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Chair

Mr. David Tilson

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● (1855)

[*English*]

The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)): Okay, I'd like to call the meeting to order.

Mr. Poilievre.

Order. Mr. Poilievre has the floor.

I'm sorry, we're on page 137. There is an amendment proposed by the Bloc Québécois, BQ-28.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): There is a subamendment now proposed by the Conservatives.

The Chair: Absolutely.

Mr. Pierre Poilievre: I believe we left off with the Liberal representatives satisfied by our explanation of the amendment, or at least understanding it.

The Chair: It's your call. We left off with you talking.

Mr. Pierre Poilievre: The question was why we chose these particular foundations to be included and not others, and the explanation was that four of the five were the result of acts of Parliament, and the Pierre Elliott Trudeau Foundation, in our view, receives enough public funds to warrant public scrutiny, and there is no other reason not to include it. We believe that it has the capacity as a foundation to respond to a reasonable flow of ATI requests. So that is why we've chosen this group.

You'll recall that there was some rationale offered by Mr. Martin as to why some of the organizations listed in the original Bloc amendment should not be included under the ATI act.

We offer this as a compromise to continue our efforts to extend access to information to yet a larger number of foundations, that's all.

The Chair: Okay, unless there's further discussion we're going to vote on the subamendment, BQ-28, which is limiting this list of five names.

(Subamendment agreed to)

(Amendment as amended agreed to [See *Minutes of Proceedings*])

The Chair: Now we're going to go to L-20.1, which is on page 139.1.... We can't.

It was a line conflict, Mr. Moore.

(Clause 166 as amended agreed to on division)

The Chair: We seem to have a small area we need to correct.

Ms. Jennings, I'm going to give you the floor. This has to do with clause 99.

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

Each of the members of the committee should have received a document that says *état du comité*, committee stage. This is clause 99, with the amendment I brought forward and this committee adopted. If you look in proposed subsection (2), you will see in the French version that there are two words in that paragraph highlighted in yellow. On the second to last line on the first page, again, you have two words highlighted in yellow.

After this was adopted, we realized there was a concordance issue between the English and the French versions. Unfortunately, this was a result of last-minute changes last Friday afternoon to the English, but by oversight they were not made to the French version.

Therefore, I would ask for your unanimous consent to allow the French version of clause 99 to be corrected as it is shown in this document. This will ensure that while the constitutional role of the House to provide opinion on the matters is dealt with here, it will also respect the constitutional role of the courts to determine whether an offence has occurred.

● (1900)

The Chair: Do we have unanimous consent?

Some hon. members: Agreed.

The Chair: It's corrected.

Hon. Marlene Jennings: Thank you.

(Clauses 167 to 171 inclusive agreed to on division)

(On clause 172)

The Chair: We're now on clause 172. These are amendments to the Access to Information Act schedule and are consequential to clause169 and proposed clauses 172.1 and 172.21.

Ladies and gentlemen, we're going to move to proposed clause 172.1, and that is on page 140. It's a government amendment, G-43, from Mr. Poilievre. It is consequential to G-42, page 136, which is proposed section165.

Mr. Pierre Poilievre: This amendment is the same as the original amendment to which it is consequential. I urge all members to vote for it.

The Chair: Excuse me for a few minutes.

● (1900)

(Pause)

● (1905)

The Chair: Mr. Poilievre, you're going to have to help us here. We're trying to figure something out.

Is amendment G-43 replaced by G-43.1?

Mr. Pierre Poilievre: Yes.

We already voted on these, did we not?

Ms. Susan Baldwin (Procedural Clerk): We're trying to determine which one the vote should apply to. I'd like to point out that in amendment G-43.1 there's a reference to the Open Government Act. I assume there must have been a consequential amendment. I don't know what's going on with that, because I don't think we've dealt yet with anything called that.

Mr. Pierre Poilievre: That should be the Access to Information Act.

Ms. Susan Baldwin: Well, in that case, is amendment G-43 the same as G-43.1, except for that title?

Mr. Pierre Poilievre: We'll withdraw 43.1.

The Chair: Okay, that makes it a little easier.

Just bear with me; we're almost there.

We voted on amendment NDP-18.4. It was carried, and it is consequential to G-43. So that takes care of that.

I'm sorry, ladies and gentlemen, we're going to proceed to vote on clause 172. It also applies to new clauses 172.1 and 172.21 and to clause 179.

(Clause 172 agreed to on division)

● (1910)

The Chair: We'll go to clause 173.

I'm sorry to cause the confusion, but it's difficult, as you know.

Clause 173 relates to returning officers, and as before, there's a series of other clauses that are related to this particular clause. We'll deal with all the amendments that pertain to the subject matter of clause 173 before we put the question on it.

We will first deal with the amendments to clauses 174, 176, and 177. Once that's completed, we'll put the question on clause 173, and the results will be applied to all the consequential clauses, namely 174 and 176 to 178.

The first amendment is on page 141 of the package. It's Bloc amendment BQ-29.

Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): I'm going back to Bill C-2 in a constructive way. I'm introducing amendment BQ-29, which appears on page 141 and is intended to amend clause 174.

I would humbly like to recall that this is a great victory for the Bloc. My friend and colleague Michel Guimond, the member for Montmorency—Charlevoix—Haute-Côte-Nord, previously introduced a similar bill. We've been requesting it for a long time.

However, we're pleased to note that the Chief Electoral Officer will be able to appoint returning officers in each of the ridings. However, I believe I heard Mr. Kingsley say that he did not disagree with an interpretation more consistent with the Quebec act, that is to say that he would make it so the Chief Electoral Officer would appoint returning officers in the ridings following public competitions.

The purpose of this amendment is to clarify the point that these would not be direct appointments, because there would be public competitions. People would therefore have to meet certain criteria in order to be put on the Chief Electoral Officer's selection list.

The Quebec act already contains this kind of obligation. In case of an emergency, for example, where there is a minority government, an early election or whatever, the Chief Electoral Officer would have some flexibility. However, in a normal situation, there would be public competitions to select returning officers.

[*English*]

The Chair: Mr. Owen.

Hon. Stephen Owen (Vancouver Quadra, Lib.): I'm sorry, I don't have the Public Service Employment Act in front of me. I wonder if Mr. Wild could give us an explanation of what that says, and how it would be applied in this case.

Mr. Marc Chénier (Counsel, Democratic Renewal Secretariat, Privy Council Office): Mr. Chair, the external appointment process in the Public Service Employment Act is defined as a process for making one or more appointments in which persons may be considered whether or not they're employed in the public service. It's unclear to me at this point how the proposed amendment would provide for open competitions. The way I read the amendment, it would just require a process where people outside the public service are considered, if we apply the definition that's found in the Public Service Employment Act.

It may be useful to the committee for me to go through what Bill C-2 provides right now. Bill C-2 provides that the Chief Electoral Officer has to develop a process to determine merit, and that he has to submit this process to the House of Commons. During the Chief Electoral Officer's appearance before the Standing Committee on Procedure and House Affairs last fall on Bill C-312, it was proposed to implement an independent process for the appointment of returning officers. The Chief Electoral Officer indicated that he would provide for processes where an eligibility list can be used. So where there is a competition to fill a vacancy, he would be allowed to set up an eligibility list. And if there's a further vacancy, he can just pick a name from that list without having the need to open a new competition.

Another thing he mentioned he would use is the reappointment of returning officers who have satisfactory past performance. So when returning officers have proved they are able to meet the merit requirements through their performance on election day, he would reappoint them to any vacancy.

● (1915)

The Chair: Mr. Owen.

Hon. Stephen Owen: From the first part of Mr. Chénier's answer—and maybe I can confirm this in my own mind—I take it that the Public Service Employment Act would not be appropriate for appointing people to non-public-service jobs. Is that what I heard you say?

Mr. Marc Chénier: Mr. Wild can correct me if I'm wrong, but the effect of the amendment, in my mind, would not apply the concepts of the Public Service Employment Act to the appointment process for returning officers. It would mean the definition of external appointment process as found in the act would apply to this process. It's defined as an appointment process whereby people outside the public service can apply.

Mr. Joe Wild (Senior Counsel, Legal Services, Treasury Board Portfolio, Department of Justice): I think Mr. O'Sullivan may actually have something from the Privy Council Office that may assist in the discussion.

Mr. Marc O'Sullivan (Acting Assistant Secretary to the Cabinet, As an Individual): Thank you.

I would support what Monsieur Chénier has described. It's an accurate description. The proposed amendment makes reference to the definition clause under the Public Service Employment Act, so it's simply limited to indicating that it's a process for people who are outside the public service. I don't see how that simple reference to that definition clause would incorporate by reference, for example, all the procedural requirements of the Public Service Employment Act. So the effect of this amendment would be to indicate that returning officers are hired in a process for which people outside of the Public Service of Canada are eligible.

The Chair: Ms. Jennings.

Hon. Marlene Jennings: I have a question. Possibly one of you technical experts can answer this. Is the Chief Electoral Officer subject to audits by the Public Service Commission? I know the Public Service Commission does audits of the appointment, hiring, selection—you name it—process of, for instance, the Auditor General. So I would assume so, but I would like to know if my assumption is based on fact. Because in that case, I would have less of a problem with the Bloc amendment, because I would be assured there would be an external independent audit of whatever process the Chief Electoral Officer put into place for this external appointment process.

Mr. Marc O'Sullivan: The Public Service Commission has authority over the hiring of public servants, so the Elections Canada employees of the Office of the Chief Electoral Officer are public servants, and would be covered by the Public Service Commission—but not returning officers.

Hon. Marlene Jennings: So should this amendment go forth, and the Chief Electoral Officer has the authority to appoint returning officers, which he wants the authority to appoint for a term of ten years, there would be no outside or independent scrutiny of the process the Chief Electoral Officer puts into place to actually recruit officers, or of the selection process put into place to actually deem the applicants qualified or not qualified, or of the ranking they receive. So there's nothing in this amendment that would provide for that kind of external, independent oversight.

● (1920)

Mr. Joe Wild: Sorry, there is an element of oversight on the reappointment, where the Chief Electoral Officer is required to consult with the leader of every recognized political party in the House of Commons in order to reappoint, for another term, any returning officer whose term expires.

Hon. Marlene Jennings: But not for the appointment.

Mr. Marc O'Sullivan: The Chief Electoral Officer, under the act, would have to report to the Speaker of the House on the proposed process for establishing qualifications and the selection process for returning officers, so the Chief Electoral Officer is accountable to Parliament for how he or she goes about establishing qualifications and determining the selection process for returning officers.

So parliamentarians will have that opportunity, and as part of the overall scrutiny of the actions of the Chief Electoral Officer, they will also be able to verify that he or she has in place a rigorous process for establishing qualifications and for a selection process, while at the same time allowing for the vagaries of appointing people from all across the country in ridings all across the country. There may be instances in far-flung ridings when the selection process will be slightly different from what it is in an urban centre, for example.

Hon. Marlene Jennings: Thank you.

(Amendment agreed to [See *Minutes of Proceedings*])

(On clause 176)

The Chair: We're going to the amendments on clause 176.

Government amendment G-44. Mr. Poilievre.

Mr. Pierre Poilievre: Government amendment G-44 refers to clause 176, which it amends on lines 37 through 39 on page 121. It would change the wording to read, “or if both their offices are vacant during an election period”, so that what we're adding is “during an election period”. The proposed section continues that the election officer “shall designate a person to act in place of the returning officer”, whereupon we add a further amendment, “and that person may, during and after that period, perform the duties of a returning officer in relation to that election”.

I think it's fairly clear what we're getting at here, but if the expert panel would like to add some commentary, I would welcome it.

The Chair: Mr. Chénier.

Mr. Marc Chénier: This provision is meant to offer the possibility for the Chief Electoral Officer to bypass the requirement to apply a merit-based process to make an appointment, specifically during an election period if there is no returning officer or assistant returning officer, because under the Canada Elections Act there are specific tasks that must be performed by the returning officer. And if there is no returning officer and there is no time to go through a merit-based process, then there is no way for the election to be carried out in the electoral district.

As we know, there can be an election at any time, either a byelection or a general election, and if there is a current vacancy when an election writ is issued, then the election would not be able to happen in the electoral riding.

The words that are being added to this section just specify that this power to appoint somebody without the need to apply a merit-based process is only for the purposes of an election and is for the tasks that must be performed in relation to that election.

(Amendment agreed to [See *Minutes of Proceedings*])

● (1925)

The Chair: We're now going to G-45, which is on page 144. This is an amendment to clause 177.

Mr. Poilievre, could you move that, please?

Mr. Pierre Poilievre: I so move.

I gather that the committee is fairly comfortable to go ahead.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Now we go back to clause 173 for the vote.

(Clause 173 agreed to)

(Clauses 174 to 178 inclusive agreed to)

The Chair: We'll move to clause 179.1. This is on page 144.2. This is government amendment G-45.1, which is consequential to clause 179.2. They go together.

A voice: Yes, they go together.

The Chair: Mr. Poilievre, would you move that, please?

Mr. Pierre Poilievre: Which amendment are you looking for us to move?

The Chair: It is amendment G-45.1.

Mr. Pierre Poilievre: I see that this amendment appears to be the same as NDP-18.5—

The Chair: Yes.

Mr. Pierre Poilievre: —and as such we will withdraw and allow discussion to focus on the NDP version of this amendment.

The Chair: Mr. Dewar, could you move NDP-18.5?

Mr. Paul Dewar (Ottawa Centre, NDP): I so move.

If you take a look at the intent of 179.1....

The Chair: No, I don't want to do that. I'm going to rule it out of order.

Mr. Paul Dewar: Oh, thank you.

The Chair: NDP-18.5 proposes to add a definition of "government institution", and it's amending section 2 of the Library and Archives of Canada Act.

House of Commons Procedure and Practice states on page 654:

> ...an amendment is inadmissible if it amends a statute that is not before the committee or a section of a parent Act unless it is specifically being amended by a clause of the bill.

Since section 2 of the Library and Archives of Canada Act is not being amended by Bill C-2, it is inadmissible to propose such an amendment. Therefore, NDP-18.5 is inadmissible.

Mr. Paul Dewar: Mr. Chair, can I seek unanimous consent?

The Chair: Unanimous consent—to what?

● (1930)

Mr. Paul Dewar: To consider this.

The Chair: Well, I ruled it out of order, so you can't even ask for consent.

We'll move to clause 179.2, which is G-45.2, and NDP-18.6. They are consequential to 179.1, which I just ruled out of order, so they're out of order.

We move to clause 180, and we have an amendment on page 144.5— G-45.3—which is the same as NDP-18.6.1 on page 144.7.

We're on G-45.3, Mr. Dewar.

Mr. Poilievre, go ahead, please.

Mr. Pierre Poilievre: Okay.

The Chair: Have I thoroughly confused you?

A voice: No.

The Chair: That's good.

Mr. Pierre Poilievre: All right, Mr. Chair, I will withdraw G-45.3.

The Chair: Mr. Dewar will proceed with NDP-18.6.1.

Mr. Paul Dewar: Is this where you tell me it's out of order?

The Chair: Mr. Dewar, we're on NDP-18.6.1.

Mr. Paul Dewar: I move that in Bill C-2, clause 180 be amended by replacing lines 12 and 13 on page 123 with the following:

> 180. The Act is amended by adding the following after

(Amendment agreed to)

(Clause 180 as amended agreed to on division)

The Chair: Clause 180.1, which is G-45.4 on page 144.9 of the amendments.

Mr. Poilievre, this is on page 144.9, and it's a government amendment.

Mr. Pierre Poilievre: Withdrawn.

The Chair: Mr. Dewar, NDP-18.7, which is the same as G-45.4, is on page 144.11.

Mr. Paul Dewar: So moved.

The Chair: All right, Mr. Dewar, I'm going to rule that inadmissible.

Mr. Paul Dewar: Thank you.

Some hon. members: Oh, oh.

Mr. Paul Dewar: I'm batting a thousand.

The Chair: You're just like Mr. Martin. Do you want me to give the reasons, sir?

Mr. Paul Dewar: Sure.

The Chair: G-45.4 proposes to add an offence to the Library and Archives of Canada Act. *House of Commons Procedure and Practice* states on page 654 that "an amendment is inadmissible if it amends a statute that is not before the committee or a section of the parent Act unless it is being specifically amended by a clause of the bill". Since section 20 of the Library and Archives of Canada Act is not being amended by Bill C-2, it is inadmissible to propose such an amendment. Therefore, NDP-18.7 is inadmissible.

So that's the end of that.

We move to clause 181, and it is consequential to clause 182. Have I missed something? We're at clause 181, being consequential to clause 182, so the vote on clause 181 applies to clause 182. We have a proposed amendment of the New Democratic Party on page 144.13, NDP-18.8.

Yes, Mr. Dewar?

● (1935)

Mr. Paul Dewar: I so move. This is to define.

> The definition "government institution" in section 3 of the Act is replaced by the following:
>
> "government institution" means

and then a definition follows, with (a) and (b):

> (a) any department or ministry of state of the Government of Canada, or any body or office, listed in the schedule, and
>
> (b) any parent Crown corporation, and any subsidiary of such a corporation, within the meaning of section 83 of the *Financial Administration Act*;

(Amendment agreed to)

(Clause 181 as amended agreed to on division)

(On clause 182)

The Chair: I'm very sorry. I missed this. It's amendment NDP-18.9, Mr. Dewar, on page 114.15.

Mr. Paul Dewar: I move that Bill C-2 in clause 182 be amended by adding after line 12 on page 124 the following:

> 3.01 For greater certainty, the Canadian Race Relations Foundation and the Public Sector Pension Investment Board are parent Crown corporations for the purposes of this Act.

It's just to define and provide certainty to the bill.

The Chair: I think we've done it.

Mr. Paul Dewar: I can withdraw if we did this when Mr. Martin was here.

The Chair: We haven't done it.

Mr. Paul Dewar: I've moved it. Perhaps I might get some technical assistance, Chair.

The Chair: Mr. Wild.

Mr. Joe Wild: Thank you, Mr. Chairman.

The amendment that the member has proposed is an amendment to the Privacy Act. It is certainly similar to the amendment that was passed earlier, which was to the Access to Information Act. The reason, of course, is once the definitions have been adopted in the Access to Information Act, normally they are kept parallel to the Privacy Act. So that's what these provisions are doing. They're putting in the same definition of "government institution", and then these provisions are associated, once you do that definition, under the Privacy Act to ensure there is concordance between the two pieces of legislation.

The Chair: NDP-18.9. All those in favour?

Mr. Pierre Poilievre: No, a point of order. We have a speakers list.

The Chair: I am very sorry.

Do I have the right order, Mr. Poilievre?

Mr. Pierre Poilievre: I presume so.

I have a subamendment. I even have copies *dans les deux langues officielles*.

Above the amendment we add:

> For greater certainty, any provision of this Act that applies to a government institution that is a parent Crown corporation applies to any subsidiary of such a corporation, within the meaning of section 83 of the Financial Administration Act;

This subamendment will look familiar because it was the same subamendment we introduced when this committee was presented with the nearly identical NDP amendment some hours ago. I do have copies if members want to see them, and I can share them with the chair.

We have introduced these amendments before, as I said, on a nearly identical previous amendment. Those were both introduced and passed.

● (1940)

The Chair: All right. Is everybody happy?

You're not happy.

Here come the documents.

[*Translation*]

Mr. Benoît Sauvageau: I blindly trust you to have the documents in French.

Ms. Monique Guay (Rivière-du-Nord, BQ): I'm a woman; I don't trust blindly.

Mr. Benoît Sauvageau: But I want to see them.

[*English*]

The Chair: I think the subamendments have now been distributed to members of the committee.

Mr. Poilievre, do you have any other comments?

Mr. Pierre Poilievre: It should be pretty straightforward. The committee already voted for an identical subamendment, so I imagine they'll be comfortable and enthusiastic in voting for it again.

The Chair: Well, let's find out.

(Subamendment agreed to on division)

(Amendment as amended agreed to on division [See *Minutes of Proceedings*])

(Clause 182 as amended agreed to on division)

The Chair: We now move to new clause 182.1, which is on page 144.17. It is a government amendment, G-45.5. It is the same as NDP-18.10.

Could I have a mover, please, Mr. Poilievre?

Mr. Pierre Poilievre: I will withdraw it.

The Chair: All right. Amendment G-45.5 is withdrawn.

Mr. Dewar, on NDP-18.10.

Mr. Paul Dewar: I so move.

The Chair: It's inadmissible.

Mr. Paul Dewar: I knew it.

The Chair: Do you want me to read it?

Mr. Paul Dewar: I'll fill in the blanks myself, thank you.

The Chair: Okay. You don't need it.

(On clause 183)

The Chair: We're going to move to clause 183, NDP-18.11, on page 144.21.

Mr. Dewar.

Mr. Paul Dewar: With a certain trepidation, I move that Bill C-2 in clause 183 be amended by replacing line 23 on page 124 with the following:

> 22.1(1) The Privacy Commissioner shall refuse

and after line 29 on page 124, adding the following:

> 22.1(2) However, the Commissioner may not refuse to disclose any record that was created by the Commissioner or on the Commissioner's behalf in the course of an investigation conducted by the Commissioner or under the Commissioner's authority once the investigation is complete and all related proceedings, if any, are final.

It is so moved.

Perhaps the expert panel can enlighten us on this.

● (1945)

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Mr. Chair, I have a subamendment.

The Chair: Subamendment, Mr. Lukiwski.

Mr. Tom Lukiwski: I'll read it quickly, then I will explain, if it's not clear, what the intent of the subamendment is. Then I have copies to distribute to all members as well.

It's mainly adding the following to the opening portion of the motion and replacing lines 23 to 29 on page 124 with the following.... We're adding a paragraph here and changing one word in the first paragraph. So proposed section 22.1(1) would read:

> The Privacy Commissioner shall refuse to disclose any personal information requested under this act that was obtained or created by the Commissioner or on the Commissioner's behalf in the course of an investigation conducted by or under the authority of the Commissioner.

Then we add subsection (2), which reads:

> However, the Commissioner shall not refuse under subsection (1) to disclose any personal information that was created by the Commissioner or on the Commissioner's behalf in the course of an investigation conducted by or under the authority of the Commissioner, once the investigation and all related proceedings, if any, are finally concluded.

Colleagues, basically what it's saying is that while the investigation is ongoing, the commissioner shall refuse to disclose any information. But once the investigation is completed, he shall not refuse a request for any information.

In my opinion, it's strengthening the clarity of the act, because you don't want to jeopardize an ongoing investigation by providing confidential information while the investigation is still ongoing. But once the investigation has been completed, all information would be provided.

The Chair: That makes sense. We'll distribute these. Do you want to wait?

Mr. Tom Lukiwski: The other thing I should mention, Mr. Chair, is that you'll notice when you receive copies, the word "may" in the original amendment by the NDP has been changed to "shall", so there is an obligation that they "shall" not disclose information requested during an investigation, but they "shall not refuse" once the investigation has been completed. So it's "shall" rather than "may".

The Chair: Well done. We'll distribute these, and then Mr. Owen has a few words to say.

● (1945)

(Pause)

● (1945)

The Chair: Okay, gentlemen. Have you concluded, Mr. Lukiwski?

Yes, Mr. Owen.

Hon. Stephen Owen: Thank you.

Perhaps the legal staff can help us on this. I'm worried about the reference to "any personal information" in proposed subsection 22.1 (1) and then the impact on proposed subsection 22.1(2), in that the central principle of the Privacy Act is to protect personal information. I'm not sure how that overriding obligation would affect personal information collected during an investigation. Would that be self-defeating to the central purpose of the act?

Mr. Joe Wild: I guess the Privacy Act has a couple of purposes to it, one of which is to certainly put in place rules respecting the use, collection, and disclosure of personal information by government institutions. The other thing it does is to create a right of access, if you will, by individuals to their personal information being held by government institutions.

So what would be happening under proposed section 22.1 is that in the first instance the Privacy Commissioner has an obligation to refuse to disclose any personal information, meaning again that the individual would be making a request for their information being held by the Privacy Commissioner. The Privacy Commissioner would be refusing to disclose any personal information they're holding with respect to that individual if that information was obtained or created by the commissioner in the course of an investigation.

Once the investigation is completed, then the personal information that was created by the Privacy Commissioner could be released to that individual, unless there are other parts of the Privacy Act that apply that would then restrict the ability of the Privacy Commissioner to provide that information to the individual to whom that information actually pertained.

● (1950)

Hon. Stephen Owen: Are you satisfied that this properly limits the release of personal information to the individual it's personal to?

Mr. Joe Wild: This amendment protects the capacity of the Privacy Commissioner to carry out investigations. It prevents the Privacy Commissioner from becoming a back door, if you will, on information that's been obtained from other government institutions that are subject to the Privacy Act, and only allows for the possibility of personal information that was created by the commissioner to be released back to that individual after the investigation is completed. So it would not jeopardize the investigation or any of the ancillary proceedings that may come about as a result of that investigation.

From my perspective, it's a fairly solid protection.

Hon. Stephen Owen: Excellent. Thank you, that's helpful. But the question was without having the words "disclosing any personal information to the subject of that information", is it clear, given the structure of the act this would fit into, that it means to the individual?

Mr. Joe Wild: Yes. That's the way the act is structured in terms of the capacity to request personal information. It fits within the structure.

Hon. Stephen Owen: Thank you.

The Chair: Okay, we're going to move. The question is on the subamendment to amendment 18.11.

(Subamendment agreed to on division [See *Minutes of Proceedings*])

(Amendment agreed to on division [See *Minutes of Proceedings*])

The Chair: The next two amendments are the same, amendments NDP-18.12 on page 144.21 and amendment G-46.

Mr. Paul Dewar: I'll withdraw mine, Chair.

The Chair: We are left with amendment G-46, which is on page 145.

Mr. Poilievre.

Mr. Pierre Poilievre: It's withdrawn.

(Clauses 183 to 189 inclusive as amended agreed to on division)

(On clause 190)

The Chair: We're on clause 190, which is the amendment to the Privacy Act schedule. It's amendment NDP-18.13. We're going to move to page 146.01.

Mr. Dewar.

Mr. Paul Dewar: Chair, I'd like to move the amendment NDP-18.13. People have it in front of them, so I won't go through all the names:

> 190. The schedule to the Act is amended by striking out the following under the heading "OTHER GOVERNMENT INSTITUTIONS":

and then the list that follows.

The Chair: Thank you, sir. Do you have any comments?

Mr. Paul Dewar: No, just to say that the names and the institutions are to be removed because they are now covered as government institutions, so this is, if you will, nomenclature, how they're defined.

(Amendment agreed to on division [See *Minutes of Proceedings*])

(Clause 190 as amended agreed to on division)

(On clause 191)

The Chair: We are now on clause 191, which is amendment L-20.2 at page 146.1

Ms. Jennings.

● (1955)

Hon. Marlene Jennings: I would just like to ask Mr. Wild—

The Chair: Before you do that, I want to know whether we have a motion on the floor.

Hon. Marlene Jennings: I'm not sure. Are you giving me a sign?

I move the amendment.

The Chair: You're okay. Go for it.

Hon. Marlene Jennings: I would just like to ask Mr. Wild, given all the amendments that have been adopted to various clauses to date, does my amendment L-20.2 still serve a purpose?

Mr. Joe Wild: L-20.2 would remove the Canada Foundation for Sustainable Development Technology from the Privacy Act. Just to remind the committee, that institution has remained under the Access to Information Act, and generally speaking, institutions that are under the Access to Information Act are normally also under the Privacy Act.

Hon. Marlene Jennings: However, I understand that by removing it from the Privacy Act, it would not be required to disclose personal information. Is that correct?

Mr. Joe Wild: This is an area that I think causes a potential problem. If it's not subject to the Privacy Act, the question then would be whether or not it fell under the Personal Information Protection Electronic Documents Act. In essence, this act is the private sector form of privacy legislation, which regulates the trade and commerce in personal information. It's very different from the Privacy Act. The Access to Information Act works hand in glove with the Privacy Act, in that the Access to Information Act has an exemption within it for requests from any individual if that request would require the foundation to disclose personal information, as defined by the Privacy Act.

The definition of personal information in the Privacy Act is different from that under PIPEDA.

Hon. Marlene Jennings: Yes, I'm familiar with PIPEDA.

Mr. Joe Wild: Okay, I never know with that acronym.

But because of that distinction, if you have an entity—and I'm not aware of any currently—under the Access to Information Act that's not also under the Privacy Act, you have the potential for a bit of a disconnect, in that you would have a definition of personal information under the Access to Information Act that's based on the Privacy Act, yet you have an institution that's not subject to the Privacy Act under PIPEDA operating under a completely different definition for personal information.

So their requirements, in terms of maintaining confidentiality with respect to personal information, is different under PIPEDA from what it would be under the Privacy Act. You're going to end up with a potential collision between concepts, where they may be required to disclose information under the Access to Information Act, which normally, under PIPEDA, they would not be required to disclose.

So it can create a conflict. Certainly, as I say, how is it just the usual? I'm not aware of any case in which we have an institution under the Access to Information Act that is not subject to the Privacy Act.

Hon. Marlene Jennings: So I have a decision to make, don't I?

An hon. member: [*Inaudible—Editor*].

Hon. Marlene Jennings: Why don' t you zip it? It might help your cause.

The Chair: Okay, we've got a vote, unless there's more debate. It's L-20.2.

Madam Jennings.

Hon. Marlene Jennings: I will withdraw it.

The Chair: All right.

(Clause 191 agreed to on division)

(Clauses 192 and 193 agreed to)

(On clause 194)

The Chair: Clause 194 is another one of these tricky ones. It relates to the Public Servants Disclosure Protection Act. There's a series of other clauses related to clause 194, so we will deal with all the amendments that pertain to the subject matter of clause 194 before we put the question on clause 194.

Therefore, we'll deal with the amendments to this clause and to clauses 201, 203, 210, 222, 224, and 225. Once this is completed we will put the question on clause 194, and its results will be applied to all those consequential clauses, namely 195, 197, 201, 211, 216 to 219, and 222 to 226.

So we will proceed with the first amendment relating to clause 194, which is NDP-19 on page 147.

Mr. Dewar.

● (2000)

Mr. Paul Dewar: Thank you, Chair.

I move this amendment relating to those who are not presently covered by the bill. So Bill C-2, in clause 194, would be amended by replacing lines 2 and 3 on page 127 with the following:

> taken against a public servant or researcher, including a student in a post-secondary or research-affiliated institution, because the public servant or researcher has made a protected disclosure or has,

We heard from people who were whistle-blowers. We heard from people who worked in the area of research with post-secondary education institutions and wanted to make sure that the people who are doing research with federal money, or touched, if you will, by federal dollars and federal scope, would have the same kinds of provisions that public servants would have. This just widens the scope a bit to ensure that the protection that is garnered, or will be garnered, for those who are directly hired by the public service will also be there for those people who are researchers, and not just exclusively those people who are public servants.

I think it's really important in terms of what we heard from the people who presented, people who have written individually to me, and people I've spoken to individually, when you take into account that a lot of the work that the government does isn't always in house; it is in fact done by people who are either working in partnership or people who are hired on contract by the federal public service or by federal dollars. So I think what this does is actually tighten up the accountability and the responsibility and provide protection for whistle-blowers beyond the scope that the bill had initially.

Thank you.

The Chair: Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Off the top, I'd be inclined to be in favour. My question is for counsel.

Does this work? Perhaps it would be better to state that we want to protect all those who are covered by the act. In choosing this definition, are we forgetting any? Is it dangerous to touch the post-secondary institutions appearing in the act?

[*English*]

Mr. Joe Wild: The proposed amendment is one that certainly touches on and would primarily deal with employment-related actions taken against researchers, including a student at a post-secondary or research institution. The issue that raises is that the employment relationships with respect to researchers and students in universities, or even a private sector research facility, are relationships that would typically be under provincial jurisdiction and not federal constitutional jurisdiction. So the amendment as proposed does present an issue from a constitutional perspective, in that employment and labour relations in those institutions is really a matter of provincial legislative jurisdiction.

● (2005)

[*Translation*]

Mr. Benoît Sauvageau: Thank you.

[*English*]

The Chair: I'll now call the vote on amendment NDP-19.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: According to our legal expert, if this amendment were adopted, it could be challenged under the Constitution because post-secondary institutions would be under provincial jurisdiction. I simply want to recall that before moving on to the vote.

[*English*]

The Chair: Thank you, sir.

Mr. Dewar.

Mr. Paul Dewar: If I may, I have a question for the expert panel.

If we're talking about post-secondary institutions, researchers who are with post-secondary institutions or hired on behalf of the government, or related to the government—adjacent to the government, if you will—would they not be considered different from those who are hired directly within a university?

In other words, would it not be plausible that you would have people who, notwithstanding the fact that they might be paid directly by the university in most instances, might receive research grants or research moneys directly from the federal government?

Mr. Joe Wild: I think it's important to be clear about the limits of federal spending power. Federal spending power doesn't translate into a regulatory constitutional authority for the federal government. While the federal government may, in any particular area, provide grants or contributions, that spending power—in other words, the creation of contractual relationships—does not translate necessarily into the federal government having the authority to go in and regulate conduct that would otherwise be in the jurisdiction of the provinces. So the mere fact of giving money would be insufficient, unless we were talking about giving money in an industry that was already under a federal constitutional head of power.

Mr. Paul Dewar: I have a final question, Mr. Chair. It relates to those foundations that do research and receive federal money—in fact, rely almost directly upon federal money and perhaps some private money, so it would be some of the foundations that we've heard from in innovation and sustainable development, etc. Would those foundations be covered by the provisions presently in the bill without an amendment if they had concerns? In other words, would they, as whistle-blowers, be covered by this legislation?

Mr. Joe Wild: The legislation provides protection for those who make disclosures who are public servants. Under the act it's a defined term that covers a wide variety of government institutions. It wouldn't go so far as to attach to employees in a foundation if the foundation is not under federal control and a federal institution in the same way we think of departments, agencies, commissions, crown corporations, and those sorts of bodies.

Mr. Paul Dewar: So in essence we're leaving out a number of people who would be working on behalf of the federal government—not directly, but certainly in terms of crown research and the delivery, in some cases, of services. They are people who are making their living by way of federal remuneration, but they are not covered by this part of the bill that we would call the whistle-blower act.

Mr. Joe Wild: Any person can provide information to the public sector integrity officer. Any person can bring forward information that may result in the commissioner undertaking an investigation into alleged wrongdoing within the public sector. There are also prohibitions against employers taking reprisal actions against employees, and those prohibitions have an offence tied to them. That would apply to any employer out there, so there are measures within Bill C-2 that do address persons who are not public servants.

Again, the core protection in terms of a protected disclosure, as it's called under the act, and in terms of access to the tribunal in the case of reprisal—those things are very much about public servants and the public sector; that's the primary purpose of the legislation.

● (2010)

Mr. Paul Dewar: Thank you.

The Chair: We will call the vote on amendment NDP-19.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: You didn't do too well on that one. That's defeated.

Next is amendment BQ-30, on page 148.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Ms. Guay will introduce the amendment.

[*English*]

The Chair: It's Madame Guay; I'm sorry.

[*Translation*]

Ms. Monique Guay: Mr. Chairman, I'm introducing the amendment. I hope it is admissible.

[*English*]

The Chair: It is in order, Madam Guay.

[*Translation*]

Ms. Monique Guay: This clause is the ideal place to add a clarification concerning the definition of the word "reprisal", because it concerns the Public Servants Disclosure Protection Act. Consequently, I'll read you part of the amendment:

> (3.1) The definition of "reprisal" in subsection 2(1) of the Act is amended by striking out the word "and" at the end of paragraph (d), by adding the word "and" at the end of paragraph (e) and by adding the following after paragraph (e):
>
> (f) any psychological harassment.

Then comes an exhaustive description of psychological harassment.

A number of people have mentioned this to us, and we moreover have tabled a bill on psychological harassment. Quebec already has legislation on that matter. Unions, including the Syndicat de la fonction publique du Québec, have asked us to find a part of Bill C-2 where reference could be made to psychological harassment, particularly where, in the event of a disclosure, a person may suffer significant trauma, that is psychological harassment.

We simply wanted to see this definition in the act.

[*English*]

The Chair: We will vote on BQ-30.

(Amendment negatived)

The Chair: We now move to page 151, L-21.

Mr. Owen, would you move that, please?

Hon. Stephen Owen: Yes. In the process of moving this, Mr. Chair, I would like to make the observation that this does not amend the Canada Labour Code. It simply provides that the provisions under consideration make the Canada Labour Code applicable. So I move this.

The Chair: Okay, I'm going to say it's inadmissible.

Hon. Stephen Owen: Well, I'd like to continue with my discussion of this.

The Chair: Well, I'm going to make a ruling, and then we'll see what happens, Mr. Owen.

L-21 proposes to change the definition of "tribunal" to "the Canada Industrial Relations Board", established in section 9 of the Canada Labour Code.

House of Commons Procedure and Practice states on page 654, "An amendment to a bill that was referred to a committee *after* second reading is out of order if it is beyond the scope and principle of the bill." Since the Canada Industrial Relations Board is not referred to elsewhere in this bill, I will rule that L-21 proposes a new concept, which is beyond the scope of Bill C-2, and consequently it is inadmissible.

Mr. Owen, do you have a point of order?

Hon. Stephen Owen: Yes, I do, Mr. Chair. My point of order is that there is no amendment to the Canada Industrial Relations Board contemplated by this. All this seeks to amend is Bill C-2, by changing the definition of "tribunal". So therefore it is simply an amendment to the bill that's before us, and it has no substantive impact on the Canada Industrial Relations Board.

● (2015)

The Chair: Give me a minute.

Mr. Pierre Poilievre: I have a comment on the same point, Mr. Chair.

The Chair: Go ahead, Mr. Poilievre.

Mr. Pierre Poilievre: Yes. Evidently this would require a change, at least in the mandate of the Canadian Industrial Relations Board, because it would require of that board to take on a whole list of new responsibilities related to whistle-blower protection, which are not part of the existing responsibilities of that board and are not contemplated or referred to anywhere in Bill C-2.

Therefore, I wish to congratulate and endorse your earlier ruling.

The Chair: Well, we're talking about two points of order. I did rule, and my ruling stands that it's beyond the scope of the bill.

Hon. Stephen Owen: Would you remind me, Chair, of the procedure for me to challenge your decision?

The Chair: You challenge the chair.

Hon. Stephen Owen: I hereby challenge the chair.

The Chair: Okay. We need a majority vote.

Hon. Stephen Owen: It's a friendly challenge.

The Chair: Will the chair's ruling be sustained? Yeas and nays.

Mr. Alan Tonks (York South—Weston, Lib.): With great respect and the utmost of friendship.

The Chair: It is indeed sustained.

(On clause 201)

The Chair: We'll go to clause 201. There are some amendments. It's NDP-20, on page 151.

Mr. Dewar.

Mr. Paul Dewar: Yes.

The Chair: On a point of order, Ms. Jennings.

Hon. Marlene Jennings: There is confusion on my part. Are we not going to vote on clause 194, or do we have to deal with other clauses before we come back to it?

The Chair: Yes, we have to deal with other clauses. We'll come back.

Hon. Marlene Jennings: Thank you.

The Chair: Mr. Dewar.

Mr. Paul Dewar: Thank you, Chair.

I'll move amendment NDP-20. This is to again look at to whom we can make the whistle-blower legislation available.

We want to expand whistle-blowing by replacing "public servant" with "any person". It would give more scope to the bill and protection to the people under it.

[*Translation*]

The Chair: Mr. Sauvageau.

Mr. Benoît Sauvageau: Mr. Chairman, I believe we must oppose this for the following reasons. The specialists will correct me if I'm wrong. First, proposed subsection 19.1(1) states: "A public servant or a former public servant..."

We previously voted so that a citizen could go through his or her member or file a complaint directly with the commissioner. I don't remember what it was about, but there is a procedure for citizens to do that. If we eventually agree to this amendment introduced by the NDP, it would be like the expression says, an "open bar". Everything we wanted to protect in the act by putting up walls would be undone to allow anyone to file a complaint anytime. That's how I understand it.

Am I wrong?

● (2020)

[*English*]

Mr. Joe Wild: Mr. Chairman, I think it's correct that the amendment would allow any person to file a reprisal complaint to the commissioner.

I guess the difficulty from a technical perspective is that with the defeat of NDP-19 there's now a disconnection between the two. It's difficult to actually see what that would do at this stage.

The Chair: Yes, Mr. Owen.

Hon. Stephen Owen: Thank you.

Further to what Mr. Wild said, I believe that I heard you say earlier that any person can bring information before the commissioner but cannot formally file a complaint. Perhaps you could confirm this. Is that the distinction?

Mr. Joe Wild: If a person believes there is a wrongdoing, he or she can bring information to the Information Commissioner with respect to a potential wrongdoing.

This section deals with a reprisal complaint. The entire reprisal section is built around the notion of protecting public servants and former public servants from reprisals and providing appropriate safeguards in the event they feel that they have been reprised against.

The Chair: We're at amendment NDP-20.

Mr. Dewar.

Mr. Paul Dewar: I just have one point, Chair. I appreciate the comments made in light of the fact that the previous amendment, NDP-19, did not pass, so the scope I hoped it would have captured is gone.

I'm curious, Mr. Wild, if there were reprisals against someone who was not a public servant but was related to someone who had suffered from reprisals, because of relationship or because they reported—as Mr. Owen said, anyone can report.... It's not out of the realm of possibility that one could suffer reprisals as a result of having disclosed. If that scenario were to happen, I'm just curious what protections would be afforded someone in that instance.

Mr. Joe Wild: The first issue on the motion, Mr. Chairman, is if the intent of the motion is to try to make available to any person the actual reprisal protections embodied in having the commissioner receive a complaint, investigate, and go through a tribunal, we're going to get back into the same constitutional issues I raised on amendment NDP-19. This act is primarily looking at things through the lens of labour relation remedies, so we're into employment labour relations. When you start to bring in people from outside the public sector, we get back into this question of whether or not there is any federal jurisdiction to actually do anything such as having a tribunal with the types of powers this tribunal has.

The protection provided in the act is one of prohibiting employers from taking reprisals against employees and tying a criminal offence to that prohibition.

The Chair: Okay, Mr. Dewar?

Madam Guay, are you okay?

We will vote on NDP-20.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Amendment L-22 is consequential to amendment L-21, which was deemed to be inadmissible; therefore this amendment is inadmissible.

We will move to amendment NDP-21 on page 153.

Mr. Dewar.

Mr. Paul Dewar: It's straightforward, Mr. Chair, as were the others. I move that Bill C-2, in clause 201, be amended by deleting lines 38 to 40 on page 144 and lines 1 to 3 on page 145.

It is the deletion of “grievance precluded”. I don't know if there's any comment from the panel on this.

● (2025)

Mr. Joe Wild: The effect of the amendment is it removes the restriction that prohibits people against whom disciplinary action has been ordered by the tribunal from grieving that to a labour board or under their collective agreement.

The reason for the prohibition is a tribunal is ordering the discipline. These are not decisions being taken by the employer, and normally what you'd be talking about in a grievance process is the employee grieving a decision of the employer. In this case, you end up with the employee grieving the decision of the tribunal. That results in a duplication of proceedings, because the tribunal orders are subject to judicial review to the Federal Court of Appeal. A mechanism is already provided if somebody has a discipline order brought to bear against him or her as a result of the tribunal ordering the employer to take a disciplinary action. The recourse would be to seek judicial review of that tribunal's decision.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: I'd like to ask a question through you, Mr. Chair, to Mr. Dewar.

The answer that the technical experts have given, is it something that satisfies you, or are you still...?

Mr. Paul Dewar: I think if what we're saying here is if someone.... In plain language, if you go down the road of using the procedures of Bill C-2 as a whistle-blower, then you would stay going down that path, and be subject to the decision that was made there. Then on the grievance side you would have to follow that path down.

Just as a thought, would it not depend upon the language within your collective agreement as to what other actions could be taken? In other words, if you aren't satisfied with the result of your actions or the decisions of the tribunal, you could still opt for actions within your collective agreement.

Mr. Joe Wild: I think it's important to be clear that the grievance that's being prevented here is if the tribunal has ordered the employer to discipline you because you have been shown to be a repriser. So you're not the whistle-blower; you're the person who has reprised against the whistle-blower. That's what that prohibition is doing; it is preventing the repriser from going down a path of grievance.

If you're the whistle-blower and you feel that the tribunal's decision is inappropriate or insufficient in some fashion, the act has put in place a judicial review mechanism through the Federal Court of Appeal.

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I don't want to add any, but I find this curious. It's like someone who likes unions and protection too much: at some point it becomes too much. If I understand correctly, that would mean that a person like Chuck Guité who is dismissed would be entitled to file a grievance, even if that person doesn't agree with the decision. Is that correct?

[*English*]

Mr. Joe Wild: The effect of the amendment would be that it would allow someone who has been proven to have taken a reprisal against a whistle-blower, and who the tribunal orders the employer to take disciplinary action against, to grieve that. The repriser who has now been disciplined by the employer would be able to grieve that. Bill C-2 prevents that from happening. The amendment would open that possibility up.

The Chair: Ms. Jennings.

Hon. Marlene Jennings: So if I understand you correctly, if we were to consider the situation that Mr. Allan Cutler lived, which was clear whistle-blowing and then active reprisals.... Mr. Cutler did in fact whistle-blow on Mr. Guité. We have the testimony before the public accounts committee. Justice Gomery received that testimony as well. Mr. Cutler was then the victim of reprisals by Mr. Guité.

Had Bill C-2 been in force at that time, and had the amendment that Mr. Dewar has just proposed been adopted, Mr. Guité would have been able to file a grievance against a disciplinary order that had been brought against him for having conducted reprisals against Mr. Allan Cutler for whistle-blowing against Mr. Guité.

● (2030)

Mr. Joe Wild: Without commenting on any fact situation, a repriser who, as the result of an order of the tribunal, has been disciplined by an employer, under the amendment that's proposed would be able to grieve that decision, whereas under the act, as proposed in Bill C-2, they would not be able to grieve that decision. The only recourse would be judicial review at the Federal Court of Appeal.

Hon. Marlene Jennings: Thank you.

Mr. Paul Dewar: Without falling into the trap presented and outlining people of note and indicators, I think we have to look at it as public policy isn't based on personality, public policy is based on situations. I think it wasn't about having someone—they have a right to appeal anyhow—have the right to grieve. You could simply turn it the other way. If a decision was made and we found out years later, because other evidence had come forward, that the person wasn't treated fairly.... This is odd for me to be saying. It's plausible—and we've seen this time and again from the courts—that all the evidence wasn't in place and that someone would be allowed the right to at least have an appeal process. So I just put that for the record and away we go.

The Chair: I'm calling the vote on amendment NDP-21.

(Amendment negatived [See *Minutes of Proceedings*])

(On clause 203)

The Chair: We move to the amendment on clause 203—amendment G-47, page 154.

Mr. Poilievre.

Mr. Pierre Poilievre: If members turn their attention to page 148 of the Accountability Act, they will find clause 203, which will be amended by replacing lines 12 to 15 with the following:

> (l) the power to request that a chief executive provide notice as referred to in section 36; and
>
> (m) the power in section 37 and the power and duties in section 38 to make a report.

I'll invite any comments from our expert panel.

Mr. Joe Wild: The primary purpose of the amendment is one that is incidental to a motion coming up, amendment G-49. Basically, this removes the making of financial awards from the list of powers and duties of the Public Sector Integrity Commissioner.

Sorry, this section is the list of powers and duties that the Public Sector Integrity Commissioner must exercise personally, cannot delegate, but this is just incidental. It's removing this from this list, because as you will see when we get to it, there is a government amendment to remove the financial awards.

Mr. Pierre Poilievre: Presumably those who are opposed to the financial rewards will support amendments to remove those rewards from the act.

The Chair: Okay. I don't see any hands up, so I'll call the vote.

(Amendment agreed to [See *Minutes of Proceedings*])

● (2035)

The Chair: I don't want to put any pressure on people here.

We move to the amendment in clause 210 that is on page 155.1. It's a Liberal amendment, amendment L-22.1.

Mr. Dewar, it is the same as amendment NDP-21.1.

Ms. Jennings.

Hon. Marlene Jennings: This amendment is consequential to all the other amendments that I have put forward and that have been adopted based on the recommendation of Maître Walsh in order to preserve as much as possible the constitutional autonomy of the House and its members, the authority of the House over the conduct of its members, and any process that could lead to disciplinary sanctions, or whatever, regarding a member of the House.

The Chair: I'l call the vote on amendment L-22.1.

(Amendment agreed to [See *Minutes of Proceedings*])

(On clause 222)

The Chair: We now go to the amendments in clause 222. There's a line conflict.

In amendment L-23, on page 160, there's a line conflict with amendment G-50 and amendment NDP-21.2. So we'll let you all deal with that.

Mr. Owen.

Hon. Stephen Owen: Just a moment, please.

What we're doing here is replacing—

The Chair: Maybe you could move it, sir.

Hon. Stephen Owen: I'll move it, thank you.

The Chair: Thank you.

Hon. Stephen Owen: And then I move to replace lines 42 and 43 on page 159 and lines 1 to 24 on page 60 with the following—which is in the amendment.

The Chair: Okay. We're going to keep moving here.

Mr. Owen, do you have any comments?

Hon. Stephen Owen: No, I think it's self-evident.

The Chair: Okay.

We have a line conflict. Is anyone worried about that? No?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Mr. Poilievre, we have amendment G-50, page 161, if you could move that, please.

Mr. Pierre Poilievre: I'll withdraw that.

The Chair: All right.

We're now on amendment NDP-21.2, on page 162.1.

Mr. Dewar.

● (2040)

Mr. Paul Dewar: I take it if I put it forward, you will....

An hon. member: Take a chance.

Mr. Paul Dewar: Sure.

The Chair: Are you moving it?

Mr. Paul Dewar: Yes, I am.

The Chair: It's in order.

Mr. Paul Dewar: Thank you.

This is what we've done before, in terms of strengthening the bill in scope and transparency. I won't read it all; people have it in front of them. The intent here is to take a look at how the bill is going to be exacted, be implemented, be understood.

When you look at what is in the amendment, you'll see that it's congruent with the philosophy of what we're trying to do here, and that is to strengthen transparency and the access to citizens of what accountability really is.

If you take a look at what we've asked before in this area, and take examples of ATI, this is consistent with what we've asked before.

I just wonder if the expert panel has any comments on this. I would welcome their input.

Mr. Joe Wild: The proposed motion, Mr. Chairman, does several things. It starts off, of course, by providing a broad coverage for the PSIC for documents that are obtained. Then it tailors the exemptions specific to the PSIC as well as those applying more generally to all heads of government institutions, because there's also the internal complaint mechanism within those institutions to provide limited coverage for materials that are created prior to or during an investigation. It also ensures that there is protection for the identities of persons who are involved in the disclosure process.

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: Mr. Chairman, correct me if I'm off point. My question is for the officials who are advising us brilliantly. It concerns amendment NDP-21.2, and, if you will, BQ-31. If you'll allow me to explain briefly, you'll understand why.

Our intention is to ensure that the information concerning a disclosure is made public one year after the end of the investigation. Under the present wording of Bill C-2, a report would be prepared following an investigation by the disclosures commissioner, and that report can be kept secret on a shelf for ever.

I'd like to understand. To make that report public, is it simply preferable to adopt amendment NDP-21.2 or BQ-31?

[*English*]

The Chair: The question should be asked if they're different, I think.

Mr. Wild.

Mr. Joe Wild: I think it's important, Mr. Chairman, to make sure the committee is aware that there is a requirement on the Public Sector Integrity Commissioner to report publicly at the conclusion of an investigation if the commissioner has determined that there has been wrongdoing. There is certainly a public reporting requirement on the commissioner.

In terms of distinctions between the motion proposed by amendment NDP-21.2 and the motion proposed by amendment BQ-31, there are a couple of questions to note about BQ-31.

I'm not sure if this was the intention or not, but as we read and analyzed it, it appeared that this particular amendment was creating an exemption for information obtained or created that would apply only during the year that follows the conclusion of the investigation, but not during the investigation. It has a bit of a temporal application that I think raises an issue, in that the protection on records obtained or created applies only for the year after the investigation is completed, as opposed to during the actual conduct of the investigation. That may be just an error in drafting, I'm not sure, but it's something to point out.

The other thing is that the NDP amendment is very specific about the nature of the timeframes in which the head of a government institution is protecting information.

That's an attempt to be helpful to the committee. There are some areas of distinction.

● (2045)

[*Translation*]

Mr. Benoît Sauvageau: If we don't adopt amendment BQ-31, would it be eternally impossible for the public to gain access to the internal audit reports and documents, for example?

Also, if we adopt it, the report would be made public at the end of the investigation, and the documents used to prepare the report would be made public one year after the report is tabled, rather than be inaccessible.

[*English*]

Mr. Joe Wild: The commissioner has to file his report within 60 days after the commissioner has concluded the investigation and determined there was a wrongdoing. That's the report part.

On the documents, the commissioner would not be required to disclose those documents. The documents could come out not through an access regime, but through the tribunal process or if there was a court challenge to a decision. But in the access regime, those documents would be protected.

The Chair: Are you finished, Mr. Sauvageau?

Mr. Dewar.

Mr. Paul Dewar: I had a question that came out of a response. Since we are doing a comparative analysis here, I'm just looking at the BQ-31. It talks about adding a new subsection 16(6). Correct me if I'm wrong here, but rather than having a prohibition against disclosure, it just seems to impose a delay; so the prohibition would apply only in the year that follows the conclusion of the investigation or decision.

I'm looking at this and thinking that the amendment could weaken the protection offered the whistle-blower, and that the person would have less because of that, because you're talking about delay, not a prohibition.

I just wanted your comments on that, just for a comparative analysis within that thread.

The Chair: We'll vote on NDP-21.2.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: BQ-31, on page 163, is a Bloc Québécois amendment. We have had some discussion on it already.

Monsieur Sauvageau, you may proceed to move that. We have to move it before we vote on it.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I'm introducing it, but I don't have any questions, since the ones I intended to ask have been answered.

Thank you.

[*English*]

The Chair: Thank you, sir.

(Amendment negatived [See *Minutes of Proceedings*])

● (2050)

The Chair: We now move to amendments for clause 224.

Mr. Dewar, could you move NDP-21.3, please?

Mr. Paul Dewar: Yes, so moved. I think, just to quicken the pace here, instead of reading the whole thing, I'll give it to the committee to wrestle with, and perhaps to our expert panel for an opinion.

(Amendment negatived [See *Minutes of Proceedings*])

(On clause 225)

The Chair: Now we go to the amendments for clause 225.

It's a Liberal-proposed amendment, L-24.

Mr. Owen.

Hon. Stephen Owen: Thank you.

I so move.

The Chair: There's a line conflict with G-51, Mr. Poilievre. That will work its way through.

Hon. Stephen Owen: Thank you.

Well, that will take its normal course, I am sure.

The Chair: Indeed.

Hon. Stephen Owen: This amendment deletes, on page 162, lines 24 to 41, and lines 1 to 7 on page 163. It basically deletes those two sections and continues on clause 225 in their absence, continuing with what is now section 58.1.

The Chair: Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I'd very seriously like Mr. Owen to explain the real meaning of his amendment to us.

[*English*]

The Chair: The deep meaning....

Hon. Stephen Owen: I would have to leave, Mr. Chair, the deep analysis in Mr. Sauvageau's mind to himself.

The Chair: Let's have some order here. Mr. Owen has asked a question.

Hon. Stephen Owen: I've answered.

The Chair: You answered yourself?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: On G-51, page 165.

Mr. Poilievre, there's a line conflict with L-24.

Mr. Pierre Poilievre: Withdrawn.

The Chair: In NDP-21.4, page 166.1, there is a line conflict with L-24 and G-51.

Yes, Mr. Dewar?

Mr. Paul Dewar: Thank you, Chair.

It suggests that clause 225 be amended by replacing lines 31 on page 162 to line 7 on page 163 with the following...as outlined.

The Chair: Are there any comments?

Yes, Mr. Dewar?

Mr. Paul Dewar: At this point I would like to get an opinion from the panel, not line by line of the amendment, but just in terms of what this would do to the bill in terms of enhancements.

● (2055)

Mr. Joe Wild: Mr. Chairman, I will certainly acquiesce and not do a line-by-line review.

The provision mirrors NDP-21.2, which has been defeated. So there's not much more I can say other than it would, as this stage, create an incongruous operation, because the others have already failed, and they work together as a package.

The Chair: Okay.

Mr. Paul Dewar: I'll withdraw.

The Chair: Sir, you're withdrawing that.

We're going to clause 194 to vote. That will apply to clauses 195, 197, 201, 211, 216 to 219, and 222 to 226.

(Clause 194 agreed to)

(Clause 195 agreed to)

(Clause 201 agreed to)

(Clause 211 agreed to)

(Clauses 216 to 219 inclusive agreed to)

(Clauses 222 to 226 inclusive agreed to)

(Clauses 196 and 197 agreed to)

(Clauses 198 to 200 inclusive agreed to)

The Chair: We'll go to clause 212 as amended.

We haven't debated it yet. This is about the deputy commissioner. It's government amendment G-48 on page 156.

Yes, Mr. Poilievre?

Mr. Pierre Poilievre: Thank you, Chair.

I'd like to move government amendment 48. Government amendment 48 applies to clause 212, which would be amended by replacing lines 4 and 5 with the following:

> may assign:
>
> (1.2) The assignment of powers, duties and functions by the Commissioner to the Deputy Commissioner may include the delegation to the Deputy Commissioner of any of the Commissioner's powers, duties and functions, including those referred to in paragraphs 25(1)(a) to (k) and the powers in sections 36 and 37, but it may not include the delegation of the Commissioner's power or any of his or her duties in section 38.

I invite commentary from our expert panel.

Mr. Joe Wild: Basically, just to boil it down, what the amendment is doing is clarifying that the commissioner can assign any power, duty, or function to the deputy commissioner, except for reporting to Parliament.

The Chair: Mr. Owen.

Hon. Stephen Owen: So what it's doing is bringing more clarity to that notion. Is that what it's achieving?

● (2100)

Mr. Joe Wild: Absolutely. It's a technical amendment intended to clarify and remove any ambiguity from that delegation.

Hon. Stephen Owen: Thank you.

The Chair: Is there any further discussion on G-48?

(Amendment agreed to)

The Chair: I think at this point that we have run out of time.

This room will be used tomorrow morning, so you cannot leave your documents and files here.

This meeting is adjourned until tomorrow afternoon at 3:30 in Room 237-C. The meeting is adjourned.

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