HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Finance

FINA • NUMBER 086 • 2nd SESSION • 41st PARLIAMENT

EVIDENCE

Thursday, June 4, 2015

Chair

Mr. James Rajotte

Standing Committee on Finance

Thursday, June 4, 2015

● (0845)

[*English*]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call order meeting number 86 of the Standing Committee on Finance.

Pursuant to the order of reference of Monday, May 25, 2015, we are continuing our study of Bill C-59, an act to implement certain provisions of the budget tabled in Parliament on April 21, 2015 and other measures.

We want to thank our witnesses for being with us here this morning. First of all, we have with us Professor Ian Lee from Carleton University. We also have with us the Canadian Association of Professional Employees and its president, Madam Emmanuelle Tremblay; the Intellectual Property Institute of Canada and its past president, Mr. Jeffrey Astle; the Professional Institute of the Public Service of Canada, Debi Daviau, the president; the Public Service Alliance of Canada and its national president, Ms. Robyn Benson; the Royal Canadian Mounted Police and Rennie Marcoux, chief strategic policy and planning officer, and the deputy commissioner for specialized policing services, Mr. Peter Henschel.

Thanks to all of you for being with us here this morning. You will have five minutes maximum for your opening statements.

We'll begin with Professor Lee, please.

Dr. Ian Lee (Assistant Professor, Carleton University, As an Individual): I thank the finance committee for the opportunity to appear before you and beside these distinguished witnesses. However, in sharp contrast, I do want to note that while they're at the very top of their unions and organizations, I'm merely a dues paying, rank-and-file union member at the very bottom. In short, I'm just a worker on the metaphorical shop floor of the education factory.

My disclosures, very quickly, are the following. First, I do not consult anyone or anything, anywhere—not corporations, not unions, not NGOs, not governments, not political parties, not persons. Second, I do not belong to nor donate any moneys to any political party. Third, I've published scholarly articles on public sector labour relations in Canada for over 20 years. Fourth, in 27 years of teaching I have not missed one single class, ever, not once, due to illness—although I have attended class sick, as my students are completely dependent on me to complete the course and graduate. Fifth, and most importantly, I've been a dues paying member of CUASA, the faculty union, for 27 years. Moreover, I recently became a part-time regular on a CBC program called *The Exchange with Amanda Lang*, where I receive a very modest honorarium, from which is deducted union dues for the communications union. Restated, I'm so committed to being associated with unions, I belong not to one but to two unions.

Today, I'll only address the sick leave provision in the budget implementation bill. In supporting the modernization of PS benefits, including the sick leave system, it is very important to state at the outset that I strongly believe that Canada is fortunate to have one of the most educated, most competent, most ethical public services in the entire world. I say that having taught executive MBA courses in many countries around the world.

Therefore, it is false and deceptive for any person to suggest that criticism of any component of PS benefits demonstrates contempt for public servants or contempt for collective bargaining. I am a unionized public servant, in a public university, from a family of federal public servants going all the way back to the 1940s, when my late uncle was appointed postmaster in Elfros, Saskatchewan.

No, the issue concerns reform and modernization. As I stated in my op-ed in the *Ottawa Citizen* in 2013, let us fully acknowledge that prior to the advent of collective bargaining in 1967, public servants were paid less and had fewer benefits than those in the private sector. However, the pendulum started to swing in the opposite direction commencing in the early in 1970s and continued until the current Parliament.

Therefore, it is a very serious mistake to blame the unions for the failure to modernize public service compensation and benefits. They were doing what unions are supposed to be doing and what I pay my union dues for—at least when not doing what unions shouldn't be doing by interfering in federal and provincial elections with my union dues.

No, accountability should be placed squarely on the shoulders of those responsible: past ministers of the Treasury Board, in past Liberal and Conservative governments who failed to apply the most difficult word in the English language, one of the shortest words, and that word is “no”, we will not approve your demand.

Now to absenteeism. As the most respected HR consulting firm in the world, Mercer consulting, as well as the Conference Board, demonstrated in their studies, absenteeism is very expensive. But it's not the direct cost of absenteeism, but the indirect cost of reduced productivity. Mercer estimates that the true cost of absenteeism at approximately 8.5% of total payroll expenditures. And do note that total payroll averages around 75% of total costs in most organizations.

Over the past 30 years, most Canadian employers modernized the sick leave policy from a two-legged stool of short term and long term, to a three-legged stool of personal leave of five to seven days with no documentation required, followed by short-term leave and then long-term leave. This cleverly distinguishes between personal issues, such as funerals, child's graduation, prom, or breaking your leg while skiing. Moreover, and more importantly, it properly shifts the responsibility to manage short-term leave from managers who are absolutely not qualified to evaluate medical certificates, to the trained professionals and insurance companies.

For this critical reason, I urge the committee and the government to remove the seven-day qualifying period to qualify for short-term sick leave in the proposal by the government, because once the insurance companies have determined you're sick, then you really are sick.

Today, per the Mercer database, 97% of employees can no longer bank sick leave, including universities and provincial public servants.

Finally, and I am wrapping up, it is important to bring an issue to your attention. I have lived in this remarkable city my entire life, a city I characterize as the centre of the Canadian universe, and I have been employed on three separate occasions in the federal PS. I know an awful lot of public servants in this city.

Honourable members, this is not well known, but there is a serious split among the rank and file of PSAC, PIPSC concerning sick leave reform. A good number of public servants have contacted me—younger people—who quietly support the reforms, as it would be a better system for those who don't have banked sick leave while the older PS generally support the existing system. I do not know the percentage split. I do know it's substantial.

● (0850)

I urge the members to discount disgruntled, tired boomers who will soon retire, and instead listen to our young people, for they are our future.

Thank you.

The Chair: Thank you, Mr. Lee.

We'll now hear from the Canadian Association of Professional Employees.

[*Translation*]

Ms. Emmanuelle Tremblay (President, Canadian Association of Professional Employees): Ladies and gentlemen members of the committee, good morning. Thank you for having invited us to appear before you this morning, in the company of my colleagues from the Public Service Alliance of Canada and the Professional Institute of the Public Service of Canada.

The Canadian Association of Professional Employees, or CAPE, represents over 10,000 economists, statisticians and policy analysts, and 925 government translators, interpreters and terminologists, as well as the Library of Parliament analysts and research assistants with whom you deal on a daily basis.

In CAPE's estimation, the changes affecting collective bargaining in Bill C-59 violate the freedom of association defined in the Canadian Charter of Rights and Freedoms. This has been confirmed by the recent trilogy of Supreme Court of Canada decisions regarding labour rights. Bill C-59 is not an isolated gesture. It is part of a concerted strategy to change the rules of collective bargaining.

Bill C-4, passed in December 2013, had already amended our members' negotiating process by withdrawing their right to arbitration. This forces our members toward a single outcome, that of conciliation or strike. Through Bill C-59, the government now wants to exclude major issues from legitimate collective bargaining, a right that has been recognized by the Supreme Court; this shows contempt for the law and for the contracts that have already been signed between the two parties. It is as though you had signed a contract to purchase a house, and three years later, the former owner came back to take away the storage shed.

In addition to denying their fundamental rights, the government is proposing an approach that is unfair to the employees, and unjust to taxpayers. Indeed, the government claims that it will be saving money, on the basis of what is in fact an accounting liability. It says nothing about the cost of the new compensation system. In order to demonstrate the impact of a change that would take the number of annual leave days from 15 to 6, we have used the information provided by the employer. We analyzed the use of sick leave days according to duration and incidence. Our conclusion is that what has been presented at the negotiating table as an improvement would in fact be a marked deterioration for a vast number of employees, especially for the most vulnerable among them.

Every year, 60% of public service employees must take more than six days of sick leave, according to the data provided by Treasury Board, in the table contained in the written brief you have in hand.

Under the regime proposed by the government, less than 15% of them would see salary replacement through the short-term disability insurance plan that is being proposed. As Mr. Lee just mentioned, the waiting period is a particular problem. Almost half of these people would receive no benefits whatsoever under the new regime as it stands.

● (0855)

[*English*]

I would like to present a realistic scenario. I'm the mother of three children and not an old baby boomer—sorry Mr. Lee—and I can tell you that in the early days, when my kids were in day care, I would catch everything, and six days go by really fast. So a normal public service employee, 33 years old, who catches pneumonia after having used up her six days of sick leave would have to make the tough choice between coming to work sick to avoid losing income and staying at home without pay. If she chooses the former, she risks spreading her infection to her colleagues, creating a further burden on our public health system. Not only are such indirect costs not accounted for in the budget, but the price tag of putting the privately run, short-term disability plan in place is also very conveniently not estimated in the budget.

On the other hand, the finance minister books $900 million in savings. While this figure is not a projected expenditure; rather, it represents the book value of accrued sick leave. Savings cannot be realized out of non-expenditures, and I have a lot of economists to back me up on that.

We know from the Parliamentary Budget Officer's analysis that the existing system costs very little, because the vast majority of employees on sick leave are not replaced during their absence from work. So we contend that the taxpayers will also be losers from this bad plan. It's likely to be more costly to manage than the current sick leave regime.

[*Translation*]

In conclusion, I think that the House of Commons is the keeper of the rights and freedoms of Canadian citizens. Public service employees are also citizens, and they should benefit from the same rights as other Canadians.

[*English*]

Bill C-59 is an illegal and unconstitutional attack on those rights.

This government contends that it is simply trying to modernize its employees' sick leave plan. If that's its goal, we're on board, and we can reach that without Bill C-59, without bypassing free and fair collective bargaining, and without changing the rules of the game after the fact.

[*Translation*]

Thank you very much.

The Chair: Thank you.

[*English*]

We'll now go to the Intellectual Property Institute of Canada.

Mr. Jeffrey Astle (Past President, Intellectual Property Institute of Canada): Thank you, Mr. Chair.

I'm here to speak to part 3, division 3, clauses 44 to 72 on intellectual property. My name is Jeffrey Astle. I'm appearing on behalf of the Intellectual Property Institute of Canada, or IPIC. I serve on IPIC's governing council as the immediate past president. IPIC is the Canadian professional association of patent agents, trademark agents, and lawyers practising in all areas of intellectual property law, or IP law. I am an in-house lawyer, a patent and trademark agent, with the title of intellectual property counsel, working for Pratt and Whitney Canada, headquartered Longueuil, Quebec.

IPIC wishes to thank the committee for this opportunity to comment on Bill C-59.

[*Translation*]

I thank the members of the committee for having invited us today to comment on this bill.

[*English*]

This bill proposes significant improvements to Canada's IP framework, most notably by establishing privilege to protect confidential communications between clients and their intellectual property advisers from disclosure in court proceedings, an issue on which IPIC has been advocating.

To establish patent and trademark rights, a client typically seeks the advice and assistance of patent and trademark agents who have the expertise necessary to interpret the technical and legal landscape relevant to their client's business, to consider their client's business strategies and objectives, and to advise their clients on how they might use patent and trademark rights to help achieve these objectives. These professionals have the credentials necessary to help clients secure their intellectual property rights.

So that a client may obtain the best advice possible from their intellectual property advisor, the client and advisor must be able to freely communicate all aspects of the client's business strategies and objectives, the client's competitive landscape and challenges, the client's and advisor's strategies on how to use intellectual property rights to achieve those objectives in view of the competitive landscape and challenges, and the client's and advisor's strategies on how they plan to secure those rights worldwide through the preparation and prosecution of patent and trademark applications before the Canadian and other national intellectual property offices.

Where these communications are at risk of being disclosed, free communication between the client and the intellectual property adviser is discouraged, thereby impeding the adviser's ability to work effectively, resulting in less than optimal advice.

In Canada, unlike other jurisdictions such as the U.K., Australia, and New Zealand, confidential communications between clients and their patent or trademark advisers, in which advice is sought in respect of patents and trademark rights, are not protected from forced disclosure in court. This circumstance places Canadian innovators at a disadvantage in asserting their intellectual property rights in litigation in Canada and in other jurisdictions such as the United States, where courts force the disclosure of confidential communications because no protection against such forced disclosure is provided in Canada.

Communications between clients and their intellectual property advisers in which advice is sought in connection with patents and trademarks should receive the same protection as those communications in respect of advice sought in other areas of the law. In both cases there is a need for full, free, and frank communication between those who need the advice and those who are best able to provide it.

By fixing this gap, Bill C-59 ensures that Canadian businesses can speak openly with their intellectual property advisers in order to obtain the best possible advice about protecting their inventions or trademarks, knowing that those conversations will not be revealed to their competitors through a court process or litigation.

Businesses small and large can now confidently explore the possibility of securing intellectual property rights while knowing that strategic information shared confidentially with their intellectual property advisers will be protected. This provision will allow Canadian businesses to be more competitive in Canada and overseas.

Bill C-59 also allows the Canadian Intellectual Property Office the ability to extend deadlines in cases of *force majeure* events, thereby helping to avoid the unintentional loss of intellectual property rights where, for example, floods or ice storms prevent the timely filing of documents with the office. This is another initiative on which IPIC has advocated with the government, and we are pleased to see that the government is taking the appropriate steps to fix this issue.

These improvements will not cost the federal government any money. The protection of confidential communications is consistent with initiatives on this issue taken by many of Canada's most important trading partners and leading innovative economies. It ensures that Canada operates on a level playing field with its international counterparts. With these changes Canada has taken significant steps to reform its intellectual property system and to focus on giving intellectual property professionals the tools they need to better serve and protect innovators.

I welcome your questions.

● (0900)

[*Translation*]

Thank you for your attention.

[*English*]

Thank you.

The Chair: Thank you very much for your presentation.

We will now hear from the Professional Institute of the Public Service of Canada, please.

Ms. Debi Daviau (President, Professional Institute of the Public Service of Canada): Mr. Chair, honourable members, thank you for the opportunity to make a submission before you today in relation to division 20 of Bill C-59 on behalf of the nearly 55,000 members of the Professional Institute of the Public Service of Canada.

The vast majority of institute members are professionals providing public services in federal departments and agencies who are currently in the process of negotiating collective agreements.

The members I represent are directly affected by division 20, which grants Treasury Board unilateral power to impose whatever terms and conditions it wants in relation to sick leave, on whatever employees it wants within the core public administration, whenever it wants, and for as long as it wants.

We believe that division 20 is unconstitutional and fundamentally flawed, and as such should be struck entirely from Bill C-59. In the brief time that I have today I'll take you through the institute's concerns, which are laid out in much more detail in our written submission provided to the committee.

Firstly, division 20 is unconstitutional. Indeed, just last winter the Supreme Court of Canada stated that subsection 2(d) of the charter protects the right of employees to engage in meaningful collective bargaining and the right to strike. This proposed legislation violates both of those rights by effectively preventing meaningful bargaining and striking over an important workplace issue.

Bill C-59 stacks the deck against unions at the bargaining table by granting to the Treasury Board—the very party negotiating with us—the power to unilaterally impose terms and conditions related to the employer's only substantive issue in this current round of bargaining: sick leave. At any time, even in the course of bargaining, Treasury Board can decide to implement the terms it wishes and simply wipe out existing sick leave provisions contained in collective agreements, gains made by unions in good-faith negotiations.

Secondly, division 20 is an affront to the rule of law.

The proposed legislation also allows the employer to override the statutory freeze provisions recently highlighted by the Supreme Court of Canada. This important statutory protection under the Public Service Labour Relations Act ensures that an employer does not change the terms and conditions of employment while bargaining is under way. In effect, division 20 is legalizing an unfair labour practice by the Treasury Board.

Even more shocking, division 20 is drafted so that any order issued by Treasury Board relating to sick leave would not have to meet the test of charter compliance as it normally would pursuant to the Statutory Instruments Act. This is nothing less than a direct affront to the rule of law.

Thirdly, division 20 will undermine public services to Canadians.

The government's proposed plan related to sick leave and disability is bad for public servants, bad for public services, and bad for Canadians. In many cases, public servants will have to either take unpaid sick days or go to work sick.

What's more, there's no evidence to support the government's claim that this approach will result in savings. The $900 million of supposed savings reported in the 2015 budget is nothing more than a convenient artificial accounting exercise that contributes to a pre-election balanced budget without representing any real savings. The drive to get this so-called “unfunded liability” of banked sick days off the books does not reflect the fact that public servants off sick are most often not replaced. The additional workload is simply picked up by their hard-working colleagues.

Worse yet, the government has conspicuously failed to account for the additional costs their proposal to move to a privately managed plan will dump on taxpayers.

To conclude, on behalf of the 55,000 professionals and scientists that PIPSC represents I urge the committee to defend the credibility of Parliament's law-making powers, which must respect the Canadian Charter of Rights and Freedoms.

Division 20 of Bill C-59 is unconstitutional and an affront to the rule of law. I urge you to reject it.

Thank you.

● (0905)

The Chair: Thank you for your presentation.

We'll now hear from the Public Service Alliance of Canada, please.

Ms. Robyn Benson (National President, Executive Office, Public Service Alliance of Canada): Good morning.

Thank you for the opportunity to appear today on Bill C-59. I will address part 3, division 20, on the sick leave and disability programs.

Since 2007 the Supreme Court of Canada has issued a number of of important rulings on the subject of freedom of association in section 2(d) of the Canadian Charter of Rights and Freedoms. The court has made it clear that the charter protects the right to free collective bargaining. It guarantees that workers have the right to join together to collectively present demands to their employers and to engage in a meaningful dialogue.

The court has also imposed constitutional obligations on governments in their role as employers. As employers, they must agree to meet with unions and bargain in good faith, and they must not enact legislation that substantially interferes with the ability of a union to bargain workplace issues. International human rights and labour laws also protect collective bargaining as part of freedom of association.

Yet in spite of international conventions and Supreme Court decisions, the federal government continues to interfere with the bargaining rights of our members and with the ability of our union to negotiate freely.

Unfortunately, Bill C-59 is the most recent act by the government to deny its employees their constitutional rights. Division 20 authorizes Treasury Board to modify the sick leave provisions of its collective agreements. It allows them to unilaterally impose a short-term disability plan outside of the agreements. Treasury Board will have full control to design the plan as well as modify the terms of the current long-term disability plan. It will also be able to alter sick leave entitlement and carry-over of unused sick leave regardless of what is in our collective agreements.

About a year before PSAC and Treasury Board were scheduled to begin bargaining, the government started its campaign to get rid of the current sick leave provisions. They started by releasing statistics about the use of sick leave in the federal public service, in effect to sway public opinion. Their statistics were later called into question by both Statistics Canada and the parliamentary budget office.

Then Treasury Board communicated directly with its employees about its new workplace wellness and productivity strategy. They talked about the new sick leave regime, leading employees to believe it was a done deal. The government's next step was to include $900 million in so-called savings from accumulated sick leave in its latest budget, in order to fund a projected surplus. Now it is taking the final step of using its power to unilaterally change our collective agreements.

It is very clear that the government has predetermined the outcome of negotiations. This offends the charter right of our members to free collective bargaining. It's completely inconsistent with section 2(d) of the charter, which calls for a meaningful process of collective bargaining.

We believe that collective bargaining works when both parties are able to negotiate freely. For example, we knew that there was a significant growth in long-term disability claims related to mental health issues. Increased sick leave usage is directly related to these claims, as members must use their banked sick leave before they can transition to long-term disability. Recognizing the importance of this issue, we tabled a proposal and reached an agreement with Treasury Board to create a joint mental health task force.

This is another reason why division 20 is such a problem. Unilaterally changing their sick leave protection just adds to our members' stress at work. It is an affront to employees with health issues, both mental and physical. We ask the committee to give serious consideration to removing division 20 in its entirety from the bill, upholding our right to negotiate our collective agreements free from the threat of legislation.

Thank you.

● (0910)

The Chair: Thank you for your presentation.

We'll now hear from the RCMP, please, Mr. Henschel.

[*Translation*]

D/Commr Peter Henschel (Deputy Commissioner, Specialized Policing Services, Royal Canadian Mounted Police): Thank you, Mr. Chair.

Thank you for the opportunity to appear before the committee as you consider division 18 of Bill C-59. I am Deputy Commissioner Peter Henschel, and I am responsible for the RCMP's Specialized Policing Services, which includes the Canadian Firearms Program.

I am here today with Ms. Rennie Marcoux, Chief Strategic Policy and Planning Officer and responsible for the RCMP's Access to Information and Privacy Branch.

[*English*]

The Information Commissioner's investigation into an access to information request for the long-gun registry has been the subject of considerable contention. We would like to take this opportunity to clarify misconceptions of how the RCMP handled this request, as well as the destruction of the non-restricted firearms registration records, otherwise known as the long-gun registry.

In particular, we would like to emphasize that the RCMP takes our obligations under the Access to Information Act seriously. As we will outline, the RCMP worked with the Information Commissioner to respond to the complaint in question while also fulfilling our obligations under the Ending the Long-Gun Registry Act.

To begin I should highlight that what was referred to as the "registry" was not a document stand-alone system, or simple electronic record, but rather a compilation of certain information contained in the Canadian firearms information system. This database is constantly being updated. On a monthly basis there are an estimated 50,000 new or amended records added to the database. A copy of the registry could not be printed, copied, or deleted with the push of a single button. The Firearms Act and associated regulations define the type of information required for the registration of a firearm, such as the make, model, manufacturer, registration date, province, and postal code. In total 27 fields in the Canadian firearms information system relate to the registration of the firearms, or the registry, of which 15 include personal information such as a person's name and address.

Since 2006 the RCMP has responded to over two dozen access to information requests for the long-gun registry. These requests were met by providing the 12 relevant and releasable fields of data. Aside from the request under investigation, the RCMP has never received a complaint on the content of our responses.

I would like to now focus on the destruction of the registration records. Contrary to what has been reported, the RCMP did not—and I will repeat—did not destroy any registration data before the coming into force of the Ending the Long-Gun Registry Act on April 5, 2012. Consistent with the government-approved implementation plan, the RCMP destroyed the records between October 26, 2012, and October 31, 2012, with the exception of the Quebec records, which were maintained pending the outcome of a Supreme Court decision.

When that decision was rendered on March 27, 2015, the RCMP deleted the remaining Quebec records from the Canadian firearms information system between April 10 to April 12, 2015, again consistent with the government-approved implementation plan. I should note here that the destruction process was subject to an audit that was externally verified for the October 2012 destruction. The same process is under way to verify the destruction of the Quebec data. So with these clarifications, I will just turn to my colleague to address the findings of the Information Commissioner.

● (0915)

Ms. Rennie Marcoux (Chief Strategic Policy and Planning Officer, Royal Canadian Mounted Police): Thank you.

I would like to start by providing background on a file that was investigated by the Information Commissioner. The investigation is based on a single access to information request received on March 27, 2012, for access to the RCMP database regarding the gun registry. The RCMP had provided the requester with an estimate of the processing costs associated with his request. The requester disputed this estimated fee and lodged a complaint.

To resolve the complaint the RCMP worked with the Office of the Information Commissioner to find a solution that would meet the nature of the request. Based on these discussions, the RCMP provided him with a copy of previous access to information requests that met the parameters. He received over 8 million rows of registration data that included the 12 fields described earlier, as well as four additional fields. To add more context, if we were to print this package it would be approximately 171,000 pages long.

[*Translation*]

During Ms. Legault's investigation, the RCMP met with investigators from the Office of the Information Commissioner on many occasions, provided all requested documentation related to the request that was the basis of the investigation, and arranged many information sessions on the Canadian Firearms Information System.

We maintain the position that in all aspects of this file, the RCMP fulfilled its obligations pursuant to the Access to Information Act and provided the requester with information to which he was entitled. We did so while also fulfilling our obligations to meet the requirements set out in the Ending the Long-Gun Registry Act.

In conclusion, the RCMP is very aware of the great deal of sensitivity and interest surrounding the destruction of non-restricted firearms registration data.

[*English*]

I should note that as we're dealing with this complaint from Madame Legault, we are also dealing with a complaint from the Privacy Commissioner to the effect that we did not delete the registry. So we do understand the sensitivity.

[*Translation*]

I will conclude with that.

[*English*]

The Chair: Yes, very briefly, please.

[*Translation*]

Ms. Rennie Marcoux: I would like to emphasize my colleague's opening remarks, namely, that the RCMP takes its obligations under the Access to Information Act seriously. As an organization, the RCMP responded to over 9,700 Access to Information requests in 2014, and since 2006, we have responded to over two dozen requests for registry data.

Thank you.

The Chair: Thank you.

We will begin with Mr. Caron, who has seven minutes.

Mr. Guy Caron (Rimouski-Neigette—Témiscouata—Les Basques, NDP): Thank you very much, Mr. Chair.

I also thank the witnesses for being here with us today.

I will begin with Mr. Henschel and Ms. Marcoux, who represent the RCMP.

There has been much talk about the whole situation surrounding the destruction of data and the current conflict with the Information Commissioner. We are not necessarily talking about the process here. I think that aspect will be settled with the Information Commissioner. The problem with this bill is that the government wants to retroactively amend an act while a legal proceeding in respect to that act is ongoing.

Since you work at the RCMP and regularly conduct investigations there, I would like you to tell me how a retroactive change connected to an ongoing proceeding affects the work of the RCMP? Let's take an example. Let us suppose that legal provisions set the value of the gifts MPs may receive at $500, but that an MP receives a gift valued at $750. However, in order to protect the MP, or for some other reason, the government decides, while there is a complaint before the courts, to retroactively increase the limit for gifts to $1,000. You can just imagine the problems that this would cause, not only in that situation but also in any other investigation the RCMP might be conducting.

● (0920)

D/Commr Peter Henschel: Just to make sure my answer is very clear, I'm going to reply in English.

[*English*]

It's not our role to comment on legislation. Our role is to enforce the laws that are passed by Parliament.

Mr. Guy Caron: I understand that.

[*Translation*]

I want to point out, however, that your testimony, even though it is interesting and informative, does not really have any impact on the legislative changes that are being proposed here. Indeed, the principle of these changes is a retroactive amendment to an act while a legal proceeding has already been undertaken. Consequently, even though your testimony is interesting—and I am sure it will be heard and listened to—it is not really relevant to what is being proposed in Bill C-59.

I would like to go back to Ms. Tremblay and Ms. Daviau. Can you tell us more about the $900 million? According to what the government is saying, it is introducing savings via this budget, and these will contribute to its much-vaunted balanced budget.

Could you tell us in a more detailed way how this $900 million constitutes, according to you, only ostensible, fictitious, savings?

We are going to begin with Ms. Daviau and then go to Ms. Tremblay.

[*English*]

Ms. Debi Daviau: As you may or may not know, PIPSC represents about 10,000 chartered accountants at the Canada Revenue Agency. They've been able educate me on it, and hopefully I can give that to you as well.

The $900 million plus the additional $250 million in the subsequent two years actually represents about $1.4 billion. That amount represents the accounting value of the entire sick leave bank. Essentially what they're saying is that they're going to retain the accounting value of the $5.2 billion sick leave bank of accumulated sick leave for their members. It means that they're essentially trying to eliminate the bank through legislation. But the bank forms a part of our collective agreements, and, as we mentioned, we are rarely replaced when we're off sick.

You can call it a liability—that might be an accounting term—but it really is an insurance policy for public servants when they need their sick leave. In most cases, many of them leave a lot of this bank behind when they retire. There's no ability to somehow cash out or retain that leave upon retirement.

The number is not an amount at all. It's a bank of sick leave that is not likely to get used, and, even if it does get used, doesn't represent a cost for government. Therefore, eliminating it doesn't represent a savings for government.

[*Translation*]

Mr. Guy Caron: Ms. Tremblay, I am going to ask another question.

As Mr. Lee said, the sick leave provisions were negotiated between the unions and the government, and both parties accepted these provisions. I think that Ms. Daviau, and probably Ms. Benson as well, talked about the possible unconstitutionality of this provision in Bill C-59. If this provision were adopted, what would be the direct consequences? Since this provision may be unconstitutional, what steps will be taken after the passage of this bill?

Ms. Emmanuelle Tremblay: We all condemn this provision. We all question its constitutionality.

May I repeat that this is the retroactive application of a rule after a contract was concluded. As Ms. Daviau mentioned, sick leave is one part of compensation as a whole. At the negotiating table, the employer tells us that he cannot offer us a salary increase that corresponds to the rate of inflation. As members of Parliament, you obtained a salary increase that was comparable to increases in the private sector, that is to say 2.3%.

Historically, the employer has rarely been able to match the rate of inflation. So he told us that instead of this remuneration, he would offer us other advantages, such as sick leave. That leave was a part of the whole compensation package. It is very valuable to the members because it is an insurance policy, as Ms. Daviau explained.

Once an employee retires, the liability disappears as if by magic. The fact that the government is presenting the elimination of accumulated sick leave as a savings continues to feed the myth that people end their career by using up sick leave, which is completely false.

I compared the situation to the contract for the purchase of a house; the contract was signed but the owner comes back three years later to say that he wants the garage back. This is just as illogical as that. These banked sick leave days are based on what was agreed upon in the collective agreement.

Thank you.

● (0925)

The Chair: Thank you, Ms. Tremblay.

Thank you, Mr. Caron.

[*English*]

Mr. Saxton, you have seven minutes.

Mr. Andrew Saxton (North Vancouver, CPC): Thank you, Chair.

Thank you to our witnesses for being here today.

My first questions will be for you, Mr. Lee. Can you provide the committee with an outside perspective, your perspective, on the state of collective bargaining today? Specifically, how has recent jurisprudence affected who holds the balance of power at the bargaining table?

Dr. Ian Lee: I'm not a lawyer, but I've certainly been reading the legislation.

It started when I did my Ph.D. thesis on the post office. I didn't intend to get into collective bargaining, but because the post office was at the origin of the introduction of collective bargaining in Canada at the federal level, I ended up spending about a third of the 850 pages on the introduction and evolution, and reading the various acts up to the time of my thesis.

As I said in my opening comments and in my op-ed, I think the balance of power has shifted in the past 45 years. I do not blame the unions, and I want to say that over and over. They did what they're supposed to be doing on the bread-and-butter issues. That's what I'm paying my union dues for. As for where the failure was, it was in successive weak ministers of the Treasury Board who did not, for example, go out and benchmark against the private sector every time in collective bargaining.

I came from the private sector. Even though I've been in the university for 27 years, I was in financial services for 10 years and know a lot of people there, and I'm very sensitive to the fact that I'm a minority. There are only 4 million people in the broader public service sector in Canada, including colleges, universities, health care, and so forth, and there are 14 million people in the private sector who simply do not have the same benefits or the same.... Sixty per cent of people in the private sector don't even have a pension, and we have gold-plated pensions.

To answer your question, I think the balance of power has shifted in the past 40 years, and I think it's very difficult for any government or any political party to try to bring it back, because while human beings are upwardly mobile, we're distinctly anti-downwardly mobile.

Mr. Andrew Saxton: Would you say that the current public service sick leave regime is fair? Is it fair to taxpayers, fair to younger, newer public service employees...?

Dr. Ian Lee: No, I don't. That's what I was trying to argue.

I think it's a very unfair system. It benefits older people who have accumulated a large bank of sick leave. I'm very aware of the system. My father was in the government for almost 40 years. He was a member of PIPSC for the last 25 years. My brother was too; he just retired. And his wife was member of PSAC. So I'm very aware of the system.

The problem is that I believe it harms, hurts, and discriminates against young people who haven't built up a large bank of sick leave. If you'll allow me, that's why I suggested that if you removed that seven-day penalty, if you will, for qualifying for short-term leave you're going to create, as an unintended consequence, huge problems inside these three unions because there are a good number of young people who would support the proposals even more strongly if it wasn't for that seven-day period. If you get rid of that, you're going to create all kinds of interesting outcomes inside the unions, even though it may not be in the papers.

To answer your question very quickly, it is unfair. What I call the "three-legged" system is used overwhelmingly across this country. It was the system I had 40 years ago in the Bank of Montreal. That's the three-tier system of short-term personal leave, followed by short-term insurance leave, and then long-term leave.

Mr. Andrew Saxton: Therefore, would you say that the new proposed changes—and they are just proposed changes, as they're still subject to negotiation—are fair?

Dr. Ian Lee: Absolutely, with the caveat I just provided in my opening comments, that I really urge you to get rid of that seven-day waiting period to access short-term leave. Again, I will repeat, a lot of people have been contacting me because I'm well known, am tenured, and don't belong to any party, and don't consult. I've had younger people in PIPSC and PSAC contact me to say, I would really support it if that seven-day exemption or penalty wasn't there.

If you get rid of that I think it's going to change the whole dialectic.

Mr. Andrew Saxton: Have other levels of government already adopted changes similar to what we're proposing?

● (0930)

Dr. Ian Lee: Yes.

Mr. Andrew Saxton: How are they working?

Dr. Ian Lee: I've got it and I'd have to provide it to the committee after the fact, but I've started to survey all of the provincial jurisdictions and a smattering of some the larger municipal jurisdictions as proxies

According to the Mercer database, 97% of employees in this country cannot bank sick leave. I can't bank my sick leave. We have a very good three-tier sick leave program at Carleton, as do other universities. I checked Queen's and they have one that's very similar to ours.

Mr. Andrew Saxton: Is there any system in the private sector that's similar to the current sick leave regime in the public service?

Dr. Ian Lee: Not to my knowledge. I think that the idea of banking went away a long time ago. It's starting to disappear in the public sector. It went away a long time ago.

As I said, I was in the Bank of Montreal in the 1970s where we had the system the government is now proposing for the Government of Canada. It's what I call the three-tiered stool. There is short-term personal leave with no documentation required—that's personal leave—followed by short-term leave administered by the insurance company, followed by long-term leave. I just think it's a much fairer system, partly because the personal leave requires no documentation, whereas right now you've got this cumbersome system where every time you have a sniffle you have to go off to find a doctor. In contrast, under the five, or six, or seven-day personal leave system, there are no questions asked. It could be a funeral or you're just tired. You don't have to go through that rigmarole. And then short-term leave is for when you really do have a problem, if you break your leg skiing on the weekend or something like that. It helps young people who don't have a bank of sick leave.

Mr. Andrew Saxton: Can you expand further on why you think it's important that we make these changes at this time?

Dr. Ian Lee: These changes should have been made 40 years ago, 30 years ago, 20 years ago, 10 years ago. I was moving my daughter and her beautiful new identical twin granddaughters on the weekend. There's no good time to move. It's always a bad time to move. It's always a bad time to introduce change where you're taking something away from somebody that they've become used to. Is it a good time right now? I guess there's no time like the present.

I don't say that flippantly, because there's never a good time to make controversial changes.

Mr. Andrew Saxton: Thank you, Mr. Lee.

Thank you, Chair.

The Chair: Thank you, Mr. Saxton.

Mr. Brison, please, for seven minutes.

Hon. Scott Brison (Kings—Hants, Lib.): Thank you, Chair.

I'd like to begin with division 18.

The Ending the Long-Gun Registry Act was flawed in that it made no mention of the Access to Information Act. This omission means that records can't be destroyed until after any pre-existing access to information cases are closed. In April 2012, the Information Commissioner wrote to your minister about this legal requirement and asked that records not be destroyed. On May 2, the minister acknowledged her letter and promised that the RCMP would abide by the access to information law on these matters.

What's your interpretation of the RCMP's legal obligations at that time?

Ms. Rennie Marcoux: Thank you, Mr. Chair.

As I indicated in my remarks, at the time we were working with the requester to process his information. We eventually provided him with the information that was contained in a previous access to information request, which he was allowed to have, and which was relevant and responsive to his request. That's the position we've taken, that we met our obligations under the Access to Information Act.

Hon. Scott Brison: So why would we even need division 18 of Bill C-59, because it effectively retroactively makes legal what seems to have been illegal at the time. Why do we even need that section?

Ms. Rennie Marcoux: We would prefer not to comment on draft legislation at this time.

Hon. Scott Brison: Was it the Public Safety Minister who ordered the RCMP to destroy the records at that time?

D/Commr Peter Henschel: What happened was that we developed a plan to implement the Ending the Long-Gun Registry Act. In the run-up to its coming into force, we developed that plan and, following consultation with senior government officials, it was approved. Once the legislation came into effect, we proceeded with implementing the process to be able to destroy the information. We were complying with the requirements of the Ending the Long-Gun Registry Act while still maintaining or responding to the requirements under the Access to Information Act.

● (0935)

Hon. Scott Brison: Was the minister's office engaged in that process?

D/Commr Peter Henschel: Which process do you mean?

Hon. Scott Brison: I mean the process of determining which records would be destroyed.

I remind you that there was a letter from the minister from May 2, 2012, promising that the RCMP would abide by the access to information law for all of the existing requests.

D/Commr Peter Henschel: It was the RCMP's responsibility to comply with the access to information legislation, which we did by maintaining a copy of the information contained in fields that were relevant and responsive, as I said in my opening comments, and that didn't contain private information. We maintained a copy of that to be able to respond to any access to information requests, but at the same time, we proceeded with the implementation of destroying the long-gun registry-related information in the system.

Hon. Scott Brison: Can the RCMP confirm whether the OPP's investigation into the RCMP on this matter is currently active?

D/Commr Peter Henschel: We have no comments on that. We have no information and no comment.

Hon. Scott Brison: You have no comment on the OPP investigation?

D/Commr Peter Henschel: We have no comment on the investigation and no information on it.

Hon. Scott Brison: If there were an OPP investigation into the RCMP at this time, what impact would there be on that investigation if this law were passed? If there were an OPP investigation, which we understand there may be or is, what would be the impact on that investigation if this division 18 were to pass?

D/Commr Peter Henschel: You would have to ask our colleagues from Justice on that. I'm not a lawyer and I'm not in a position to comment on that.

Hon. Scott Brison: So you can't comment on whether this legislation would effectively terminate that investigation.

D/Commr Peter Henschel: I don't think I'm in a position to provide that kind of advice.

Hon. Scott Brison: Thank you.

I have a question with regard to the sick leave issue. We know there is a razor-thin budget surplus on the eve of an election, created by a number of unusual steps, including one-time asset sales. What cost savings is the government alleging? I forget how many millions of dollars it is.

Ms. Debi Daviau: It's $900 million.

Hon. Scott Brison: It's $900 million.

Mr. Lee, notwithstanding your position on the sick leave issue, as somebody who follows fiscal situations of governments, would you agree that putting a $900 million figure on this saving, notwithstanding whether or not you are in favour of it, seems to be at least a bit on the optimistic side, to be gentle, and that it does not represent good budgeting practices to actually consider it to be a legitimate cost saving for the next fiscal year?

Dr. Ian Lee: I understand where you're going. I listened very carefully to Ms. Daviau's explanation, which I thought was excellent. It is an accounting entry under accrual accounting. I'm very familiar with accrual accounting, I teach it in my classes and I also came from a bank, where we certainly dealt with this sort of issue.

I wouldn't use it as a justification for this bill. As I've said over and over again, I think the real savings, per the Mercer study, are the savings in productivity—the indirect costs. But in terms of the legitimacy of the accounting, it's legitimate, but I just don't think it's a compelling argument.

Hon. Scott Brison: But the issue here is that as the government is scurrying on the eve of an election try to create a budget surplus, it is not usual to book this kind of savings when it has not even implemented the changes.

The Chair: A brief response, please.

Dr. Ian Lee: Because of past Auditor General's recommendations to move the Government of Canada to accrual accounting, which was long overdue, the government is moving through the Treasury Board and the OCG, the Office of the Comptroller General, and so I think that it is legitimate. Even though to many people accrual accounting seems very strange, it is legitimate. I just wouldn't use it as the justification or the argument for this bill.

● (0940)

The Chair: Thank you.

Thank you, Mr. Brison.

Ms. Bateman, please, for your round.

Ms. Joyce Bateman (Winnipeg South Centre, CPC): Thank you very much, Mr. Chair.

I want to thank all of our witnesses, and I'm going to start with Mr. Astle, but I hope I get to all of you because I have lots of questions.

Mr. Astle, you practised in this field and now you have one client, but you're clearly very involved in your professional organization. You represent not only the large business but the small business perspective, too, on intellectual property. Is that right?

Mr. Jeffrey Astle: Yes. The institute that I represent represents agents and lawyers, who represent clients across the spectrum.

Ms. Joyce Bateman: Across the spectrum. Okay, good, that's important.

I'm just curious, is the extension of time allowed under the Industrial Design Act, the Patent Act, and the Trade-marks Act positive for the industry—for all the clients who are served by your organization, small business and big business?

Mr. Jeffrey Astle: Yes, absolutely. Regardless of the size of your business, if you're unable to respond to a patent office request in a timely manner, you may lose your rights, absolutely. By granting an opportunity for the commissioner to declare a *force majeure* event and extend the time to respond—for example when you're office is flooded and you can't get to your materials—it preserves those rights for those companies.

Ms. Joyce Bateman: Does it make your colleague lawyers more effective and efficient?

Mr. Jeffrey Astle: Make them more efficient? I think it grants them the ability to deal with situations, if the commissioner were to declare a date of that kind, to be able to respond on behalf of their clients in a manner they would not otherwise be able to do.

Ms. Joyce Bateman: That's good.

Could you just speak briefly about how these proposed changes in Bill C-59 bring us in line with other countries?

Mr. Jeffrey Astle: As I mentioned in my testimony, countries such as the U.K., Australia, and New Zealand, for example, have established laws to extend privilege to communications between intellectual property advisers and their clients. Intellectual property rights, such as patent and trademark rights, are international in scope. One needs to rely upon a network of those rights in various countries to be able to be secure in protecting those rights internationally. Those rights only exist in the countries that issue them. A patent in Canada is only good in Canada; a patent in New Zealand is only good in New Zealand. By being on a level playing field with respect to protecting such communications, there's not one jurisdiction that will undermine the rights in other jurisdictions, so that is how by—

Ms. Joyce Bateman: Hopefully, having that level playing ground will help us with productivity and entrepreneurship.

Mr. Jeffrey Astle: Absolutely. If you can appreciate, Canadian innovators are most likely to seek advice from Canadian intellectual property advisers. Therefore, without these changes, their communications are subject to being revealed in litigation in other counties. So it puts Canadian innovators at risk relative to innovators in other countries where these protections exist.

Ms. Joyce Bateman: Thank you.

Ms. Benson, could you tell me what percentage of your members are over 40?

Ms. Robyn Benson: I'm not at all sure. I can tell you that over 60% of my members are women. That I can tell you.

Ms. Joyce Bateman: Can you tell me how many are over 40 or over 35?

Maybe Ms. Daviau knows about her membership.

Ms. Robyn Benson: I think that—

Ms. Joyce Bateman: How about Madam Tremblay?

[*Translation*]

Ms. Tremblay, do you know how many of the members of your union are older than 35 or 40?

Ms. Emmanuelle Tremblay: All I can say is that the average age of our members is relatively low as compared to other cohorts, but I do not have that precise information with me today.

Ms. Joyce Bateman: This information interests me a great deal.

[*English*]

I would actually like to get that information. Perhaps we have it already.

Ms. Robyn Benson: I could share with you this brief—I think it's actually from the Parliamentary Budget Officer—where they speak to how it is an older workforce, certainly—

● (0945)

Ms. Joyce Bateman: So it is an older workforce.

Ms. Robyn Benson: —so we could get you the percentage, but I think what we really want to discuss here is the merit of division 20, which is the charter right. It takes away our right under the rights and freedoms—

Ms. Joyce Bateman: Okay. You know what? I just asked you about the age and that—

Ms. Robyn Benson: I realize that, but I would just like to take it to that direction.

Ms. Joyce Bateman: Thank you for that.

Given that, maybe it's because I'm a mother of two children aged 23 and 17 and you want to make sure that the workplace makes room for the next generation and gives the next generation an equal playing field, I particularly want to find out from you, Mr. Lee, how this disadvantages young people and how our proposals in Bill C-59 will assist young people.

Dr. Ian Lee: Right. I'm very sensitive to this issue, obviously, as I'm in a classroom. My students are always 22. Every year I get one year older and my students keep coming in and are 22, because I teach only fourth year.

I'm very conscious of this whole "generation screwed" thing that's been started by the professor at UBC. Now I'm answering your question, because I have certainly argued that in a large number of areas in our economy, we boomers run the system. We control the system, and we've tilted the playing field to make sure we're looked after, not because we're trying to hurt them deliberately, but because we're looking after ourselves first.

To answer your question in this instance, if you come down with a serious illness, or you're in a car accident, or you're bicycling or doing something and you're really banged up and you're going to be off work for two or three months, a young person who has been in the public service for only five, six, or seven years simply would not have the sick leave.

Why I'm so strong on this—and this has nothing to do with party politics or partisanship—is that people don't realize that sick leave is open-ended. Once the insurance company says you're off sick, you're off sick until you get better. If you run out of sick leave and you're still sick, then they roll you over onto long-term sick leave. I've seen this at my own university, by the way: you go on short-term sick leave, you run out, and then they flip you onto long-term sick leave because you're still ill.

The Vice-Chair (Hon. Scott Brison): That's it.

Ms. Joyce Bateman: That's all the time I have? *C'est dommage*.

The Vice-Chair (Hon. Scott Brison): You've had seven minutes.

Ms. Joyce Bateman: Thank you very much, all of you.

The Vice-Chair (Hon. Scott Brison): Thank you, Ms. Bateman.

[*Translation*]

Mr. Dionne Labelle, you have the floor.

Mr. Pierre Dionne Labelle (Rivière-du-Nord, NDP): Thank you, Mr. Chair.

I understand the representatives of the Canadian Association of Professional Employees, the Professional Institute of the Public Service of Canada, and the Public Service Alliance of Canada very well. I understand that they are surprised to see that in an omnibus budget, the government is attempting to dispose of an issue that is on the negotiating table.

You mention that this type of process may be unconstitutional, and I believe that that is a very real possibility. It would not be the first time that this government goes before the Supreme Court and is not successful in bringing in certain measures. I calculated that this has happened about a dozen times.

If the government continues this, are you going to launch court challenges? Perhaps Ms. Benson could answer that question.

[*English*]

Ms. Robyn Benson: Thank you very much for the question.

If I might, I will add, just to address Mr. Lee, that we do a bargaining input process. We contact all our members to see what it is that they want us to bring to the table. Not one of them, regardless of age, raised the issue of sick leave.

This is unconstitutional, what is taking place here. Division 20 will allow this government the right to reach into our collective agreement and rip out the sick leave provisions that are there, with no rhyme or reason and no discussion with us. We're currently at the bargaining table, so what this does is predetermine the outcome of our bargaining, and that, quite frankly, is unconstitutional. It goes against the Charter of Rights and Freedoms, and we will take the necessary steps to ensure that our membership is protected.

[*Translation*]

Mr. Pierre Dionne Labelle: I agree with you on this matter.

The government claims that these measures are going to allow it to save $900 million, but you challenge that figure.

Did your organization evaluate this? In the event that this bill were applied as it stands, did your calculations produce a different figure?

[*English*]

Ms. Robyn Benson: Quite frankly, it's an insurance policy and it's actually not really a figure at all. It's not real money. I personally earn 9.375 hours a month. I have over 3,000 hours in my bank that I will never use.

When Mr. Clement, the President of Treasury Board, is asked where he gets the $900 million from, he has no answer. He goes so far as to say that it's still negotiable.

How can it be negotiable, Mr. Clement, if you've already booked $900 million for a projected surplus? That's why we suggest to you that it's not an accurate figure. It's simply an accounting exercise on a piece of paper.

● (0950)

[*Translation*]

Mr. Pierre Dionne Labelle: This is a problem we are facing with this budget. In a more general way, the government was announcing a surplus of $1.4 billion. And yet we are told that this $900 million is not real money. They have calculated things in a particular way to arrive at that surplus. Moreover, for the quarter that has just come to an end, the forecast was that the gross domestic product would increase by 1.2%, but in reality, there has been a drop of 0.6%. There were supposed to be surpluses in the budget that has been presented, but we parliamentarians, and the entire population, can see that we are instead heading toward a deficit.

I share your opinion that this $900 million amount is fictional money which has been trumped up essentially for political ends. The amount is being used to show that the government is a good manager. However, in principle, a good manager negotiates with its unions and attempts to maintain negotiated agreements as long as possible. However, it is clear that this government does not do that.

I would like to go back to your table, which I found very interesting. You applied the proposed plan to the figures you had for 2013-2014. I see in your table that after having used the six days of sick leave being proposed, 45% of employees who would need leave because they are sick would not be covered by the new plan.

Ms. Emmanuelle Tremblay: Indeed. Based on the information we had, we examined the total number of days taken in a year, but also the incidence of leave of more than six days' duration. By analyzing all of this data, we were able to determine that the waiting period that is currently being proposed would mean that a large number of employees would run the risk of either not being paid, or of having to go to work while ill.

I will go back to what my colleague Ms. Benson was saying, which is that we should not be in this committee room trying to negotiate, to determine what is a good regime and what is a bad one. Ultimately, it is the unconstitutionality of the measure in this bill that is the most dramatic aspect of the situation. That is what we should be discussing and not minor technical aspects. As Mr. Lee said, it is as though we were discussing the merits of a three-legged stool.

Tony Clement said it publicly: he assumes that unions negotiate in bad faith and that they would not want to budge from their position. However, that is totally false. Several unions have already made counter-proposals. They admitted that the idea of a short-term disability plan was not necessarily bad. We admit that young workers may perhaps have better coverage. We admit all of that. All sorts of means could be used to reach those objectives, but what we come up against is the government's intransigence. It is using provisions in its budget to give itself extraordinary powers that are deeply unconstitutional.

Mr. Pierre Dionne Labelle: In your presentation...

The Chair: You have 30 seconds.

Mr. Pierre Dionne Labelle: You also refer to Bill C-4, which is an obstacle. It is not the first time that this government attacks the right to collective bargaining.

Does this all mean that this government does not like workers and does not like unionized workers? What is going on?

Ms. Emmanuelle Tremblay: We will admit that we don't feel a whole lot of love. We also perceive a lot of contempt when Tony Clement leaves the room where people are studying the budget, saying that he works for public servants who want to work and take their sick leave when they are really sick. What that sounds like to me is that according to him, we public servants take leave when we are not really sick. That is an insult.

Mr. Pierre Dionne Labelle: Yes, there is a type of contempt there.

Ms. Emmanuelle Tremblay: We hear insults every day in the workplace.

Mr. Pierre Dionne Labelle: Thank you, madam.

Ms. Emmanuelle Tremblay: Thank you.

The Chair: Thank you, Mr. Dionne Labelle.

[*English*]

We will go to Mr. Cannan, please.

Hon. Ron Cannan (Kelowna—Lake Country, CPC): Thank you, Mr. Chair.

Thanks to our witnesses for being here.

I would like to continue with the discussion, because we've had some other witnesses from Treasury Board. Officials appeared recently and talked about the numbers. We're looking at about 180,000 members, public servants who are affected by the proposed change? Is that correct?

● (0955)

Ms. Robyn Benson: The PSAC alone has about 145,000 members. So 150,000, yes.

Hon. Ron Cannan: We are told that about 60% of the employees in the core public administration do not have enough banked sick leave to cover a full period of short-term disability; that's 13 weeks. Of the employees, 25% have fewer than 10 days of banked sick leave. Many employees, especially new and younger employees, whom I think Mr. Lee was alluding to, have no banked sick days at all. In contrast the select few, long-tenured individuals, including many executives, have far more banked sick days than they will ever reasonably need.

The issue is not.... It's trying to reform a system that's 40 or 60 years out of date. I met with the local president of the CBSA union. I was in a union and on strike at one time. I was in management of a unionized organization. I understand that we're trying to come up with a system that's fair not only today but in the future.

But as Mr. Lee alluded to, if 60% of our younger employees of the future don't have a system in place, then I will ask our public servants' representatives if they could share a little about how the present system compares to the one in the private sector—not that we need to lessen the standards, but that we're trying to modernize them.

Mr. Lee said that the university has a better system in place for younger employees than the public service has today. Maybe you could comment on that, please.

Ms. Debi Daviau: Yes. Thank you, Mr. Chair.

We are not against looking at gaps in the system and modernizing it, based on the environment we're now faced with. What we're opposed to, and why we're in front of you today, is that this is the first time in our history as public service unions that we are facing this type of threat through budget legislation to deem a particular term and condition of our employment. It's the first time in history that government has resorted to this tactic.

We have spent an awful lot of time speaking about the merits of a modernized sick leave system. Certainly, Mr. Lee and some of the honourable members want to focus there. But that's really not what is being proposed in the act. What's being proposed is an enabling power to the Treasury Board to impose whatever conditions it chooses with regard to sick leave, on whoever it chooses.

We really ought to be focused on that. But if you want to get into the numbers game, 60% is a game with numbers. We've calculated that maybe 1% to 2% of our members will find themselves with not enough banked sick leave to meet long-term disability, because a very small percentage of members will find themselves on long-term disability.

The 60% comes from the following. If you have six members who will ultimately go on long-term disability, only two of them are likely to have the 13 weeks banked to get them there. Of the other four, three are within shooting range. What I mean by this is that you can advance credits up to 25 days, and that can get them to their long-term disability with their paycheques. Only one has fewer than the weeks required to be compensated while they're sick. And that person has somewhere around nine or 10 weeks, and may find themselves with a gap.

That's 1% to 2% of our membership. As Ms. Benson mentioned, I've been across this country speaking to our members, and not one member, young, middle-aged, or old, has told me that they think we need to fix the sick leave regime in order to benefit them. Quite the contrary. I've heard from women with breast cancer, from people who face chronic illness, all of whom told me that the sick leave regime that we have currently works.

Again, I urge you to focus on the budget implementation bill. It's about the unconstitutional provisions within it to impose terms and conditions and not allow us to freely and fairly collectively bargain that modernization of sick leave.

Hon. Ron Cannan: I appreciate that. I know that it's up for negotiation.

I want to change the channel for a minute to Mr. Astle, coming from Pratt & Whitney, a world leader in aerospace. My largest private employer, KF Aerospace, formerly Kelowna Flightcraft, has brought forward innovative ideas.

Could you walk the committee through what happens if my constituent comes forward with an innovative idea? How would that change with the proposed amendments versus the present legislation? Is there better protection for them?

● (1000)

Mr. Jeffrey Astle: Sure, I'll give it a try.

Today, if your client were to seek advice from an IP adviser, the discussions necessary for them to determine the type of protection that the company wishes to obtain and how to craft their intellectual property rights—their patents, for example—may all be disclosed. If in a litigation there were an opportunity to assert those rights, they would come back in discovery and could potentially be used against your client. The client, therefore, is discouraged from being open and frank in their discussions with their IP advisers out of fear that that may come to bear. As well, your client may be less likely to wish to use their intellectual property rights in an assertive manner because of these defects.

With the changes to the legislation, when a client seeks that advice, those communications related to that advice will be protected as privileged, as would be any other conversations with respect to the legal advisers on legal questions. Therefore, the administration of justice would be better served in the sense that those full, free, and frank conversations can now occur without fear of their being disclosed, and your client will have better access to justice in that they won't fear that in asserting their rights, somehow their strategies and other confidential information needed in seeking that advice will be disclosed to their competitors.

The Chair: Okay, thank you.

Thank you, Mr. Cannan.

[*Translation*]

Mr. Côté, you have the floor.

Mr. Raymond Côté (Beauport—Limoilou, NDP): Thank you, Mr. Chair.

Mr. Astle, the amendments made to the Industrial Design Act, the Patent Act and the Trade-Marks Act will never be examined by the Standing Committee on Industry, Science and Technology. What do you think about that?

[*English*]

Mr. Jeffrey Astle: I'm not aware of everyone who was consulted in connection with these changes, but I do know that the associations; the law societies, the Federation of Law Societies, for example; the Canadian Bar Association; and others that have an interest in these were consulted and had an opportunity to provide input, as did we.

[*Translation*]

Mr. Raymond Côté: Were you consulted by Industry Canada?

[*English*]

Mr. Jeffrey Astle: We were, as were they, yes.

[*Translation*]

Mr. Raymond Côté: Very well.

I sat on the Standing Committee of Industry, Science and Technology for all of 2014. I was caught up in the process and buffoonery surrounding the parts of the omnibus bill that had been referred to this committee. These provisions made other amendments to certain acts concerning trademarks and other such things.

Monsieur Astle, according to the Canadian Bar Association, the fact of amending laws other than budgetary laws via an omnibus bill reduces the effectiveness of the democratic process and debate, and weakens the legislative power of the government.

I think that what the Canadian Bar Association said is very significant and of great moment. As a lawyer, what do you think ?

[*English*]

Mr. Jeffrey Astle: I have personally been in discussions with these associations—the law societies, the Federation of Law Societies, and the Canadian Bar Association—in my personal experience since as early as 2004. There's been a lot of debate and discussion and a number of opportunities for consultations where responses were provided, so I'm surprised at the suggestion that there has not been an opportunity to provide input.

[*Translation*]

Mr. Raymond Côté: We are not talking here about the consultation process, but about the legislative process itself, which includes the study of bills in committee. You would probably have been comfortable had we examined the amendments made to these three acts at the Standing Committee on Industry, Science and Technology.

[*English*]

Mr. Jeffrey Astle: Maybe I'm not understanding the question. I admit not knowing the entire process behind the development of legislation, but in my understanding, the concepts, which are relatively straightforward, have been discussed at length in the act. Consultations and opportunity to consult were provided at a number of intervals with respect to these types of changes, most recently in November 2013, when all those who were invited to submit had an opportunity to do so, as did we. What has been discussed and what we have been advocating is reflected in the legislation.

I'm not aware of further study. I suspect that the officials have worked with those who have an interest in this type of legislation and have given them an opportunity to provide input. I was not consulted, but I'm quite aware of the process that has led us to where we are today.

● (1005)

[*Translation*]

Mr. Raymond Côté: The Advocates' Society sent a letter to the Minister of Finance concerning the process. Here is an excerpt from that letter:

> [...] further study is required given that some of Canada's professional associations and regulatory bodies [this is a reference to the issue of extending solicitor-client privilege], including the Law Societies in all of the provinces and territories, did not have an opportunity to provide their position or opinions on this issue.

Were you aware of these omissions?

[*English*]

Mr. Jeffrey Astle: I don't believe there has been a failing. I believe that the associations that represent lawyers, as well as the associations that represent the various law societies, have been consulted. There has been in-depth study. They've had the opportunity to provide their input. I believe the government has acted appropriately in putting protections in place now to protect the clients of those advisers in the appropriate manner.

[*Translation*]

Mr. Raymond Côté: And yet, the Law Society of Upper Canada, which shared its concerns about these amendments, considers that this created a precedent. The fact that this accelerated process is foisted upon a committee that does not have the necessary expertise may lead to certain deplorable consequences. That is the opinion of the Law Society of Upper Canada.

[*English*]

Mr. Jeffrey Astle: I've had an opportunity to read the Law Society's letter. It reflects positions that were put forward in 2004, as well as in 2013. They're the same arguments that have been presented over the last decade. I don't believe it sets an appropriate precedent. In fact, it recognizes the need for legislative enactment to extend privilege in an appropriate manner.

If there are other situations where privilege should be extended, I'm sure a similar process of consultation and study will occur.

It protects the status quo to a certain extent. I don't think it necessarily sets a precedent, other than providing protection where a gap currently exists, which, I might add, protects the communications of lawyers with their clients, where there is a gap currently.

[*Translation*]

The Chair: You have 30 seconds left.

Mr. Raymond Côté: I am finished. Thank you, Mr. Chair.

The Chair: Thank you, Mr. Côté.

[*English*]

We'll go to Mr. Van Kesteren, please.

Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC): Thank you, Mr. Chair.

Thank you all for being here.

I'd like to go to the RCMP and maybe clear up some things so we have a better understanding of what this bill is going to do with regard to the dates that the long-gun registry was deleted.

You testified in your remarks that this was done in October 2012 for most of Canada and April 2015 in Quebec. Is that correct?

D/Commr Peter Henschel: That's correct.

Mr. Dave Van Kesteren: If we look at clause 230 of the bill, the date referred to is October 25, 2011, but if we look at clause 231 the date referred to is April 5. Could you explain to the committee the difference in the dates and why these provisions are necessary?

D/Commr Peter Henschel: I'm not in a position to explain that. As I said earlier, we were not involved or consulted in the drafting of this legislation. It would be inappropriate for me to provide any comments as to the reasons.

I think the dates are for the tabling and then the coming into force of the legislation, if I'm not mistaken, but I don't have any further comments.

● (1010)

Mr. Dave Van Kesteren: Okay. Thank you.

We have heard that the NDP and the Liberals have made some allegations that the RCMP deleted data before the Ending the Long-gun Registry Act received royal assent. Would you comment on that?

D/Commr Peter Henschel: As I said in my opening comments, the actual data was deleted in October of 2012 following the approved implementation plan, which was, I guess, close to six months after the coming into force.

Mr. Dave Van Kesteren: All right.

Some have suggested that the information regarding the cost to delete the long-gun registry, or whether the long-gun registry was deleted at all, could be blocked from the release of this legislation. Do you feel that's accurate?

D/Commr Peter Henschel: Again, without getting into the technicalities of the legislation, my understanding is that it would require data that's in the registry to be deleted, or data that was part of the registry to be deleted.

Mr. Dave Van Kesteren: Thank you.

Years ago I had the privilege of serving on the access to information, privacy, and ethics committee. At that time, the Privacy Commissioner stated that they were really short-staffed, that they were under an awful lot of pressure to release documents, and that's why some of these documents took so long to be released. I asked the question, where are most of these requests coming from? I'm leading up to something; you haven't been able to tell me a lot of things, but I'm just curious. And incidentally, that came from the prison system. Prisoners were spending lots of time asking for information from the Privacy Commissioner.

You spoke about a request, an information request, that you had received from Quebec, I believe. It involved those records from Quebec. Can you tell the committee where that request came from? Is that public knowledge?

Ms. Rennie Marcoux: I'll start by answering the first part of your question. Very few people in the RCMP or any other organization are actually authorized to know the identity of the person who submits an access to information or privacy request. In that sense, we're not sure exactly who submits the request, but generally, based on my knowledge of it, I would say a high percentage comes from the media in terms of access to information.

Mr. Dave Van Kesteren: It was just a curiosity question, I suppose. Thank you. That's all very helpful.

Mr. Astle, oftentimes we talk about the omnibus bills. This is just a question of curiosity as well. Why was this not done sooner? It's obviously something that was necessary. Other jurisdictions are actively moving in that direction, or have moved in that direction. Why wasn't this entrenched in law sooner?

Mr. Jeffrey Astle: I have asked that question myself. I think part of it is that it's a relatively nuanced subject. It's taken some time to discuss with officials and with members of Parliament, for example, to educate them on the issue and why it's important. It just takes a bit of time, I think, on some topics, such as intellectual property, to get people comfortable with the subject matter and have them understand fully the situation.

I think the amendments currently before us coincide with a great deal of effort that has been undertaken by our institute, for example, in the last year or more in pursuing this and seeking to raise the level of understanding. It coincides with efforts in other jurisdictions that are ongoing as well. The entire intellectual property community worldwide is working on this. It just happens to be now that it's taken root.

Mr. Dave Van Kesteren: How far behind were we from major countries like the United States and the European Union?

● (1015)

Mr. Jeffrey Astle: The enactments that have occurred in other countries have occurred sporadically over time. Some of the amendments in the U.K., I believe, were in the 1990s, and in Australia and New Zealand a little later.

The United States is currently studying this, because with the number of states involved and the complexity of their union, they need to understand it. I participated in consultations that occurred in Washington in the last couple of months. I have been actively working with other organizations on an international scale to try to push these forward. The protections are to the advantage of clients and those who wish to innovate and seek to protect their innovations.

So it's all good, and it's just a matter of trying to establish a net worldwide where one can rely on these protections.

The Chair: Thank you, Mr. Van Kesteren.

Mr. Adler, please, for your round.

Mr. Mark Adler (York Centre, CPC): Thank you, and witnesses, thank you all for being here today. We really appreciate your time and input.

I do want to ask my first question of the RCMP, and then I want to go on to Mr. Astle. I want to further pursue privilege with you.

Let me put my first question to the RCMP. There is some concern that the long-gun registry was used by the RCMP members in High River to seize more guns. I have read the audit of the destruction of the data, and I have read the Civilian Review and Complaint Commission's report into the incident.

I'm satisfied that the long-gun registry was deleted as advertised. However, if information came to light that someone had illegally obtained and used gun registry data to seize firearms, would the legislation before us today stop them from facing the consequences?

D/Commr Peter Henschel: To start with, yes, I can confirm that the data was deleted, and it is not available. As far as the legislation that's before you is concerned, I think to provide a response on that would probably require our colleagues at Justice to give you that answer. But I can assure you that the data is gone and is not available.

Mr. Mark Adler: Thank you very much.

Mr. Astle, small business is crucial to Canada's long-term prosperity, and Canadian families depend on the jobs they create and the services they provide.

That is why our government has been continuing to foster an environment for small business to grow and prosper. In fact, we've reduced red tape for small business, and we're in the process of lowering the tax rate from 11% to 9% over the next four years. We provided more assistance to small business. We have lowered EI premiums. We've frozen them. We've provided financing for small business with the small business job credit.

Could you please comment on how privilege, more specifically privilege contained within this legislation, will help small business prosper.

Mr. Jeffrey Astle: From my perspective a smaller business is more likely to have a single patent they are relying upon to protect the innovation that's securing their future. It's important that whatever protection the small business has sought to obtain is going to be effective and not be undermined by the very discussions that were necessary to seek the advice to get that patent in the first place.

Those small businesses will need to seek advice from their advisers here in Canada and should be given the same degree of protection they would be given in another jurisdiction in similar circumstances. So I think it would be helpful to small businesses.

Mr. Mark Adler: Some 50% of the jobs in Canada are with small businesses, and small business accounts for a third of our country's GDP. So you are saying that this provision does provide a benefit to small businesses. Correct?

Mr. Jeffrey Astle: I believe so, yes.

Mr. Mark Adler: Thank you.

Also, in discussion with my colleague, Ms. Bateman, you mentioned that the U.K., Australia, and New Zealand have similar regimes to what we're proposing here. You did indicate that no one jurisdiction can undermine the rights of another jurisdiction.

Could you expand on that because it wasn't quite clear to me? Could you give an example even?

● (1020)

Mr. Jeffrey Astle: Yes, I can. There have been instances in the United States where, when determining whether communications between advisers and clients should be privileged, they look to the jurisdiction where the communications occurred. If privilege is not extended in that jurisdiction, they will not provide a privilege in their jurisdiction. So if there's no privilege in Canada, we're not going to give it to you in the United States. That's one way to look at it.

Another way to understand the present situation in Canada is to look at situations where privilege was actually given to communications, for example in the United Kingdom, where privilege exists.

In court proceedings in Canada, they will actually strip away that privilege and force the disclosure of the communications that occurred in that foreign jurisdiction. So at least currently there's no judicial comity. It's basically, sorry, if you're going to deal with the Canadian courts, you're going to deal with the Canadian system, and, unfortunately, privilege does not extend to those types of communications at this point in time. This legislation has addressed that gap.

Mr. Mark Adler: So this really levels the playing field.

Mr. Jeffrey Astle: Yes, absolutely. There's work to be done worldwide to continue on this path, and I think Canada has moved forward at an appropriate time to address this.

Mr. Mark Adler: Thank you.

Could you speak a bit about that? You mentioned earlier that an international network would be beneficial. Could you talk a bit more about that and what role, if any, Canada could play in possibly helping to move that along?

Mr. Jeffrey Astle: Sure. If we are a jurisdiction in which these protections are in place, officials in their meetings with organizations or groups of governmental organizations can look to us as a model with respect to how these protections can be used and can help encourage other countries to put similar protections in place. I know discussions occur at the international level, and I think Canada could be at the table in helping to promote the benefits of this and the fact that it's important to have these features in their intellectual property frameworks as well.

Mr. Mark Adler: Thank you.

The Chair: You can have one final brief question.

Mr. Mark Adler: Thank you. I'm okay.

The Chair: Thank you, Mr. Adler.

I'm going to follow up as the chair on a few points.

Mr. Astle, I want to follow up on what Mr. Adler and Monsieur Côté said. We did receive correspondence from the Law Society of Upper Canada, stating that they oppose this measure, because they don't think the government needs to extend solicitor-client privilege in order to actually accomplish what it wants to accomplish, which is to protect commercial information. So I'd like you to respond to the concern they've raised with us.

Mr. Jeffrey Astle: There are several dimensions to their concerns.

The Chair: I mean their concern that this is actually going too far and that you don't need to go this far to accomplish what you want to accomplish.

Mr. Jeffrey Astle: I disagree, first of all.

The Chair: Why?

Mr. Jeffrey Astle: I will tell you why I disagree.

The courts have the ability to extend privilege on a case-by-case basis, where the circumstances suggest that it's appropriate. Unfortunately, in Canada, based on, I guess, the evidence before them, the courts have held to date that no privilege should exist in those communications. This is an unfortunate state of the law, but the only way to overcome it at this point in time is to enact legislation to change this to where the bar should be relative to those communications.

In the communications of the associations and the CBA, for example, it's admitted that the type of advice that's being provided is with respect to very important legal instruments and it's important that the communications associated with the advice given in putting those properties in place be protected in the same way as communications in connection with any form of legal advice are.

I hope I've addressed your question.

● (1025)

The Chair: I appreciate that.

I next want to move to the RCMP. As you know, the Information Commissioner testified here this week. She actually provided a helpful timeline in terms of the investigation. In my understanding, she raises two main concerns. One is with respect to the timing of the request and then the response, and the other is with respect to the applicability of the Ending the Long-gun Registry Act to her act itself, the Access to Information Act.

I just want to clarify. In your presentation you said the RCMP did not destroy any registration data before the coming into force of the Ending the Long-gun Registry Act on April 5, 2012. Later on you talked about the RCMP providing the requester with a copy of a previous access to information request that met the parameters of his request. Over eight million rolls of registration data would be approximately 171,000 pages long. So is this essentially then a disagreement between you as the RCMP and the person who put the request in? You feel very strongly that you have fulfilled his or her request, but this person feels that they did not get the information or all the information that they should have been provided under the request. Is this essentially, then, a disagreement of that type? Does that characterize it fairly?

D/Commr Peter Henschel: Yes, I think that is probably a way of characterizing it.

What I will say is that we had two obligations. One was the obligation under the Access to Information Act to provide information. The other obligation was to meet what was stated in the Ending the Long-gun Registry Act when that came into force, which was to delete the data in the registry.

To ensure that we could meet both of those obligations, even prior to the Ending the Long-gun Registry Act, as we mentioned, we had dealt with at least a couple of dozen requests of a similar nature. As defined by the Firearms Act and the associated regulations, we had identified some 27 fields within the Canadian firearms information system that related to the registration of firearms, which is what we consider to be the registry. Of those, 12 did not include personal information. We made sure we had those 12 before we destroyed the data. After the legislation came into effect, we actually made sure we had the data that was there—those 12 fields—and we had a copy of that information so that we could respond to any access to information requests with the relevant data, but also data that was releasable. That, of course, excluded all the personal information. Those were the 12 of the 27 fields that we maintained in order to be able to be responsive and be in compliance with the two pieces of legislation.

The Chair: Okay, I appreciate that.

I have only a couple of minutes left.

I want to get to the disability benefits. We have three individuals here to whom I'd like to pose questions, but perhaps I could just ask one of you. Ms. Benson, you mentioned the $900 million. The Treasury Board describes that as a subset of a contingent liability associated with banked sick days.

My understanding is that the government has to provide some actuarial accounting for all of the unused sick days, some value. It seems to me that the $900 million is.... Obviously, they're hoping to have some agreement whereby they move away from the current system toward one that has a short-term disability plan, as well as a long-term disability plan that they say better provides for employees.

I'm really not quite sure what the concerns are about the $900 million. You can say that you don't want to move to that model, and that's fine. But it seems to me that the $900 million is a logical number, considering the actuarial accounting or valuation of the unused sick days and any savings that the government may hope to get.

Ms. Benson, Ms. Daviau, or Ms. Tremblay, do one of you want to address that?

Ms. Benson.

Ms. Robyn Benson: Yes, I'll start, and thank you very much for the question.

The $900 million is actually a paper exercise and not real money, so we have a concern about that. We are concerned that the government is telling taxpayers that there is this huge liability and that it's on the backs of taxpayers, when in fact, if we move to this short-term disability plan, there will be a third-party carrier who will be on the backs of the taxpayers because somebody will have to pay for that carrier.

We also are concerned that division 20 reaches into the collective agreement and takes something out of it so there is no negotiation or free collective bargaining, which we have the right to under the charter.

We certainly would entertain discussions with respect to the sick leave, because the government has yet to provide any of us at the bargaining table with an explanation as to what is wrong with it in terms of.... Certainly, in the press there have been discussions about young people or new employees' not having enough sick leave, which has not been discussed yet.

There are three of us sitting here. I might suggest that when I started as a young employee 35 years ago, the sick leave provisions that were there then are there now. There are provisions for managers to manage that particular leave.

We have concerns that when the government says it's booking moneys for a projected surplus, those are actually not moneys. It's not prudent on behalf of all Canadians to do that.

● (1030)

The Chair: Thank you.

Unfortunately, my time is up. I have to turn it over.

[*Translation*]

Mr. Caron, you have the floor, and you have five minutes.

Mr. Guy Caron: Thank you, Mr. Chair. I am going to share the time I have with my colleagues Mr. Côté and Mr. Dionne Labelle.

I would like to go back to Mr. Henschel and Ms. Marcoux.

The Standing Committee on Finance is discussing legislative changes that are included in Bill C-59, in division 18 in particular. All of the witnesses here want to and may discuss the legislative changes. For your part, you do not want to, or cannot talk about them, and I understand that. You cannot talk about legislative changes that would have a retroactive effect on matters in a case that is currently before the courts. You cannot or do not want to talk about the investigation of the Ontario Provincial Police on this matter.

As to whether all of the files were destroyed, even the Information Commissioner mentioned that she had no proof that they had not been destroyed, aside from Quebec, of course.

[*English*]

I'm sorry for the blunt question, but what is your purpose in coming here? What can you bring us that's related to the bill itself, outside of the fact that in your reply to Mr. Rajotte, you indicated that there is a disagreement in perspective between you and the Information Commissioner regarding compliance with the access to information requests? I'd like to know what you can bring here to the committee for the purpose of discussing Bill C-59?

D/Commr Peter Henschel: We were invited to appear here, so we've appeared. We can answer your questions to the best of our ability, but it would be inappropriate, as I said already, for us to comment on legislation. That is not the role of the RCMP. Our role is to apply and comply with the law.

All we can offer is to provide the information we have with respect to an issue that has arisen as a result of the legislation.

Mr. Guy Caron: Thank you very much.

[*Translation*]

I am going to yield the floor to Mr. Côté.

Mr. Raymond Côté: Thank you, colleague.

Mr. Astle, you said that jurisprudence had been widely unfavourable regarding the protection of information exchanged between clients and experts in this area. Do you think that most of these judges' decisions, or a large proportion of them, were justified?

[*English*]

Mr. Jeffrey Astle: The decisions were the decisions of a court, and I would say based on the evidence before the court in those particular instances.

I don't know to any great detail the specifics of the cases, but I do know that there have been instances in Canada where lawyers' files, in connection with the advice they provided relative to securing intellectual property rights, have been opened in the courts simply on the basis of the precedents established by earlier decisions.

This concerns me. It should concern the law societies. I'm surprised by the opposition to this, in that the principles involved seek to protect the administration of justice; they seek to protect access to justice.

Lawyers enjoy this particular characteristic with respect to their conversations or discussions with their clients, but it provides them with a unique position, which I believe is—

● (1035)

[*Translation*]

Mr. Raymond Côté: Excuse me, Mr. Astle.

[*English*]

Mr. Jeffrey Astle: If I may answer your question, which is a competitive—

[*Translation*]

Mr. Raymond Côté: Mr. Astle, I apologize, and I thank you for your elaborate reply, but I must also let my colleague Pierre Dionne Labelle take the floor.

Mr. Pierre Dionne Labelle: I'm going to conclude.

I heard your criticism regarding the reason for our opposition. In fact, our objection is not, basically, about the content of the bill, however we do wonder about one thing. This question is not addressed only to you, since it could also go to the RCMP. How is it that we are being presented with omnibus bills that involve budgetary questions, and in which matters are discussed that could be studied by other instances and in the context of other laws? The provisions affecting the Industrial Design Act, the Patent Act and the Trade-Marks Act could have been part of a separate bill and have been studied in that framework rather than being included in a budget bill.

Thank you, Mr. Rajotte.

[*English*]

The Chair: That may be more of a question for the government.

Mr. Astle, I'll let you finish your earlier response on your particular provisions.

Mr. Jeffrey Astle: I guess my concern, in response to the first question, is that it seems that what the law societies are seeking to preserve here is a competitive advantage over others who are providing advice relative to legal rights. I think that if one reflects on the principles for which privilege exists, the legislation before us is appropriate.

As regards timing, there's no better time to do the right thing as the present. I don't understand why it should be an issue. We've had all-party support in our discussions to date, so the pushback that I'm feeling here is curious to me. I'm not clear on why there's any resistance to this.

The Chair: Thank you very much.

We'll go to Mr. Saxton, please.

Mr. Andrew Saxton: Thank you, Chair.

My first question is going to be for Mrs. Benson.

Mrs. Benson, if I heard you correctly, you said that the current public service sick leave system has been around for 35-plus years, since you started, and that it's fine. Now, just because something's been around for 35-plus years, are you saying that it doesn't need to be changed or modernized?

Ms. Robyn Benson: No, I'm certainly not saying that. What I'm saying is that the government or the Treasury Board has yet to indicate to us what is wrong with it, where the flaws are in it.

Certainly, if they were to point out flaws, we would enter into negotiations in good faith. But when you don't come and point out the flaws, and you simply say that you want to modernize it, it brings us to a point where our members would have to choose between going to work sick or having a full paycheque. I might add that our members live paycheque to paycheque now, so it's very difficult should they find themselves in a position where their paycheque is less than what they expect because they would be on leave without pay.

But division 20—

Mr. Andrew Saxton: May I just...? We have a short, short time.

Ms. Robyn Benson: Okay.

Mr. Andrew Saxton: You've been at this committee now for an hour and a half. You've listened to testimony from others, including Mr. Lee. Do you not hear what the problems with the current system are?

Ms. Robyn Benson: There actually are not, in the sense—

Mr. Andrew Saxton: Did you hear what the current problems with the system are?

Ms. Robyn Benson: —that they're all very manageable—

The Chair: One at a time.

Ms. Robyn Benson: If I might...? Because I am a supervisor in my other life with the Canada Revenue Agency, I actually do manage the sick leave of the staff that I supervise. What we have is that if somebody is away sick, they call in to me. I make sure they're well enough to come to back to work. There are provisions to earn 9.375 hours per month. Should they use all of that sick leave, we have the opportunity to advance them sick leave. Should that not work—

Mr. Andrew Saxton: That's fine, but our time is short—

Ms. Robyn Benson: Okay.

Mr. Andrew Saxton: —so I have to get to the crux of the matter here.

If the current system is fine, why have other governments, provincial governments, abandoned it long ago, and why does it not exist in the private sector? Can you answer that for me?

Ms. Robyn Benson: The current system works well for the employees of Treasury Board, who are hard-working Canadians, and certainly, if we were to identify a flaw—

Mr. Andrew Saxton: It has been abandoned in the provincial public service.

Ms. Robyn Benson: —we would negotiate.

Mr. Andrew Saxton: Why has it been abandoned in the provincial public service?

Ms. Robyn Benson: I can't answer that.

Mr. Andrew Saxton: Why does it not exist in the private sector?

Ms. Robyn Benson: It does exist in many places, sir.

Mr. Andrew Saxton: Can you explain where? I'd like to know where.

Ms. Robyn Benson: Well, it does exist in unionized places, with CUPE, for example, in municipalities.

● (1040)

Mr. Andrew Saxton: In which municipalities?

Ms. Robyn Benson: I will get you the list.

Mr. Andrew Saxton: Okay. Thank you very much.

Madam Tremblay, can you explain the difference between the federal public service sick leave system and the one that exists in the private sector?

Ms. Emmanuelle Tremblay: I can say, for example, that in many private sector firms, particularly large ones, there are no limits to the number of sick days that employees can take. My cousin works at IBM. He's been working there for several years. There's no limit, so he.... Like you distinguished MPs, if you are not in Parliament, nobody will remove pay from you, and there's no calculation of the number of days you're sick. You're deemed to be working when you're off because you're sick. The very same exists at IBM that I know of.

If my cousin is sick for three days, there's no short-term disability kicking in because there's a bit of a lag, but his supervisor will not ask him to bring in a doctor's note or anything. There's no record of it. Also, if he's away for longer, then their short-term disability will kick in, but there's no bank because there's no need for a bank. Because whatever the person needs.... One year, it's one day, the next year, it's 18 days.

Mr. Andrew Saxton: What you're saying is that there's no need for a bank. Basically you're saying that the current federal system is different and that there's no need for a banking of sick days. That's what you just said, correct?

Ms. Emmanuelle Tremblay: If there is wage replacement. Right now, the current proposal that's on the table has a waiting period, which actually is a deterrent to staying at home when you're sick. Based on public health data, we know that where workplaces do not have paid sick leave or salary replacement, there are higher public health costs.

Mr. Andrew Saxton: Okay. So what you're saying is that it sounds like the current system in the public service, the federal government, could be changed. It could be changed to be more in line with the private sector. That's what you basically—

Ms. Emmanuelle Tremblay: What I'm saying is that there are systems in the private sector that ensure salary replacement when people are sick. That's what we need.

Mr. Andrew Saxton: You would not be opposed to changes in the federal system that would mimic the private sector.

Ms. Emmanuelle Tremblay: If the government has the goodwill to bargain it and not impose it through a legislative hammer that is not required and that is unconstitutional....

Mr. Andrew Saxton: Okay, but you're talking about the process of getting there, not the end result. The end result is a similar system to the private sector.

Ms. Emmanuelle Tremblay: The end result has already been predetermined by booking this $900-million saving. Basically, what the government is saying—

Mr. Andrew Saxton: But you're more upset about the process.

Ms. Emmanuelle Tremblay: —is that there is no way to discuss —

Mr. Andrew Saxton: It's the process that's bothering you, not the end result.

The Chair: Okay, this will be the final answer.

Mr. Andrew Saxton: It's the process, not the end result. It sounds like you could be okay with the end result.

Ms. Emmanuelle Tremblay: The problem is with the legislation, with division 20 of Bill. The problem is with the profound unconstitutionality of this legislation.

Mr. Andrew Saxton: Not with the end result.

The Chair: Okay.

Thank you, Mr. Saxton.

Mr. Brison, we have a few minutes for your final round.

Hon. Scott Brison: Thank you, Mr. Chair.

One of the challenges we're faced with in omnibus legislation is that, as the finance committee, our focus and responsibility and understanding of issues is basically on questions of the fiscal framework or budget-type questions, and we're forced to deal with issues around intellectual property, public sector labour relations issues, and issues around the long-gun registry. These should be dealt with at the appropriate committees. It's very frustrating.

On the whole issue of the proposed changes to the treatment of sick leave of employees, the government seems to be—and it's not just this, even the tone in the House, the gratuitous attacks on the public service seem to be.... I remember as minister of public works that we had 14,000 employees. We agreed with the union sometimes and we disagreed at other times, but we engaged respectfully. We did not gratuitously try to pick a fight.

Does it seem that the government is angling to pick a fight, as opposed to trying to negotiate and address some of these issues? There may be some legitimate issues, but instead it is looking to pick a fight and perhaps even provoke a strike. Do you have any thoughts on that?

● (1045)

Ms. Debi Daviau: What else could this be, really, when you're talking about fictitious numbers and accounting exercises and bringing about a surplus by manipulating your books?

You mentioned earlier the sell-off of GM shares at a loss. There were a number of other instruments used in this budget implementation act that really speak to exactly that point—picking fights. Taking $2 billion out of the contingency fund is another example of the poor use of fiscal funds.

The Chair: You have one minute.

Ms. Debi Daviau: Indeed, that's what this is about. This is nothing more than a pre-election budget PR exercise.

Hon. Scott Brison: And pitting the general public against the public service.

Ms. Debi Daviau: Exactly.

Hon. Scott Brison: This question is for the RCMP.

The OPP confirmed that an investigation is active. That was confirmed in *Maclean's* this week in a report that the commissioner wrote to the Attorney General to raise the concern that documents related to—

The Chair: Okay.

Hon. Scott Brison: It's being investigated by the OPP, who confirmed on Tuesday that the file forwarded to them by the Public Prosecution Service is the subject of an active investigation.

Do you have any further comment on that? It's in the public domain.

D/Commr Peter Henschel: No.

As I said before, we have no information, but we would cooperate with any investigation.

Hon. Scott Brison: Thank you.

The Chair: Okay, thank you.

On behalf of the committee, I want to thank all of you for being here this morning. Thank you so much for participating in this session today.

Colleagues, we will resume here in this room in 60 minutes, please. Thank you.

The meeting is adjourned.