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Tuesday, May 30, 2006

Chair

Mr. David Tilson

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● (0825)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Good morning. I call the meeting to order.

This is the legislative committee on Bill C-2, meeting number 13, pursuant to the order of reference of Thursday, April 27, 2006, on Bill C-2, an act providing for conflict of interest rules, restrictions on election financing, and measures respecting administrative transparency, oversight, and accountability.

We have with us Henry McCandless, who is the general convenor of the Citizens' Circle for Accountability.

Good morning, Mr. McCandless. You have a few moments to make some preliminary comments, and then members of the committee will ask you some questions. Thank you for coming.

Mr. Henry McCandless (General Convenor, Citizens' Circle for Accountability, As an Individual): This morning I wish simply to put before you the concept and logic of public accountability and how it can increase fairness in society and citizen trust in authorities. Without that trust, society doesn't work properly.

My aim is to try to show you how you can act to prevent harm and injustice, such as the lethally contaminated blood of the 1980s or the management control failures in HRDC in sponsorship. Audit and commissions of inquiry are after the fact, when it's too late.

I have been a rigorous student of public accountability for 15 years. I was the author of this book on the subject in 2002. I was a principal in the Office of the Auditor General for 18 years. My MBA is in organizational behaviour, which is about cause and effect in management processes. In the audit office I served as the Auditor General's parliamentary liaison officer to the public accounts committee, so I know pretty well people's roles and duties.

If we turn to the concept of public accountability and why it's a society imperative, let's assume for a moment that we don't know the difference between conduct, responsibility, and accountability. A simple logic sequence may help us. If an executive government intends something that would affect the public in important ways, in fairness it should tell the public what it intends and why it intends it. This means accounting to the public. An obvious example is a government policy initiative.

Next the executive government should publicly explain its intended performance standards to clarify what it intends to achieve. Hospital emergency waiting times are an example.

Then we want to know whether the government thinks it has met agreed performance standards, and we want to have the government tell us the outcomes from what it did and how it applied the learning available to it. These affect trust in competence.

Then we apply the precautionary principle: we ask for an audit of the fairness and completeness of what the government reports. The combination of these accountings plus audit helps us determine our level of trust in government because we know better what the government intends, why it intends it, and what it's actually doing. MPs can then better control what's going on, and citizens can better see the role of the MP in holding to account.

Accountability does not mean responsibility, the obligation to act, and it doesn't mean conduct, the actual doing of something. The mid-1970s independent committee on the mandate of the Auditor General of Canada authoritatively defined accountability as the obligation to report on responsibilities.

Public accountability isn't new. It has been a mainstay in the business world for centuries. The public accounts of Canada are a governmental offshoot of financial reporting. One reason you're not already steeped in public accountability is that authorities don't like to account unless they're made to—corporations were—so you had nothing to work with. Executive governments have thus far controlled whether standards for accountability reporting get legislated; thus far, they haven't been.

But first we need a useful and comprehensive definition of public accountability to work with, and here's what I have proposed: public accountability is the obligation of authorities to explain publicly, fully, and fairly, before and after the fact, how they are carrying out responsibilities that affect the public in important ways. If you feel you have to go into four-wheel drive to absorb that, don't worry about it. I'm writing it so that it's unassailable to the barracuda critics, mostly academics.

Then you can ask what the benefits of public accountability are. First, MPs and citizens get information they need but wouldn't otherwise have. Access to information requests are no substitute, and weren't meant to be.

Perhaps even more important, the obligation to account publicly, as long as it is audited for fairness and completeness, exerts a self-regulating influence on officials, and this self-regulating influence works in the public interest.

The requirement to account is unassailable because it's non-partisan. It does not tell anyone how to do his or her job; it's simply an explanation requirement. It does not ask for any more information than officials need in any case to do their jobs properly—and what they know, they can report.

My last comment is on legislating accountability. If we're serious about something, we legislate it, but a bill entitled "accountability" that isn't about accountability allows people to continue confusing responsibility conduct with accountability. That means we won't get full and fair public accounting for responsibilities.

● (0830)

Moreover, adding more and more monitoring, policing, and audit instead of accountability obligations will likely turn off good people from entering the civil service, people who would otherwise willingly account for their performance as a self-control, if they knew their accounting would be used competently and fairly.

There is one thing your committee could recommend that doesn't mean adding accountabilities across the board in Bill C-2. In whistle-blower protection, which takes up 32 pages of the bill, you could recommend a short provision that ministers and deputies report annually to the House their own protection performance standards and whether their claimed protection is actually working.

The Chair: Can you wind up soon, Mr. McCandless?

Mr. Henry McCandless: Yes.

You could also recommend that a House committee be struck to examine principles and standards in government accountability, and we could call that a Government of Canada Public Accountability Act. It would cover off accountabilities within the executive government and from the executive government to the House.

That's the end of my remarks. I have left with the clerk a copy of my book and a copy of articles in the *Canadian Parliamentary Review*. I apologize for not having it in French, but I was only called Thursday at noon in Victoria and had no chance to have anything translated, let alone in Victoria. I imagine the clerk will have that. But in the *Canadian Parliamentary Review*, August 2004, that journal is in both languages, so that would be available to you.

Thanks for your time.

The Chair: Those will be exhibits, Mr. McCandless?

Mr. Henry McCandless: I think so, yes. I've given them to Wayne.

The Chair: Thank you very much.

We have with us Duff Conacher, who is the chairperson of the Government Ethics Coalition and the Money in Politics Coalition. Good morning to you, Mr. Conacher.

Mr. Duff Conacher (Chairperson of the Government Ethics Coalition and the Money in Politics Coalition, Democracy Watch): Good morning.

The Chair: Thank you for coming. You have a few moments to make some introductory comments before questions from the committee.

Mr. Duff Conacher: Thank you very much for the invitation from the committee to appear today on this important bill, Bill C-2, which is very much a breakthrough bill in terms of addressing many much neglected areas of government accountability that have been neglected for more than 130 years, actually since Confederation.

As mentioned, I am chairperson of two coalitions, the Government Ethics Coalition, which is made up of just over 30 groups, and the Money in Politics Coalition, made up of 50 groups—both coalitions with groups from across the country. Democracy Watch's proposals today are also based in part on the platform of the 10-member group Open Government Canada, a coalition that put out a position paper on access to information reform, now five years ago. The details about all of these groups are on the Democracy Watch website. The total membership of the groups represented in the coalitions is more than 3.5 million Canadians.

All of the coalitions' platforms are based on historical experience that has proven that in order to ensure people who are working in large, powerful organizations such as government institutions follow the rules and perform, the rules must have no loopholes; secondly, that the institutions must operate as transparently as possible; thirdly, as Mr. McCandless has set out, that there must be standards in terms of goals and objectives that are measurable, so that performance can be measured; that enforcement agencies must be fully independent, well-resourced, and fully empowered, including having the power to penalize rule violators in significant ways, and must be conducting regular inspections and publicly reporting, of course; and finally, that whistle-blowers must be effectively protected.

This is not to claim at all that everyone involved in the federal government intends to violate rules; however, as has been shown in any organization of human beings throughout history, some people will try to break the rules. So in line with the commonsense sayings —first of all, that people do what you inspect, not what you expect, and second, that when all is said and done, more is said than done—you of course need to have an enforcement system that must include all of the above key elements. It's sad to say it, but it's unfortunately true.

When examining Bill C-2 and taking these elements of effective enforcement systems into account, Democracy Watch's coalitions have looked at these systems for now the past decade, and in examining the bill we see many loopholes, in 15 key areas.

You hopefully will have a list of this summary list of 15 bullet points on the loopholes and flaws in the bill, but if not, it should be arriving soon, along with a very detailed 17-page list of 140 proposed amendments to close the loopholes in these 15 key areas.

As detailed in the report, if these flaws are not corrected, then Democracy Watch's position is that people who break the federal government's honesty, ethics, openness, hiring and appointments, and waste prevention rules will continue to be let off the hook.

If the changes to the Federal Accountability Act are not made—this is the first of the 15 areas—lying to the public will still be legal. The bill will remove—actually proposes to delete—the only ethics rule that requires cabinet ministers, their staff, and senior public servants to act with honesty. This would be an enormous step backwards.

As well, cabinet ministers, their staff, and senior public servants will be allowed by flawed ethics rules to be involved in policy-making proceedings that help their own financial interests and will be allowed to use government property for their own purposes, because that government property rule is also proposed to be deleted from the ethics rules.

Number three, secret unethical lobbying will still be legal, and many ministerial staff will be allowed to become lobbyists too soon after they leave their position.

● (0835)

Number four, the proposed new ban on secret donations to politicians will not be effectively enforced. It's because Canada is not complying with an international agreement that it signed, which is aimed at combatting terrorism and money laundering.

Fifth, the public will not be allowed to file ethics complaints against politicians, even though politicians are of course the public's employees, and that, amongst a few of the other things that I've already mentioned, was promised by the Conservatives.

In total as you go through the bill, there are 21 broken promises when you compare it to the Conservatives' election platform, which is a very key piece of evidence as to why we need an effective law and enforcement system for honesty in politics.

Going through the list again of the summary areas where there will still be very key problems, loopholes, gaps, and flaws, the Prime Minister and cabinet will still be able to appoint party loyalists and cronies to more than 2,000 key law enforcement positions without any effective review or parliamentary approval process.

Number seven, government institutions will be allowed to keep secret information, which the public has a clear right to know, because of loopholes that will be left in the Access to Information Act and the enforcement system.

Secret funds like the ad scam fund will not be effectively banned because the Gomery commission's proposal in that area has not been taken up in the bill, and politicians and officials will not have to provide detailed receipts. Although expenses are now disclosed, the details are not disclosed, and as a result, it's still very difficult to ensure that expenses are justifiable.

The key area that Democracy Watch has been pushing for, for a long time is key to accountability, and it fits in with what Mr. McCandless was talking about. Federal government institutions will still not be required to set out proposed plans for action and decisions and to consult with Canadians in a meaningful way before making significant decisions or undertaking significant actions. This is a very key change that needs to be done in terms of accountability. In Sweden, they have a system where the government regularly consults in a meaningful way.

● (0840)

The Chair: Could you wind up soon, Mr. Conacher, please?

Mr. Duff Conacher: Yes, I will. Thank you very much.

Citizens will still face very high barriers to banding together into watchdog groups that have the resources to match the resources of industry sector lobby groups. Democracy Watch and its coalitions propose a very simple system that has worked effectively in the U.S. to help citizens band together into these watchdog groups.

Unfortunately, secret rulings will still be possible unless Bill C-2 is strengthened. Secret rulings by the ethics watchdog for the Prime Minister and other senior officials will still be possible, and even that watchdog, the Ethics Commissioner has noted, has a very serious problem with the current mandate.

As well, the identities of politicians, political staff, cabinet appointees, and public servants who are guilty of wrongdoing will often be kept secret.

The Information Commissioner and other watchdogs will lack independence and the key powers that are needed to ensure the rules are followed.

Another key area in an enforcement system, as mentioned, is effective penalties. The penalties will still be too low in the areas of unethical, secretive, and wasteful activities. For example, violating the cabinet ethics code will result in a maximum penalty of $500, which is a joke.

Finally, whistle-blowers who are not public servants will not be effectively protected from retaliation, and no whistle-blowers will receive compensation adequate to seeking other jobs, even if the whistle-blowing process leaves them completely alienated from all their co-workers.

I hope the committee will take this historic opportunity to take the time to work through this bill and to fully consider amendments, which means possibly running into the fall. There's no rush. It's important to get it right. It's an historic opportunity to close all the huge loopholes in the government's accountability system.

I hope the committee will take seriously the 140 amendments that Democracy Watch is proposing today.

Thank you very much. I welcome your questions.

The Chair: Yes, thank you, Mr. Conacher, for coming on behalf of Democracy Watch. I'm sorry I left that out at the beginning.

Mr. McCandless, thank you as well for coming.

Mr. Conacher, we're curious as to whether you're related to the Conacher hockey players.

Mr. Duff Conacher: Yes. Grandfather, uncle, great-uncle, it depends which one.

The Chair: Wow! We welcome you to the committee.

Mr. Tonks has some questions.

Mr. Alan Tonks (York South—Weston, Lib.): Well, I'm not up to the stickhandling of that family.

Welcome, Mr. Conacher and Mr. McCandless. Both of you have stressed that whistle-blowers must be protected.

Mr. McCandless, you've talked about a culture of responsibility. You've also focused, it appears at least to me, on that culture of responsibility being entrenched in two ways, one according to legislation through the deputy minister being the financially accountable officer, and you go one step further in completing the accountability loop by having that officer take what you've described as responsibility for reporting on his or her whistle-blowing record in terms of any incidents of inappropriate financial conduct or otherwise coming before that officer in carrying on duties.

I wonder if you could expand on that, because you go one step further and you say that officer should report to Parliament through a special committee. You know this committee is wrestling with how you increase the oversight of the committee system, or some part of the parliamentary structure, and how you complete the accountability loop in reporting directly to Parliament.

Could you expand on that just a little bit more, please, for the committee?

● (0845)

Mr. Henry McCandless: There is a lot of debate on to what extent deputy ministers report directly to parliamentary committees. The academics—or some of them, anyway—say deputy ministers should account to Parliament only for those responsibilities that are statutorily or authoritatively told to them.

My view is what Commissioner Gomery missed and the academics aren't that clued in about: the concept of management control, which simply means causing to happen that which should and causing not to happen that which shouldn't.

I believe the minister is ultimately responsible for the quality of management control. The ministers collectively do appoint the deputy ministers. I know the Prime Minister does, but it's still the ministry's responsibility to put in place deputies who know what management control is and set in place the control processes that make sure that what's supposed to happen does and what isn't supposed to happen doesn't.

I'm proposing something that's probably new, that the deputies as well as the ministers report to the House on what their whistle-blower protection practices actually are and whether they think their protection practices are doing the job. I'm claiming that without that public accountability you don't get that self-regulating influence on their conduct.

In my view—and I've put this in writing in several places—if we don't have that direct accountability reporting by the ministers and the deputies on whistle-blowing, forget whistle-blower protection; it won't happen.

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

Mr. Duff Conacher: I believe the chief executives are required under the bill to be reporting regularly to the proposed public sector integrity commissioner on how their whistle-blower protection systems are working. That is not the same as coming to a committee, but of course a committee can always question anyone who comes before them on anything within their mandate.

The Chair: Thank you.

Mr. Owen.

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

Thank you, gentlemen, for being here.

Mr. McCandless, it seems to me that what you're describing, although you're putting it in a unique way, is simply good public sector management, in which there is a normal expectation that the chief senior person will ensure sound public policies on channels for whistle-blowers to report apparent errors, public access to information within the department, and fair treatment of individuals of the public who are served by the department. The public accountability officer really is just that: a combination internal ombudsperson, privacy commissioner, and whistle-blower protection commissioner.

While we can deal with symptoms of poor internal management by adding more and more independent officers of Parliament, I'm concerned that as this group grows, we may be creating a parallel universe between Parliament and the executive in which the officers are not really directly accountable to Parliament and certainly are not to the electorate. By allowing proliferation of these offices, we almost remove responsibility from senior managers to look after these matters properly internally. If we're going to have these officers, their role should be remedial over time, so that accountability within the departments that you describe is actually there as a natural part of management, and only in exceptional cases would anybody have to make use of the residual independent office.

That would seem to me to be the healthy way that a public administration should grow. We understand that mistakes will happen and that we may have to have a residual, independent review or action, but it would be justified only if its role were remedial over time to improve accountability. I wonder if either one of you would want to comment on that.

● (0850)

The Chair: Well, you've left about 30 seconds, Mr. Owen.

Mr. Henry McCandless: I maintain that if you are publicly accountable, which is to say that you have to state publicly what you intend to do and why you intend it and what your performance is and all that stuff, then the fact that you have to report publicly and can be audited by someone for fairness and completeness is a motivation to do the right thing. I agree with all these intermediate inspectors general and whatever.

You probably haven't really thought that since 1978 the Auditor General of Canada has been doing government's reporting job for it. In 1978, when the Auditor General Act was passed for the value-for-money mandate, the Treasury Board did not accompany that with amendments to the Financial Administration Act requiring department heads and officials themselves to account for the performance of their own duty. They passed the buck to the Auditor General. You mustn't pass the buck to the Auditor General; that's not what you're there for. That would have allowed the Auditor General to attest to the fairness and completeness of what management itself was reporting. The Auditor General served the accountability relationship, but she stands outside it.

The Chair: Go ahead, very briefly, Mr. Conacher.

Mr. Duff Conacher: I would agree with your concern about independent watchdogs if there had been a better historical record of Parliament holding people to account. I use the example of ethics enforcement. Prime ministers have not held their ministers to account on ethics. George Radwanski was not found accountable in any way by Parliament, despite what he did and despite that he's now facing criminal charges.

So parliamentarians have not done the job—I'm sorry—for 139 years. We need independent watchdogs who are fully empowered and who, hopefully, will have the attitude to do the job, which we're still missing, certainly, in the ethics enforcement area.

The Chair: Thank you, sir.

Monsieur Sauvageau, go ahead, please.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): Good morning and welcome, gentlemen.

My first question is for Mr. Conacher. In your Report on the 140 Flaws in the Federal Accountability Act, you talk about 21 promises broken by the Conservatives. I will not ask you to list them, as that will take my entire eight minutes. However, I would like you to clarify two or three of the main commitments that were not honoured and I would like you to send us the list of the 21 broken promises.

Perhaps there are 140 proposed amendments in your document; I have not counted them. Are they all there? Do you want to send more to us?

Finally, this sponsorship scandal is what triggered the Bill C-2. If this bill were to be enforced tomorrow morning, are you convinced that this kind of scandal would no longer happen?

Mr. Duff Conacher: Thank you, and please excuse the quality of my French. I have a lot of practising to do. Given the details that I must provide you, I will respond in English.

[*English*]

What you have received, first of all, are just the first two parts of our full report. It's simply because this was scheduled on fairly short notice. I submitted the full report just last Friday to the committee, so they will be translating all 140 amendments that follow from the sections you have, which summarize the areas that we see as still having key flaws.

In terms of the broken promises, it's hard to choose among them, but I think what is most offensive is to attempt to delete five rules in the current cabinet, ministerial staff, and senior public servants code, including the rule requiring that people act with honesty, and to bar the public from making complaints to the Ethics Commissioner about their own employees—to actually increase the bar. There is no legal bar now, and there is a legal bar being put in with this bill. I find that completely offensive.

Also, it is a violation of the Conservatives' promise, which was to allow the public to make complaints, not just politicians. That is not in the bill. Some people may think it is, but a member of the public has to file a complaint with a politician, and the politician then has to prove the complaint is valid, somehow—I don't know how that's going to happen without any investigative powers—before they can file with the Ethics Commissioner. It's totally offensive.

But the other areas, the secret lobbying, secret donations, secret rulings from ethics watchdogs—this overall secrecy—and the violation of the Conservatives' promise to include many key changes to the access to information system...all of those things are missing. As a result, Democracy Watch's position is that people who break the honesty, ethics, waste prevention, openness, and hiring and appointments rules in the future will not be caught, they will not be found guilty, and they will not be penalized.

So another ad scam is still very much possible.

● (0855)

The Chair: Mr. McCandless, the question was directed to Mr. Conacher, but do you have any comments?

Mr. Henry McCandless: Not especially on that one, no. I've left alone the area of the conduct rules.

The Chair: Okay.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Mr. Conacher, there is talk that citizens will be able to send their complaints directly to the Integrity Commissioner, as is the case with the Office of the Commissioner of Official Languages. For our part — and I think that the same is true for the Liberals — we want to eliminate the obstacle that would prevent citizens from proceeding that way.

Will we run the risk of seeing as specific lobby group block the process by filing 58 000 complaints in order to prove that the act is ineffective. As was the case with the Canadian Firearms Registry? People had decided to fill out the forms in a haphazard way, which revealed the ineffectiveness of the act, but in a way that was somewhat questionable.

Would allowing citizens to file their complaints directly with the commissioner enable a group to nail a political party? Could a group like that, under this amendment, take advantage of the opportunity and do something like that?

[*English*]

Mr. Duff Conacher: I think you have a safeguard that you don't have in the gun registry, so it doesn't quite work as an analogy. And that is that for every complaint you file about a violation of the ethics rules, if it's not true it's slanderous and libellous, and you're opening yourself up to a libel lawsuit.

I have no problem with putting in a bar where the commissioner can reject complaints that they consider frivolous or vexatious. There is going to be a transition period where there likely will be a backlog, as there is with any new law.

[*Translation*]

Mr. Benoît Sauvageau: May I interrupt you? I understand that part of it. However, I wonder what the lobby group would consider frivolous or vexatious. Couldn't this lobby group simply show how ineffective the commissioner is by filing a whole lot of complaints? They might be considered frivolous and vexatious, but the group would have considered them a priority. However, the Integrity Commissioner would not be able to do his work adequately, because he is inundated with complaints, as frivolous and vexatious as they may be.

[*English*]

Mr. Duff Conacher: Worst-case scenarios are possible in any situation, and I think you're extending it to a worst-case scenario that's highly unlikely. There's been no bar on filing ethics complaints for the past 20 years, since the cabinet code was created and the almost two years since the MPs' code was created. You've only seen a dozen complaints in the past dozen years, so I don't see the danger, especially when it is libellous to make a false complaint.

The Chair: Thank you, Mr. Conacher.

Mr. Martin.

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

Thank you to both of the witnesses for being here.

Mr. McCandless, I read with interest your article in the May 22 edition of *The Hill Times*. I found it very useful. I see your remarks today touch on some of that as well, but we've taken some guidance from that.

Mr. Conacher, as always I find your report very helpful, comprehensive, and thorough. We share your view that this is an historic opportunity. You've dedicated most of your life to these issues, and this is possibly the first realistic window of opportunity you're going to have to see some of those things realized, if not all.

I share that view and take some comfort that much of the FAA—incomplete as it is, perhaps, in your view—reads like the NDP's federal election campaign document almost chapter to chapter. So we're excited by this opportunity. Notwithstanding that, I take how valid many of your observations are, and I can assure you that we are working at crafting amendments to address as many of those as is humanly possible. I'm not sure it will be all.

In your introduction, you said one of the things that bothered you most was that the obligation to act with honesty won't find its way into the legislative side of the package. I'd only ask you to consider—if you agree with it—that the absence of an obligation to act with honesty doesn't give someone licence to act dishonestly. There are other regulatory measures and legislation that certainly curb senior politicians or their staff from acting in a blatantly dishonest way that would be illegal, in many senses.

Would reference in the preamble of Bill C-2 to an obligation to act at the highest standard of ethics and honesty satisfy your observations or concerns?

● (0900)

Mr. Duff Conacher: Not at all, because a preamble is not enforceable. I don't see—

Mr. Pat Martin: How is an obligation to act with honesty enforceable in legislation?

Mr. Duff Conacher: It's enforceable in the same way that corporations are required to be truthful in their advertising. If they're not, six people—they don't have to go through a politician—can file a complaint directly with the Competition Bureau. The Competition Bureau is required to investigate and rule. Sears Canada was found guilty of false advertising through this exact method a year ago.

Corporations are also required to be honest with their shareholders. They have to state everything accurately. If they don't, shareholders have grounds to sue, and so do securities commissions, which are independent enforcement agencies that enforce that law. Corporate leaders cannot lie to consumers or shareholders, so political leaders, public servants, should not be allowed to lie to the public. I don't see the bars that you see there now legally against being dishonest.

If you're talking about the breach of trust in the Criminal Code, how many times have you seen that enforced? We need a civil process. We already have it in the ethics code and there's no reason to remove it. I think it's being removed because David Emerson was accused of not acting with honesty. So the government realized this was a potent rule and it had better get rid of it.

Mr. Pat Martin: Well, I think there are some valid points there.

Mr. Duff Conacher: Again, it's not talking about legislating morality. Legislating morality means that even when you set out laws, it will not make people moral. Some people will break the laws. That's what the saying that you can't legislate morality means. It doesn't mean you don't have laws; we do have laws. Corporate leaders cannot lie and politicians and public officials should not be able to lie either.

It's fundamental. And it's the number one issue of government accountability for Canadians, as every single poll has shown in the last decade, including every single poll done in the last election. This is why I find it so shocking that this government would attempt to remove this rule, when it's the number one hot button issue on accountability for Canadians, as every single poll showed in the last election.

The Chair: Mr. McCandless, I don't want to leave you out. Do you have anything to comment?

Mr. Henry McCandless: Yes. It just occurred to me what would be really different in Bill C-2 if you stuck in the definition of lying by the American scholar Sissela Bok, who wrote a book in 1978 called *Lying* , because the U.S. administration was lying to the American people on Vietnam. Her definition of lying is pretty damned rigorous; it is “any intentionally deceptive message that is stated”.

Now, if you go back to the interview with Erik Neilsen by Peter Gzowski some years ago, where Neilsen said there's a hell of a lot of lying by politicians—in fact, it was worse than what I've just said. But if that was the criterion for what you call lying, it would be very powerful indeed.

I don't think there's a hope in heck of Bill C-2 including that, but you might consider what is a definition, a criterion for lying, versus not. It's something the committee could consider and see if they can put in something of that nature.

● (0905)

The Chair: You have less than a minute, Mr. Martin.

Mr. Pat Martin: I think that's a really interesting idea. Actually, I jotted that down. You know, Mr. Conacher, I think your point is well taken.

I would like to believe that some of the obligation to honesty is sort of deemed to be in effect with everything we do. Your point is that there is no obligation to tell the truth, other than the ultimate test, I suppose. At election time, if you get caught you get unelected. But that's a pretty blunt and clumsy instrument to enforce a better standard of ethics.

Our point of view is that the single strongest thing we could do in this FAA is to improve the access to information law so that even if you can't legislate some ethical practices by better scrutiny, better observation of what's going on, you force the standards up by shining the light of day on them.

Would you agree that perhaps the single most important amendment we can make now is expanding—

The Chair: I'm going to stop you right here. We have a bit of a problem, Mr. Martin. The 40 minutes has expired. We haven't heard from the Conservatives yet. Your time has expired. Obviously, for us to continue we need unanimous consent, and that will cut into the next group.

Does anyone have any bright ideas?

A voice: [*Inaudible—Editor]*

The Chair: The Conservatives have....

Mr. Martin, I have to cut you off, I'm sorry. You were well over time.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): I thank my colleagues for granting the unanimous consent, and thank you both for appearing here today.

Mr. Conacher, you have obviously made some very serious allegations about the proposed Federal Accountability Act. In your release of last week, you stated that the Prime Minister, the President of the Treasury Board, and the Prime Minister's spokespersons are being dishonest and claimed a number of broken promises.

You've reiterated those claims today, and I challenge those. I would argue that...you use the term “offensive”. Well, quite frankly, with respect, sir, I find it offensive that you would make those comments and those claims against this legislation.

I want to go over a few of your accusations today. Obviously, I don't have a lot of time, so I can't go through every single one of them, but I do want to point out a few.

The first accusation is that the promise to enshrine the conflict of interest code into law is a broken promise. I would ask you, sir, do you have a copy of the bill with you?

Mr. Duff Conacher: No, I don't.

Mr. Tom Lukiwski: That's unfortunate. If you did, sir, I would ask you to turn to page 1 and read clause 2 of the bill, which is in bold face. A copy of the bill has been presented to you. Could you read that to me, sir?

It is page 1, clause 2, in bold face.

Mr. Duff Conacher: It reads, “The *Conflict of Interest Act* is enacted as follows”.

Mr. Tom Lukiwski: Thank you. “The *Conflict of Interest Act* is enacted as follows”. In fact, sir, I would note that the enshrinement of the code into law takes up the first 50 pages of this act. How in any way, sir, is that breaking a promise?

Mr. Duff Conacher: Because on April 11, the day the act was issued, the backgrounder said that the Federal Accountability Act will enshrine the provisions of the current Conflict of Interest and Post-Employment Code for Public Office Holders into a new conflict of interest act. Five of the provisions of the current code are not in the act, including the rule to act with honesty, to uphold the highest ethical standards, to avoid potential and apparent conflicts of interest, to not use government property for your own purposes, and the rule that bans owing anyone who could benefit from your decision-making. That is not the current code. When you delete five provisions of the current code, you are not enshrining the provisions of the current code into the act, as was specified in last week's release.

● (0910)

Mr. Tom Lukiwski: I would argue, sir, that in fact it is enacted, and that's why it is taking up 50 pages of the bill.

You may argue that it doesn't go far enough and that there are amendments. That's a fair argument, but to make a blanket statement that we have broken a promise by not enshrining the conflict of interest code into this act is completely unfounded. It's a false claim, but we will argue that and perhaps agree to disagree.

Let me go on to another one. You accused the government of breaking its promise to close loopholes that allow ministers to vote on matters connected with their business interests.

Please turn to page 6 and read me proposed subsection 6(2).

Mr. Duff Conacher: It reads:

> (2) No minister of the Crown, minister of state or parliamentary secretary shall, in his or her capacity as a member of the Senate or the House of Commons, debate or vote on a question that would place him or her in a conflict of interest.

Mr. Tom Lukiwski: How would that, sir, be breaking a promise?

Mr. Duff Conacher: Because again, as detailed in our release last week, the definition of private interest that has been kept in the act defines virtually 95% of what ministers do as not a private interest. Therefore, you can't have a conflict of interest when you're dealing with things. It's an exemption that was added by Paul Martin when he was Prime Minister. It's an exemption that means that a finance minister can own $1 million worth of stock in a bank and still be responsible for changing the Bank Act, because private interest does not include what is a matter of general application. The Bank Act is a matter of general application, as is most everything that ministers deal with. This is specifically what the promise was aimed at, I believe, given that I was consulted on the development of the promise.

Mr. Tom Lukiwski: I would suggest, sir, that that is factually incorrect because in the act we are prevented from owning.

Mr. Duff Conacher: You could have it in a blind trust and know that you still own it.

Mr. Tom Lukiwski: That's factually incorrect, sir.

This is something that more and more, sir, I find offensive, because your claims are factually incorrect in many cases. If you take a look at the act and read it carefully, which obviously we have done, your claims are unfounded and baseless.

Mr. Poilievre, perhaps you could add something.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): For one example, public office holders have to divest themselves of all their interest by June 3—by next week. It would be impossible to have the example you just cited—that you would have ownership of a bank and then be able to vote on Bank Act provisions—because we're not allowed to own any bank stocks; we have to sell everything.

Mr. Duff Conacher: Or place it in a blind trust.

Mr. Pierre Poilievre: About which we would not know anything since it's a completely blind trust. We would not know what we held; that's why it's blind.

Mr. Duff Conacher: Yes.

Mr. Pierre Poilievre: So your claim is factually wrong.

Mr. Duff Conacher: No, the rules allow that you can have an interest, because of the definition of private interest in the rules.

Mr. Pierre Poilievre: You would have no knowledge that you owned it, so how could you possibly be voting in favour of your private interest if you didn't know what those private interests were?

Mr. Duff Conacher: First of all, there's a six-month period, when you are a minister, when you do know that you own it, before you have to divest or place something in a blind trust, a period that Democracy Watch is proposing be shortened. Second, when you first place it in that blind trust, you would still know. Third, the definition of private interest allows the minister to vote on something in which they have a financial interest as long as the matter is of general application.

Mr. Pierre Poilievre: You're factually wrong.

The Chair: I'm sorry. I know this could go on for a while, but we're already 10 minutes over schedule.

I want to thank you, Mr. McCandless and Mr. Conacher, for coming and providing us with your thoughts.

Thank you very much. We will have a brief break to get ready for the next witness.

● (0915)

(Pause)

● (0920)

The Chair: I would like to reconvene.

Our next guests this morning are from the Office of the Privacy Commissioner of Canada. We have with us Jennifer Stoddart, who is the Privacy Commissioner, and Patricia Kosseim, who is the general counsel. Good morning to both of you.

As you know, Ms. Stoddart—you've appeared before many committees—you will make a few preliminary comments, if you could, and then members of the committee will have some questions for you.

Thank you for coming.

Ms. Jennifer Stoddart (Privacy Commissioner, Office of the Privacy Commissioner of Canada): Thank you very much, and thank you for inviting me. I'll have some short comments, and then I'd be happy to take your questions.

[*Translation*]

Let me begin by saying that I welcome the direction in which the government is moving under Bill C-2. Since I assumed my position, I have governed my Office with the spirit and practice of increasing its transparency and accountability to the Canadian public. I have experienced first-hand the lengthy and difficult struggle of having to restore sound business practices, rebuild staff morale and re-establish public confidence in my Office. I fully support the government's efforts to put into place necessary mechanisms to help avoid such unfortunate situations from happening again.

Bill C-2 brings the first wave of new amendments to the Access to Information and Privacy Acts. However, I believe there is still major work to be done. Like Access to Information reform, Privacy Act reform is an equally important pre-condition for achieving meaningful government accountability and transparency.

[*English*]

I will talk a bit more about the need for Privacy Act reform as an issue of accountability and transparency.

As the Supreme Court of Canada recently stated, the Access to Information Act and the Privacy Act must be read together, and I quote them, as "a seamless code". When Parliament adopted these companion pieces of legislation some 25 years ago, it clearly intended to increase government accountability in two ways: first, by ensuring that access to information under government control is recognized as a right of citizens; and, second, by strengthening the individual's right to know what personal information the government has about them and how it is used.

Privacy is not synonymous with secrecy, nor should it be seen as an antonym to access. In fact, openness, accountability and access to one's personal information are three of the fundamental, and now internationally recognized, principles of any modern data protection regime. At the request of the former Standing Committee on Access to Information, Privacy and Ethics, my office has prepared a discussion paper on the reform of the Privacy Act, which we will be tabling next week with the committee.

I will go now to comment on the specific provisions of this bill as they relate to the Privacy Act. The focus of my remaining comments then are as follows.

The extended scope of application is something that I'd like to comment on. While I take the view, as my colleague Information Commissioner John Reid does, that a more principled approach is eventually needed to hold all government institutions accountable for their information holdings, the extended coverage proposed by Bill C-2 is still, in my mind, a welcome incremental step. By extending Privacy Act coverage to include more entities, Bill C-2 certainly improves on the status quo.

I am concerned, however, with the proposal that seeks to remove certain commercial crown corporations from our private sector act, which is known as the Personal Information Protection and Electronic Documents Act, PIPEDA, and include them instead in the Privacy Act. I refer the honourable members to clauses 188 and 190 of the legislation. Specifically, I am referring to the Canadian Broadcasting Corporation, the CBC, and Atomic Energy of Canada Limited, both of which are crown agents currently designated by order to be subject to PIPEDA, as well as VIA Rail, which is a federal work, also subject to PIPEDA. The sad reality, honourable members, is that personal information is now far better regulated in the federally regulated private sector than it is in the federal public sector. Changing the rules for these commercial crown corporations would actually lower the standard of privacy protection they are required to meet under PIPEDA, equivalent to their private sector competitors, who are all presently on a level playing field.

Bill C-2 exempts from access personal information obtained or created by our office in the course of an investigation. This provision is parallel to a new section proposed for the Access to Information Act. I support the inclusion of both of these new exemptions in respect of privacy investigations conducted by my office. I believe that these new exemptions, as they apply to privacy investigations, are important to close the back door so that a person who is being denied access to information by a department and brings the complaint to my office cannot indirectly obtain access to it simply by seeking access to my investigation files, which invariably contain a copy of the information in question. Were complainants permitted to do this, they would, in effect, be circumventing the entire complaint resolution process provided for by law.

Moreover, this exemption is entirely consistent with the existing confidentiality provision in the Privacy Act, which aims to protect the ombudsman process in its mission to resolve conflict in an informal manner. The obligation of confidentiality is essential to the ombudsman's approach to encourage the parties to engage fully within a conciliatory process that best functions when the parties reach a mutual state of trust and confidence.

● (0925)

[*Translation*]

Finally, I would add that, by their very nature, privacy complaints arise out of situations where individuals feel that their personal information rights have been violated. It would only add insult to injury if OPC investigation files, which are created to look at the complainant's allegation, were publicly accessible, further exacerbating their sense of privacy violation.

We support the new exemptions being proposed for the Privacy Act to protect whistleblowers under Bill C-11. OPC had voiced support for protecting the identity of whistleblowers when we appeared on Bill C-11.

Disclosure of wrongdoing is an alert to the existence of departmental wrongdoing. The type of investigation envisaged in this legislation scheme does not generally turn on the identity of the whistleblower, but rather, on the veracity of the alleged facts. It is important not to confuse the necessary assessment of the credibility of witnesses in any investigation, including investigations into alleged wrongdoings, with the legislator's public policy choice to protect the identity of the whistleblower in this specific context. Even where the identity of the whistleblower may be relevant to an investigation, Bill C-11, as amended by C-2, expressly provides that rules of procedural fairness and natural justice continue to apply to the Chief Executive, Integrity Commissioner and Tribunal.

In my view, this insures a proper balance between fairness to the alleged wrongdoer and protection of the whistleblower.

[*English*]

I'll comment briefly on the appointment and removal process for officers of Parliament. I support these amendments to the process for appointing and removing the Privacy Commissioner under section 53 of the Privacy Act, which ensure the necessary level of independence appropriate for an officer of Parliament. Like my colleague the Auditor General, however, I would not favour the public disclosure of the final vote count, which may adversely affect the necessary level of confidence among parliamentarians and the public in the ultimate choice of an officer.

[*Translation*]

Finally, I bring to your attention what I see as a serious omission in Bill C-2: the absence of a mechanism to investigate access or privacy complaints against the Information and Privacy Commissioners. I would hope that the provisions in Bill C-2 making the two commissioners subject to both Acts will not come into force until an alternative complaint investigation process is properly established to deal with these new types of situations.

[*English*]

In conclusion, I hope I have given you a clear indication of my views on the provisions of Bill C-2 that have privacy implications, as well as the importance, for the same reasons as you are undertaking this reform, of reforming the Privacy Act, which is an indispensable part of assuring government accountability.

I would be happy to take your questions.

The Chair: That was a thorough presentation.

The committee does have some questions.

Mr. Owen.

Hon. Stephen Owen: Thank you, Commissioner Stoddart, for being with us and for re-establishing, in such short order, the integrity of the Office of the Privacy Commissioner.

Perhaps I could just ask a general question about the type of office you hold—that is, your view of its proper role between both the executive and Parliament, where you really are an extension of members of Parliament in order to assist them to hold the executive of government accountable.

Coming from that, it would seem to me that, over time, you would identify trends, perhaps of particular types of complaints or difficulties that you would recommend be altered in terms of the management of public administration. Therefore, although concerns, problems, and mistakes won't disappear entirely, over time they should start to come in line with the best management practices, as far as your office or any of the other independent offices are designed to meet.

Is that the experience in your looking at the history of the privacy office and your own individual relationship with it for the last two years? Are we creating, with your office being one of the agents of change, a change in management practices towards greater responsibility? Or do you feel that your office is simply there as an ongoing, steady-volume recipient of complaints that aren't really being corrected in a remedial way?

● (0930)

Ms. Jennifer Stoddart: If I understand your question correctly, honourable member, you're talking about two things: about management and accountability—administrative issues—as well as issues of enforcement of the legislation and amendments to the legislation.

I would say from my own experience as Privacy Commissioner that I was in a sense both fortunate and unfortunate to come in at a very critical time in the role of this office and also in the historic role of agents or officers of Parliament, however one chooses to qualify them.

I'd emphasize that this is a reciprocal relationship between Parliament and its officers or agents, and the importance one assigns to them and the interest Parliament takes in their doings can vary widely—and has varied widely, certainly, throughout the history of my office.

I'm fortunate to be Privacy Commissioner now, at a time when, through various issues—both the emerging issue of privacy and the unfortunate events of 2003, in which Parliament was directly involved—Parliament is now very much following the developments in my office. This in turn—it's a synergetic relationship—I think gives me a lot more credibility when I talk about Privacy Act reform, or this fall Parliament wouldn't be looking at a five-year review of PIPEDA.

Hon. Stephen Owen: I agree. Thank you.

The Chair: Mr. Murphy.

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

Thank you, Madam Commissioner. I'm very grateful for your testimony, and it seems very clear to me on page 4, when you talk about CBC, Atomic Energy of Canada, and Via Rail.

What we hear in the other place, over there in the Commons, is that somehow in the other part of this omnibus bill—the access provisions in particular—something was done to protect CBC and the sources. But what's clear here is that the extraction of CBC in particular from PIPEDA gives them, in your words, a lower standard of privacy protection than the federally regulated private sector.

I guess my question—I'd buy that lock, stock, and barrel—is why this has come to be, other than maybe that it was rushed without consultation. Was there consultation with you about the extraction of these three crown corporations, or arm's-length corporations, which have to, after all, compete with the CTVs and the rail systems out west and the atomic energy.... I suppose they compete on a worldwide basis.

Was there consultation, and has there been sufficient time to develop a safety net?

Ms. Jennifer Stoddart: No, unfortunately, we weren't consulted before the act was tabled. I think that had we been consulted we would have pointed out that these three entities are already covered by PIPEDA; that it's a much higher, more modern standard of data protection that seems to be working well. There is an exemption for journalistic, artistic provisions under PIPEDA, so this does not go to the issue of journalistic sources.

We don't know whether this is an omission or whether.... It probably seems to be an omission. One cannot imagine that the government deliberately wants to lower the standard of privacy protection, both for employees and for the public, for consumers and for citizens who deal with these organizations.

● (0935)

The Chair: Okay.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Good morning and thank you, Ms. Stoddart and Ms. Kosseim.

My first question refers to page 4 of the English version of your presentation. The last sentence in the middle paragraph reads as follows:

> Changing the rules for these commercial crown corporations would actually lower the standard of privacy protection they are required to meet under PIPEDA, equivalent to their private sector competitors who are all presently on a level playing field.

Representatives from Export Development Canada told us that when an organization deals with clients from the private sector and its competitors are in the private sector, the fact of opening the door under the Access to Information Act could constitute unfair competition, a thorny issue for this organization.

Is this what that sentence means?

Ms. Jennifer Stoddart: Mr. Sauvageau, I do not believe that the issues are the same as they are under the Access to Information Act. In the long term, Parliament should consider amending both acts based on the principles, rather than on the fact of designating certain corporations or not, given the public/private sector mix that we often find in many federal organizations.

The PIPEDA provides a rather high level of protection for personal information. This legislation contains requirements in terms of organization, transparency, accountability, and redress measures, but nothing of the sort is included in the current Privacy Act. The burden imposed on these three crown corporations would be lighter than the burden on their competitors or colleagues in the private sector governed by the same act.

Mr. Benoît Sauvageau: At the bottom of page 6, mention is made of secret votes in Parliament. What are your complaints or your criticisms with regard to the current way secret votes are held? We're talking about completely changing a tradition in the parliamentary system, because in the British parliamentary system, only the Speaker is elected by secret ballot. To my knowledge, this is not the case for independent officers such as the Auditor General, the Commissioner of Official Languages, etc. What is the problem with the current process in your opinion?

Ms. Jennifer Stoddart: Honestly, I don't see any problem with regard to the current situation. I have been through it. I am not an expert in parliamentary procedure. The acting commissioner, Mr. Robert Marleau, made comments about this, and I respect his opinion. He said it was preferable for the House's rules of procedure, rather than a bill, to regulate secret votes.

● (0940)

Mr. Benoît Sauvageau: If the change was made.

Ms. Jennifer Stoddart: Yes. Currently, the individuals appointed to this position are elected almost by consensus. If we opt to take a secret ballot, we can assume that everybody would vote the way they want to, which could lead to a situation where two thirds would be in favour and the other third would be opposed or to an election with a majority of 10 votes, etc. If we move in that direction, I agree with the Auditor General to say that votes should be secret. I am not asking for the current process to be changed.

Mr. Benoît Sauvageau: Thank you, Mr. Chair.

You are in favour of keeping the status quo, but if the committee recommended a change, you would prefer the vote to be secret. Your first choice however is the status quo, is it not?

Ms. Jennifer Stoddart: Yes.

Mr. Benoît Sauvageau: Thank you, I have no further questions. I don't know if Ms. Lavallée would like to ask any.

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): You asked whether the government wanted confidential information to receive less protection under Bill C-2. You also mentioned that the current level of protection was sufficient and that the bill would decrease that level.

Do you really believe that personal information will be less protected under this bill?

Ms. Jennifer Stoddart: Yes, with regard to these Crown corporations. It's more than a thought, Madam member.

Mrs. Carole Lavallée: For the three Crown corporations that you mentioned?

Ms. Jennifer Stoddart: This is an incontrovertible legal fact. The Privacy Act does not include all the aspects of the Personal Information Protection and Electronic Documents Act, which is a more recent statute by nearly 25 years and which applies to the private sector.

Currently, these Crown corporations come under the PIPEDA. This means that if people have a problem with regard to the protection of personal information, they cannot only file a complaint with us but they may request remedial action. And we can also make some suggestions. If the corrections are not made, these individuals may go to federal court to obtain compensation.

At the request of the standing Senate Committee on Access to Information, Privacy and Ethics, I will be tabling next week a discussion paper on reforming the Privacy Act. Under current legislation, you can only request access to your file. You may request that corrections be made, but if they are not made, the process ends there. Neither the individual or I or the commissioner may go to federal court on your behalf, or obtain compensation. This was recently confirmed by the federal court. Furthermore, current legislation regulating the federal public sector does not contain a code of conduct that applies to personal information, while the legislation regulating the private sector does contain such a code.

[*English*]

The Chair: Thank you.

Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chair.

Thank you, Ms. Stoddart, for your observations. Listening to you, it made me think that much of what we're doing today with Bill C-2 really had its origins in the incidents in your office. I remember, of course, that the inquiry of the government operations committee into the Office of the Privacy Commissioner was sort of a catalyst for a lot of us realizing, first of all, the need for better whistle-blower protection, because we remember the scene when these honest, well-meaning whistle-blowers were so concerned about their own protection or lack of it that they felt they had to bring legal counsel with them to make their presentations to a standing committee of the House of Commons. That, more than anything, just drove it home to us that the whistle-blower protection regime is woefully inadequate. So I thank you for your observations on that today.

Early in your brief you made the point that privacy is not synonymous with secrecy, which is a very good point to raise here, I think. But by the same token, the Auditor General, when she was a witness to this committee, testified that whenever you increase access to information authority or regulations, or improve access, as it were, it has the effect of reducing the amount of documentation. In other words, there's a problem from her point of view; she finds that there's less to audit when there are access to information requests going on.

Do you anticipate corresponding problems with privacy complaints if we increase dramatically the access to information provisions within Bill C-2?

Ms. Jennifer Stoddart: No, I don't think it has the same effect on personal information. I think there's a minimum amount of personal information that has to be held and a minimum amount of personal information that's always generated, because it's linked to individuals. So we don't see this phenomenon that Commissioner Reid has certainly spoken of at some length. We haven't noticed this as a phenomenon.

In fact, I would say that the opposite is true, but maybe for other reasons, because of the possibility of linkage to individuals. A lot of government is about governing citizens. A lot of the private sector, also, is about managing the marketplace and consumer relations. So I think there's an increase in the holdings of personal information. But we haven't done a study on it. That's a personal opinion.

● (0945)

Mr. Pat Martin: So you don't see any competing interests here between the public's right to know and the individual's right to privacy.

Ms. Jennifer Stoddart: Yes, as you point out, there are always competing interests, and this is the subject of ongoing debate and ongoing adjudication. The Supreme Court of Canada came out with an important decision just last month. But that's an inherent and healthy tension in a democracy.

Mr. Pat Martin: That's an excellent point.

Ms. Jennifer Stoddart: We think our government should be open and transparent, not open and transparent about what's in my file or yours, but open and transparent about documents that contain facts, eventually opinions, policy statements, and so on, that go to the governance of the country.

Inversely, the personal information we give should be accessible only to us, and I would argue that we should go on, and that's why I'm arguing for reform of the Privacy Act next week. We should also know the linkages and what use is made of our personal information. That's not very clear under the present regime.

But we have to live with both these principles. We all want them I think as citizens, and we have to get them right.

Mr. Pat Martin: Up until your being here as a witness today, I think the emphasis of this committee has probably been on the access to information side. Your representing the side for right to privacy is very fitting.

With the whistle-blowing changes, you cite that you don't oppose what Bill C-2 would do to Bill C-11. But in your own experience, I suppose it's ultimately very difficult to guarantee the anonymity of the whistle-blower. I think you made some reference to it. If it becomes an integral part of the investigation, you talked about natural justice or maintaining natural justice. Could you explain what you mean by that?

I'll find the phrase:

> Even where the identity of the whistleblower may be relevant to an investigation, Bill C-11, as amended by C-2, expressly provides that rules of procedural fairness and natural justice continue to apply....

What do you mean by natural justice and procedural fairness?

Ms. Jennifer Stoddart: In this context, natural justice and procedural fairness usually mean things like the right of both parties to be heard, before a conclusion or a decision is come to that would affect both of them, and the right to know all the facts that are involved in the process so that one is not adversely affected by an arbitrary process, part of which would be secret.

Mr. Pat Martin: Isn't the right to know your accuser an aspect of natural justice?

Ms. Jennifer Stoddart: Well, I don't like the phrase "the right to know your accuser" in the context of administrative law. I think it telescopes a lot of things, such as criminal law principles, and it imports them into a more sensitive, nuanced, and many-shaded world of administrative process. I stay away from that phrase.

I think what we're looking at and what you are looking at in Bill C-11, where I originally testified on this, is how to create a safe place, as in the example of the Office of the Privacy Commissioner in 2003, for people to come forward and say they think there's something wrong, without being intimidated the next day by the person who they think is doing something wrong. I do not see that as contrary to natural justice. I think you need to have a time and a space in which you can do that. You can come forward and you have some protection while the investigation is going on.

I said in my submission that the person or persons who are leading the investigation have other tools at their disposal, rather than making the contents of the investigation public, as in open court, which is our rule for criminal proceedings, notably on the issue of the credibility of witnesses. They also look at all the facts, and so on. You have those built-in safeguards.

My reference to natural justice also meant there's usually a second, third, or ulterior step after that. If you go on from the initial discovery of facts that is triggered by a whistle-blowing process and you go on to some kind of disciplinary or remedial action or criminal accusations, at that point, yes, you then have the right to know all about the case.

● (0950)

The Chair: Thank you.

Monsieur Petit.

[*Translation*]

Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC): Thank you, Mr. Chair.

Ms. Stoddart, my question is two fold. You work for the Office of the Privacy Commissioner of Canada and you have access to a wide range of rules to protect privacy. God knows how difficult that is today!

However, there one thing that I wonder about. The Information Commissioner of Canada has a job completely the opposite of yours, meaning he requires a great deal of information. You you are some kind of a watchdog.

Do you believe that Bill C-2 will enable the information you obtain during an investigation, for example with regard to protecting individuals, to be transferred to the Information Commissioner? If I want to obtain information, I must go through the Information Commissioner. If you block my request, rightly or not, I do not have to provide an explanation. Would you be prepared to transfer information to the Information Commissioner, or would you systematically block the transfer of information? Does Bill C-2 resolve this problem?

Ms. Jennifer Stoddart: I do not believe that, currently, personal information is passed on to the Information Commissioner. That is why a suggestion is being made with regard to the exemption.

I would like to ask the legal counsel to talk to you about this in greater detail.

Mrs. Patricia Kosseim (General Counsel, Office of the Privacy Commissioner of Canada): The Privacy Commissioner is involved when personal information on a third party is collected during an investigation by the Privacy Commissioner on a much broader subject. In both cases, there are provisions, in Bill C-2 and in the current legislation, that can protect some information so there are not disclosed.

Under Bill C-2, information collected during an investigation would be exempted, which the Commissioner fully supports.

With regard to personal information on third party, there are already provisions in place to ensure that this information is protected. There are mechanisms protecting this information prior to its disclosure.

So Bill C-2 would not necessarily increase this tension.

Mr. Daniel Petit: Agreed.

I have another question for Ms. Stoddart or Mr. Kosseim. In Bill C-2 from this session and Bill C-11 from the previous session, which you examined, the term "whistleblower" is used. Naturally, everyone focusses on this word. However, there is another notion, which we learned about within the framework of the Gomery Commission,that of "informer". Do you see the distinction between the two terms?

A whistleblower is someone who did not assist in the commission of a crime, while an informer is an individual within the system who, in order to obtain specific rights... For example, Mr. Guité, who was within the system, could have sold out his friends by revealing everything they had done in order to reduce the penalty he would face.

Does Bill C-2 provide this possibility?

Ms. Jennifer Stoddart: It is difficult for me to answer this question. I have not considered the distinction between these two terms, but I do not see, with regard to their use, consequences on privacy protection.

Mr. Daniel Petit: Thank you.

[*English*]

The Chair: Thank you.

That concludes our time with you this morning.

I thank you very much, Ms. Kosseim and Commissioner Stoddart, for coming.

We will break for a few minutes.

● (0954)

(Pause)

● (1000)

The Chair: We'll reconvene the meeting.

We have three groups before us this morning. We have Deborah Bourque, the National President of the Canadian Union of Postal Workers.

Good morning, Ms. Bourque.

We have Toby Sanger, an economist, and Corina Crawley, both from the Canadian Union of Public Employees.

Good morning to you.

We have Pierre Patry, and Eric Lévesque, who are with the Confédération des syndicats nationaux.

Good morning to you.

All three groups can make brief presentations to us before the committee asks you questions.

Thank you.

Mrs. Deborah Bourque (National President, Canadian Union of Postal Workers): On behalf of the 54,000 members of the Canadian Union of Postal Workers, I want to thank you very much for the opportunity to appear before this committee and to provide the committee with our views on Bill C-2.

Due to the time constraints, my presentation will consist of a very much edited-down version of the written presentation that you've already received, and I'll basically start on page 2 of the English and page 3 of the French.

To begin with, I'd like to mention that we're very happy that Canada Post is going to be covered under access to information. This is something that we have been calling for for years. However, we have serious concerns about amendment 149 under part 3, which adds exemptions and exceptions to Canada Post coverage under the Access to Information Act. We think the exceptions being proposed are too extensive. In addition to normal economic interest exemptions, such as trade secrets, financial, commercial, scientific or technical information, the government has added a new exemption for information that has consistently been treated as confidential. This would cover a great deal of information at crown corporations like Canada Post. Canada Post has not been required to give the public access to its information and it would therefore be very easy for Canada Post to say that a great deal of information has consistently been treated as confidential.

I'll give you one example of basic information that Canada Post is currently treating as confidential. The corporation is reviewing its national network and has announced plans to close a mail processing plant in Quebec City as the very first step in its review. It has also closed about 50 rural post offices since 2001 in spite of a moratorium on post office closures in rural and small towns. Canada Post is a public corporation and the public has a right to know what the corporation is up to, especially when it comes to fundamental issues such as the integrity of our public postal network. Unfortunately, Canada Post has refused to release its overall plan for the network.

If information that has been consistently treated as confidential is included, it will be difficult for us to obtain this kind of basic information even if Canada Post falls under the Access to Information Act.

We'd also like to raise concerns about the exceptions to the new exemptions. We don't understand why we need an exemption for a part of a record that deals with general administration or a special exception for a part of a record that deals with any activity of Canada Post that is fully funded out of moneys appropriated by Parliament. This sounds to us as if everything except for parts of these two types of records...and you know, frankly, they are readily available on Canada Post's website, and the information that relates to things that are solely funded by the government is limited to government mailings and publications for the blind. We think this means that everything would be treated like information that has consistently been treated as confidential.

We'd like the committee to amend Bill C-2 to make it clear that Canada Post must provide all information, except for very specific exemptions.

I'd like to mention here that our call to have Canada Post subject to access to information rules has always included an exemption for information that is commercially sensitive. We agree that there's a real need to improve transparency at Canada Post, but we also think that our public post office must be protected from the predatory requests of competitors who have no legitimate claim on information such as Canada Post's plans to compete with courier companies. These companies want more of Canada Post's business but none of its universal service obligations.

So the union is recommending language, and this is included in the written presentation we've given you, that makes it clear that the head of Canada Post must provide all information with the exception of trade secrets or financial, commercial, scientific or technical information. We would also suggest that the terms “trade secrets, financial, commercial, scientific or technical information” be defined in the least restrictive way possible, and that this information would be subject to independent review by the Information Commissioner.

We have other concerns, especially related to contracting out with procurement, that we hope to have a chance to address during the question period. Thank you very much.

● (1005)

The Chair: Thank you, Ms. Bourque.

Ms. Crawley, Mr. Sanger, very briefly.

Ms. Corina Crawley (Senior Research Officer, Canadian Union of Public Employees): I'd like to thank the committee, on behalf of the Canadian Union of Public Employees, for the opportunity to share our thoughts and recommendations for amendments to Bill C-2, the proposed Accountability Act.

[*Translation*]

CUPE is the largest union in Canada. It has over 540,000 members, most of whom work in the municipal sector, in health, education and social services. Our objective is to maintain and reinforce the public sector, not only to benefit our members, but also to strengthen our communities. Our interest today is to ensure that Bill C-2 will improve government accountability, particularly with regard to contracts for the procurement of goods and services and with private companies in general.

[*English*]

Accountability is a major concern with contracting out and public-private partnerships, or P3s.

The sponsorship scandal is only one example of these. The $160 million Department of National Defence scandal, the Richmond airport-Vancouver rapid transit line, also known as the Canada Line, and Prince Edward Island's Confederation Bridge were all other examples fraught with controversy.

Privatization of roads, hospitals, schools, and prisons in the U.K. has led to mismanagement of funds and loss of public control.

The changes proposed in Bill C-2 put the public sector under a microscope—in many cases this is welcome—but leave the private sector and its use of public funds shielded from scrutiny.

[*Translation*]

I am going to give my colleague the floor so that he can explain our amendments and our particular concerns.

[*English*]

Mr. Toby Sanger (Economist, Canadian Union of Public Employees): In our view, a central element of the federal Accountability Act should be to increase the transparency, disclosure, and powers of the Auditor General to review contracts with third parties. This was the essence of the sponsorship scandal: a political party's abuse of public funds channelled through private contracts, often with crown agents of the government, for private partisan purposes. Public accounts, budgets, estimates, departmental reports, and the Auditor General, as well as the proposals in the Accountability Act, provide significant accountability and details on how funds are spent within government. Citizens also deserve to know how their funds are spent by private companies.

Instead of proposing to improve accountability by substantially increasing transparency, the proposed Federal Accountability Act has adopted an approach more like “father knows best”, by increasing the powers of and the number of oversight bodies rather than substantially increasing the transparency of government. These proposals would not necessarily prevent further abuse and scandals from happening, particularly in relation to government contracts with private companies.

The proposed Federal Accountability Act has major loopholes that would exclude contracts for goods and services from review by the Auditor General, not allow individual citizens to lodge complaints with the proposed procurement auditor, not enshrine the current practice of proactive disclosure in legislation, and not address the recommendations of the Information Commissioner regarding disclosure of details of government contracts with third parties, or even meet the principles established in courts over this information.

We have prepared and distributed four sets of specific changes. They are simple and they are fairly straightforward, but they go a long way to increasing accountability for all government spending. These are certainly not the only changes that should be made. We support the proposals made by the Canadian Union of Postal Workers, and you've also heard a lot of other proposals.

I can go into these in more detail later, if you would like. I've distributed them.

● (1010)

The Chair: Thank you, sir.

Monsieur Lévesque or Monsieur Patry, be very brief, please.

[*Translation*]

Mr. Pierre Patry (Treasurer, Confédération des syndicats nationaux): First, I want to thank you for allowing us to present our briefs on Bill C-2. The CSN represents 300,000 workers in all sectors of activity. Although it is mainly concentrated within Quebec, the CSN is also present elsewhere in Canada, particularly in the telecommunication and road transport sectors and also represents correctional officers in federal penitentiaries.

We congratulate the current government on its initiative in presenting a bill and a federal accountability action plan. Overall, we agree with this bill. However, we feel that it is lengthy and complex, and we want to ensure that there will be a real consultation process and a rigorous study, because this bill must not be passed too hastily.

Given the short amount of time at our disposal and the complexity of this file, our presentation will focus on a few issues.

First, with regard to political party financing, we are delighted that the federal government included in its federal accountability action plan measures based on the Quebec model that has been in place since the 1970s regarding political party financing, which helped to improve the democratic process during elections.

The ban on corporate donations will help to further the democratization of political party financing, and the provisions concerning the ban on making secret donations to political candidates will also help to clean up election practices.

With regard to budget transparency, we also agree with the proposed approach. In fact, we ourselves had made this recommendation during pre-budget consultations. However, we do have questions about the means used. We wonder if it would not be preferable to create an independent working group rather than having a parliamentary budget officer. We also have questions about this officer's powers with regard to access to information. Why does this position come under the Library of Parliament rather than under the Standing Committee on Finance, for example? We also wonder about the additional resources that will be allocated to the parliamentary budget officer.

As for the protection provided to whistleblowers, we are pleased that protection will be given to employees who wish to disclose wrongdoing. However, we oppose providing a $1000 reward to individuals who would act under the provisions of the new legislation. We fear that this will lead to a culture of whistleblowing. We agree that it is important to protect individuals, but we do not believe that a culture of whistleblowing should be encouraged with a monetary award.

With regard to the Access to Information Act, we do not agree that the reform should be delayed yet again. Moreover, last November, the Standing Committee on Access to Information was unanimous in this regard, if I am not mistaken. Consequently, we believe that the government should move forward as quickly as possible on this issue.

We wish to emphasize our support with regard to the addition of Crown corporations that will be covered by the Access to Information Act. However, the new exceptions are of some concern, with the exception of the special exemption for Radio-Canada and work done by journalists. This is, in our opinion, fully justified in order to ensure the protection of sources.

In closing, I want to mention two things. First, with regard to the powers of the Auditor General, we are pleased with the provisions in this bill.

With regard to the ethics commissioner, our main question concerns the fact that citizens will not be able to communicate directly with this individual, but will have to go through an MP. We would have preferred for individuals to also be able to file complaints with the ethics commissioner who would determine the validity of these complaints.

Thank you.

● (1015)

[*English*]

The Chair: You all did very well in the time allowed. Thank you very much.

Mr. Owen.

Hon. Stephen Owen: Thank you.

Perhaps I could address the first question—and then I'll share time with my colleagues—to Ms. Crawley, in terms of the expansion of the review by the Auditor General into contracts.

You mentioned a number of examples of P3 arrangements.

The Auditor General, when she appeared before us, expressed some real concern about the expansion of her role, even to the extent that the act does provide for...because of lack of resources, but also the complexity of it, perhaps in favour of a simpler model where spot audits could be provided or the normal course of auditing of those relationships would be brought forward through professional audit.

The one area where of course it's very useful to have the Auditor General directly involved beyond just audit provisions is following the money, as they say, and the value-for-money aspect of it. Is that what you're trying to get at in terms of the expansion of private-public partnerships?

Ms. Corina Crawley: I would start by saying that I think we might not support the expansion of the Auditor General's purview to organizations receiving smaller amounts of federal funding, which is I think the major significant change you're referring to.

I'm not surprised to hear she was concerned about that, in terms of her workload. It's perhaps more important that there be some capability of the Auditor General to work with the financial statements and documents, and with contracts, once they're signed, that the federal government has entered into with private companies —rather than NGOs and non-profits that are receiving $1 million over five years, or whatever that figure was.

Hon. Stephen Owen: But you're talking about large public works —

The Chair: Monsieur Patry, do you have any comments?

I want to give all the groups a chance. Ms. Bourque, do you have any comments?

Ms. Deborah Bourque: No.

The Chair: Thank you.

Mr. Owen, go ahead.

Hon. Stephen Owen: Do I have some time left?

The Chair: You do, yes.

Ms. Jennings.

[*Translation*]

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

[*English*]

The Chair: You have about seven minutes. No, you can't have seven minutes; that's not right. I'll give you the appropriate time.

[*Translation*]

Hon. Marlene Jennings: There may be un conflict of interest between the Canadian Union of Postal Workers and myself because I was a member of this union in the past and also a union delegate. So I think very highly of this union.

Unfortunately, I only received your brief in English and I would like to quote some passages. Could you better explain the reason why you suggest that subsection 18.1(2) be struck in it entirety?

[*English*]

I think I understand it, but I want to make sure I do. You're asking that it be completely eliminated and that proposed subsection 18.1(1) be amended in order to remove the part that says “and has been consistently treated as confidential”.

If my understanding is correct, that pertains to Canada Post contracting out some of the services it normally provides, and you're worried that it could put Canada Post on a different footing with its competitors in the sector of parcel delivery, etc.

Mrs. Deborah Bourque: I can explain. First of all, we've never argued that Canada Post should be required to release information that would undermine our public postal service. As you know, some of the multinational competitors in the courier industry are extremely aggressive and predatory. We think Canada Post should be protected from having to give commercially sensitive information like that.

In our comments on proposed subsection 18.1(2), our only point is that the "general administration" information is generally readily available in annual reports.

As for proposed paragraph 18.1(2)(b)'s activities that are "fully funded out of moneys appropriated by Parliament", they refer to only two things: free government mailings and literature for the blind.

We think a better way to deal with the points in proposed section 18.1 is to rewrite proposed subsection18.1(1) so that it simply says that all information as requested under this act is required to be released. We've deleted the reference to information that has "consistently been treated as confidential", because Canada Post hasn't been obligated to release information in the past, so they could argue that virtually everything is information that falls under that exemption.

● (1020)

The Chair: Thank you.

Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: Hello. Thank you for coming here. I am particularly pleased to welcome you as the Bloc Québécois labour critic.

In passing, I met with Ms. Carbonneau of the CSN last Friday about the anti-scab bill. Furthermore, I will be meeting in the near future with representatives of the Public Service Alliance and the Postal workers Union on this subject.

I don't recall which one of you expressed concerns about the speed with which our committee was working. You would like us to take the time needed to do a good job. That said, we are in a real scramble. I see that three major unions are represented here and that they each have only a few minutes between their respective presentations. People come here and apologize for not having enough time to properly prepare. I don't believe that this is possible. We will no doubt be sitting for 45 hours over the next two weeks. I am not sure that the work will be of high quality.

That said, I get the feeling — and I don't know if you do also — that the current Conservative government is trying to have us pass Bill C-2 more for reasons related to perception. In a press release, there is talk about restoring Canadian's trust in government. We don't have enough time to do a proper analysis. We must not only consider the trust and perception of Canadians, but also attempt to prevent another sponsorship scandal.

Mr. Sanger said that, in his opinion, Bill C-2 would not prevent other scandals and abuses of power. He shared his opinion with us, but perhaps he would like to comment further. I would ask each of you, in light of your analysis and reading of the bill, wether in your opinion Bill C-2 contains elements that will allow us to avoid another sponsorship scandal. We must remember that this scandal is the reason for this bill.

Mr. Pierre Patry: We are the ones who expressed our concerns regarding the speed with which the bill was being studied. We are afraid that the bill will be passed in haste. We particularly regret this situation because on the whole, the fact that we would enact accountability legislation at the federal level could indeed prevent further sponsorship scandals. It would not prevent them all, but we could thus reduce the probabilities, which obviously would be sensible.

Furthermore, in this bill we are addressing extremely complex issues. We are discussing the financing of political parties; we are reviewing the role of the ethics commissioner and we are dealing with access to information, the contracting process, which I did not refer to earlier, as well as whistleblower protection. In short, each of these subjects deserves an exhaustive study on its own. We must make sure to pass the right provisions, in order to avoid any new sponsorship scandals. However, the main goal is to improve the democratic system within which we live. This is an important concern for the CSN.

On these grounds, we deplore the fact that things are being done so hastily. We believe it is important that such a bill be adopted, but we believe that this legislation deserves a much more in-depth study. We support the major principles of the bill, even though we have expressed certain reservations or asked certain questions, particularly on the subject of the transparency of the budgeting process.

We would have liked to debate each and everyone of these issues and to have carried out our own studies, in order to give the committee a better understanding of our position today. We received the invitation last Tuesday. In the space of one week, we did the analysis that we were able to do, but the fact remains that these subjects deserve a much more in-depth study. We are talking about giving our society the right tools, that will allow it to attain more transparency and democracy.

● (1025)

[*English*]

The Chair: Do you have some thoughts, Mr. Sanger?

Mr. Toby Sanger: I won't disagree that there are a lot of positive elements in this legislation. Obviously, in three minutes we don't have a lot of time to talk about that. Our point was that you could close the major loopholes in it quite simply with a few amendments.

I think a lot of other people have some other amendments. Perhaps you can't solve everything with one piece of legislation, but I really do think there are major loopholes you can deal with in this.

The Chair: Ms. Lavallée, you have two minutes.

[*Translation*]

Mrs. Carole Lavallée: Ms. Bourque, would you share your thoughts on this subject with us? Would this settle the sponsorship scandal problem? Would this ensure that such a scandal will not happen again?

[*English*]

Mrs. Deborah Bourque: I'm not sure if this legislation would in fact have prevented the sponsorship scandal.

The problem is that successive federal governments have in fact imported private sector values into the public sector, things such as corporate sponsorships, lavish expense accounts, and exorbitant CEO salaries. We think that's fundamentally one of the problems related to issues around the sponsorship scandal at least as it relates to Canada Post.

But certainly I would echo my brother's comments about needing more time and having more attention paid to this really extensive legislation. It's absolutely important and crucial in terms of the democratization of our public institutions that this kind of legislation does meet the needs of the public.

The Chair: Mr. Martin.

Mr. Pat Martin: Thank you, Mr. Chair.

Thank you, witnesses, for being here and for all the helpful recommendations.

There are some very specific things that I think we can assure you we will be acting on and trying to implement into amendments to the bill.

Given the limited time, I'd like to speak to one specific item with CUPW, Ms. Bourque.

When we had Moya Greene here, she aggressively defended the exclusion that's contemplated in Bill C-2. Whereas even Bill C-2 contemplates putting Canada Post under the Access to Information Act by adding it to schedule I, it takes away with the other hand by saying there are automatic and permanent exclusions built in for anything time-sensitive. I put it to her at that time that she would enjoy a higher rate of secrecy than the Department of Finance, for instance, whose inner workings can have the effect of upsetting the whole national economy.

Where does this reasoning come from that they're clinging to this right to secrecy even beyond what anybody else enjoys?

Mrs. Deborah Bourque: I don't presume to speak to what Canada Post management is thinking, but what I suspect is the problem here is that the leadership at Canada Post sees its commercial mandate as much more important than its public policy mandate at this point. If Canada Post management understood that, yes, they're a crown corporation with a commercial mandate but that crown corporations serve the public good and are frequently required to act in the public interest rather than just simply maximizing profits....

I think that's part of the problem. Canada Post sees itself as a commercial interest rather than a public institution.

Mr. Pat Martin: That was quite clear.

The second thing I'd like to address actually applies to all the witnesses.

I notice in the first part of your brief, which you didn't get a chance to address, you talk about contracting out, and so on. In a study done in 2003, you found that 355 of 599 cases of contracting out and procurement were done in violation of their own policies, and now you have no way of knowing and we the public have no way of knowing if this has changed in any way. It sounds as if they were in some kind of an ideological frenzy of contracting out, that rampant neo-conservative “all things public, bad, and all things private, good”, was the only rationale.

I'd ask all the public sector representatives here to comment on this. How can we tighten up Bill C-2 to at least oblige management to present a viable business case when they contemplate contracting out, to do a cost benefit analysis that would be made public if it's their intention to go with public-private partnerships or contracting out?

● (1030)

Mrs. Deborah Bourque: I don't want to take up all the time, because I could go on at length about this, but I would just say quickly that we're not confident that anything has been fixed since the recommendations from the Deloitte audit.

I wrote to Gordon Feeney, the chair of the board of directors of Canada Post, and asked what steps had been put in place to ensure that there was compliance with the rules. He wrote back indicating that he was quite comfortable with what had been put in place. But I can't get any comfort from that because I don't know what has been put in place.

So we think it is a serious issue. The ideology has not changed at this point. We're still seeing a lot of emphasis on contracting out. We think the kinds of assessments and evaluations we've spoken about in our presentation would go a long way towards making sure there weren't the problems that have been identified before.

Mr. Pat Martin: Thank you.

CUPE, your brief dealt with this as well. Would you like to expand on what measures we could see to at least have the obligation of a cost benefit analysis before these measures are undertaken? The one point you made, and perhaps you could start with, is that we actually suffer in terms of accountability and transparency when public money is being spent by private interests, and we don't really have a way of tracking the use of that public fund, do we?

Ms. Corina Crawley: Essentially, yes, I agree. I think the recommendations we're making are very simple ways of building in private contracts into the powers of the Auditor General. That's one piece. I'll just say that I agree, there is a trend—and it goes far beyond Canada Post in terms of public sector institutions, crown corporations, and so on—towards privatization. This legislation is a manifestation of that, with the changing powers of the Auditor General, public disclosure legislation changes, and the procurement auditor all prejudiced against going with the public sector because it's added bureaucracy and scrutiny for public sector institutions and non-profits, while on the other hand there's a clear absence of anything on private contracts, which the government is increasingly engaging in for the procurement of services and also buildings.

Mr. Toby Sanger: Can I just add to this?

I think the first step is having greater transparency and disclosure. I think it would be a very good idea to have some sort of assessment process to find out if proposals for private contracting could be done more efficiently in-house, because obviously that would be better. But I think the first step is transparency and disclosure.

My concern with this legislation is that it is so focused on public spending and so little on private contracts and goods and services with the private sector that it is going to put any NGOs, any other public bodies, under incredible scrutiny, and that in itself will lead to an insidious prejudice against public spending in this area because we won't have any focus on the private sector spending.

The Chair: Very briefly, Monsieur Patry.

[*Translation*]

Mr. Pierre Patry: We are also biased in favour of the public sector when the common interest is at stake. That is why we were so pleased with the fact that, from a perspective of the changes planned to the access to Information Act, this bill covers certain Crown corporations that were not covered in the past, as these are corporations that are spending public money. It is not so much an issue of measuring the profitability of these organizations, as it is an issue of public funds, there is an obligation to be accountable.

Also, exceptions have been anticipated, and this limits the access to Information Act.

It is very clear, in our opinion, that there must be the greatest transparency possible, so that the population is aware of what is happening with the taxes they pay to the federal government.

● (1035)

[*English*]

The Chair: Thank you.

Mr. Poilievre.

Mr. Pierre Poilievre: Yes, I agree with you that this is the kind of legislation that needs good study and careful contemplation. That's why it has been two years since the sponsorship scandal was exposed and our country has been engaged in great debates on how to restore accountability. Over the course of those two years, we've had a public commission study it and put forward a report and we've had this legislation introduced. By the end of this week, you'll be happy to know, we will have heard from over 70 witnesses throughout a course of 45 hours of testimony, and that's just by the end of this week alone. So I'm sure you'll join me in celebrating the intense study that this bill has already enjoyed.

There is so much time we've allotted to this bill that in fact every single speaking opportunity they're given, some opposition members spend half of it—they have such an abundance of time—complaining about how much time they don't have. So I find it a curious contradiction that if they have so much time—

The Chair: Mr. Poilievre—

Mr. Pierre Poilievre: —they can spend their time talking about how much time they don't have.

The Chair: Mr. Poilievre, everybody is trying to provoke each other, and I don't want any more of that—no more.

Mr. Pierre Poilievre: The question that I'd be interested in is this. You talk a lot about private contractors. In the United States there was a lot of concern about private contractors and there was argumentation that private contractors were ripping off the American taxpayer. So the progressive left in that country, led by a lot of unions and activists, got together and pushed the rebirth of the informers act, which allowed individual citizens to actually sue private contractors who were defrauding the government. The government in many cases didn't have the political will to sue them themselves. If the judge found that there was a fraud, the judge could award repayment of three times what the contractor allegedly stole, or ultimately did steal, and the citizen who brought forward the act would receive a commission of 30% of what was taken. Since that time, the American treasury has recovered $10 billion through the actions of private citizens, and 80% of those dollars came from defence contractors and private health care companies.

I'm wondering what you think about importing that idea into Canada, of bringing in an informers act that would allow organizations like yours to take to court contractors who are committing fraud against the Government of Canada, or against Canada Post, for example, to see that money recovered, and then your organization would have your costs covered, and more, through a system of awards. Does that policy idea interest any of you?

Mr. Toby Sanger: I don't know about that legislation so I can't really comment on it, but I think people are driven not necessarily by monetary reward but by public service, and people should be driven by that. The first step is increasing transparency and disclosure through the government and not relying on the courts necessarily to do that.

[*Translation*]

Mr. Pierre Patry: I said as much during my presentation. I'm not aware of the legislation you are referring to that is in effect in the United States, which is not always model of society we would wish to emulate. This is not what we want to import into Canada, and especially not into Quebec.

I do, however, wish to state that we want effective protection for public servants who are witnesses to wrongdoing, in order that they have an appropriate place to report this to. However, we do not want a reward system. This is true for ourselves, for public servants, regardless. We do not want to set up a whistleblowing system or an excessively judicialized one, nor do we want processes that are overly political. I think that the existing whistleblower protection is fine. However, we do not agree with the proposed $1,000 payment. That risks creating a culture of paranoia within our organization, and I do not think that is a model we would wish to bring this into Canada.

● (1040)

[*English*]

Mr. Pierre Poilievre: I, for one, don't reject ideas merely because of where they come from. I judge them on their own merit. Regardless of where the idea came from, if any government was able to recover $10 billion worth of stolen money, I think that's $10 billion that can go back into programs that your union supposedly cherishes. So I think any method of bringing those dollars back would be a good method. But ultimately the only way to recover money that's stolen by fraud is through the court system. There is no other way. There is no other legal means by which to do it.

So you can talk about your ideals of avoiding the court system at all costs, but ultimately you cannot do that if companies like the Liberal ad companies that we are now pursuing for the money they stole.... They are being pursued by the courts, and you have to—

The Chair: Mr. Poilievre, please.

I'm really concerned, and this applies to everybody, that we're starting to provoke each other, and I don't want that to go on.

So you can continue. One clock's gone, so you have another clock left.

Mr. Pierre Poilievre: All right. Hopefully we'll be able to finish a sentence here, Mr. Chair.

My next question is, what are your thoughts on the whistle-blower protections that are contained in the bill?

Mrs. Deborah Bourque: I would agree with what my colleagues have said about the limitations of the whistle-blower legislation. My union believes it's really important that people who do reveal wrongdoing or do expose information aren't subject to reprisals. I think that's the fundamental principle here, and it's one that we support.

We also have real concerns about monetary compensation or enticement for people to squeal on their co-workers or their employers. Canada Post has set up their own whistle-blowing hotline or process, which we have real concerns about because we think it can be abused and it's the wrong way to get democratization. The call for transparency is what's really important here and to protect people who do expose wrongdoing.

The Chair: Thank you. That concludes our time.

Ladies and gentlemen, we appreciate you coming this morning. Thank you very much.

We'll have a brief break.

● (1042)

(Pause)

● (1048)

The Chair: Continuing, ladies and gentlemen, we have the Association of Canadian Financial Officers with us.

Good morning to you, gentlemen.

We have Milt Isaacs, who is the chair. We have Jonathan Hood, who is the vice-president, and we have Serge Buy, and I'm sure someone will tell me who he is.

You could introduce him.

Mr. Isaacs, you or your colleagues have a few moments to make introductory comments, then members of the committee will have some questions for you.

Thank you for coming.

Mr. Milt Isaacs (Chair, Association of Canadian Financial Officers): Thank you.

The Association of Canadian Financial Officers represents approximately 3,000 financial officers in the public service—that's the FI group. As the association chair, I would like first to take this opportunity to thank the committee for having us here today and to express my appreciation for the work you are doing.

This is an historic occasion for Canada. The Federal Accountability Act has the potential to not only provide more accountability within the federal government but also to increase Canadians' faith in their government and restore pride within the public service.

We will concentrate our remarks on three main points: the importance of consultation, long-term issues, and preventive measures rather than reactive ones.

To start, I would like to express concerns regarding the lack of consultation that took place while the legislation was drafted. During the study of Bill C-11 by the operations and estimates committee, representatives of all political parties expressed concerns about the lack of consultation with the public service. It was seen as a major cause of the bill's weaknesses.

We feel that some of the discussions that have taken place in this committee could have been avoided if there had been more consultation with key stakeholders, such as our association. We understand that the Federal Accountability Act has been discussed as a plan on the political level since the last election was called. However, it was not government policy at that time, and debate was somewhat limited; therefore, our opportunities to provide input have been few, if any.

When it comes to financial accountability, I cannot think of any group more interested and concerned about the issue than financial officers. Financial officers are on the front line in the fight for accountability. It was a mistake to ignore them in the process of drafting Bill C-2. Financial officers, through the association, should be consulted not only on the drafting of legislation but also on its implementation. The combination of our experience and professional qualifications can only add value to the process.

As such, our first recommendation is that public service unions be included in the committee of deputy ministers that will review existing Treasury Board financial management policies. This committee is part of the action plan that accompanies this bill. Front-line public servants will undoubtedly offer a different perspective than management's—an unbiased, informed, and especially interested opinion that will lead to a better and more comprehensive approach to accountability.

It is important to recognize that this legislation will have a long-term impact on how things are done by the federal government. The previously mentioned committee is only one of a number of initiatives that aim to eliminate potentially restrictive rules and regulations. We agree with these important measures, but we're concerned that focusing only on past rules and regulations does not go far enough.

Our second recommendation, as written in our latest report entitled *Checks and Balances III: In Pursuit of Balance*, is that there should be a similar test imposed on all new rules and regulations for financial management, going forward. Such a test is essential to our efforts to balance the need for accountability and efficiency.

We also understand that there is a call for the review of this legislation every five years. We are wary of a process that plans to correct mistakes in five years and opens us to the possibility of another wide-ranging reform. We would be better off spending a proper amount of time to arrive at a product that will stand the test of time.

It is important to allow for accountability, not only for today as a result of some scandals, but for tomorrow as well, when accountability will no longer be on the front page of newspapers. This will be the time when we will be most at risk.

As shown by our first two recommendations, the association feels that Bill C-2 misses an opportunity to take a proactive approach to accountability. While this legislation provides for strengthening the Office of the Auditor General, the hiring of more auditors, and other reactive measures, we are concerned that there are not enough preventative measures.

● (1050)

Financial officers play just such a preventative role. As an association, we believe that had a financial officer been embedded in the sponsorship program, it would have been less likely that such a scandal would have happened in the first place.

This legislation should provide for strengthening of proactive roles of financial officers within the Government of Canada. Financial officers carry professional and legal responsibilities under the Financial Administration Act. They are also bound by a professional code of conduct and ethics, as many of our members have professional accounting designations.

It has been said the sponsorship scandal was caused not by a lack of rules but by the fact that they were not followed. In fact, the Auditor General told this very committee that perhaps we should come back to the principle of sound management instead of creating more rules. Furthermore, she pointed to a lack of understanding of existing rules as a major problem. This is something our association has also identified in previous reports. By the virtue of their training and experience, financial officers can bring about a better understanding of rules in place. Therefore, our third and final recommendation is to ensure that financial officers are embedded in programs where there is an expectation for being accountable for the management of public funds.

It would be hard to find many Canadians opposed to the Federal Accountability Act. This legislation is extremely important, and for that reason due process must be observed. Canadians would rather have a delay in the acceptance of this legislation if such a delay will ensure the rules stand the test of time. We ask all members in all parties to carefully weigh this in their decisions in the next few weeks.

As public servants, we are concerned by the number of new rules and regulations drafted, announced, and, on occasion, implemented every time a new scandal makes it onto the front page of newspapers. It is important to remember that when the political pendulum swings again and the eye of the public turns to another area, it is the public servants who are left to implement and work those rules and regulations. This government and this Parliament have the ability to change the system and forge a document that will redefine our government, provide better accountability, and at the same time ensure that government is effective and efficient in delivering its agenda.

There are many programs competing for funding, and Canadians want to see value for their tax dollars. At the same time, they want access to government services. Implementing any legislation that focuses on accountability needs to ensure that it does not run the risk of becoming an impediment that discourages Canadians from accessing government services. Financial officers have the skills, experience, and qualifications that will add value to the development and implementation of this legislation, and we are eager to be part of that process.

Thank you.

● (1055)

The Chair: Thank you, Mr. Isaacs.

There are some questions for you and your colleagues.

Mr. Murphy.

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

Thank you, Mr. Isaacs.

At the risk of quoting you to you, I read with interest part of this document, *Checks and Balances III: In Pursuit of Balance*, but I just want to do a little review as a foundation to my question. You said under Bill C-11—and I wasn't around, so I don't know—there wasn't really any proper consultation with your group. In the Gomery commission of inquiry there may have been some consultation, but there were some findings that are very consonant with what you're talking about on page 54—strengthening House committees, ongoing review of vote structure, and clarifying administrative accountability. This last is most key. On page 55 of volume 1, it said, ““Deputy ministers should be designated as accounting officers for their department.” That's part of what I think we're talking about—the culture shift that this eventual bill, which builds on Bill C-11, is about to undergo.

The key question or issue I have is on the aspect of timing, because I don't think the general aspects of this divides anyone here. The aspect of timing is obviously something that not everybody agrees on. There has been some suggestion that there have been two years of discussion, a royal commission or inquiry, 54 hours or 35 hours—I can't really remember which, but it seems like 54. On page 9 of 24 of your paper, *Checks and Balances*, you say that "the wide-ranging debate" you feel is needed would ensure that "views and concerns related to the practicality in the various responsibility models" would also give public servants "a sense of ownership" of whatever was selected, despite the fear that now they're going to be on the hot spot. This "would ensure a buy-in and facilitate the introduction and implementation of the new model".

We like the new model. We see that you feel you haven't been consulted. This is about finding solutions, so my question is: "the wide-ranging debate"—to quote you to you—involves what? What more time would you need to feel adequately listened to and have adequate input to this new deputy minister and public service responsibility in part for decisions?

Mr. Milt Isaacs: We received the bill I think sometime in April. It's quite extensive. Right now, principals within the association are reviewing it in terms of how it relates to what our members do on a day-to-day basis.

It's really difficult to get into the specifics. Fundamentally what it really comes down to is for the association, with its members, to have an opportunity to digest the proposed legislation and then be allowed to come back with our findings.

● (1100)

Mr. Brian Murphy: Can you give us some help on how much time it might take, or what process your membership would require? Clearly, six minutes at a parliamentary committee hearing is probably at one end of.... Do we need the whole summer? What do we need?

Mr. Milt Isaacs: That's a good question.

What I can say is that this legislation is going to be out into the future for five or ten years. The exact amount of time we need, I'm not really sure. Let's hypothetically say two months. I look at this as somewhat of an investment; you're investing time up front to ensure that you get this right. It's a lot easier to build frameworks than to tear them down and rebuild them again. I think the spirit here within this act, the purpose or what's driving it, is good; there are good intentions here. But I think stakeholders need an opportunity to provide input, and it's going to take some time for us to digest what's in there and how it impacts the financial management community. We're not talking of years, let's put it that way.

Mr. Brian Murphy: No, and I think it's important, just to sum up, that the general chill in Ottawa now regarding elected representatives and senior public servants sticking their necks out on any issue is something that concerns me as a newcomer to Ottawa. I have underlined, and will take to the hustings, this statement of yours that in order for deputy ministers and other public servants to feel they own it, they must be consulted.

I thank you for your testimony.

Mr. Milt Isaacs: Thank you.

The Chair: Mr. Tonks.

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

And thank you, Mr. Isaacs and your colleagues, for being here.

I want to follow up a little bit on what my colleague, Mr. Murphy, has pursued in terms of the role of the financial officer through the deputy minister. You used the term "embedded", that financial officers should be embedded in the process of program development and program evaluation—I'm actually putting it in those terms, although you didn't quite say it that way. I think this term "embedding" comes from the media recently being embedded on military fronts to provide balanced commentary from those fronts. In that sense, we're in the same kind of an action, trying to get a balanced commentary on program evaluation.

The problem I have is, how do you embed financial officers in a system that, under the terms of the legislation, has the accounting officer through, I would think, an internal audit function with an internal audit committee...? I would think that a financial officer should be part of that internal audit committee. But internal audit reports to the Comptroller General. It seems to then take another course in terms of the evaluation, as opposed to taking course changes within a ministry, within a particular role.

Could you expand on that a bit in terms of how a financial officer could be better utilized in program evaluation and how that could provide a course direction that would be more immediate and more within the committee structure and the oversight structures of Parliament?

Mr. Milt Isaacs: First, probably the way I can answer this is to enlighten you a little bit as to what we meant by "embedded in the program" and see if I hit your question.

You spoke of the Comptroller General and the internal audit. The internal audit is more reactive. It is discovery after the fact. What we're talking about in terms of preventive measures is that financial officers are in the process at the beginning.

Through access to information—using the sponsorship program as an example—the first question we had when it became public was, "Well, where was the financial officer?" We had asked for organizational charts, and there wasn't a financial officer. With the expectation of financial officers in the program...one of the things that should have happened in that process, when you're spending someone else's funds, is you would have had commercial paper, some sort of authorization, that said you have authorization to spend these funds. That then begins the accountability trail. I understand that's what's missing, how did that authority happen.

So what we're talking about here is that financial officers should be in those types of programs so that they can give advice and direction to the program managers and say, "This is the authority you have that's given to you by Parliament through appropriation, and here are the rules of engagement in terms of how you spend those funds. You had the authority for this, but you don't have authority for that, and if you want this type of authority, you must go and seek it."

That's what a financial officer does, and if that role had been played, I think we probably wouldn't be here today.

● (1105)

The Chair: Thank you, Mr. Isaacs.

Madame Guay.

[*Translation*]

Ms. Monique Guay (Rivière-du-Nord, BQ): Thank you, Mr. Chairman.

Thank you for coming quickly despite a short notice. You have managed nevertheless to provide us with quite an interesting document. You are not the only ones to bring out the issue of longer consultations. The majority, if not all of the witnesses who come here, call our riding offices to tell us that they do not have sufficient time to prepare a brief that would allow us to table the amendments ensuring that the bill will operate properly. We are attempting, rather, to pass legislation that in the end or in ten years' time, will probably have to be revised. In this way, we will have administered legislation over a decade that quite simply did not work.

I would like your opinion on the following: we had proposed that Bill C-11 from the previous Parliament be enacted. I know that Bill C-11 was not a perfect bill, but it could have provided a temporary safety net while the study of Bill C-2 was completed and while we could take the necessary time to draft a well-crafted piece of legislation, with necessary amendments that you, the witnesses, could have proposed during an in-depth study.

I would like your opinion on this.

[*English*]

Mr. Milt Isaacs: Merci, Madame.

Whistle-blowing is an important aspect, obviously, of how we do business as public servants. What you're describing is sort of a bridging from Bill C-11 to Bill C-2, and from our point of view, we felt that Bill C-11 didn't have a whole lot of teeth. It didn't give us what we felt was necessary.

If it's a bridging platform, we wouldn't have any opposition to that. I really don't know if I have much of a comment to make on that.

As far as the whistle-blowing aspect in terms of Bill C-2 is concerned, that's another thing we still have under review. We're trying to look at that and ask, what are the merits; what does this do in terms of our members?

I think it's a noble effort to protect public servants and to have them come forward, no question about it, but I think my members, just from the professional code of conduct, would, if they see significant abuses per se, come forward anyhow. But there is some hesitation, no question, in the culture right now, because I don't think there's a sense that public servants feel they would be protected.

In my own personal opinion, I'm not even sure you could even legislate that into the culture, to be honest. I think you can put as much protection out there, but there's still the typical approach that once you become a whistle-blower, you're labelled. I think that's a significant cultural change, not just in the public service but in industry as well.

It's a difficult one, and I'm not sure if you're going to resolve that through legislation.

[*Translation*]

Ms. Monique Guay: You said earlier that you were still in consultation, that you were still in the process of studying the bill as such. You are here as a witness today, you are making a few recommendations to us, but if you are still in the process of studying the bill, that means that you would probably have further recommendations to make to us once your study is complete.

And so I find it unfortunate that we do not already have all of the results of your study. You could always ask to appear before the committee again in order to table the final version of your proposals. Otherwise, we will not be doing serious, in-depth work. For us, it is extremely important when we are studying a bill.

I recall working on the legislative review of the Environmental Protection Act. We took two years to do so. In this case, we are trying to have a bill passed in the space of two months. This is not a criticism, because I believe that everyone wants a bill on accountability. However, it must be done responsibly. It seems, however, that you did not have the time to complete your study of the bill.

I therefore invite you, when all your recommendations are ready, to request the opportunity to come and present them before the committee.

I have one final question for you, gentlemen, if you wish to answer it. What do you think of the $1,000 reward?

● (1110)

[*English*]

Mr. Milt Isaacs: First I'd like to say that yes, we would appreciate the opportunity. I agree with your comments. We haven't had the opportunity to really digest this, so yes, we'd appreciate the invitation, if it's there.

The $1,000 is, in our opinion, unnecessary. Our members are bound by a professional code of conduct. I don't think this would entice anybody to come forward. I don't think any amount of money, to be honest, is necessary.

[*Translation*]

Ms. Monique Guay: I find that fully satisfying. We are also completely against the $1,000 reward. We believe that it is a person's responsibility to inform about wrongdoing that they have witnessed, without there having to be compensated for . This could even bring about a situation in which people will seek to disclose just about anything in order to cash in on the $1,000 reward. And so we agree with you.

I hope you will complete your study of the bill and that you will ask to come back and see us. We would be pleased to welcome you back.

[*English*]

The Chair: Thank you.

Mr. Martin, I don't know whether you have any comments or questions.

Mr. Pat Martin: I would if I have time.

The Chair: You do have time, sir.

Mr. Pat Martin: I'm sorry I had to be out of the room for part of your presentation, but I have been looking at your brief, sir, and I appreciate both the tone and the content. I accept your view that you should have had input and consultation in the development of the process.

I would point out that some of the items I see within your brief are things that should be viewed as ongoing, continuous improvement, and that we shouldn't have to wait for a bill to come along to engage in this continuous improvement of our management practices. I think it would be catastrophic to the viability of this bill if we stopped now to undertake some of the recommendations here, such as commissioning an empirical study of all current performance reporting systems. This is work that should be done, but I argue it should be done on an ongoing basis.

This is because we've been studying many of these things for 10 years. Some people would say we're studying this issue for 40 days. In actual fact we're studying it for a very generous period of time compressed into a few short weeks. But on many of the issues, we know what needs to be done. By stopping in our tracks now and even backing up to undertake some of what you're recommending here, such as engaging public servants in a wide-ranging debate on the issue of ministerial and deputy ministerial accountability.... That would be interesting, but it's like the question of how many angels can dance on the head of a pin when it comes to the hard, fast, concrete measures we're trying to get through here.

In this limited window of opportunity in this minority Parliament, we want to show some real results, because there are people who don't want this bill to succeed. There are enemies of this bill who are lurking in the wings, as it were, trying to sabotage and undermine the progress of this bill. One of the most effective ways to kill it would be to engage in a study, to continue hearing witnesses into next spring, and then, come election time.... Believe me, in a majority government, you would not have the opportunity to make these concrete steps.

Wouldn't you agree that it would be important to get the three pillars in place: whistle-blower protection, access to information reform, and a cleaning up of the patronage appointments practices? If we achieved those three things in this minority Parliament, wouldn't that be something to celebrate?

● (1115)

Mr. Milt Isaacs: I'm not sure I'm in a position to comment, because you rather framed it around an environment that is political. I would suggest to you that if the mechanism is there to bring in amendments to the legislation, then absolutely, I would have to agree with the comments you've made. It's difficult not to.

The concern we have is that once you build this legislation and pass it, you now have a framework, and policies have to now fit within that framework. That's our concern: what would it take then? I understand that when you're going to go.... The review is there after five years, but I think you need to probably look at the thing on an annual basis.

I wouldn't want to see you get into a fairly bureaucratic process to make adjustments to the bill, where you find flaws over time because you're looking in the mirror and realize we have to make these types of fundamental changes. Our concern really is that once you pass this legislation, the box has already been formed at that point. You've laid down the foundation, and what policies can be fit in there have to fit within that framework.

That's why we're saying you need to bring in the stakeholders and give them time to digest this. We're not talking about years here.

Mr. Pat Martin: Well, we are talking years for some of us on some of these issues. The pace has been glacial. I've seen successive presidents of the Treasury Board come along and do all of these things that you're recommending we do again—undertake a thorough review of the professional climate of financial officers. Alcock did that. He added on a whole bunch more. We've been standing by watching a lot of these developments take place to no appreciable benefit to anybody. It's just been studies for the sake of studies and round tables for the sake of analyzing the study that we just took. Most Canadians want some concrete evidence at least that there is a commitment to transparency, accountability, and good governance.

We have this window now, and as much as I believe all of these points you raise are valid, I think it would be a mistake to delay and stall this bill to accommodate these ongoing measures that we should embrace just as part of the working culture. We should have a continuous improvement culture—kaizen, as the Japanese call it—in which the financial officers are always looking for ways to do their job in a better way. I would be concerned if the enemies of this bill would use your presentation today as further justification to kill this bill or have it die a natural death prior to the next federal election.

The Chair: Mr. Moore.

Mr. Rob Moore (Fundy Royal, CPC): Thank you, and thank you to the witnesses.

As someone who has been sitting on this committee, we have had a pretty intense schedule, and we're meeting long hours and so on to hear from a broad range of witnesses. Obviously you were invited as a witness so that we could get the benefit of your input and testimony. I guess I find it a bit alarming when people say they're not being consulted when this is a part of that consultation. We have had the benefit of years of study on these types of issues. This is a well thought out bill, and we're working in a way to hear from witnesses. This committee is working very hard to take the inputs we're getting from witnesses.

Is there any general clear-cut recommendation that you have for this committee? I noticed, as Mr. Martin has already stated, the recommendations that are in your executive summary would involve a great deal of time. I think Canadians are saying we'll never achieve perfection. I know that, and I don't think any of us are under any illusion that you can ever be perfect, but we want to take a good product.

I noted with interest your comment that Bill C-11 did not have teeth, and that's one thing about Bill C-2—it does have teeth. It has teeth that empower officers of Parliament to do their job better and it has teeth to protect whistle-blowers from reprisal, and those are some of the necessary steps that we have to take as responsible members of Parliament to further accountability in our country. I would rather move forward with something that is positive. These types of studies have been going on for years, and will continue to go on, and we can benefit from them.

I'll take your comments on that, but also in your executive summary it says:

> Just because accountability is a fundamental democratic value does not mean that there can never be too much accountability. However, excessive and burdensome accountability requirements can detract from responsiveness, innovation and efficiency.

I'm wondering if you can also comment a bit on that. Can you give some specific examples? Can you shed a bit of light on what that means?

● (1120)

Mr. Milt Isaacs: Unfortunately, I don't have anything specific on that. I didn't come prepared with a specific case.

I've spent 25 years as a financial officer for the federal government. I can tell you that what is meant by that is that it's difficult for program managers to deliver on their programs when there are a significant number of rules they have to comply with. I understand this legislation attempts to resolve some of those issues —and that's a positive thing. So in that context, we are hoping to ensure that this legislation does not add other layers of rules and regulations that can in fact end up being counter-intuitive.

In the world of government, like the world of business, there is a balance. There has to be a reasonable level of risk imposed in the process, so that you don't build impediments to services to Canadians. Some people find that strange, coming from financial officers. There's a perception that we are bean counters, but nothing could be further from the truth; I think that particular description has gone by the way of the dodo bird. It really comes down to the fact that these are professionally qualified individuals, and they're really looking at the purpose of why they exist. The financial officers are there to ensure probity in terms of how funds are spent, but at the same time to ensure that the programs are delivered. We are concerned that there is a tendency to try to legislate risk away, and I don't think that's going to be the case; I don't think you're going to get there.

As the Auditor General mentioned, these are isolated cases; there's not a widespread scandal going on in the federal government, not that I'm aware of. I would suggest that the tendency sometimes to overreact causes the issues. And then when you do so, there is this element of building gates and loops that individuals have to go through, and that's the bureaucracy that we've been talking about in this particular report and that we're trying to avoid. So it's not really a case of saying, don't introduce legislation—because we do learn from our mistakes—but to be aware that when you're looking at legislation, government has to allow for reasonable risk in day-to-day processes in order to be efficient, and that legislation is not necessarily the answer.

The Chair: Thank you, Mr. Isaacs. Your time has expired.

I thank you, gentlemen, for coming this morning and telling us what you think about the bill. Thank you very much.

We will have a brief break before the final presenter.

● (1124)

(Pause)

● (1132)

The Chair: I'd like to reconvene the meeting. Our final witnesses this morning are from the Certified General Accountants Association of Canada. We have with us the vice-president of government and regulatory affairs, Carole Presseault, and the vice-president of research and standards, Roch Lefebvre.

Good morning to both of you. I think you know that if you wish you may make some preliminary comments, and then members of the committee will have some questions for you. Thank you for coming.

[*Translation*]

Ms. Carole Presseault (Vice-President, Government and Regulatory Affairs, Certified General Accountants Association of Canada): Thank you, Mr. Chairman, and ladies and gentlemen.

[*English*]

I understand you've had a long morning, but I do have a statement I want to make.

On behalf of CGA Canada and our 64,000 members, we're very pleased to be here and to engage in discussions with you on this very important piece of legislation.

It's actually fitting to a certain extent that about 100 years ago, 12 accountants working in Montreal sat in a room and decided to form themselves as the Certified General Accountants Association, in the quest for professional development and building of experience and skills to meet the ever-changing business environment. Some of our members working in government—about 8,000 work in the federal government right now—are struggling and coping with some of the same things as are public sector managers.

We look forward to your questions and discussions on elements of this very important legislation, but I have a few brief comments to make.

[*Translation*]

The genesis of Bill C-2 stems from a crisis of confidence that goes well beyond the purview of this government, this parliament, and indeed Canada's borders. In this world of post-Enron, Worldcom, and Parmalat, we needn't be reminded of the scourge of scandal within the private sector. Nor do we need to dwell on problems closer to home in the cases of Nortel or Canada's judicial inquiry into the sponsorship program and advertising activities. Suffice it to say that we face a crisis of confidence as a direct result of the perceived absence of ethics among our corporate, political and bureaucratic elites.

The important question is why? How has it come to this? What, if anything, has changed? What can we learn from this? And what measures can or should we adopt to prevent a recurrence?

[*English*]

While we all hope the legislation before us will help prevent many of the wrongs of the past from being repeated, rules and regulations are no substitute for ethical behaviour. The Auditor General and many other witnesses have said as much in their testimony before you and before other forums.

It might strike you as ironic that we should appear before you today in defence of a cautionary approach to rule-making. After all, accountants are predisposed to rules and structure. We're number crunchers, financial analysts, chief financial officers, auditors, business leaders. In sum, we are the people others turn to for guidance on how to follow the rules governing capital, assets, profits, and losses.

In that connection, though, the accountancy profession bears an enormous burden of public trust and responsibility, but a burden we shoulder willingly. It is after all our stock-in-trade. But we need to remind ourselves that rules for their own sake won't likely achieve the outcomes for which we all strive. The challenge before this Parliament and this committee is to ensure that we are able to achieve the right balance between rules, ethics, and sound governance.

In the financial world, accountability for fiscal performance is more straightforward today than ever before. Rules introduced post-Enron hold CEOs and CFOs accountable for certifying their corporate financial statements; auditors are now subject to independent oversight. No one argues with the idea that top executives are ultimately responsible for the accuracy and veracity of the financial information presented to shareholders: it merely signals that leadership and accountability come straight from the top.

Undeniably, ethics commissioners and judicial investigators have a role to play, but so have our political leaders. U.S. President Harry Truman was reputed for displaying a sign on his oval office desk that read: “The buck stops here.” What it signalled was the simply stated but powerful embrace of personal responsibility, and he was widely admired for it. Canadians are no different. We expect the same thing from our government leaders.

● (1135)

[*Translation*]

Canada wants and needs a federal accountability act that works, but not just at any cost. In your consideration of this legislation, you've been tasked with the challenge of striking a balance between competing interests, in order to serve all Canadians. That delicate balance includes a myriad of advocacy interests, like the organization we represent, and must take stock of their right to be heard with respect, and, at times, in strict confidence. This lies in sharp contrast with Canadians' right to know as reflected by the access to information commissioner, the media, and parliament itself. Bridging these two poles is critical — though we appreciate it is no easy task.

[*English*]

In bringing forward Bill C-2, we believe the government has gotten several critical elements right. We welcome the clarification of roles of deputy ministers and their ADM as accounting officers. We strongly support the creation of independent audit committees. We also believe the access to information protection afforded to internal audit working papers is appropriate and will improve the internal audit process in departments and agencies. We are pleased to see that appropriate safeguards have been put in place to ensure that draft audit reports are protected and provision has been made for their release. In sum, these measures will safeguard the integrity and effectiveness of the audit process.

We applaud the broadening of the Auditor General's authority to follow the money, and we agree with the new requirement for a five-year review of relevance and effectiveness of grants and contributions—a provision that echoes one of our many recommendations. We also think you as parliamentarians will be well served by the creation of a new position of parliamentary budget officer. And while we agree with protective and supportive measures aimed at whistle-blowers, we reject, as others have, the idea of providing public servants with monetary reward. These are all initiatives that align themselves very well with similar undertakings throughout the corporate sector.

This legislation is ambitious in its attempt to strengthen accountability and improve the management of the government's fiscal and human resources. We support these initiatives, and we've been asked to assist in efforts to strengthen financial management and improve internal audit within the federal public service. We are in the throes of launching a series of initiatives to support this goal.

As registered lobbyists, we would be remiss if we neglected to comment on proposed changes to the Lobbyists Registration Act. Clarity lies at the root of all good legislation and regulation. It ensures that each player in the system is made aware of what is expected of him or her. We believe more enforceable legislation governing the conduct of lobbyists is a laudable objective. To this end, we lend our support to the Government Relations Institute of Canada and its call for stronger investigative and enforcement provisions. While the vast majority of lobbyists are fully compliant with the law, more and better enforcement provisions will serve to protect the majority from the tarnish caused by a misguided few, and we think that's in everybody's interest.

We all want what is right for Canada's future, though we may at times disagree on how best to get there. During the course of the last federal election campaign, CGA Canada called on all parties to commit to several measures aimed at restoring Canadians' shaken confidence in their public and private sector leaders and institutions. We are delighted to see our message, along with others, was heeded.

We look forward to assisting this committee in its deliberations in whatever way we can.

[*Translation*]

We thank you and we will be pleased to answer your questions.

● (1140)

[*English*]

The Chair: I'm sure there will be some questions, Ms. Presseault. Thank you very much for coming. Your presentation was outstanding.

We have questions from Mr. Owen.

Hon. Stephen Owen: Thank you both for being here and assisting us with these deliberations.

It is a large bill and has great complexity, and the succinctness with which you're putting forward the benefits that you see in the bill is very helpful.

I wonder, Ms. Presseault, if you or your colleague might comment on the change you see coming as a result of this bill from the adjustments that were made by the previous government in respect of restoring the role of the Comptroller General that was removed in the early 1990s and setting up chief financial officers in each department.

This goes to your comments I think about financial management rather than just auditing, but builds into the whole process a very cautious review of implementation against purposes and designated funds, rather than simply waiting for post-implementation audits. Do you have any view of how that has worked to date and to what extent it might be dealing with some of the problems that occurred in the sponsorship program?

Ms. Carole Presseault: Thank you, Mr. Owen, for your question. It's an important one, in the sense that we really saw the restoration of the role of the Comptroller General as a very good move, because essentially, again, when you're talking about mirroring initiatives taken in the corporate sector, tone is set at the top, and I think that is an underlying theme that we wanted to leave with the committee today.

The Comptroller General has very, very clear responsibility in terms of not only strengthening the internal audit process but also building capacity. We've talked a lot about internal audit, and the Auditor General and others have talked a lot about it. We haven't really talked a lot about strengthening financial capacity in the public sector, and in that respect, when I mention launching a number of programs, we are launching a number of programs, but we hope that setting the tone at the top, reinforcing the role of the chief financial officer, will trickle down.

The group you heard before us are financial officers. We met with them last week, and they're all in the throes of seeing how they can contribute to this capacity building. A new emphasis on the professionalization of the public service, obtaining appropriate professional designations such as the Certified General Accountants Association designation and other accounting designations, is really a key role.

As I said, the role of the office of the Comptroller General sets the tone for this across the public sector.

Hon. Stephen Owen: Thank you.

The Chair: Madame Lavallée.

[*Translation*]

Mrs. Carole Lavallée: First of all, we would like to thank you for being here. It is very kind of you to come and present your very interesting thoughts on the Bill to us, on the process itself and on the crisis in confidence in leaders around the world. I find this very interesting.

Here in Canada, within the federal government, Bill C-2 was essentially developed in the wake of the sponsorship scandal. The conservative government has tried to find a way to avoid any future sponsorship scandal. This is stated in all of the government documents. And yet, several witnesses have told us that the Bill will not necessarily prevent another scandal like the sponsorship scandal.

The government also wants to restore Canadian's confidence in their leaders. However, we have the feeling that we are part of an attempt to manage the perception of the population, whereby the government wants to pass the Bill as quickly as possible, and it is rushing the witnesses — and we apologize for that — to this end.

Do you believe that Bill C-2 will be able to prevent another sponsorship scandal?

During the election campaign, you stated that you had defined certain elements that could be added in order to, if such a thing is possible, get our fiscal house in even better order. Can you describe these elements to us?

● (1145)

[*English*]

Mr. Rock Lefebvre (Vice-President, Research and Standards, Certified General Accountants Association of Canada): I'll try to answer the first part of that question. It goes back I think to the original question as well.

What we felt very attractive about this bill is not only that the institution of the Comptroller General's office has been brought back, but if we look at the bill we see the addition of a parliamentary budget officer, the new authorities granted to the Auditor General, and the creation of various roles, such as a chief audit executive and chief accounting officers. Obviously some people have put a lot of work into thinking about this.

When you try to look at it as a non-accountant—I looked at it more maybe as a fraud examiner or something of that nature—the system is really designed to be as strong as it possibly can be, quite frankly. I don't say that because I'm before this committee; rather, it's a recognition that a lot of energy went into thinking about this and segregating the duties and authorities and responsibilities. We would support that in its entirety. As I say, I don't support it only as an accountant; from a systems point of view, I think it's remarkably strong.

Will it assure us that scandals will never occur? Probably not. I don't know that there is such a thing as a fail-proof system, but I think what we have before us here is certainly a large improvement. Whether or not government or parliamentarians will ever have 100% assurance.... I think that might be overzealous or ambitious. But I think you're certainly on to a good start, and with a bit of experience, the refinements will be brought to it to possibly correct what might be outstanding.

Thank you.

[*Translation*]

Ms. Carole Presseault: As far as the second part of your question is concerned, I would be pleased to send you our documents on that subject.

Mrs. Carole Lavallée: All right. Could you speak to us about two or three of the main components?

Ms. Carole Presseault: We made a series of recommendations in our briefs during prebudget consultations, which we repeated during the election campaign. The theme remained the same, namely a return to ministerial responsibility and to the role departmental controllers and independent audit committees could play. And we must not forget standardization. Our recommendations dealt more with the corporate sector than with the public sector.

Mrs. Carole Lavallée: You also stated that you were against rewarding whistleblowers, without any further elaboration. Could you do so now?

Ms. Carole Presseault: Yes, absolutely. We are far from experts on whistleblowing. Several groups appeared before you. Our thoughts really revolve around the principle whereby whistleblowing is really a tool to be used as a last resort. All you really need are good systems in place and an organizational culture to promote the necessary exchanges internally to avoid having recourse to this tool as a last resort. We do nonetheless recognize that it is a necessary evil.

As for the reward, you have heard the previous witnesses. We share their opinion. The members of our association working in the public sector are professionals governed by a code of ethics. The $1,000 amount means absolutely nothing. Out of concern to take the proper action and their sense of professionalism, people will take the necessary action, regardless of the reward.

[*English*]

The Chair: Thank you, Madam Lavallée.

Mr. Martin.

Mr. Pat Martin: Thank you.

There's only one issue I'd like to get your view on. You mentioned that many of your clients or members of your organization are lobbyists. Did you mean that you as an organization are registered as a lobbyist? Is the CGA a lobbyist in itself?

Ms. Carole Presseault: In our role with CGA Canada, we are registered lobbyists. We have about 12 to 14 of our employees under the revised act in the previous Parliament. I'm now considered a registered lobbyist and do so register.

Mr. Pat Martin: Perhaps this question isn't quite as relevant, but I'll ask you anyway.

One of the recommendations the NDP is putting forward is that lobbyists should be barred or blocked from also selling other services to the government agencies they may be lobbying. In other words, it is to put an end to some of the larger firms that may in fact have multiple divisions within their firm that are contracting to the government and lobbying the government at the same time. Do you see the conflict and the need for amendment?

● (1150)

Ms. Carole Presseault: I wasn't aware of this. I find it interesting, and I immediately leapt, if you will, to what it would mean to our organization.

To start, I would say that the previous Parliament amended the Lobbyists Registration Act and changed the definition. We still don't have a lot of experience in understanding exactly what the implications of that will be. There has been renewed impetus into enforcement provisions, and I think those are the essential things.

I think Parliament has had a tendency sometimes to put a lot of things under the *égide*, under the cover, of the Lobbyists Registration Act that don't exactly fit. I would really like to spend more time thinking a bit about your proposal. On the face of what you suggest now, CGA Canada, which provides educational products and continuing education products to a number of outside clients, including potentially the Government of Canada, would be excluded from doing that. We have a product. We have courses to strengthen financial management and we have courses to strengthen internal audit. We would be unable to participate in an open, fair, and equitable tendering process because some of the employees, by the nature of their activities, would be registered lobbyists because they communicate with public policy officials.

Mr. Pat Martin: It's an interesting point. I think it speaks to people having misconceptions about who lobbyists are. Many of us think of the large agencies, such as Hill & Knowlton Canada, but there are non-profit lobbyists, there are groups like your own. So that's an important insight that I'll factor into our amendments.

I have a second question about lobbyists. What is your view on banning the contingency fees that were such a high-profile issue in the David Dingwall case, for instance? Do you believe that's a practice that should be stopped?

Ms. Carole Presseault: I agree with it, yes.

The Chair: Thank you, Mr. Martin.

Mr. Lukiwski.

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

Thank you both for appearing before us.

I'd like to ask you to make a comment on an issue that keeps resurfacing here at the committee. It deals with a situation that we've encountered several times in conversations with other witnesses, and that is the speed with which we're dealing with this bill.

Many of the concerns mentioned by some of my colleagues have been that it appears that the Conservatives, in particular, are trying to rush this bill and that we need to give this bill its due diligence. We have to make sure that it's a good bill, as Mr. Lefebvre has said. But there are always ways in which to make it better; there are amendments that we can make to strengthen this bill. I'm in full agreement with that.

I want to point out something here and just ask you to comment on it, because it makes perfect sense to me that the approach we're taking is the correct one. In a normal standing committee of Parliament, the committee usually meets four hours a week, and Parliament usually sits about 28 weeks a year. So over the course of a year, committees would hear approximately 112 hours of testimony.

We're currently sitting 24 hours a week, so by my calculations, in five weeks we will have heard slightly more hours of testimony than a committee in a normal Parliament hears in a year. Should we start sitting beyond June 23, when Parliament rises—which I believe we probably will—I anticipate we'll increase that to perhaps 40 hours a week. Again, by my calculations, in three weeks we will have heard a normal year's worth of testimony.

The reason I'm asking you to comment on this is that I believe that by sitting as frequently as we do, hearing as many witnesses as we have, going into a clause-by-clause examination of this bill, it's basically a win-win situation. We will have done our due diligence. In fact, we will probably be in a situation, or it's very likely we could be in a situation, where by the end of July we will have heard over two years' worth of normal testimony, which I think is pretty good. I think if any other standing committee of Parliament examined an issue or bill for two years, they would be able to say they'd given it a pretty good examination, that they'd done their due diligence. But the benefit we would have is that the law would be in effect. We would have done our work. We can get this bill passed, because a minority government could fall at any time.

So I'm just asking you to comment on whether or not you would agree that this bill needs to be passed and be given due diligence, but done quickly, so that the spirit of this act, which you seem to agree with, would actually have some real meat behind it by actually becoming a law; it would be enacted.

● (1155)

Mr. Rock Lefebvre: I hate to start with a disclaimer, but I guess it could be expected in the sense that there is a lot of political science and environmental factors to be considered here, and I won't profess to be an expert on those. But I think the way this has to be approached—and I think Mr. Martin put it eloquently—is that this committee has confidence that it has looked at the subjects and at the research. In reality, we have to evaluate it as accountants or auditors probably would and determine whether or not additional hearings would bring any added value.

Again, as an association, it's really hard to speak for all our members, but if we look at what's before us and the quality of that work, I think as an association we could support the view that there is enough information available to this committee at this time.

Mr. Tom Lukiwski: Thank you very much. No further questions.

The Chair: Mr. Petit.

[*Translation*]

Mr. Daniel Petit: Ms. Presseault, I would like to ask you a question.

You mentioned the huge scandal at Enron. However, in all major financial scandals, accountants have always been complacent about the one committing the crime. That was the case with the accounting consultant firm Arthur Anderson that carried out its activities in the United States and Canada.

In the opinion of the Certified General Accountants' Association of Canada, will Bill C-2 solve the problem of overly complacent accountants that risks leading to scandals?

Ms. Carole Presseault: We could rewrite Enron's history, but I do not think that is the purpose of your question. In the Enron affair, there are several accomplices. Last week, two of the corporation's most important executives were found guilty. The example comes from the top.

The printed copy of my text includes quotes from Warren Buffet who states that integrity is truly what is most important. Other associations, like ours, have stated that history alone will determine what Bill C-2 will resolve. Within the system, you need a good organizational culture that promotes dialogue and includes checks and balances, which often helps the Auditor General establish whether the mistake is attributable to internal auditing. The process was in place, but it was not in the right place, if I can put it that way. Will setting up independent autonomous internal audit committees for a department or a Crown corporation correct the mistake? In the corporate sector, much has been said about independent audit committees that have proven their worth. We are eager to see them established. The policy will only come into force in 2007, but we have been assured that several departments are already interested.

Many of our members throughout Canada, licensed general accountants, have a vast expertise and considerable experience in the corporate world and other areas. They would like to sit on these committees that would not just be committees of accountants. No one can say that it's the accountants or the auditor's fault, because they are an integral part of the system. You are aware that financial officers are in the hot seat. They are on the front line in this sector. In this situation, it was not clear that financial officers were present.

I am not sure that I have answered your question, Mr. Petit, that was my morning skating exercise.

Mr. Daniel Petit: You skate well. Thank you.

[*English*]

The Chair: That appears to conclude our questions of you. Thank you very much to both of you for coming. We appreciate it.

The chair has a couple of announcements before we adjourn until this afternoon. I will be unavailable to be here tonight. Mr. Tonks will chair the meeting, and that's on the understanding that there are no votes, that all caucuses have agreed to that.

The meeting tonight will be across the hall at 237-C at 6 o'clock. There will be a subcommittee meeting tomorrow at 12:15 at the Promenade Building in room 701.

Finally, there are two notices of motion outstanding: one is from Mr. Poilievre and the other is from Ms. Jennings. We will deal with those tomorrow night at 8 o'clock, unless there's some unforeseen event.

There is a vote?

● (1200)

Hon. Marlene Jennings: The opposition motion is being voted at 7:15 this evening. The bells are supposed to start at 6:15, with the vote at 6:30, so that's going to mess up this committee's schedule.

The Chair: Mr. Tonks will have to solve that one.

Thank you. The meeting is adjourned until 3:30 this afternoon in this room.

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