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Chair

Mr. Tom Lukiwski

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● (0845)

[*English*]

The Chair (Mr. Tom Lukiwski (Moose Jaw—Lake Centre—Lanigan, CPC)): Colleagues, thank you.

For those of you new to our committee—Mr. Breton—welcome. Welcome to the new committee rooms in 180 Wellington.

I welcome our committee guests, Monsieur Bégin and Madame Ferlatte.

I understand, Monsieur Bégin, you have an opening statement.

Mr. Luc Bégin (Ombudsman and Executive Director, Ombudsman, Integrity and Resolution Office, Department of Health): Thank you.

Good morning. My name is Luc Bégin and I will speak to you on behalf of Health Canada in my capacity as senior integrity officer for this organization.

To provide members of this committee with some context, the Health Canada ombudsman, integrity, and resolution office, for which I am the ombudsman and executive director, was created nearly a year ago as a shared service to serve both Health Canada and Public Health Agency of Canada employees coming forward with workplace issues. Prior to February 2016, the senior integrity officer was the chief audit executive.

The launch of this office reflected an innovative decision on the part of senior leaders to implement a best practice and centralize four services, those being ombudsman, informal conflict management, values and ethics, and internal disclosure services. These services are responsible for delivering integrity programs to Health Canada employees at all levels in one mutual, confidential office led by an independent ombudsman as part of a seamless delivery of services for employees through one port of entry.

Under my guidance, the internal disclosure services are responsible for internal disclosure and providing a safe, confidential, and independent mechanism for employees to disclose wrongdoing in the workplace and to seek an opinion about whether a behaviour is in need of intervention. The internal disclosure services also provide advice and information to employees on the act and on the disclosure processes.

Further, it receives and reviews disclosures of alleged wrongdoing and conducts investigations as required. Where the disclosure of a wrongdoing is founded, we report the findings as well as any systemic problems that may give rise to wrongdoings to senior management, along with recommendations for appropriate actions. Reports concluding that wrongdoing was founded are also posted on the Health Canada website. Where the wrongdoing is unfounded, the allegation may otherwise indicate areas or issues to be addressed proactively to prevent escalation.

In my dual role as ombudsman and senior integrity officer, I manage these situations with objectivity and fairness while respecting confidentiality as mandated by the act. I am glad to further explain to the committee how we administer the act by describing the internal measures we currently have in place for the disclosure of wrongdoings and provide a description of the processes and procedures we follow to address them.

Health Canada, my office, and senior management take the application and administration of the act very seriously. We actively work to ensure employees have a safe and confidential mechanism for disclosures that is consistent with the values and ethics of the public sector.

Internally, the policy related to internal disclosure by public servants for Health Canada currently in place outlines the process for disclosing allegations of wrongdoing. It notably specifies that complaints of wrongdoing can be made either to the employee's direct supervisor, to the senior integrity officer, or directly to the Public Sector Integrity Commissioner. It also specifies the roles of the chief executive, the senior integrity officer, managers, and employees.

As a whole, this policy addresses Health Canada's obligations and reflects the department's commitment to implement the requirements of the act. It sets out expectations for Health Canada personnel in implementing the act and presents broad elements of the departmental processes that support the implementation of the act. The employee contacting our office for inquiries or intending to bring forth allegations of wrongdoing will get further details and information about how to proceed to submit their allegation, which documents they need to provide, how allegations are dealt with, and what they can expect.

● (0850)

There is a lot of unknown for the employee coming forward within this process, and fear of retaliation and reprisal is a component to be addressed. My office provides information to employees on all aspects of reprisal protection and all relevant information to help dismiss misconceptions, clarify assumptions, and manage expectations.

To protect confidentiality, reminders are made to everyone involved in the disclosure process to safeguard information pertaining to cases or inquiries. My office takes great care to ensure information is kept confidential by keeping a separate filing system, physical and electronic, and providing a secure email address and a phone, apart from the other services that we offer. These are accessible only to employees dealing with disclosure cases and inquiries in my office.

As far as outreach and awareness activities go, my office continues to promote its services by providing a monthly awareness session to all staff. Internal disclosure services are also presented at every orientation session for new employees as well as being discussed at every values and ethics session, which are, at Health Canada, mandatory for all managers and employees. In addition, all employees, upon nomination, attest that they have read and understood the code of conduct upon signing their letter of employment.

My office attends yearly events and forums involving large numbers of employees to provide awareness and to discuss the process. Furthermore, my office continuously updates the content of its intranet site to make relevant the information to Health Canada employees.

The intranet pages feature information about roles and responsibilities related to how to receive and lodge a disclosure, and to conduct investigations. They also feature resources that may be downloaded, such as brochures on the act, as well as a form for making internal disclosures. They also link to annual reports and Internet sites where other relevant information can be found, such as information found on the Public Sector Integrity Commissioner's website. They also feature links to contact our office through the dedicated email box and toll-free confidential hotline.

It is often not required to formally investigate issues raised with the internal disclosure services under the act, even if the subject matter is of a relevant nature, that are informally addressed and referred.

My office works in close collaboration with internal partners, such as managers and representatives for other employee recourse mechanisms. When allegations do not meet the threshold to warrant the launch of an investigation, or internal disclosure is not the appropriate means of resolution, having a variety of recourse actions or options is considered an asset. It provides employees with access to a wealth of resources to assist them, regardless of the nature of their difficulties.

My office also collaborates with the Public Sector Integrity Commissioner's investigations by playing a liaison role and by notably ensuring that all internal partners are aware of and respect the strict obligations to safeguard the confidentiality of information.

Fear of reprisal, as per the 2014 public service employee survey results, is still prevalent with employees considering or having made allegations of wrongdoing. Health Canada is deeply concerned about this and is committed to correcting this situation and creating an environment where employees are comfortable in coming forward.

My office and its services continuously strive to embody the values of integrity, neutrality, and independence in dealing with allegations of wrongdoing. I strongly believe this supports and emphasizes transparency and accountability.

Health Canada is committed to promoting a culture of strong values and ethics where open communication on issues and concerns can be discussed and dealt with through appropriate recourse channels, including disclosure of wrongdoing, without apprehension of reprisal, to ultimately foster an ethical organizational culture.

Mr. Chairman and members of the committee, thank you for your time.

● (0855)

The Chair: Thank you very much.

Our first round of seven minutes will go to Mr. Peterson.

Mr. Kyle Peterson (Newmarket—Aurora, Lib.): Thank you for that, Mr. Chair.

Thank you, Mr. Bégin, for being here, and Madame Ferlatte as well.

I don't know where to begin. There's lots of information to unpack. I appreciate your being here, of course.

How many employees in your department would be subject to the act?

Mr. Luc Bégin: Approximately 12,000 at Health Canada would be subject to the act.

Mr. Kyle Peterson: Of that, there have been eight or nine cases?

Mr. Luc Bégin: Disclosures.

Mr. Kyle Peterson: Do we have the numbers for general inquiries, the first contact?

Mr. Luc Bégin: There were eight general inquiries and eight disclosures reported.

Mr. Kyle Peterson: The furthest any of these went was the settlement at the tribunal, correct? One case was settled at the tribunal.

Mr. Luc Bégin: There have been no investigations under those eight disclosures.

If you're referring to the tribunal, that refers to reprisal, a complaint of reprisal that was made to PSIC.

Mr. Kyle Peterson: Okay, thanks for clarifying that.

Walk me through some of the process. If employees witness what they believe is wrongdoing under the act, what is the next step they would take? I know there are probably three or four different steps they can take, but do we know which is the most prevalent, or is it a mix?

Mr. Luc Bégin: First of all, Health Canada really encourages employees to make the information known to their supervisors. That's what we encourage. Employees have an opportunity to come to my office.

I have to preface that by saying the ombudsman, integrity, and resolution office has an operating principle that says it's confidential, informal, neutral, and independent. They have an opportunity to raise and discuss those issues in my office. If they do, at that point we would look at the different opportunities for them, the options for resolution. It may mean filing a wrongdoing.

Mr. Kyle Peterson: Is that process distinct from the process under the act that we're discussing today?

Mr. Luc Bégin: The process for dealing with wrongdoing is not different. We have one layer where we have an ombudsman who hears a lot of workplace issues.

Mr. Kyle Peterson: The role of the ombudsman is what I'm trying to get at. It is distinct from the whistle-blower legislation we're looking at today.

Mr. Luc Bégin: It's distinct once a formal complaint or disclosure has been filed.

● (0900)

Mr. Kyle Peterson: Who's making the determination of whether or not the threshold has been met to escalate it? Is that your office?

Mr. Luc Bégin: Yes.

Mr. Kyle Peterson: Are those powers bestowed upon that office through other legislation besides this disclosure act, or is it under the act we're studying today?

Mr. Luc Bégin: No. Under the act, the deputy needs to appoint a senior official. The ombudsman becomes the senior integrity officer.

Mr. Kyle Peterson: In a sense, you're wearing two hats.

Mr. Luc Bégin: Yes.

Mr. Kyle Peterson: Okay, I wanted to make sure that was clear.

You referred to a study that highlighted that fear of reprisal was still relatively high. Can you elaborate a little on that study?

Mr. Luc Bégin: This is the 2014 public service employee survey where it actually stated that, I believe, only 38% of employees at Health Canada would file a grievance or complaint without fear of reprisal. Don't quote me on this exactly.

Mr. Kyle Peterson: So, presumably, 62% had fear of reprisal.

Mr. Luc Bégin: That's what it....

Mr. Kyle Peterson: That, to me, is troublesome. I think at least one of the purposes of the act was to create an environment where employees would not have that fear. How do we reconcile this? Is this a suggestion that the act is not working, or that it needs to be tweaked?

Mr. Luc Bégin: What I can tell you is that my office has been very proactive in positioning this office with services, including the internal disclosure services, to be a trusted place where employees can actually raise and discuss those issues. An effective awareness strategy is making sure we combine promotional tools and materials so that they understand and there's an outreach base there. Employees see an opportunity to see a face to discuss the disclosure. They see the whole regime or wrongdoing process with a higher level of comfort and trust.

Mr. Kyle Peterson: Do you know if that document has been provided to our committee, Mr. Chair?

The Chair: To my knowledge, it has not.

Mr. Kyle Peterson: Is that easily accessible? Are you able to provide that to us?

Mr. Luc Bégin: What document?

Mr. Kyle Peterson: The 2014 study.

The Chair: If you could provide that to the clerk for distribution, I would appreciate that.

Mr. Kyle Peterson: That's great. Thank you, Mr. Chair.

There's that study, and maybe we won't get into the study because you'll provide it and we'll all have a chance to look at it and that might answer any questions I have.

I want to look at the data we have about cases and inquiries coming forward. The problem with the data is that if it showed zero action taken on any of the cases, or zero inquiries, it could mean the act is a failure, but it could also mean it's a success. The numbers don't really tell us something. It might mean everybody is too scared to come forward, so the act is a failure, or it might mean everybody has changed their behaviour and there's no more wrongdoing because the act is such a success.

Mr. Erin Weir (Regina—Lewvan, NDP): I'm sure that's what it is.

Mr. Kyle Peterson: This is what I'm saying. The numbers themselves don't necessarily tell us. I think we need to get into the attitudes of the employees and what is preventing them from coming forward. If they aren't, perhaps it's because—and I'm just speculating—they feel their complaints aren't seriously addressed, or no action ever results anyway so what's the point of raising your head and being a target for possible reprisal. That's what I'm getting at.

Thank you for your time. Hopefully that study will elaborate on that as well.

The Chair: Thank you very much, Mr. Peterson.

Mr. Clarke, you have seven minutes, *s'il vous plaît*.

[*Translation*]

Mr. Alupa Clarke (Beauport—Limoilou, CPC): Thank you, Mr. Chair.

I would also like to thank Mr. Bégin and Ms. Ferlatte for being with us this morning.

First, I would like to know what if any relationship you have with the Treasury Board Secretariat. Mr. Trottier, who is responsible for the governance, planning and policy sector, was here Tuesday morning. What relationship do you have with him?

Mr. Luc Bégin: Mr. Trottier works for the Treasury Board Secretariat. It offers departments support for the implementation of the act.

Mr. Alupa Clarke: What does that mean for you on a daily basis?

Mr. Luc Bégin: There is an interdepartmental community, which includes the senior officers, Treasury Board, and a representative of the commissioner, which holds discussions in particular about the issues and the procedure in place. It is actually a working group that looks at ways to give us the necessary tools to manage disclosures.

● (0905)

Ms. Carole Ferlatte (Manager, Ombudsman, Integrity and Resolution Office, Department of Health): Let me clarify something. We also have another resource. A Treasury Board lawyer gives us specific advice on cases that fall into grey areas.

Mr. Alupa Clarke: To what extent are your offices interrelated? Do you report directly to the secretariat or are you independent of it?

Mr. Luc Bégin: As a senior officer, I report directly to the deputy minister of Health Canada.

Mr. Alupa Clarke: So you cannot get orders from Mr. Trottier's office, is that correct?

Mr. Luc Bégin: No, it is separate from Health Canada.

Mr. Alupa Clarke: In general, you are the ombudsman for Health Canada, but your office is also responsible for complaints related to the Public Servants Disclosure Protection Act. Can you tell us what percentage of your time you spend on matters related to those disclosures? How much time to you devote to all the work related to the act?

Mr. Luc Bégin: I would point out that Ms. Ferlatte joined my office as a manager after I arrived in February 2016. For my part, given all the other issues, I spend from 10% to 15% of my time on that.

Mr. Alupa Clarke: Okay.

For the work related to the act only, how many employees do you have?

Mr. Luc Bégin: Ms. Ferlatte and I are the ones who manage internal disclosures.

Mr. Alupa Clarke: Okay, I understand.

What is the total budget of your office and roughly what part of it is dedicated to the work related to the act?

Mr. Luc Bégin: The ombudsman, integrity and resolution office has a staff of 20 people who support the various services offered by the office, including those related to values and ethics and informal conflict management. They are mediation and conciliation specialists. For her part, Ms. Ferlatte manages the services related to internal disclosures. Give the size of my office, $1.7 million of the budget goes to salaries and close to $120,000 goes to operations.

Mr. Alupa Clarke: Last Tuesday, I reviewed a table showing that 300 to 400 cases are reported every year, whether they are founded or not. How many of those cases do you review? I believe it is eight or nine cases, is that correct?

Mr. Luc Bégin: Not including the reports related to specific cases, there were eight last year, or in the past two years. No cases were reported to us this year, so no formal disclosures were made in fiscal year 2016-17.

Mr. Alupa Clarke: The law goes back to 2011, as I recall. Do you produce an internal report? Is there a yearly record for the institution?

You began in your position a year ago. Did you meet with your predecessor? Of course, I would imagine that you had a meeting, but were you informed about the office's activities related to the act?

What, in general terms, are your office's activities related to the act on a yearly basis?

Mr. Luc Bégin: Every year, the integrity officer reports to the deputy minister on activities, case volume and priorities. This year, or last year, I prepared a report that covered the activities of the office itself, including those related to internal disclosures. This annual report essentially covers the case volume and activities. I also make observations in the part pertaining to my role as ombudsman and set priorities for the coming year.

Mr. Alupa Clarke: Can you give us some examples of the content of the report?

● (0910)

Mr. Luc Bégin: The report covers the volume of cases, statistics, my observations as ombudsman, the employer-employee relationship, and awareness activities to encourage employees to use the services of our office in a preventive way rather than as a last resort.

Mr. Alupa Clarke: Does it include various recommendations on how to improve the process or indeed the act? Would you suggest any changes to the act?

Mr. Luc Bégin: My comments in the report are based on my observations. They can include suggestions, but I do not make specific recommendations about the act.

Mr. Alupa Clarke: Thank you.

[*English*]

The Chair: Thank you very much, Monsieur Bégin.

Mr. Weir, you have seven minutes.

Mr. Erin Weir: Thanks very much for coming to testify before our committee.

You mentioned, in response to Mr. Clarke, that dealing with issues under the act occupies about 10% or 15% of your time. I just wanted to clarify what proportion of Madame Ferlatte's job it is.

Mr. Luc Bégin: She's the IDS manager, so it's 100%.

Mr. Erin Weir: Okay, so you have your employees entirely devoted to it, and it's a small portion of your work.

Mr. Luc Bégin: Correct.

Mr. Erin Weir: Thanks for clarifying that.

It's obviously a very specialized type of work to do these forensic investigations when someone believes there has been reprisal because they've reported wrongdoing. When you started in this job, what kind of background or training did you have to do that kind of work?

Mr. Luc Bégin: First of all, our office does not do the investigation. We actually contract the wrongdoing investigation if it's filed under our office.

With respect to the background, I've been in the public service in labour relations and HR for 24 years, and I've been an ombudsman for about five years.

Mr. Erin Weir: Excellent.

Who do you contract the investigations to?

Mr. Luc Bégin: There are standing offers.

Mr. Erin Weir: Okay, so there are outside firms that specialize in doing the investigations.

Mr. Luc Bégin: There are outside firms that specialize in investigations, yes.

Mr. Erin Weir: Under what circumstances would you recommend that someone actually go to the Public Sector Integrity Commissioner?

Mr. Luc Bégin: In discussion with the employees, we provide many different options. As you know, they can come to their supervisor, me, or the Public Sector Integrity Commissioner. We don't refer cases to the Public Sector Integrity Commissioner. It's the employee who chooses to go directly there.

It is the employee who decides in what circumstances....

Mr. Erin Weir: For sure, but you must provide some kind of guidance, advice, or information.

Mr. Luc Bégin: We provide the options and explain the process to them.

Mr. Erin Weir: Also in response to Mr. Clarke, you mentioned a committee of people who are doing similar jobs in different departments and agencies. I wonder just how often it meets.

Ms. Carole Ferlatte: I can speak to that, because I attended. It's called the interdepartmental disclosure working group, and it meets monthly. We have ad hoc meetings. There was just a meeting held for senior integrity officers, to which both managers and integrity officers were invited. At these meetings, if that's of interest, we discuss best practices, since the act is almost 10 years old—April 1, 2017. Basically, it's a kind of support, if you will, in terms of sharing information.

Mr. Erin Weir: That makes sense, and it sounds fruitful.

Does this group have any decision-making power, or do you feel that it has an ability to influence the decisions the Treasury Board makes?

Ms. Carole Ferlatte: The chairs are both senior officers, like Mr. Bégin, but in the terms of reference, there is no decision-making influence. I know that the chair sits on the PSIC—Public Sector Integrity Commissioner—advisory committee, so you may say there that.... But as far as the group is set up, it's more like a discussion or support group, but more in terms of exchanging practices.

● (0915)

Mr. Erin Weir: If your office or one of the investigations that you contracted discovered really serious wrongdoing in the department, do you feel that this would be welcomed as your doing your job well, or would you fear that you might be subject to some difficult treatment or that it might not be well received by senior management in the department?

Mr. Luc Bégin: Run that by me again.

Mr. Erin Weir: Let's imagine that you played a role in uncovering some really serious wrongdoing. Do you think you'd be hailed as having done your job well and having performed the function, or do you think you might get some push-back or some kind of bad feelings from other senior management in Health Canada?

Mr. Luc Bégin: It doesn't matter what they feel. My job is to manage and bring forth some of these issues, whether it be through internal disclosure or as an ombudsman. That role is basically to bring to light systemic issues or organizational issues.

Mr. Erin Weir: It seems as though the system may not be working as well as it should be. I think Mr. Peterson mentioned the fact that the majority of Health Canada employees feel that they would suffer reprisals if they came forward. It sounds like very few are actually coming forward. I think you mentioned that in the last fiscal year there haven't been any formal cases. I wonder if you could speak to whether the system is working well, and if it isn't, what we could do to make it more open and accessible to federal public servants.

Mr. Luc Bégin: Having or not having disclosures, I think.... I bring it back to the creation of an office where employees come to see us in a preventative way and then look at all possible options to resolve. Not all wrongdoing needs an investigation, but wrongdoing needs to be addressed. There are a multitude of internal mechanisms within the department to address that without going through formal internal disclosure, such as labour relations or informal conflict management.

At Health Canada, we are part of the mental health in the workplace strategy. There are a multitude of opportunities to look at and address any concerns that employees have raised through my office. Hopefully, as we promote this office, employees will come and alert us to potential wrongdoing, and we will take the opportunity to raise that to management and the authorities.

Mr. Erin Weir: We got a similar kind of—

The Chair: Thank you, Mr. Bégin. Unfortunately, we're out of time.

Madam Shanahan, you have seven minutes, please.

Mrs. Brenda Shanahan (Châteauguay—Lacolle, Lib.): Thank you very much, Chair.

Thank you, witnesses.

It seems like it's very well-established and institutionalized. I use that word; it's not a negative connotation. You want to have a system in place to receive wrongdoing.

Something that caught my eye and was a concern to me the other day was the on-boarding of new employees into a new culture. Of course, we're hopefully getting young employees coming in, and it's their first time in the workforce. It's all very new, and it's a lot to absorb that there could be some possible wrongdoing and you're on the spot to report it. I was interested in the decision-making tool that is referred to in our briefing notes and is available to employees. It's "Five questions to ask yourself before making a protected disclosure of wrongdoing".

[*Translation*]

We could also check the French version.

[*English*]

Already you'll agree with me that the words are like, whoa, what's this? It's trying to be helpful to the employee:

> Do you think something is wrong?
>
> Check the facts.
>
> Before making a protected disclosure, ask yourself...
>
> What facts or documentation do I have to support [it]?
>
> Does the activity breach any federal, provincial or organizational codes, policies or rules?

It's putting the onus on the employee, who's not sure. I'm thinking, purely based on my experience in corporate life and so on, that it typically is the newer people who will notice something and say, "Hmm, is that right or is that wrong? What's going on here?" I would like to get your feedback. You have 12,000 employees. Talk to us about what kind of work these employees do.

How can you be sure? The machinery is there. I'm not looking for tens of thousands of cases, but it does strike me that typically when you're trying to get at something specific, you need to have a big funnel. You want people to feel comfortable talking about anything that they see. It's actually a positive thing when corrective action is able to be taken. It's not a big deal, like what's listed in the act, but it's something that's worth reporting on, looking at, and talking about.

Please comment.

● (0920)

Mr. Luc Bégin: I'll go back to the existence and the creation of this office. It is innovative in bringing together all the integrity programs, and in the idea that an employee has a safe haven to come and discuss, in confidence, some of the issues, and is given an opportunity to see what the options are, navigate through the system, and make the best choice on how to address it. That's one thing.

There's also my obligation. If I see information, I have to raise that with the authorities. I have to bring the mirror to management and let them know to take preventative action in order to minimize any potential future wrongdoing.

Again, the act looks at serious wrongdoing. Wrongdoing may be dealt with through grievances, through harassment complaints, or by the manager in his workplace. There may be some changes in the workplace where there is an increase in oversight because an employee has raised some concerns.

Mrs. Brenda Shanahan: But, if I may, in that initial step, somebody may just be wondering, what's going on here? Where's that safe place? When you go through this decision-making tool, it actually asks whether you think your family and friends are going to be affected by this, which could lead to, "Well, okay, I'm out of here. I'm not going to talk about this."

Madame Ferlatte, do you see people in your office for this kind of thing?

Ms. Carole Ferlatte: I will add to what Mr. Bégin was saying. These are ethical situations. It's not black and white; it's zones of grey.

It wouldn't be fair for Luc or me, or anybody in that field to.... It's like a doctor. Yes, you'll be okay.

[*Translation*]

I will say it in French: it is an obligation of means, not an obligation of results.

[*English*]

What we do, and what I do, is all about the awareness. Luc said this, but at the orientation sessions for new employees Luc even takes time out of his busy schedule and does a presentation, so there is a portion of this but it's just part of the awareness.

To go back to your question, I know all the tools on this one. I think it's very well done and we use it. It's part of the package. It's not just giving a package to employees, but it's having the discussions. Our role is certainly not to give advice, meaning "Yes, you should do it" or "No, you shouldn't do it". My role, and that of others in my role and Luc's role, is to give out all the information, and then they have to make the decision. We cannot take the onus or the responsibility for that decision. It's the same for someone who would think of making a complaint of any kind.

To summarize, it's giving out all the information, and those questions are very good, in my view, because they make them think. It's not all black or white and something that will go a certain way. Nobody can predict because there is.... Maybe they think in all good faith that their case is very strong, but when it is held up against the evaluation criteria that we follow, maybe it's not as strong, or maybe it is strong. This we cannot know. We haven't yet seen the evidence they will provide, so it's very difficult for us to talk about an outcome. It's the nature of the beast, if you will, to not be able to say for sure, "Yes, you should go, and this is what is going to happen", because it's case by case.

● (0925)

The Chair: Thank you very much.

Mr. McCauley, you have five minutes, please.

Mr. Kelly McCauley (Edmonton West, CPC): Thanks for joining us today.

Ms. Shanahan, you have had some great comments.

I'm afraid I'm going to move us away from this discussion and bring us back to the motion I introduced on Tuesday, and I'd like to move it forward now so we can discuss it.

I'm not sure if you wish to excuse, or....

The Chair: Well, Mr. McCauley, I'm not sure exactly how long you plan to take. Our next set of witnesses is scheduled to appear in about 20 minutes.

Mr. Kelly McCauley: Okay, I'll get started immediately then.

This motion, discussed on Tuesday, is just moving to have an emergency meeting on the Super Hornets.

I want to preface by acknowledging that we're scheduled to discuss the Public Servants Disclosure Protection Act today, and the reason I'm bringing this motion forward to the committee is that we have new information regarding Boeing and the Super Hornets that we believe substantially changes the conditions in which the Minister of National Defence made his proposal for a sole-source contract for the interim fleet of the 18 jets.

There is also an aspect of this issue that is touched upon with regard to public service disclosures, which does make this relevant to our current discussion.

Since agreeing to the proposed studies in the committee, numerous major issues have arisen in the three large procurement projects: Phoenix, and we heard more of that today in the news; shipbuilding; and now the Super Hornet acquisition, which this committee has an obligation to study. Each of these severely impacts our country, our economy, and our taxpayers.

We believe there has not been adequate debate in the House on these issues, nor have we resumed the studies of emerging situations past the initial meeting or two on these subjects.

That's why I am proposing today that we further study the procurement details surrounding the government's decision to sole-source 18 Super Hornet jets, given that the impact of this decision would be felt by the Canadian industry, our servicemen and women, and our defence capability for decades to come, or maybe just 12 years, as the minister recently wrote in response to an Order Paper question.

The conversation has been unclear and seemingly silent, so we don't know what the full answer is to the question. The fact is that we shouldn't have to rely—

The Chair: Excuse me, I think I will interject now and as it appears you may be going until the time of our next witnesses.

Mr. Kelly McCauley: I will be, probably.

The Chair: I don't want to take up too much of the valuable time of our committee witnesses, so I will suspend just for a moment to excuse our witnesses.

Monsieur Bégin and Madame Ferlatte, thank you very much. You are excused.

Mr. Kelly McCauley: [*Technical difficulty—Editor*] to get these issues talked about.

It should be a natural matter of discussion, as our previous government regularly undertook with the F-35.

While the debate was heated at times, it was always open, with regular committee meetings, unanimous emergency studies in various committees, and regular debate in the House on the issue. Rather than taking on a statutory review of legislation as requested by Minister Brison, something we could do at any point in the coming session, we should be focusing on matters of immediate concern.

I have four concrete concerns that underpin the tabling of the motion today, and I hope to garner support from all members of the committee on these.

Issue number one is the sole-source contract. We're all here on the OGGO committee—by choice, it is hoped—because we feel a duty to watch over the disbursement of public funds, to ensure that taxpayer dollars are being allocated fairly and responsibly, and to make sure that the procurement projects are receiving the proper oversight and scrutiny for the sake of public servants, Canadian industry, and in our case, the Canadian Forces.

It's difficult to justify a sole-source contract worth billions of dollars as being fiscally responsible. In response to an Order Paper question we submitted to the Minister of Public Works questioning the rationale for a sole-source contract, the minister responded that while we wait for new planes to be procured through a lengthy competition process, the government is exploring an interim option to fill the capability gap in the Canadian Armed Forces requirements for defence supplies or services.

On that point I want to comment on Minister Foote's new mandate letter, which says, “I will expect Cabinet committees and individual ministers to: track and report on the progress of our commitments”. It goes on:

> We have also committed to set a higher bar for openness and transparency in government. It is time to shine more light on government to ensure it remains focused on the people it serves. Government and its information should be open by default. If we want Canadians to trust their government, we need a government that trusts Canadians....
>
> Our platform guides our government. Over the course of our four-year mandate, I expect us to deliver on all of our commitments.

One of the commitments is to “Work with the Minister of National Defence and the Minister of Innovation, Science and Economic Development to launch an open and transparent competition to replace the CF-18 fighter aircraft, focusing on options that match Canada’s defence needs.”

Obviously, we've been calling for an open and transparent competition, and the response from the government is that there will be one in five years from now. This contradicts the minister's own mandate letter, which says, “Over the course of our four-year mandate”.

We have a mandate letter demanding openness and transparency. We have a mandate letter saying that over the course of a four-year mandate, of which only two and a half years are left, they expect to deliver on the commitments, one of which is an open and transparent competition that will not be for five years. Therefore, the mandate letter that was issued, I think, just two weeks ago already contradicts the government's policies and workings.

Continuing on the capability gap, which we call the credibility gap, the government's justification for allocating billions of dollars on a sole-source contracted basis has been questioned by members of the military, the media, and military and procurement experts inside and outside the government.

As then Liberal House leader, Dominic LeBlanc, said in 2010, in response to an earlier procurement of jets, there is a "commitment to ensuring that the men and women of the air force have the aircraft they need, but also to do the missions that this Parliament and that the government asks of them, and not simply pursue a particular aircraft for some ideological reason."

Again, we have the government course contradicting what their own House leader said back in 2010.

I can go further with a quote from Minister Garneau, then Liberal defence critic, who said:

> Once the bidders on a contract are evaluated, both in terms of performance requirements and the offsets they are prepared to offer, we are then in a position to select the best aircraft for Canada....
>
> Why are they the best? Why is this the best way of going about it? In one word, it is because it is a competition. By definition, when a competition is held, the best deal is found. Everybody knows that.

I have a couple of other quotes. This is from Minister Garneau again, from March, 2012:

> ...the government has bungled the CF-18 replacement right from the beginning. Will it now do the right thing, which is: first, define a statement of requirements based on our objectives from a defence and foreign policy point of view; second, hold an open and transparent competition; and third, choose the best aircraft based on performance, cost, industrial benefits and, I need to add, availability? In other words, do what the Liberals did 30 years ago when we chose the CF-18.

● (0930)

This one is from May 2012 by Kevin Lamoureux—odd, I know. It's hard to find him speaking in the House, but here's a comment:

> Mr. Speaker, there are many aspects of the budget I could talk about, and many other aspects I could talk about with regard to the 70-plus pieces of legislation....
>
> There is one issue that kind of eats at a lot of Canadians, and that is the issue of credibility. The Prime Minister and the Minister of National Defence have a talked a great deal about the need to replace the F-18, something the Liberal Party agrees with. There a need to replace the F-18. Where we disagree is with the manner in which that has been done.
>
> There has been a great deal of deception from the government to Canadians. At some point, it said $9 billion was going to be the cost, and we are finding out that the cost is going to be more than double that.

At least that government had discussed costs, as opposed to hiding them, as we have seen with the Super Hornets.

Mr. Lamoureux continued:

> My question to the member is this. How can Canadians believe the numbers the government is purporting to talk about on issues like the deficit, when it has really made a whole mess, and there is evidence to show it misled Canadians on the pricing of the F-35 contract? Why should Canadians believe the budget document is a legitimate document...?

It goes back to our concerns that the Super Hornets haven't been priced and that we've chosen an aircraft before we've even negotiated a price.

This last one is from Honourable John McCallum, recently retired, from May 2012:

> The government could have put the F-35 out to tender. In a book coming out today, the former ADM for materiel, Alan Williams, makes a strong case that this F-35 business has been mishandled from day one. He has also indicated that a competitive bidding process would save the taxpayer some billions of dollars.

I'm going to go on about the Super Hornets. It's not a small deal, as we know. These are 18 jets that are going to be flown by our forces, and dismissing this as a matter of "it's only something we're going to do until we get something better" is the wrong course of action. We owe it to Canadians to fully and transparently examine the necessity of the current government's ignoring of the key fairness clause in government contracts regulations.

Issue number two is ministerial responsibility. Earlier, we discussed her mandate letter. One of the main reasons that we, as members, send letters to ministers and move motions calling for emergency meetings on particular topics is that we need answers to questions that only ministers can provide. They are the elected and accountable faces of the departments they lead and the final sign-off for all projects and decisions. For example, we've had six press conferences on the Phoenix pay fiasco, the most recent one just the other day. Minister Foote has been present at exactly zero of them. She's appeared before this committee twice, with only one appearance before a regular meeting; and even then we cannot commit to making any decisions, because she's put her deputy minister in front of the issues.

To date we haven't heard anything from Minister Foote on the sole-source contract. When the previous government was pursuing the F-35 program, our current leader was the Minister of Public Works and Government Services. She regularly appeared before various committees, including this one, to discuss the program.

These jets are going to cost billions of dollars and take years to procure. They're an incredibly complex system, with millions of decisions to be made between two of the largest departments within the Canadian public service. Should anything derail in these discussions, it's up to the same minister who has been silent on shipbuilding, on Phoenix, and now the Super Hornets to take responsibility and explain what went wrong. We're wondering how we can possibly prevent these molehills from becoming mountains if we are not prepared to commit to an adequate oversight and study.

Issue number three is the lack of military experience involved in the manufactured capability gap. Our colleagues on the National Defence portfolio have repeatedly asked who is deciding the capability requirements for the military. Is it the defence staff or the PMO? There's been no response. Then in a November 2016 *National Post* article we found out that the government has ordered 235 military personnel and public servants to take the details of the fighter jet program to the grave. There are 39 civil servants in Public Works who are forced to sign this agreement, which would permanently bind them to secrecy on the fighter jet capability project.

The former assistant deputy minister of materiel, Alan Williams—the very same Alan Williams whom the Liberals relied heavily on during their calls for a competition for the F-35—has said he's never heard of such agreements. He said, “I've never heard of this type of thing before.... I never required it of my staff. I think if I had, I would have been laughed out of the building.”

The article went on to note that the capability gap—which the defence minister blamed on the previous government—has been questioned by a large number of defence sources. In fact, the article notes that earlier in the year, RCAF commander Lieutenant-General Mike Hood said that the CF-18s could fly until 2025 and potentially beyond. Moreover, as the article noted, “In his appearance before the Commons defence committee, Hood didn’t mention anything about a capability gap.”

● (0935)

Past statements from both CDS Vance and the chief of air staff have confirmed that the RCAF has sufficient numbers to meet its domestic and international obligations until 2025. This is the result of the previous government's investments in the CF-18 life extension program.

Given that the current government has deemed it appropriate to circumvent contract regulations on a questionable capability gap, it would be irresponsible for this committee to take the claim at face value, especially with the impact this would have on precedents. It is our duty to ensure that public dollars are being spent appropriately, efficiently, and in the best interests of Canadians. It's difficult to verify that this is the best deal for Canadians if the core tenet of the deal is being questioned and if government workers are under a lifetime ban on speaking about the deal.

We've also discovered that there was a 2014 memo posted on the DND website for over a year about the excess expense of managing two fleets and saying that the capability gap was non-existent. After being told to remove the memo from the website, DND confirmed that the government officials had decided to keep the memo secret. I didn't see how this could possibly be seen as anything but a naked attempt to hide the facts that contradict what the government has been saying.

Rather than openly addressing the concerns expressed by the public and the opposition when confronted by these facts, the government decided to simply declare the memo secret and have it removed from the DND website, something that no previous government, whether ours or Liberal, has ever done before.

Issue number four is the cost to taxpayers. The fact that the RCAF will already be running 18 Super Hornets is seen by many as putting Boeing at a competitive advantage in any future competition. The RCAF will already be set up to train its pilots on the Super Hornet and be geared toward its supply chain in operational requirements. Running a mixed fleet calls for countless unnecessary costs, making it a considerable factor for officials in upcoming competitions.

The government often tells of—

The Chair: Just to let you know, we have approximately five minutes before our next witnesses are scheduled. Obviously the floor is yours and you can speak as long as you wish; however, if there are other speakers, they obviously will have an opportunity as well.

If committee members want to get the next set of witnesses in, I'm just reminding us of where we are from a timeline perspective.

It's back to you, sir.

● (0940)

Mr. Kelly McCauley: The government often touts the lower immediate price tag of the Super Hornet as a primary reason that it should be sole-sourced and preferred. However, as with most other things on this file, the government has not been clear about what kind of price tag Canadians can expect to pay to fulfill this Liberal campaign promise. Boeing likes to use the old value of $57 million U.S. to buy a Super Hornet; however, Australia recently paid $120 million per plane. The most recent analysis done by Denmark showed that the purchase of fully capable fighter jets was $87 million for an F-35 versus $124 million for an F-18. We recently purchased 40 Super Hornets for a total of $10 billion, or $252 million per plane, well over triple what an F-35 is right now.

Boeing has been lobbying the American government to impose a 20% tax on top of the military sales tax, which would substantially increase the cost of these interim jets. If we're going to get serious about the question of good deals for Canadians, we have to ask why we're willing to buy a plane at double the tax and again why we would commit to a plane before we even start negotiating on price or asking for pricing from any competition.

Coupled with the fact that the Super Hornet is at the end of its life cycle and is basically an obsolete plane right now, I'd like to pose a question. How do these evolving financial realities not change the discussion on whether or not this is the best deal for Canada?

I'm going to quote a retired member of Parliament, because it sums up my argument nicely:

> This is obviously costing all of us, members of the Canadian public, the taxpayers, a significant number of dollars.
>
> That is what competition is there for. It is to get the best price, to make sure the Canadian taxpayer is getting value for dollar. This party has talked about value for dollar with regard to this issue from the beginning. That is a responsibility the government has chosen to ignore.

He goes on:

> The other reason is to make sure we get the best equipment available to us. Never is this more important than when we are talking about military procurement for our men and women in the air force. We want to make sure they have the best tools available. Again, without an active, open, transparent and fair competition, we do not know that.

Later he says:

> It is incumbent upon all parliamentarians to make sure we do get value for dollar. It is incumbent upon all parliamentarians to ensure that the process as outlined in Treasury Board guidelines is followed. If that is not followed, then we cannot be sure that we are getting the best price for Canadian taxpayers, and we clearly are not sure.

Now, that former MP was none other than the veteran Liberal defence critic, the Hon. Bryon Wilfert, from a debate on a sole-source contract in 2010.

Taxpayers have so far been kept in the dark about the true cost of the Super Hornet purchase, about the necessity of a sole-source contract worth billions of dollars, and about the long-term impacts on Canadian industry and the military. It's the committee's responsibility to ensure that the rules of transparency, accountability, and fiscal responsibility are kept.

I hope I have your support for this essential study and I hope my colleagues on the other side vote in favour of this study, and for the sake of transparency, not push this discussion and this vote in camera, once again away from the public.

Thank you.

The Chair: Thank you, Mr. McCauley.

Procedurally, colleagues, what happens now is I call for speakers, unlimited debate. Mr. Whalen has already indicated he wishes to speak to this. Mr. Weir, you as well.

Again, I remind colleagues that we have approximately two or three minutes before the next scheduled witnesses appear.

Mr. Whalen, the floor is yours.

Mr. Nick Whalen: I move to adjourn debate.

The Chair: The motion is in order, colleagues. The motion to adjourn is non-debatable. We will vote immediately.

I have a question to the clerk. Is Mr. Tabbara subbed in?

A voice: Yes.

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

The Chair: We will suspend for a few moments while we ask our next set of witnesses to approach the table.

● (0940)

(Pause)

● (0945)

The Chair: Colleagues, we are back in session.

I want to welcome our new witnesses to the table: Mr. Cutler, Mr. Hutton, and Mr. Yazbeck. I understand, gentlemen, that you each have approximately 10 minutes or fewer for opening statements.

I'll start with Mr. Cutler. You have 10 minutes please, sir. The floor is yours.

Mr. Allan Cutler (Allan Cutler Consulting, As an Individual): Thank you, Mr. Chairman.

Honourable members, thank you for the opportunity to appear before you to present my experiences regarding the Public Servants Disclosure Protection Act.

My understanding is that it is in its 11th year and we are now commencing the five-year review. The fact that it has taken so long to do the review, and the short period of time for the review, to me is a strong indicator that there is little interest in protecting civil servants who witness wrongdoing.

Something needs to be done. I deal with these damaged individuals continually because nobody else will. I'm past chair of Canadians for Accountability. We are now the only organization in Canada trying to help whistle-blowers. We have no power. All we have is knowledge and the ability to sympathize and empathize.

In brief, the act completely fails to protect those it's designed to protect or that it says it's going to protect. It's designed to protect senior bureaucrats, not the ordinary public servant. I'm going to give examples of the act and its failure, but I want to give some highlights of the history of the act, because not all of you will be aware of the background history of some of the events that have taken place in these 11 years.

The act came into force on April 15, 2007.

By the way, the gentlemen here can correct me if I misstate anything. I'm not a technical expert. I'm dealing with people.

The Conservative Party promised it would bring in legislation that would enable whistle-blowers to come forward without fear. The act as written is not what was promised. If you give public servants guidance to write an act to protect people exposing wrongdoing done by public servants, the public servants will make certain that they cannot be criticized and that they are protected. As written, the act was flawed right from its beginning.

It's also worth pointing out that it's part of the Federal Accountability Act. In that act, the deputy ministers of departments were designated as accounting officers. They're accountable for ensuring that measures taken to deliver programs are in compliance with policies and procedures and that effective internal controls are in place. However, a fundamental problem with that legal requirement and that act is that there is no consequence if you don't, and what has happened? A good number of them have ignored the law because there's no reason to follow it.

There have now been two Auditors General investigations on this office. The first took place October 2010 and ended with Christiane Ouimet resigning for allegedly intimidating employees and engaging in retaliatory action against them.

An internal whistle-blower blew the whistle on the whistle-blowing office. Madam Ouimet was paid about $500,000 to leave—not a bad payment. Mr. Friday, the present commissioner, was the legal counsel at that time and appeared before this committee and testified he had seen nothing done wrong by her in that office at any time.

The second investigation was done in 2014 as a result of two complaints by external whistle-blowers about the treatment they received from the integrity office. Mr. Mario Dion was then the commissioner, and Mr. Friday had become the deputy commissioner.

To quote from paragraph 54 of the Auditor General's report of 2014:

> On the basis of the information gathered during this investigation, we concluded that the Deputy Commissioner committed a wrongdoing as defined in subsection 8(c) of the PSDPA by grossly mismanaging the oversight of the investigation file.

The Auditor General's report also stated that on the basis of the information gathered during the investigation:

> We found that the actions and omissions of PSIC senior managers (the Commissioner and Deputy Commissioner) regarding this file amount to gross mismanagement.

● (0950)

Mr. Dion accepted the findings of the report. It was tabled on April 15, 2014.

This is an admission by the commissioner that either he is completely incompetent or the act is extremely flawed. You can't have it both ways, and I don't happen to believe Mr. Dion was incompetent. I think he was working under an act that caused him to appear to be incompetent. Subsequently, he resigned early and was appointed to a five-year term as chairperson of the Immigration and Refugee Board of Canada.

The third commissioner, and the current one, is Mr. Friday. At best, he has the same problem as Mr. Dion, either the act is extremely flawed or he was guilty of gross mismanagement as reported in the Auditor General's report and as accepted by the commissioner of the integrity office at that time.

Having given you a brief background—I could have given you a lot more depth into things that went on in that office and with that office—I want to give you some actual cases that involve the office. For some, I can use the name, but sometimes I can't due to confidentiality.

The first case I'm going to speak on very briefly is that of Dr. Imme Gerke and Dr. Jacques Drolet, a husband and wife who worked for Health Canada. They were recruited by Health Canada and were involved in global regulatory strategies. What they discovered was an inability to do their job and tremendous resistance when they tried to implement the changes.

They made at least two attempts to get together with PSIC, but unsuccessfully. The end result of their story...? They resigned from Health Canada. They sold their home. They moved to Germany and are very happy, gainfully employed, and accepted as professionals in Germany.

The next case is that of Don Garrett, a contractor in British Columbia. He reported wrongdoing by PSIC in 2011. What should be of concern is that the complaint involved asbestos. It took him years, with no help, to find that the asbestos report existed—though denied by the government—and he had no support from the office.

Another employee who reported wrongdoing was fired in retaliation and went to PSIC for help. What they were told was that they were not a government employee anymore. The act states that reprisal includes termination of the employment of the individual. However, the office told them that they were not a public servant so they couldn't be helped. That was dismissed by the office.

Then there's the case of Sylvie Therrien, who I know is going to be mentioned again. She has spent four years trying to have her case looked at. Why has it taken four years? Because she's been fighting the integrity office for four years. The office that should help her is the office that has been abusing her and fighting her, and she's had to have legal representation. As of January 17, the Court of Appeal stated that the commissioner violated her rights and fairness rights. I'll let David Yazbeck speak more on that.

If a person who wants to report wrongdoing faces retaliation and has to fight the people who would be expected to help, why would they do it?

There are a couple of other ones. I've put down why.... I'm going to conclude because I've been signalled that I have one minute. That's fine.

I'm going to conclude with a direct quote from a whistle-blower who has experience with PSIC. This is a written quote he actually gave me through an email. He said that in every case where an employee has spoken out against wrongdoing in government, he has been the one to be beaten up and has been treated very poorly by the employer and in most cases the employee has not been able to return successfully to his job.

● (0955)

That's the experience of whistle-blowers. Nothing has changed with the new law. Nothing has changed with the Public Servants Disclosure Protection Act. It's just as bad as it ever was, and I end up getting the phone calls and dealing with them after they have tried the office and been turned away.

On that point, I'll make one final point. The worst part of the act is that the burden of proof is on the whistle-blower. If I go to you and tell you there's wrongdoing, my management has all the documents and the ability to vet the documents and clean them up before you even go to me, because the act lets PSIC contact them and say, “In 48 hours, or a reasonable time, we want to go in and look at the documents.” Do you really think those documents aren't cleaned?

On that note, I'll say thank you and I'll pass it to my colleagues.

The Chair: Thank you very much.

Before I invite Mr. Hutton to speak, I'll say to our two remaining witnesses, I know that you probably have much more information to provide to the committee than the 10 minutes allocated to you; however, it has been our experience that during the questioning, much of the information you have will probably come forward. I ask you if you could possibly keep it to the 10 minutes, so we have enough time in the remaining part of the hour for all of our committee members to ask you questions.

Mr. Hutton, you have 10 minutes, please.

Mr. David Hutton (Senior Fellow, Centre for Free Expression, As an Individual): Thank you. Please signal me when I'm running out, and I will respect that.

The Chair: I will.

Mr. David Hutton: First of all, I want to thank the committee for the opportunity to testify. People like me have been beating on the doors of Parliament for more than 10 years and asking for the opportunity to explain what's really going on with this law and this agency, and up to now we've been completely blocked.

The last time I was able to address parliamentarians on the subject of this law was in May 2006, before the law came into force, when various NGOs—people like me and Allan—testified that the law was badly written and would fail. As a result of our testimony, the Senate passed 15 substantive amendments to improve the law, one of them dealing with the reverse onus that's been talked about so much. Sadly, all of these were rejected. We're so glad to see the review finally taking place, albeit five years later.

My purpose today is to help the committee understand why this system is failing and what can be done about it. I'll look at the law itself and also touch briefly on the way that it has been administered by successive Integrity Commissioners.

Starting with the law, it's a very complex law and there's a lot to it. What I'm going to do is take a very thin slice through it and take you through the trajectory of what happens to a whistle-blower who approaches PSIC. We'll follow that trajectory.

From the moment a whistle-blower approaches PSIC with a disclosure of wrongdoing, things are likely to go wrong for them, because the very first thing the Integrity Commissioner will do, if he decides in fact to do anything at all, will be to inform the whistle-blower's head of department about what the allegations are. You can imagine that this is quite concerning to that person.

The act claims that the whistle-blower can be protected by strict confidentiality about their identity, but in many cases that's completely bogus. In many cases, only a handful of people have the information that lies behind the allegations. Perhaps the whistle-blower is the only person who's been asking questions about whether something is kosher. Even if that's not the case, departments spare no effort and do everything they possibly can to track down the traitor, the leaker. That's their attitude. There's a very strong likelihood that very quickly the whistle-blower's cover will be blown and they'll be subject to reprisals. That's number one.

Let's say that a whistle-blower still has some confidence in PSIC —they may not—and they go back there, this time with a complaint of reprisal. What happens? You can imagine this person pleading with the entire staff of the commissioner, asking them to please stop these reprisals, and saying that their life in the workplace is now a living hell: they've been isolated, they've been bullied, they've not been given the proper work, they're clearly going to be fired, and they don't know how much longer they can tolerate it. They say, “You told me I was protected, so can you stop this?” Essentially what they're going to learn is that nothing will be done to prevent those reprisals. The management can do essentially what they want to that person, and they just have to sit there and suck it up.

Where's the protection? Well, here's the protection, they're told. We're going to start a process that in all likelihood will take a very long time and that offers the very faint hope that at some point in the future the tribunal will order a remedy for them. The remedy means some kind of compensation for all the damage that's been done to them. That's the protection, but if the whistle-blower asks some questions, they'll discover that no one has ever received a remedy from the tribunal. At this point, they will realize that the promise made to them that they were protected was bogus, and that the life they know and enjoy presently is over and there's no going back.

You can see at this point already that there are serious problems, but let me take you through some of the other steps just so you understand the sheer depth of this.

First of all, nothing happens very quickly now. Although the commissioner has to decide quickly whether to launch an investigation into the reprisals, the actual investigations often take an inordinate length of time. They'll stop and start, and in my opinion, they're very slipshod. We know of one case where it took two years to decide to conclude a simple investigation for reprisal.

● (1000)

The Integrity Commissioner has no powers of investigation for cases of wrongdoing. He has all the powers of the Inquiries Act to compel witnesses and testimony and so on, and to receive documents. For investigations into reprisals he has no special powers. He simply has to go to those accused, the aggressors, and seek their voluntary co-operation. We can see that the investigation itself is likely to be very superficial and take a long time.

If we consider the six or nine months that it might take to conclude the investigation, by this time the whistle-blower's life has dramatically changed, simply due to the elapsed time. The harassment in the workplace has taken a terrible toll on his mental health. He probably has classic PTSD symptoms by now. He has been fired on trumped-up charges, often accused of the exact wrongdoing he's trying to expose. After 20 years of sterling service he's now accused of being incompetent. He has been blacklisted in his chosen profession and is now unemployable.

As you can imagine, he has terrible financial problems as a result of this and is headed towards losing the family home. The stress of all this is unbelievable, which reflects on his family and his loved ones, because they are desperately worried about their future. They do not understand what's going on. They can't understand why they should have to suffer in this way and there's always the suspicion, because they're being told that their loved one is a bad person and telling lies, that he must have done something wrong to deserve being treated in such a horrible way. That's their situation.

Let's say that the commissioner makes a referral to the tribunal. This might sound like good news, but again you begin to see the depth of the problem because in the tribunal, the aggressors, the persons conducting the reprisals, are going to be represented by a team of lawyers paid for by the government, while the whistle-blower has to find the resources to pay his own legal costs.

The strategy of the defence is pretty much always to delay and delay by any means possible. They aim to drag the proceedings out as long as possible, which exhausts the whistle-blower emotionally and financially and destroys the person further in that way.

The real killer is this onus issue that we've talked about, because the whistle-blower's prospects of succeeding before the tribunal are essentially nil. I should say to you that this is such an embarrassment. The reversal on this provision is whistle-blowing 101. It was whistle-blowing 101, 10 or 15 years ago before this law was written and the fact that it would not be in this law is a huge red flag saying there was no intention to ever make this law work.

Faced with the situation and having no understanding of what the tribunal is going to look like, whistle-blowers simply bail out. They're desperate to escape this terrifying process where they know they can't win, and so they settle. Not a single whistle-blower has completed the tribunal process. Not a single one has been ordered a remedy by the tribunal. In not a single case has any sanction been taken against aggressors who ruined this person's life. I want to say more about it. Maybe someone will ask me a question later.

This is only the tip of the iceberg. I'm not going to comment at length on how the law has been administered, but let me say this. For a long time I ran a charity and part of what I did was to run a confidential hotline for whistle-blowers. We gave very minimal help to people. It complemented what Allan's group did. My records show that of the 400-plus whistle-blowers that I had contact with, about 50 of them had dealings with PSIC.

What I learned from their encounters with PSIC would often leave me shaking with anger. I was stunned by the dishonesty, the contempt, and the way they were treated. A previous chair of this committee remarked sometime ago that this was an act not to protect whistle-blowers, but to protect deputy ministers from whistle-blowers. That's exactly the way it is.

● (1005)

I'll end by imploring this committee to dig deeply. Don't just call people from within the bureaucracy, but outsiders who can tell you what's really going on. We've developed a suggested witness list and can explain to you why it's important that you see quite a number of other types of people.

Thank you again for your time and consideration. I look forward to your questions.

The Chair: Thank you very much.

Finally, we have Mr. Yazbeck for 10 minutes, please, sir.

Mr. David Yazbeck (Partner, Raven, Cameron, Ballantyne & Yazbeck LLP, As an Individual): Mr. Chair, members of the committee, thank you for allowing me to testify this morning.

The 10 minutes is real time, not lawyer time, right?

The Chair: Real time.

Mr. David Yazbeck: First, I just want to give you a little bit of information about me. I'm a labour and human rights lawyer here in Ottawa. A substantial portion of my practice is representing whistle-blowers. I've represented Dr. Shiv Chopra and Dr. Margaret Hayden, Health Canada whistle-blowers; Sylvie Therrien, the EI quota whistle-blower; and Corporal Robert Reid, who blew the whistle about corruption in our mission in Hong Kong.

I've also represented a number of others who have had decisions in the Federal Court and before the tribunal. David has mentioned the track record of the tribunal. I'm doing a case in April called Dunn, which is likely to be the first decision from the tribunal on the merits of an allegation. Yesterday, I was in the Federal Court of Appeal on behalf of Edgar Schmidt, the Department of Justice lawyer who expressed concerns about how the department vets bills before they go to Parliament. I have extensive and practical experience under this act.

I want to start with the preamble to the act. It's something I would urge the committee to consider seriously as you conduct the review. Ask yourselves, is this act working in accordance with the intentions of the preamble? The preamble situates the act of whistle-blowing in the heart of our constitutional democracy. It is essential to the operation of our constitutional democracy. It ensures that governments operate properly, it enables people to expose wrongdoing, and ultimately it assists the public. Ask yourselves—you've heard the stories from my colleagues here, and you'll hear some from me—is that the way the act is running? It's not. It's broken, and it needs to be fixed.

I also note that because of that status, I would hope that the committee does give this a thorough and serious review. If you need any more information from me after this session, I would be happy to provide it. I'd urge you to follow my friend's suggestions regarding other witnesses.

I am going to speak about the reverse onus. Reprisal, in fact, is a subtle, insidious, and difficult thing to prove. It's rare that you can find overt or direct evidence of it, and as my friends have pointed out, there are many opportunities to hide that evidence by the time you get to a tribunal. Institutions and managers, often just inherently, and sometimes even subconsciously, turn against the whistle-blower. If the evidence goes, you're out of luck.

This is not an unusual notion. Reverse onus provisions exist in almost all labour relations legislation in Canada in specific cases. I'll give you an example. If you're organizing a union at a department store and your manager finds out and fires you, you can file a complaint and can allege that the termination was based upon your union activity. When you file that complaint, it's presumed to be true and the employer has to disprove it before the labour board. That process has been operating fine for decades. This is not a radical notion at all. If an employer has a reasonable, justifiable basis for the termination, then they'll win. If they don't, then the griever, in this case the victim of the reprisal, will win.

There's an added bonus to the reverse onus. You all know about how few cases actually get referred to the tribunal. In my view, that's in part because the standard the commissioner's office uses is much too high. If you have a reverse onus, it's going to have the effect of reducing the standard when they're investigating complaints, and therefore, increasing the number of complaints that go to the tribunal.

Next I want to talk about the PSIC investigative process, which is flawed. It lacks thoroughness. I find that they view whistle-blowers with suspicion. Often, it's procedurally unfair. There's a tendency to find ways not to deal with a complaint or dismiss it. They don't have a contextual or a subtle approach, in my view. What's troubling is that we have decades of jurisprudence dealing with the Canadian Human Rights Act process for investigating human rights complaints and referring them to the tribunal. That jurisprudence has set out crystal-clear standards for the process of investigation, yet we continue to have to litigate fairness issues in the Federal Court and the Federal Court of Appeal with this commissioner's office. I've done six or eight cases so far, and there will be more to come.

Let me give you two examples. The first is the El-Helou case. Charbel El-Helou made three allegations of reprisal. The commissioner decided that one was justified and applied to the tribunal. The commissioner dismissed two of them. We ended up setting aside that decision because the commissioner's process was unfair. They didn't actually give us a fair chance to influence his decision. The commissioner started a new investigation as a result of the Federal Court's order.

Even though they had already applied to the tribunal, they decided to look over that one allegation again as part of this new investigation. What they did, over my strenuous objections, was to review all three allegations and then decided there was no basis for all three of them, including the one they had already decided had a basis. Now they're taking the position before the tribunal that they can't support that allegation. That's ridiculous. It's unfathomable that they would take that kind of approach when they did have evidence in the first place.

● (1010)

The other thing is that in the course of their investigation, I made a very lengthy submission regarding why all these allegations should go to the tribunal. Internally, they prepared a scathing analysis of our submissions. It was highly critical of me and the whistle-blower. Did they disclose that to us before they made their decision? No. We only find this after the fact.

The second example is Therrien. Ms. Therrien goes public with concerns about using quotas to achieve savings in the EI plan. She gets suspended, her reliability status is revoked, and she's fired. She files a grievance with respect to all those things. She also files a reprisal complaint and says that each of those actions was an act of reprisal.

The grievance has nothing to do with reprisal. We're not alleging it. There's no evidence called about reprisal, nothing like that. But the commissioner's office looks at this and says, oh, she has a grievance and the grievance refers to these three events as well so we don't have to deal with it. They refuse to deal with it. They even make that decision before I get a chance to make submissions to the commissioner's office.

What we say is that I'm counsel for Therrien before the adjudicator, and we're not talking about reprisal at all there. We take the position that the adjudicator doesn't have jurisdiction to deal with a reprisal. What does the commissioner do with that? They say they don't care. It's mentioned over there and they're not going to deal with it.

This ends up going to the Federal Court of Appeal. As Mr. Cutler pointed out, less than a month ago the Court of Appeal said that's unreasonable. Just because those acts are mentioned in this other process, you can't simply refuse to deal with it. You actually have to look at it. You actually have to ask yourself the question, is reprisal being dealt with in that process?

So they'll have to ask the question again and I'm not certain what the answer will be, frankly.

I will also note that those are just two of many legal battles that have ended up in the Federal Court. The only reason those two people were able to do that was because of their unions. In one case it was the Public Service Alliance of Canada and in the other case it was the Professional Institute of the Public Service of Canada. They've been footing the bill to fix this act and how it's operating. If the two hadn't had union representation, they probably wouldn't have been able to do this.

This leads me to the question of legal fees. The fact that the act allows for legal fees of $1,500, and an extra $1,500 in exceptional circumstances, is novel and good. I welcome that, but that's not nearly enough. If you were to go all the way through the process and actually go to a reprisal hearing that lasted maybe four or five days, you would be paying at least $10,000 or $15,000, and probably more, particularly if you don't have access to somebody who knows the law and is up to speed on it.

That has to change in order to make the system more effective. It doesn't have to be giving them costs; it could also be allowing for costs to be awarded in favour of the complainant if they're successful. That's one mechanism. I would offer this caution: please do not suggest that costs could go to the respondent. If that happens, it will have a huge chilling effect on whistle-blowers, because they'll have to be told that they might actually end up paying money.

My colleagues here have spoken a bit about the impact on whistle-blowers, and I agree with them. I think the committee should know that if somebody comes to me and says they're thinking of disclosing some wrongdoing, I have to tell them certain things. I have to tell them that these events will happen, as Mr. Hutton explained. These are not undocumented. There are plenty of articles, journal articles, including an article in the *British Medical Journal*, about how whistle-blowers are treated when they blow the whistle.

On top of that, I have to tell them, look, you'll need to go through a very lengthy and a likely unfair and difficult investigation process. If we're successful as a result of that process, you'll have to go a tribunal, where you'll have a lengthy hearing, etc., and you may not even win. To that, a lot of people will think it's ridiculous, and they'd be a fool to disclose this wrongdoing. That takes me back to the preamble again. The whole point of the act is to encourage that person to do that. I have to discourage them as part of my advice to them.

The last thing I want to say, members of the committee, if I can be a little strong and almost emotional here, is that whistle-blowers are heroes. They risk their families, they risk their careers, and they risk financial stability in order to make the operation of government better and therefore improve the lives of Canadians.

The system they've been given for 11 years has been proven to be ineffective. It doesn't work. It needs to be fixed. This committee has a golden opportunity to do that. I would urge you to listen to people like us and do that. This is not only better for whistle-blowers. This is also better for Canadians.

Thank you.

● (1015)

The Chair: Thank you very much, Mr. Yazbeck.

To all of our witnesses, thank you.

Colleagues, we probably have enough time for one seven-minute round of questions.

We'll start with Mr. Drouin.

Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.): Thank you, Mr. Chair.

Thank you to all the witnesses for being here.

I've heard Mr. Cutler's opinion before, but I want to get your opinion on a "pre-act" environment. The act has been in place for 11 years. You perhaps represented a lot of cases before that time. Have you noticed any changes at all?

Mr. David Yazbeck: I have not really. There is some change in the sense that there is a process available, not only to investigate wrongdoing but also to help people who are engaged in reprisal. I still find that because the process is so ineffective, the advice I give to people is the same; it's not significantly different.

Mr. David Hutton: I would assert that whistle-blowers in Canada are significantly worse off now than they were 10 or 15 years ago. That's happened in three stages. The first was with the Public Service Modernization Act. There is a section in there that strips public servants of the right to sue their bosses if bad things are done to them. That was slipped through quietly and that was very insidious.

The second was this act, and you've heard several times how bad we think it is.

With regard to the third stage, part of this law requires codes of conduct for each department. The logic, clearly, is that if you look at the definition of wrongdoing, most of it is up in the stratosphere. You can do a lot of wrongdoing without actually breaking the law. It's the code of conduct that tells you the sorts of ways in which most of the wrongdoing really happens, so it made a lot of sense for the law to refer in its list to the code of conduct, but it called for a new code of conduct.

Treasury Board sat on its hands for five years or so and eventually came out with a new code of conduct, and each department had to write its own. Many departments rewrote their code of conduct to criminalize whistle-blowing and to make it a firing offence to say anything negative about your department, and all kinds of negative consequences would flow from that. The media reported that.

Whistle-blowers were better off 10 or 15 years ago.

● (1020)

Mr. Allan Cutler: I'm totally in agreement.

Let me just say that what has happened is smoke and mirrors. Now there's something to hide behind. We have a process that will help them, so we're not responsible for doing the right thing anymore. I've tried to tell a number of different politicians that they wear what the senior bureaucracy does. Some of them are gods unto themselves. They can do what they want, but if something goes wrong, it goes right up to the minister. It's sort of like, well, we have to cover it up.

Why should you cover it up? Instead you should be thanking God that you have employees who come forward. You should be touting how good your employees are rather than saying, "Look at what they did." The message you're giving is "Look at what the employees are doing to us." Well, who's giving you that message?

Mr. Francis Drouin: Mr. Hutton, in your statement, you said the first step, when a whistle-blower decides to come forward, is to call the head of the department. I equate that to a situation in which if I'm being harassed by a gang member, the police will call the gang boss and ask if one of their employees is doing this to a member of the society. How would you change that?

I can see why the department, as soon as the deputy is called, would say that it has to protect what's going on in the department, but that creates this culture of covering up as opposed to a culture of openness, as Mr. Cutler said. There's the idea that it has an employee who's sounding the alarm, and it needs to fix that. How do you change that within the act?

Mr. David Hutton: I think one of the things you need to do is to make it dangerous to take reprisals, and we're not even close to that. Other jurisdictions do that. Other jurisdictions allow for injunctions to be issued very quickly to put a whistle-blower back in his job and to prevent any further action against him.

Mr. Francis Drouin: Which jurisdiction do you know?

Mr. David Hutton: Ireland would be a good one. There are a number of countries that have excellent laws that are much better than ours. The law would also establish personal liability for taking reprisals against someone, so all kinds of bad things could happen to the people who take the reprisals. Of course, the reverse onus is a given. I think the fundamental strategy here is that once a person is identified as a whistle-blower who is trying to protect the public interest, then you just ring-fence them, and anyone who goes against them does so at their severe peril.

Mr. Francis Drouin: Mr. Yazbeck, you've touched a bit on the unions helping their employees, but in your experience how do they interact with PSIC and the employee who has been affected. Is that working well?

Mr. David Yazbeck: Do you mean in the course of an investigation or a complaint, or just generally?

Mr. Francis Drouin: Yes, in the course of a complaint, if an employee decides to move forward with whistle-blowing on a particular department, is the union well-equipped? Are they well-trained to coach them on how to move forward with that?

Mr. David Yazbeck: In some cases, yes. Unions have a duty to represent and they've taken upon themselves to learn about that, so I've seen them provide effective representation for complainants. Oftentimes when the case becomes too complicated or is difficult, then someone like me will be retained by the union. I'm essentially representing the individual at the behest of the union and we try to be as effective as we can.

However, at the end of the day, whether it's a union representative representing the individual or me, we still experience the same sorts of difficulties with the fairness of the investigative process, difficulties with how investigators approach allegations of reprisal, how seriously they take them, and the standard they use to assess whether to go to the tribunal or not. Those are all matters that are still in dispute, in my view, and will ultimately be resolved by the federal courts.

● (1025)

The Chair: Mr. McCauley, you have seven minutes, please.

Mr. Kelly McCauley: Thanks. It's very interesting.

Mr. Hutton, you mentioned other jurisdictions that do a better job. We don't have a lot of time and you mentioned you were going to provide us with other witness names. Could you provide us those jurisdictions and what you like about their whistle-blowers when you provide those names?

Mr. David Hutton: Surely, and when—

Mr. Kelly McCauley: No, I'm just going to ask something else. Sorry, I have so many other things, but when you send in the witness list, can you send us that?

There's a great quote here from Mr. Cutler from an earlier interview with *Maclean's*, "If experience tells us anything, it's that accountability measures are only attractive to parties in opposition." That's very good.

I just want to ask a couple of quick questions, gentlemen. We were talking earlier about the Super Hornet procurement and that the government has gone and muzzled an unprecedented 140 people for life. We haven't got a firm answer on whether they're protected by the whistle-blower legislation. I don't think they are, from looking at some of the.... I want to get your feedback on what you think about something like this. How can taxpayers be protected and, more importantly, how can these people be protected? We've heard very clearly that there's almost a culture of intimidation with the bureaucrats. How do we protect these people and what should we do?

Mr. David Hutton: I'll respond initially.

The issue here is secrecy and keeping information hidden. One thing that is very interesting about the PSDPA is the extraordinary lengths it goes to make sure that nothing will ever come out of the allegations that whistle-blowers make. That information is buried forever, and no one can ever get at it. As for the criminalization of whistle-blowing, it's the same idea. Often the strong wish of the bureaucracy is just to bury some information and make sure it can never come out.

Laws like this ought to be written so that is simply not possible.

Mr. Kelly McCauley: Have you ever encountered people who have been forced by law to take issues to the grave?

Mr. Allan Cutler: I have dealt with a person at National Defence who was in the process of exposing a vast problem, which I think is still there. What we needed were the documents and we had asked for them, and then just as we were going to get the documents, suddenly they became covered by national security, which they weren't before.

We've never been able to pursue it and prove it, and because it's now a matter of national security, you can't get in the door.

Mr. Kelly McCauley: This is about security, which I understand, but also purchase pricing and procurement.

Mr. Allan Cutler: Yes, so if there's wrongdoing, you can't uncover it easily.

Mr. Kelly McCauley: It's almost a double whammy. Taxpayers aren't protected, but more importantly, the public servants aren't protected.

Mr. David Yazbeck: I have a response to that as well. The Canadian Standards Association, which is now the CSA Group, recently published a guideline on whistle-blowing. Both Mr. Hutton and I were part of the working group that put that together. One of the chief recommendations for any employer is that you need to create a culture of speaking up, a culture that allows people to feel free to speak up. When you see situations like that and hear about what we're talking about.... Have we over the last 11 years created that kind of culture in the federal public service? No, no, it's not working.

Mr. Kelly McCauley: Mr. Cutler, in your interview with *Maclean's*, you talked about five ideas you had for helping whistle-blowers. We don't have time to discuss those five—

Mr. Allan Cutler: I don't even remember the article.

Voices: Oh, oh!

Mr. Kelly McCauley: I'll send it to you and maybe you can provide us those five ideas.

Mr. Allan Cutler: What year was it?

Mr. Kelly McCauley: It was from October of 2013. I'll send it to you.

We were talking earlier about Phoenix and all the problems we've had. We've done a lot of ATIP stuff and we've seen stuff come out in January where the department was aware of it. Right in black and white, it says, "Clear the backlog". When we asked about it, we heard, "Oh, there is no such thing." We saw other ATIP reports saying that 0% of the backlog had been cleared, but they went ahead and caused all these problems with Phoenix.

Mr. Hutton, you mention it on your website. What could we have done? It had been brought up in committee. PSAC brought it up. It had been brought up several times. How much more could have been done? What systematically is set up such that this information is getting quashed and we're still making these damaging decisions?

Mr. David Hutton: It's very simple. Phoenix is a classic example of what can happen when there's a serious problem that's widely known, but everyone is terrified to talk about it.

I believe that there were very serious problems in the original demonstration project, which claimed to be such a wonderful success. That was years ago. It did not have all the functions it was supposed to have—

● (1030)

Mr. Kelly McCauley: As recently as March we had the DM talking about opening champagne bottles for it.

Mr. David Hutton: Right. Exactly.

Now, I knew in 2013 that Phoenix was a disaster. I'm not going into why it.... A lot of people in this town knew. No one came forward and nothing was done. If we had additional whistle-blower laws in place, many whistle-blowers would have come forward, not just one or two. They would have gone to an agency that is a bit like yours—

Mr. Kelly McCauley: Do you think just a better whistle-blower system...?

Mr. David Hutton: Yes. They would have gone to the—

Mr. Kelly McCauley: Let me move on with that. What can we do? We'll hear a lot more, but it sounds like what Mr. Drouin brought up about reporting on a gang member. I've seen it in private practice as well, where you basically end up losing your job.

Is it a matter of taking this completely away from the government? We chatted with Health Canada earlier, and it's as if you had a Health Canada problem and you reported it to Health Canada. I would want to get away from them and go to a completely independent system, away from the government or away from the department. Would that help or...?

Mr. David Hutton: Well, basically—

Mr. Kelly McCauley: Can I have your Coles Notes version? We don't have much time.

Mr. David Hutton: Sure.

This also probably answers your other question. What we really need as an agency is the power, the reputation, and the leadership of the Auditor General, but focused on whistle-blowers, so that when wrongdoing is reported to them, they do a thorough, impartial, and proper investigation and then they write a report to Parliament.

Mr. Kelly McCauley: Would you take it completely out of the departments?

Mr. David Hutton: It's the—

Mr. Kelly McCauley: It sounds like every department has its own little keystone—

Mr. David Hutton: Yes, but this is a whole separate system. The heart of this is PSIC, and the Integrity Commissioner is an agent of Parliament. He's supposed to be completely independent of the bureaucracy, but he's not.

It would be very easy, with significant changes to the law and staffing, to make this into an agency that would be as effective as the Auditor General—

Mr. Kelly McCauley: It sounds like—

The Chair: Thank you very much. Unfortunately, we're out of time.

Mr. Weir, please, you have seven minutes.

Mr. Erin Weir: Thanks very much.

Mr. Hutton, I heard you on the radio this morning making the connection between whistle-blower protection and the Phoenix pay system. Mr. McCauley has touched on this, but I just want to confirm this with you. In your view, if we'd had a better whistle-blower protection system, could the Phoenix boondoggle have been avoided?

Mr. David Hutton: Absolutely. There's no question in my mind. It would have been stopped years ago, long before any rollout was attempted. A few senior people would have egg on their faces, quite justifiably, but the problems would have been so public and so clearly laid out that everything would have stopped until all those technical problems were fixed, before any kind of rollout was attempted. We would not be sitting here discussing this incredible train wreck that the bureaucrats seem incapable of fixing.

Mr. Erin Weir: Thank you.

You and the other panellists have been quite critical of the existing whistle-blower protection regime. I wonder if the solution to that is to change the act, or whether it lies in the appointment process for the Integrity Commissioner.

Mr. Allan Cutler: I was going to say both. I think you need to rewrite the act almost completely. The other thing is that I think your appointment process needs to be redone. The first commissioner was appointed by the Privy Council. They found her in a department. They got her appointed. With regard to the second one, David here and I were both together talking to Mario Dion when he was interim commissioner. We had with us Duff Conacher at the time. Mario told us we could rely on his integrity because he'd never be the permanent commissioner. He became the permanent commissioner. Mr. Friday has been in that office continually. They went through a competitive process to select him, but my contacts within the Privy Council told me he was going to be selected before they did the competition, so there were no surprises when he got the job.

We have a concern. The Auditor General is an outsider who sits there and looks at things, and has, I'll call it, the outsider's viewpoint. The present commissioner and the other two commissioners are insiders who have colleagues, and they don't want to make waves because they're going to end up dealing with their colleagues in the future.

Mr. David Hutton: Can I—

Mr. Allan Cutler: Go ahead, David.

Mr. David Hutton: I'll build on what Allan has said.

I have a letter here written by Dr. Keyserlingk, who ran the Public Service Integrity Office, the predecessor to PSIC, who did a bang-up job. He did a wonderful job with very limited resources and authority. He campaigned aggressively for a stronger system, and that's why we had the PSIC put in place.

I have the letter here, which was written to Pat Martin, a former chair of the committee. It's a six-page letter. It's very carefully thought out. It makes three strong recommendations to the committee. This was written after the Christiane Ouimet fiasco, when they were looking at the next appointment. It makes three recommendations.

The first one is to employ someone who's respected and established outside of the bureaucracy, not someone who's grown up inside the bureaucracy. The second one is to make the appointment process much more public and transparent. Imagine the U.S. appointment process. You can see who's applying. You can hear what their qualifications are, and you can see how the decision is made. The third one, regarding the mandate of the commissioner, is to make it much clearer that the commissioner's mandate is to expose wrongdoing. That's their job.

That recommendation is in this letter because Christiane Ouimet came up with the idea that her mandate was prevention. She would not concern herself very much with looking at existing wrongdoing; she would send people out to educate people and raise their understanding so that everyone could understand that wrongdoing is a bad thing and we shouldn't do it. That was basically her approach. That was a smokescreen that she created while essentially doing nothing for whistle-blowers.

I'll provide this letter to the committee.

● (1035)

The Chair: Thank you, sir.

Mr. Erin Weir: Thank you very much.

You mentioned, Mr. Hutton, that you'd also provide the committee with a witness list. I wonder if you'd like to say a little bit more about the types of witnesses you think we should be hearing from, as well as any particular individuals.

Mr. David Hutton: Absolutely.

By the way, I didn't just cook this up myself; I've had a lot of consultation with colleagues.

I think the important thing is to get a variety of perspectives, mostly from outside of the people who are running the system. There are four categories. I suggest you call at least one witness from each.

The first is people who are anti-corruption professionals, such as certified fraud examiners, because they deal on a daily basis with situations in which there's serious wrongdoing. They have a lot of knowledge. Their professional body does a lot research. They understand the prevalence of corruption, the impact of it, and how it can be exposed. For example, they will explain to you how research demonstrates that whistle-blowing is the number one strategy you need to avoid and expose wrongdoing. It's much more effective than anything else.

You need to speak to former PSIC clients. These are whistle-blowers who have been through the system. You've heard some names here. We've suggested three different people here.

Mr. Allan Cutler: One of them is sitting in the back here.

Mr. David Hutton: Yes. The challenge is to select the most suitable witnesses.

The third category would be other whistle-blowers, because this system covers only a tiny proportion of our workforce in Canada. It's only federal government public servants. Very similar stuff goes on in the private sector. I think you need to talk to whistle-blowers, and there are lots of them. There are lots of whistle-blowers who have tried to expose private sector corruption, and you need to talk to some of those.

Then, finally—and this is really important—other countries are decades ahead of us. We are the *Titanic* of whistle-blower protection. We have no experience anyone would want to study, and we've done virtually no research. Other countries are decades ahead. They have excellent lawyers. They have conducted extensive research. You need to have before this committee people who are knowledgeable about those systems, with the extensive insights they have into how whistle-blower laws work in practice. We've suggested some names here that would be extremely valuable to you.

The Chair: Thank you so much.

Our final intervenor will be Mr. Whalen for seven minutes, please.

Mr. Nick Whalen: Thank you so much for coming here, and thank you, Mr. Chair. It's fantastic to hear testimony from the other side, from people who see there are problems with the system. They're not here to try to defend the system, which, it was very apparent to us two days ago, is not working on some fundamental levels.

Mr. Allan Cutler: You might say we're from the dark side.

Mr. Nick Whalen: Or vice versa.

I have four questions. Hopefully we can be brief and succinct. First, in what particular ways does the Public Servants Disclosure Protection Act give the senior civil service too much power?

Maybe I'll start with you, Mr. Yazbeck, and we'll go down the table, if you can point to some particular ways in which senior civil servants are given too much power by the legislation.

● (1040)

Mr. David Yazbeck: I think in part it's that there's a system established. Departments are required to have a senior officer and there is a system established. For a lot of people, that's going to be the first place they go to. That, ultimately, puts the determination of whether there's wrongdoing in the hands of the department.

Employees don't have to use that. They could go directly to the commissioner's office, but still, it's sort of the default mode. Beyond that, the way the system is structured is such that the likelihood of someone getting relief if they have been subject to reprisal is extremely slim. There are many tools that senior management can use. They can delay. They could remove evidence. They could make motions before the tribunal on procedural matters. There are all kinds of things that can cause delay.

Mr. Nick Whalen: Mr. Hutton.

Mr. David Hutton: I support what David has said. Basically, senior people have enormous power and in this system there's absolutely nothing to impinge on or affect that in any way.

Mr. Allan Cutler: He mentioned the senior officer they can go to. Who does that senior officer report to?

Are you going to risk your future career by supporting a whistle-blower? They're in a terrible dilemma.

Mr. Nick Whalen: Here's an idea I'd like to float by you before we get an opportunity to look at some foreign systems and how they work. Does the Integrity Commissioner need police powers and anti-corruption experts? Should this organization be responsible as a general clearing house for whistle-blowers, not just in the public or civil service but whistle-blowing generally, so that they could have the expertise and be available? Then they wouldn't be so obviously beholden to the civil service, because their job would be to root out wrongdoing and defend whistle-blowers rather than to prevent wrongdoing and protect departments.

Mr. David Hutton: I'll respond initially. If you look at the countries that have done the best job, their whistle-blower legislation is sector-blind. In other words, it doesn't matter where you are and whom you've worked for, the same kinds of rules apply. That's the most effective way. The problem getting there is that you may get significant push-back from powerful corporations who are doing nasty things.

It's good idea. If you look at the laws that work well in other countries, then they certainly provide very strong mechanisms for digging in and investigating, and serious consequences, especially for taking reprisals.

Mr. Allan Cutler: I'm in agreement with you.

One of the things you may not be aware of is that in the office of the Integrity Commissioner, virtually all the staff are public servants. They go in and out. They have their own careers as vested interests because they're going to move back into the mainstream.

Mr. David Hutton: Let me add one other thought. One of the problems with the investigative process that the Integrity Commissioner uses is that a lot of it is contracted out. We've had situations where an investigation under way was being done very well.... It was the Don Garrett case, in which it looked as if the investigator was going to get to the heart of things and then everything went quiet. What we discovered eventually—

Mr. Allan Cutler: Two months later.

Mr. David Hutton: —was that the investigator's contract had been allowed to lapse, so she was no longer involved. She didn't even know that had happened. In my mind, they sabotaged their own investigation. Then someone else was brought in who wrapped everything up in a few days.

Mr. Nick Whalen: My final question would be, how tight do the timelines need to be to maintain the appearance of justice and the welfare of whistle-blowers? I guess this is really a question for Mr. Yazbeck because he's involved in procedural matters.

Do we need a special process with very tight timelines, or can we go through the general type of process that's used by the courts?

Mr. David Yazbeck: Are you talking about timelines in terms of investigating either wrongdoing—

Mr. Nick Whalen: I mean at both the investigation stage and also in the tribunal, and then appeals process and the various motions that you talked about, the dilatory motions.

Mr. David Yazbeck: There's an old labour board saying that labour relations delayed are labour relations defeated and denied, and that applies in this case as well, so tighter timelines would be better. I could give you examples of timelines that we're dealing with on cases that are years and years old and we are still not even at the tribunal yet.

The concern that I have though with very specified timelines is that oftentimes things arise and you need more time and an extension is legitimate, and having too tight a timeline might encourage investigations to be less thorough and less effective, and you wouldn't be able to look at as much evidence as you might. Remember that as part of the investigative process the commissioner is sometimes able to get evidence that will be helpful to use down the road when you actually go to the tribunal. The complainant doesn't have that opportunity. They're just sitting there waiting for the evidence to come to them. Missing out on that opportunity at the start could harm the case down the road.

● (1045)

Mr. Nick Whalen: Following up on that, in terms of the amount of work you do in this field, would you say most of your time is spent trying to work on the wrongdoing side of the legislative, or is most of it spent on the reprisal side?

Mr. David Yazbeck: It's probably about 30:70 with 30% wrongdoing and 70% reprisal.

Mr. Nick Whalen: We have an act that essentially has the opposite balance of what we would hope to see if our goal is to actually ferret out whistle-blowing rather than encourage a system that essentially encourages reprisal.

Mr. David Yazbeck: It seems that way.

The Chair: Thank you very much.

Gentlemen, thank you all for being here. To say that your testimony before this committee has been illuminating would be an understatement in my estimation. There are a couple of things. Should committee members have further questions of you, I assume that you would welcome them and you would be able to respond in kind. Further to that, should you have any additional information that you do not think was covered adequately in your testimony here, please supply that through the clerk for the benefit of all committee members.

Finally, gentlemen, let me just say that, in my opinion at least, I think all members of this committee, who I know well, would concur that this issue is certainly one of a cross-partisan nature. There should be no politicking on either side of the table here. It's of great concern, I'm sure, to all members of Parliament to ensure that our professional public servants are dealt with professionally and fairly. It appears from your testimony that in many instances that has not been the case. I can also assure you that the report that this committee will be developing and subsequently tabling in the House of Commons will take your testimony very seriously.

Thank you once again for being here. Your testimony has been wonderful.

Mr. Allan Cutler: Could I make just one final comment? David and I have discussed this before and we actually handle more whistle-blowing cases than the commissioner does, and we don't get paid.

The Chair: Thank you for that.

The meeting is adjourned.