concerned that you're picking on these witnesses. The Canadian Federation of Students was invited to come here by one of the caucuses—and that's all we need to know. He's with the Canadian Federation of Students. There's the villain.

I didn't mean it like that, but I really think that's an improper question.

[*Translation*]

Mr. Benoît Sauvageau: You do not want me to ask my question?

[*English*]

The Chair: Well, we'll see how they do, but....

Mr. Ian Boyko: We submitted my name earlier this evening, when we were liaising with the committee clerk. While the colleague I'm referring to wasn't a member of our federation, he really wanted to be. I've worked with him in a few different capacities.

[*Translation*]

Mr. Benoît Sauvageau: Thank you.

I will not ask you for any more details.

[*English*]

The Chair: You both did very well tonight. Thank you very much for coming and giving us your comments.

We're not going to adjourn just yet, as Madam Jennings has some comments.

Hon. Marlene Jennings: Yes. I just have a notice of motion.

Given the fact that Madame Sylvie Matteau, the acting chairperson of the Public Service Labour Relations Board, was unable to answer a series of questions because of her current office—she has the duty of reserve—I would move that this committee mandate its chair, and obviously the clerk, to invite a panel of former chairs of the Public Service Labour Relations Board to appear before the committee to answer those questions regarding Bill C-2 that Madame Sylvie Matteau was unable to answer given her office of acting chairperson of the said board.

So I'm giving a notice of motion.

The Chair: Notice of motion has been duly—

Hon. Marlene Jennings: I see it's 8:20.

The Chair: The meeting is adjourned until 8:20 tomorrow morning in this room.

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