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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)): Ladies and gentlemen, I call the meeting to order. I'm a big believer in punctuality and starting on time. It's 8:45 and we have quorum. I think we'll start.

This is the continuing study of the Public Servants Disclosure Protection Act, also known as the whistle-blowers protection act.

We are very pleased to have with us the Auditor General of Canada, Mr. Ferguson, and Mr. Chamberlain, representing the Association of Canadian Financial Officers.

Mr. Ferguson, I believe you have a short opening statement. Following that, we'll have Mr. Chamberlain's short statement. We'll follow that with a round of questions from all of our committee members.

Mr. Ferguson, welcome to our committee. The floor is yours.

Mr. Michael Ferguson (Auditor General of Canada, Office of the Auditor General of Canada): Thank you, Mr. Chair.

Thank you for this opportunity to present our office's experience under the Public Servants Disclosure Protection Act.

Joining me at the table is Andrew Hayes, senior legal counsel for the office.

Under section 14 of the act, the Auditor General has the power to receive, review, and investigate disclosures about wrongdoing on the part of the Office of the Public Sector Integrity Commissioner or PSIC officials.

To date we have received 27 disclosures of alleged wrongdoing by PSIC officials that have resulted in three completed investigations, one investigation that is still under way, and one performance audit.

In conducting our work, we've noted some limitations that exist within the act. For example, we cannot investigate complaints of reprisals that come from PSIC employees and, in the course of an investigation, we are not allowed to seek information from outside the public sector.

[*Translation*]

These limitations proved to be a problem in 2010, when we began investigating three disclosures received by our office under the act. This caused us to convert our investigation into a performance audit, to be able to fully examine allegations of reprisal and obtain all the required information.

In our view, this illustrates why it's important that PSIC employees have the same avenues of recourse as other public servants. We see two options if Parliament wishes to address the limitations we've noted.

The first option is to expand our mandate. We've noted that the Public Sector Integrity Commissioner of Canada has recommended that consideration be given to amending section 14 of the act. This would allow the Auditor General to investigate disclosures coming from the public concerning PSIC officials and reprisal complaints made by PSIC employees, with all the related powers and duties of the commissioner.

[*English*]

Our experience has been that PSDPA investigations are often complex and time-consuming. An expansion of our mandate would likely increase the number of disclosures, with considerable impact on our resources. To take on this work, we would need additional funding or we would have to reduce the number of performance audits that we can do.

The second option is to consider an alternate model, such as that which exists for the Information Commissioner and the Privacy Commissioner. These agents have the ability to appoint an independent investigator to deal with complaints regarding their obligations under the Access to Information Act and the Privacy Act.

The committee should be aware that we did not pursue many of the complaints that we received because they were disputes of decisions reached by the commissioner. The correct approach for an individual to dispute a decision is to file an application for judicial review with the Federal Court, which we believe is appropriate.

[*Translation*]

Ultimately, it's up to Parliament to decide how it wishes to address the limitations we've noted under the Public Servants Disclosure Protection Act. We will, of course, comply with whatever Parliament decides.

Mr. Chair, this concludes my opening statement. We would be pleased to answer any questions the committee may have.

Thank you.

[*English*]

The Chair: Thank you, Mr. Ferguson.

Mr. Chamberlain, go ahead, please.

Mr. Scott Chamberlain (Director of Labour Relations, General Counsel, Association of Canadian Financial Officers): Thank you, Mr. Chair, for the opportunity to appear before you today.

My colleagues and I at ACFO have had the opportunity to counsel hundreds of public servants who came forward and wanted to do the right thing. In the vast majority of these cases, those public servants decide not to do anything.

I've heard the committee ask questions about why the numbers are so low. I believe it's not because public servants don't want to come forward and disclose wrongdoing, and not because there is no wrongdoing that exists; it is because these public servants' singular fear is that they will lose their livelihood as a result of doing the right thing.

With that in mind, ACFO submits that in order to have an effective system, we need a single system managed by an independent office that has the power to protect the livelihood of those who come forward.

I'll talk a little about my background. I am ACFO's general counsel and director of labour relations. As such, for every case file that comes into my organization, I either talk to the member or talk to the labour relations adviser, who talks to the member. Until very recently, ACFO discouraged its members from coming forward. We've always discouraged them from going to the departments, because we don't feel they are protected there. Until about two years ago, we discouraged them from going to PSIC, because we did not feel they would be protected there. We think that's changing, and their trajectory is in the right direction now.

I've had the opportunity to represent the Trade Union Advisory Committee to the OECD, representing 62 million workers globally, and 20 million workers at Public Services International before the ILO, working on whistle-blowing and anti-corruption measures. I've also served on the Public Sector Integrity Commissioner's advisory board, and I'm the chair of Canadians for Tax Fairness, an independent, not-for-profit NGO. In that role, I've referred a number of private sector whistle-blowers to law enforcement, to PSIC, and to the media.

I can tell you that in all these—internationally, private sector, and public sector—there is a fear that blowing the whistle will ruin your life. I think you've heard the evidence already that this does occur.

We have five recommendations we think will help in this regard. I'll indicate where the models are, because these recommendations are tried and tested in other jurisdictions.

The first is, I think, unique to ACFO in terms of what the committee is going to hear. We believe that a public servant who blows the whistle should have a staffing priority. The staffing priority system is well established in the public service. It's typically used for public servants who come back from leave. Let's say they've relocated with their spouse, or they've had military service; when they come back, if they're qualified, they are at the front of the queue for jobs.

I think you've heard other witnesses suggest that pay protection is in order for whistle-blowers, and I agree with that, but I think that before you protect pay, you can give the members an option to use the staffing priority process to find another job outside the context in which they've blown the whistle so that they can continue to contribute. Most of them do want to continue to contribute and not sit at home while a lengthy process takes place. If you look at the U. S. system, the South Korean system, and the whistle-blower protection in South Africa—the provisions are detailed in our brief—you see that there is pay protection, and in some cases staffing priority rights, in those jurisdictions.

Second, we believe—and I know you've heard this, so I won't belabour the point—that a reverse onus is absolutely essential for cases of reprisal. This exists most recently in Quebec. I'm not even sure the legislation is published, but I know through colleagues in Quebec that the Quebec legislation will have reverse onus. It exists in the U.S. and in South Africa.

Third, to echo Mr. Ferguson's point, we believe that there should be an expansion of the jurisdiction so that investigations can follow the trail into the private sector. Too often we hear of investigations stopped because a senior public servant has retired, or the chain of waste goes into the private sector. This needs to change. You need only look to New Zealand or Australia for examples of legislation covering both the public and the private sectors.

Fourth is an incentive system. This is something we're working on internationally quite a bit. We believe that in certain cases whistle-blowers should be rewarded if their information results in the recovery of revenue. If you look at the U.S. system, it's firmly in place there. Actually, it has been in place since the days of Lincoln. In Ontario the securities commission has just put in a program like this, and Korea has a system as well.

● (0850)

The fear that people raise with an incentive-based system is that it will result in a lot of false claims, but the evidence does not bear that out. Much more is recovered. I have spoken to people in the U.S. in particular who work on these files directly. They report that false claims are not an issue and that they have recovered billions of dollars as a result of an incentive-based system.

Strangely enough, it is firmly based in English common law, a principle called *qui tam*, which has just gone out of practice. It's time to bring it back.

Finally, we believe that there should be a consolidation of the integrity function. The disclosure process in the departments does not work. My members will not use it. They believe and I believe that departmental systems are designed to contain problems, not to deal with them. These systems serve to cause waste to fester, and it comes out when it's much worse. It comes out often in the media, or by other means.

Independence is essential. You can only do that through an independent office, and we had one already.

I have just a few other points.

There is something I would like to read to you. It's a little long, but I think it's worth it. Then I'll close.

It's an impact statement from a member we supported. She was involved in the PSIC case. There was a decision. It was the chair of the Canadian Human Rights Tribunal.

It's going to sound familiar, because it details gross mismanagement in terms of harassment, as you have seen in some of the more recent cases. I would urge you to read those cases and think about why PSIC is dealing with harassment when it seems so obvious when you read these cases.

The answer, similarly, is that departmental systems for harassment do not work. They're designed—again—to contain harassment, and they're not independent. This is why you're seeing harassment come up through the PSIC process and result in decisions that seem fairly obvious.

Realize that this harassment is often a product of corruption and waste in government and that harassment is a way to suppress people from speaking out, to suppress people from blowing the whistle.

Please bear with me for two minutes.

This is from Doreen Dyet. She has never disclosed her name before. She's a member. She was anonymous in the report, but she wanted you to know her name today.

> As a former Director of Financial Services of the Canadian Human Rights Tribunal I would like to convey my feelings to the Standing Committee about my experiences in dealing with the wrongdoing of the CHRT Chairperson....
>
> As a manager, staff frequently complained to me about abuse...and her inappropriate conduct. Prior to her appointment, I had received a Chairperson's Award for work I had done in implementing harassment and recourse policies and procedures at the CHRT....
>
> I was involved in a total of four difficult and grueling processes before [PSIC ruled in my favour].

She filed a harassment complaint. She participated in an investigation with the PCO. She filed multiple grievances over multiple years and had no recourse. Doreen Dyet only got a result by going to PSIC, and for that, ACFO supports PSIC and the current commissioner. We also support all 16 recommendations save one, which is that we believe that the legal fees should be at the discretion of the PSIC commissioner, not TBS, in terms of offering whistleblowers more.

Given the time, I won't read through the whole statement, but I will provide it, translated, to the committee afterwards.

I will say that Doreen Dyet was successful. She won her whistleblowing complaint. She lost her marriage. She lost her health. She lost her job after 34 years of service.

With the whistle-blowing system that we now have in place, even if you win, you lose. Ultimately, that is why, to 95% of members who call me up, I say, "You shouldn't go forward. If you're worried about feeding your family, if you're worried about your job, if you're worried about your health, it's not in your interest to come forward."

The changes that I and some of the other witnesses have recommended are important to making a change happen so that people aren't afraid of losing their livelihoods.

Thank you.

● (0855)

The Chair: Thank you very much.

We'll start our seven-minute round with Mr. Peterson.

Mr. Kyle Peterson (Newmarket—Aurora, Lib.): Thank you, Mr. Chair, and good morning, everyone.

Thank you for being here. I appreciate your submissions today.

I'm going to follow up with you, Mr. Chamberlain, on your comments and some of your recommendations. Can you elaborate on the reverse onus? I know some of us here are lawyers, but a lot of people aren't.

Just so that we can get it on the record, why is it that the way the system is now may put an undue burden on the complainant, and how might the reverse onus alleviate that undue burden when it comes to reprisals?

Mr. Scott Chamberlain: Simply put, reverse onus is a rule of evidence. Normally, if you're alleging something, you have to prove it. That makes legal sense in most circumstances.

In this context, when we're often dealing with a power imbalance, the person who is blowing the whistle is usually not the person who has the power and the control. Often they are excluded from the workplace after this, so they don't have the evidence. It is a very difficult evidentiary burden to prove. Often it gets to a fifty-fifty, a "he said, he said" or a "he said, she said", and that weighs in favour of the respondent in those cases. Reverse onus would change that balance—very slightly, in fact—so that the employer, who has the control, who has the power, and who has the other employees at their disposal, bears a bit more of an onus.

It's not unheard of. We have managerial exclusions, for example, which depend on whether an employee falls within a union or not. For certain exclusions, the onus is on the union and for certain exclusions the onus is on the employer. It's not unusual. It's not typical, but it's a well-known legal principle, and it serves a purpose in this case.

● (0900)

Mr. Kyle Peterson: You mentioned that when you get calls from potential complainants in your organization, you often dissuade them from using the process because of the flaws you illuminated today.

Are there other avenues you recommend to them, or is it, "Sorry, there's not really anything you can do, and it's in your best interest just to keep quiet"?

Mr. Scott Chamberlain: In Doreen Dyet's case, the one I was just referring to, we tried everything before we went to PSIC. This was more than two years ago. Today I would go to PSIC early on, and I do. I recommend that members go there, because I think the commissioner has made some improvements.

We grieve, and we file harassment and human rights complaints. Those were all done in that case. Two other unions went to the PCO and asked for another investigation, which was done. None of that resulted in a change in having it dealt with. Only the PSIC process did.

In terms of my other role, in terms of gains for tax fairness, I refer people to the media, the CRA, law enforcement, and PSIC now. I believe there's a role for PSIC, and the trajectory is going in the right direction.

Mr. Kyle Peterson: I want to follow up briefly before I move on to Mr. Ferguson.

On the reward system, there are other jurisdictions you mentioned that use that system. What has been the outcome of that process there?

Mr. Scott Chamberlain: I'm most familiar with the U.S. system. It's almost like a private prosecution, in a sense. If someone raises an issue of the government being defrauded, they are standing in the feet of the people and usually suing a third-party provider. If they prosecute that up to conclusion and recover money for the government, they get 30%, for example. If the Department of Justice steps in and says it's a valid case and they're going to take it forward, they get somewhere in the nature of 10%.

All reports are that it's a very effective system, and they've recovered billions of dollars in the United States.

Mr. Kyle Peterson: Thank you, and thanks, Mr. Ferguson, for being here too.

From some of your recommendations, it's clear that you're limited in what you can do under this act, but I think the purpose of the act is to ensure that when complainants and employees witness what they believe is wrongdoing, they can come forward without fear of reprisal. The purpose is to make sure we have an effective public service and that people who are conducting themselves in a manner that can be defined as wrongdoing aren't profiting from that and aren't able to thrive in the public service.

Those two goals are laudable. I think we can all agree on that, but the question is how to get there.

In your review, do you see this act as being the only means? I know Mr. Chamberlain would like all complaints to go to PSIC and believes that this would be an appropriate solution. You mentioned that there should be a different resolution process. I believe that was what you said, that there should be a different avenue for complainants beyond what's in the act.

Can you expand on that?

Mr. Michael Ferguson: Understanding that our role under the act is limited and that the only thing we are commenting on is our role, right now what we see is that there are some limitations to what we actually can do.

That really came to light in 2010, when we had three people bring forward complaints to us under the act about what was happening at PSIC itself.

Mr. Kyle Peterson: Right.

Mr. Michael Ferguson: When we started to look at it, we realized that these were complaints of reprisals by PSIC employees against the PSIC organization itself, and we didn't have the jurisdiction to investigate those. Similarly, it was going to require us to get information from outside the public service, and the act didn't give us the ability to do that either.

We had to stop the investigation under the PSIC legislation, and we had to conduct a performance audit under our own legislation. That wouldn't work in all cases, but in this case it did work. However, it also meant that the people who brought the complaints forward didn't have the same protection that the act would have provided them had we done an investigation under the act.

● (0905)

The Chair: Thank you very much.

Go ahead, Mr. Clarke, for seven minutes.

[*Translation*]

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

I also want to thank the three witnesses who are appearing before us this morning.

I have a few questions for you, Mr. Ferguson.

I understand that you can't investigate complaints made by PSIC employees and that you also can't investigate complaints made by the public in general.

That said, can you conduct an investigation when the case involves public servants who have proceeded through disclosure entities within departments?

Mr. Michael Ferguson: Do you mean any public servant?

Mr. Alupa Clarke: Yes. There are two avenues to take into consideration. People can proceed through the Office of the Public Sector Integrity Commissioner or through internal sources.

Can you investigate public servants who have proceeded through internal sources?

Mr. Michael Ferguson: No. Our responsibility is simply to review processes used at PSIC.

Mr. Alupa Clarke: Okay.

Mr. Michael Ferguson: As a result, our responsibility and role is to investigate any complaints regarding how PSIC operates. Nonetheless, again, our powers are limited, given that we can't review a reprisal complaint made by a PSIC employee.

Mr. Alupa Clarke: Okay.

Mr. Michael Ferguson: So our role doesn't involve reviewing the department's internal process.

Mr. Alupa Clarke: I understand what you're saying.

Your responsibilities concern public servants who file complaints regarding the process used at PSIC.

However, what about public servants who file complaints regarding a department's internal process? If you can't respond to these people, who can they contact? I suppose the solution would be to contact PSIC.

Is that correct?

Mr. Michael Ferguson: If a person wants to file a complaint regarding an issue with a department's internal process, a solution would be to do so directly with PSIC.

Mr. Alupa Clarke: First, it's inevitable.

When people decide to submit complaints to your office after proceeding through the Office of the Public Sector Integrity Commissioner, do you systematically accept the complaints?

Mr. Michael Ferguson: No.

As I said, over the years, we've received 27 complaints from various public servants. In some cases, the people simply wanted us to review the commissioner's decision.

Mr. Alupa Clarke: Okay.

Mr. Michael Ferguson: That isn't part of our role. Our role is simply to determine whether PSIC used the appropriate process when it reviewed a complaint and made a decision. The issue is that many complaints we've received in the past concerned the final decision.

Mr. Alupa Clarke: Mr. Ferguson, I've read a few of your reports and I've noticed that your office excels at determining whether a certain process was properly followed or whether a particular process was necessary.

Let's look at what I call the internal avenue, in other words, the disclosure process within departments. Would it be good and reasonable to consider eliminating this avenue in order to enhance PSIC's or your office's avenue and make available all the resources at the departments' disposal?

The committee members have noticed that public servants often fear a department's internal avenue. The public servants must deal with people who have committed wrongdoing. Do you think this avenue could be closed to enhance PSIC's more independent avenue?

● (0910)

Mr. Michael Ferguson: We haven't conducted any audits on this matter.

Mr. Alupa Clarke: Okay. I understand.

Mr. Michael Ferguson: Obviously, a number of people have concerns about the current process. However, I can't make comments because we haven't reviewed the situation. Our role isn't to make comments on policies, but simply to give our opinion on how the government's policy is implemented by the departments. We can make comments only on how the legislation works, on how we operate and on our role under the current legislation.

Mr. Alupa Clarke: Thank you.

[*English*]

The Chair: Mr. Stetski, welcome to our committee. I should say anyone with a “ski” at the end of their last name is always welcome to this committee.

Some hon. members: Oh, oh!

The Chair: Welcome. You have seven minutes.

Mr. Wayne Stetski (Kootenay—Columbia, NDP): Thank you. I appreciate being here.

I spent my career as a public servant, working with initially the federal government, then the Province of Manitoba and the Province of British Columbia, both as a union member and then in management. This topic is very much of interest to me.

Mr. Ferguson, I guess I'll start with you.

You had two options for a way in which you thought this situation could be improved. One was expanding your mandate, and the second was to appoint an independent investigator.

Do you have a preference between those two, if one were going to be implemented?

Mr. Michael Ferguson: Mr. Chair, I think it's simply a matter of our saying that there are some limitations. There are limitations concerning people who are bringing forward complaints of reprisals against PSIC and there are limitations in our ability to get access to information.

We think those two things need to be fixed. They don't necessarily need to be fixed so that they are done by us. The mandate could be removed from us and done by some sort of independent investigator as well.

Really, I'm not suggesting one or the other. I think the work that we have done under the investigations we have done well, but we are limited in what we can do. Anything that expanded our mandate would, as I've said in my opening statement, have an impact upon our resources.

If people from outside the public service were able to bring complaints about PSIC's work to us or if we were able to get reprisal complaints from PSIC employees, it doesn't necessarily mean that we would end up doing more investigations. It would mean, however, that we would have to assess more complaints, and all of that takes time.

Similarly, though, if Parliament decided to put in place some sort of independent process, there would be a cost to that as well.

I'm thus not advocating one or the other. I would be happy to work within whichever framework Parliament decides they want us to work in. I think, though, there would need to be a recognition that if we were asked to do more, there would be an impact. Right now the only way we could get the resources to do this would be to reduce the performance audits that we present to Parliament.

Mr. Wayne Stetski: But you certainly believe that improvements are needed.

Mr. Michael Ferguson: Absolutely. That's why we put forward those two options. Right now, the way it works is that if PSIC employees themselves want to bring forward a reprisal complaint, they have to bring it forward to the PSIC commissioner, so they need an avenue, just like all other public servants have an avenue, to bring forward a reprisal complaint in an independent way.

Similarly, we run into issues when an individual has gone through the whole process—has made a complaint to PSIC, and PSIC has investigated and made a decision. The individual may not be satisfied with the way PSIC conducted that investigation, but often by that time the individual may already be retired, so again there's a limitation on whom we can receive information from and on investigating that information. I think that fixing those two things is important. Whether they are fixed by changing our mandate or by having a complete mandate exist somewhere else is really for Parliament to decide.

● (0915)

Mr. Wayne Stetski: I guess the second part of this, to me, is broader in nature. It would appear, and I think it's true, that in some departments there is a culture of fear of reprisal for whistle-blowing.

Mr. Ferguson or Mr. Chamberlain, what are your thoughts on the appropriate training, let's call it, of management, and on setting a culture that does not, in essence, include a fear of reprisal? How important might that be? Have you ever seen examples of management being held accountable for that culture of fear?

Mr. Michael Ferguson: I'll answer quickly and then pass it over Mr. Chamberlain.

Certainly training, I think, is critical in any of these types of things, so that the organization understands the importance of treating these things respectfully and in the right way, by believing people who are coming forward and doing a thorough and appropriate investigation. I think setting that tone and that environment is critical.

Have we seen any situations? We did turn the three complaints that we got from PSIC employees themselves in 2010 into an audit of PSIC. I think that there were repercussions for the commissioner of the day, at that time, as a result of our audit.

I'll turn it over to Mr. Chamberlain to answer your question.

Mr. Scott Chamberlain: Thank you.

Mr. Chair, I think training is not as important as making these changes to the act. Most public servants receive training, inboarding training. I think we've heard that from some of the departments. I think it's not very effective because most members assume that they are not going to have that problem, so it goes in one ear and out the other.

Right now our union has a pilot project with PSIC in terms of educating the union officers on the value of PSIC. Then we in turn are doing some outreach to our members. If they hear it from the union, there's a basis of trust there. If they hear it from the department, I really don't think it's very effective.

I know PSIC has spent a lot of time on outreach to try to improve its reputation, which was tarnished quite badly early on, but I think outreach and training has to be one part of a much broader approach. I've explained the process to the same member twice, years apart, and it's not something that people tend to retain. I think outreach and training are valuable, but it's only one small piece of the solution.

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

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

Thanks to the witnesses for being here.

I want to expand a bit on the culture issue. I want to understand your role, Mr. Chamberlain. You mentioned that you often advise those who come forward with complaints not to go through the process. If I put myself in my shoes, it might mean denouncing a friend. There's a friendship environment that happens there, and if there is corruption or wrongdoing, it can be hard for people to step forward. All the onus is on them to prove it, and then they have to suffer the consequences of that. How is that you advise employees to move forward, and what's the breaking point for saying, "Okay, now's the time to go to PSIC"?

Mr. Scott Chamberlain: It's a little bit more nuanced than I put it.

When someone calls in and says, "I have this problem", they don't know if it's an integrity issue or it's wrongdoing; they just know they're getting issues in the workplace. We put before them all their options: grievances, human rights complaints, PSIC. At one point in time, we weren't telling them about PSIC, because we just weren't using the process. We had lost faith in it. However, we put all the options to them, and they usually ask us about the repercussions of these options. They're always worried, even if they're filing a grievance about reprisal. I don't tell them they shouldn't file; I tell the member the most likely outcome if they file, and they make the decision not to.

Only a small part of changing that culture is about training. It's more about making sure that they can see examples out there of people who've blown the whistle and haven't suffered dire consequences because of it. They can look at that model.

In my union right now, we use the example of the one member who came forward at the human rights tribunal and was successful. I still tell them that it took a terrible toll on the person, but they were successful.

The change point you're asking about occurs because those people are particularly brave and they say, "Damn the consequences; it's not right."

Often my members have designations. Perhaps they're accountants and they're being asked to do things that are against their professional ethics and against their personal ethics. When they go forward, they're going forward at their own peril, and they know it, generally. They're just particularly brave people.

I don't blame the people who don't go forward. I think protections need to be in place to encourage more people to go forward. That's the difference between someone who chooses to go forward and someone who doesn't. It's just someone who's particularly brave, in my mind.

From the outside, when we look at whistle-blowers, we all say, "Oh, that's a great thing they did", but it's not like that on the ground. I call it the Serpico effect. I don't know if you know the New York City police officer who disclosed the corruption in the NYPD and got a bullet in the head for his trouble.

Even good people tend to go along with the harassment and the isolation of whistle-blowers because they didn't say anything. They want to believe that they didn't do anything wrong and that the whistle-blower must be crazy. There's a tendency for people closer to the whistle-blower to isolate them. That's just a reality.

The Serpico reference was not hyperbole. I have a close colleague in Quebec with the SPGQ, and he had a member who committed suicide with a memory stick in their pocket about corruption in the construction industry in Montreal. The stress of whether to blow the whistle or not, and the repercussions on their life, caused them to take their own life. This is serious business for some people.

There are a lot of people out there who have decided that when they have a person telling them to do something unprofessional or unethical—maybe the person sends them an email ordering them to do it—they're just going to cover themselves, and that's the way it gets resolved. That's not right.

● (0920)

Mr. Francis Drouin: Thanks for that.

You mentioned that one of the recommendations is for reverse onus and you expanded on this with Mr. Peterson, but are there any other jurisdictions in your experience where they've adopted that specific practice?

Mr. Scott Chamberlain: Yes. In the Province of Quebec, they've just brought in their whistle-blower legislation for the public service, and it includes a reverse onus for reprisal. Bear with me; it's in my notes, in our briefs.

Mr. Francis Drouin: Yes.

Mr. Scott Chamberlain: There are a few other examples, I believe, in South Africa and the United States.

Mr. Francis Drouin: In the United States, is the evidence there to show that it does work?

Mr. Scott Chamberlain: All of our research—we've done some international comparative work through Public Services International and the Trade Union Advisory Committee to the OECD—has shown that the reverse onus hasn't ground systems to a halt. There's been no opposition. I haven't heard from advocates in those countries saying that the reverse onus is under fire. I think it's just part of the system that's accepted, and it's working.

Mr. Francis Drouin: Great. Thank you.

Mr. Ferguson, Mr. Stetski mentioned one of the options. You had no preference, but did you say that the alternate model used by the Information Commissioner and the Privacy Commissioner limits your capability to further investigate?

Mr. Michael Ferguson: No. The model as it exists right now and the powers we have under the act right now are limited. We can't look at reprisals from complaints coming forward from PSIC employees and we can't get information from outside the public service, so the situation as it exists right now limits our ability to investigate the way PSIC handled one of their investigations. Either of the two options we put forward would be with the intention of either removing those limitations from us or of giving the power to somebody else to do that investigation, but without the limitations currently in place for us.

● (0925)

Mr. Francis Drouin: I want to touch base on culture again.

I know you perform performance audits in departments. In your experience, are deputy heads, managers, and directors rewarded for creating a good working environment and creating a good culture within government and within their departments? How is that being measured?

The Chair: You have about 30 seconds to respond to that.

Mr. Michael Ferguson: That's a good thing, I think.

Voices: Oh, oh!

Mr. Michael Ferguson: Again, that's not something that we've actually looked at from that perspective. Obviously anything that I would say on that point would be purely anecdotal. I think that would be a better question for someone who deals with that on a regular basis.

The Chair: Thank you very much.

We'll go now to five-minute rounds.

Go ahead, Mr. McCauley.

Mr. Kelly McCauley (Edmonton West, CPC): Welcome, gentlemen.

Mr. Hayes, I feel I should ask you something just so you haven't wasted your time coming down, but I'm not.

Mr. Chamberlain, what are your thoughts on all the resources that we spend? When Health Canada was our first group of witnesses, I think they said they had 30 people in their office for investigations. Then when they had one, they contracted it out to a private company. Indigenous Affairs has a relatively large office. They've done two investigations over a three-year period. I wonder if you have some thoughts about all the resources that we're spending, department by department, on something that doesn't even seem to be working.

Mr. Scott Chamberlain: Mr. Chair, I view it as being an incredible waste of resources in that they're completely ineffectual, in my mind. The fact that the crux of this job, investigating, is farmed out outside of government is incredibly wasteful as well. When we have a body, if properly resourced, that employs former law enforcement to do their investigations and knows this act inside and out, I think it's incredibly wasteful.

Often these offices are combined with ICMS and harassment. I truly believe, whether they do it intentionally or not, that they are designed to contain issues and to protect senior management in the departments. What struck me when the individual from Health Canada testified was the statement that the first thing they do when someone comes to blow the whistle is tell them to go talk to their supervisor.

Don't get me wrong. In a union, sometimes one of the options is to say to the member, “That's not right. That seems wrong. Maybe we can talk to your supervisor." We have those conversations. We're not against any. We work with management all the time; they're our colleagues and our counterparts in labour relations. However, if that person has no guidance and he or she is going to someone who is often the person who has told them to do something they're not comfortable with, there's a problem in the system.

Honestly, I think millions of dollars could be better spent putting in that independent office. No matter how much you invest in those departments, my members aren't going to trust the department if the final word is in that department.

Mr. Kelly McCauley: I think it's human nature as well.

Mr. Scott Chamberlain: Yes, absolutely.

Mr. Kelly McCauley: Mr. Ferguson, do you have any thoughts on Mr. Chamberlain's suggestion that all these resources that we're spending by department be utilized in a single independent office?

Mr. Michael Ferguson: It's not something that we have looked at. I couldn't tell you what the level of resources are, how much they're used, or that type of thing. Really, it's not something I can comment on.

Mr. Kelly McCauley: Fair enough.

I want to get back to the reprisals. Mr. Chamberlain, in your learned opinion, what are the consequences for senior managers who are guilty of reprisals? Are there any, apart from a slap on the wrist?

Mr. Scott Chamberlain: That is one of the issues. Doreen says in her impact statement that she doesn't know what happened in the end to that senior manager, because part of the process is not necessarily knowing what happens. Often it's a slap on the wrist. Often the person is moved on to another department. I had the advantage of representing FIs in 65 to 70 departments. I've seen the same people more than once move from department to department. I think there's very little, unfortunately, I can tell you on that, because it's kept very quiet.

Mr. Kelly McCauley: You've mentioned how our system is set up to keep issues internalized within the department as they pop up, which suppresses whistle-blowing. How do we actually encourage whistle-blowing so we bring in the reverse onus on reprisals? That still doesn't really protect a whistle-blower. It will still be very much like the lady mentioned: there will still be reprisals with a slap on the wrist for a department head or an ADM or someone else.

● (0930)

The Chair: Please give a brief answer if possible.

Mr. Scott Chamberlain: If Doreen Dyet could have stepped into the priority staffing system and gotten a position at another department, she would have worked for a number of years further and she wouldn't have had any of the repercussions that she suffered.

Mr. Kelly McCauley: Thanks, gentlemen.

The Chair: Thank you very much.

We'll go now to Madam Ratansi.

Ms. Yasmin Ratansi (Don Valley East, Lib.): Thank you very much for being here.

Mr. Chamberlain, have you read the Auditor General's report of 2014 regarding the 2010 allegations in a review of the Office of the Public Sector Integrity Commissioner?

Mr. Scott Chamberlain: I have, a number of years ago as a member of the advisory board for PSIC. When I was onboarding, I did read it. I would comment that I think the culture has changed greatly at PSIC since that report was written.

Ms. Yasmin Ratansi: Thank you. You answered my question. My question was, do you think that you would now send your members to the PSIC body?

Mr. Scott Chamberlain: I do send them now. I didn't prior to 2014.

Ms. Yasmin Ratansi: My second question is this: when you have made recommendations such as a guaranteed staffing priority for transfers, how do you change the culture? Let's say I was the whistle-blower and I was transferred from department A to department B or to another ministry. How do you change the culture so that somebody doesn't say that I'm the snitch who has come over?

Mr. Scott Chamberlain: The beauty of the staffing priority system is that the hiring managers don't know the reason you're on the list. There are many reasons you could be on the list, including prior military service or returning from disability, things don't have any stigma attached to them, so it's not necessarily that their reputation would follow them.

Also, I think there are many good places to work in the public service where doing the right thing is valued, not suppressed.

Ms. Yasmin Ratansi: There's a last question I want to ask you before I go to the AG.

You've said that there should be a single system. Explain what you mean by that. I thought there was a single system with the Public Sector Integrity Commissioner.

Mr. Scott Chamberlain: What I mean by that is the departmental structure. It's an option now, one or the other. We don't need that structure.

Ms. Yasmin Ratansi: That's dysfunctional, because you have—

Mr. Scott Chamberlain: That's dysfunctional. It's not independent. The only structure we need is a strong, independent office.

Ms. Yasmin Ratansi: Okay.

Mr. Ferguson, I used to be on the public accounts committee, so I know that the AG is always very busy and does cyclical value-for-money auditing and performance auditing. Do you have the capacity to do audits to...? You did the audit of the Public Service Integrity Commissioner because there was a complaint, but generally, would you utilize forensic accountants? Would you have the capacity to do these one-off audits?

Mr. Michael Ferguson: What happens normally is that when we get a complaint, we first of all have to assess it. If we deem that we need to do an investigation, we do an investigation, not a performance audit. In 2010 we had three complaints that we deemed to be valid complaints that needed to be looked at, but we didn't have the authority we needed to do those investigations under the PSDPA, so we turned them into performance audits.

Since then, we have completed three investigations under the PSDPA, and we have one under way right now. Those are investigations, not performance audits. We do those primarily through the legal group that we have in our office rather than through our audit, although the methodology that our legal group uses is informed by how we do performance audits as well.

What we do are investigations using our legal folks. In the brief we provided, we note that it has cost us anywhere from $136,000 so far this year, and in 2013-14 it cost us $876,000.

Ms. Yasmin Ratansi: For someone like me who wants to blow the whistle, I'd be totally confused with those two systems as to whether I should go to the AG or to the Public Service Integrity Commissioner. What should I do? I look at the Auditor General and say that he has 42 departments to audit and he has to do this and do that. Where do I go?

Mr. Michael Ferguson: Remember that you can only come to us under the PSDPA. You can only come to us if you are a public servant, first of all, and if you have a complaint about the way PSIC conducted one of its investigations.

● (0935)

Ms. Yasmin Ratansi: I have to report to PSIC and nobody else?

Mr. Michael Ferguson: That's right. Under this act, we can look only at how PSIC conducted its investigation and whether they used the appropriate processes in conducting their investigation. We can't look at their decision. We can't question their decision. All we can do is look at the process.

You can always come to us with a complaint about something. We may decide to do a performance audit on it or not, but if you do that, you don't have the protections that exist under the PSDPA.

Ms. Yasmin Ratansi: Thank you.

The Chair: Mr. McCauley, you have five minutes.

Mr. Kelly McCauley: Thank you, Mr. Chairman.

Mr. Chamberlain, I'm sorry if this is sounding like a broken record, but I want to get back to the reprisals. We heard from Public Works in their opinion survey about how uncomfortable people feel about whistle-blowing, and I think it's similar across the whole public sector. I think she said that of the 22,000 people in Public Works, 55% said they had a fear of reprisals and were not comfortable going forward on that.

Even if we had a reverse onus and a staffing priority, how do you think it would be best to tackle this widespread...? I mean, it's not just a culture; it's beyond a culture. It's ingrained in our public service, it seems.

Mr. Scott Chamberlain: In the general public service area, I think more like 38% were confident. In our own internal study—we've done some surveys—it's about 39%, so it validates that.

Honestly, they need to see results. They need to see other whistle-blowers bringing something forward and being rewarded for it, or at least not suffering dire consequences because of it. It will take time. It has taken 10 years for the PSIC to get its feet under itself. A wholesale change is ill-advised, because I think the trajectory is in the right place.

Mr. Ferguson's office is “internal affairs” for PSIC, essentially, for lack of a better term. They're filling the gap when people have a complaint against PSIC.

I have people raising issues with Phoenix and military procurement. There's almost always a paper trail with my folks. They're accountants, so they're dealing with spreadsheets and documentation. It's not complicated. It's all about that fear.

I don't have a magic bullet. I have five recommendations that I think will improve it. I think the PSIC commissioner's recommendations will make a very large change.

I know there's been a lot of negativity here at the committee, but if you look internationally, Canada is still on the cutting edge. This is relatively new legislation everywhere around the world. Canada is performing well, and we can do much better. I honestly believe that with the changes we're recommending, more people will be coming forward. I will certainly be recommending more people coming forward. I can already tell you that in the last year we've sent five or six. We would have sent none the year before. We are sending people now.

Mr. Kelly McCauley: You have a good sense of confidence in the direction in which PSIC is going?

Mr. Scott Chamberlain: Yes. I think Commissioner Friday and his staff are very committed to ramping up, if I can put it that way. I know that they take complainants seriously. I know that they feel very constrained in terms of their mandate. I think you can see that in their recommendations. I think they're ready to do the right thing as well, given expanded jurisdiction and powers.

Mr. Kelly McCauley: Great.

When you talk about rewarding whistle-blowers, what do similar jurisdictions do? I know that in the States they have a very robust system. Is it a percentage, or is it a...?

Mr. Scott Chamberlain: Often it's for unique information that results in recovery. We have something similar with the....I won't call it a snitch line, because that's the wrong word for a whistle-blower advocate to use, but the informant line for the CRA. The securities commission is experimenting with this as well. They're doing it because it's successful in other jurisdictions. Usually it's 10%. The highest I've heard is 30%. That's in the United States, and only if the person takes care of the whole prosecution, which rarely happens.

Mr. Kelly McCauley: Right.

Mr. Scott Chamberlain: You're talking about millions of dollars, and sometimes even billions, so it's a high incentive. That goes into the risk-reward aspect for a whistle-blower. There are the costs of legal representation even to do the right thing.

Mr. Kelly McCauley: That's one of the recommendations we heard, to move up the money we provide for people to have legal representation.

Mr. Scott Chamberlain: It's not so bad with the unionized employees. We provide that representation. In my office we're all lawyers—

Mr. Kelly McCauley: Don't apologize.

Voices: Oh, oh!

Mr. Scott Chamberlain: —who are in labour relations.

● (0940)

Mr. Kelly McCauley: Sorry, Kyle.

Voices: Oh, oh!

Mr. Scott Chamberlain: I do tell my four sons not to be lawyers.

Someone who is a manager or who doesn't have union representation has to pay a high price for legal representation, particularly if there is reprisal.

The Chair: Thank you very much.

Our final intervention will be by Mr. Whalen.

You have five minutes, please.

Mr. Nick Whalen (St. John's East, Lib.): Thank you very much, Mr. Chair.

Thanks to all of you for coming.

I want to maybe take the question in a different line. I see how the confidentiality provisions that pervade the act help the wrongdoer and I see how they help the departments, but I don't see how they help society as a whole and I'm a bit equivocal on whether or not they help the wrongdoer.

Mr. Chamberlain, could you speak a little bit to the benefits that actually accrue to a whistle-blower who has to have all these confidentiality regimes around the disclosure of wrongdoing when perhaps it doesn't serve their benefit?

Mr. Scott Chamberlain: In cases like that of Doreen, who has authorized me to use her name although it has been confidential up until this point in time, it serves them to the extent that their name is not on the decision. They may want to work in another department and not want their reputation attached to whistle-blowing and the stigma that may be attached.

Confidentiality in terms of the complainant—

Mr. Nick Whalen: I can see that if we agree there's a stigma and keep promoting the fact that there's a stigma, then there's going to be a stigma—

Mr. Scott Chamberlain: Yes.

Mr. Nick Whalen: —but if we say there is no stigma and there's no confidentiality either, it forces the herd to change their behaviour. Would you not agree?

Mr. Scott Chamberlain: I agree that if there is no stigma, that's a good thing, but it's more than just saying there's no stigma. You need to make changes to the legislation to ensure that people don't suffer because of what they've done, and that's not the case right now. It's not just stigma. I don't think you're ever going to eliminate that.

Mr. Nick Whalen: But the herd doesn't know. Your friends and colleagues shouldn't know whether you're a whistle-blower. If they know, it's because someone has broken a confidence to tell them. That further isolates the person. I don't necessarily see how confidentiality benefits the whistle-blower.

The next point would be on reprisals.

Mr. Scott Chamberlain: Yes.

Mr. Nick Whalen: Why not just deal with reprisals through the regular labour relations, arbitration, and adjudication process? It's just another poor labour relations issue. Their rights as an employee have been violated, and I don't see how it's any different from any other type of grievance that an employee might be able to file.

Mr. Scott Chamberlain: Here's the difference. Things can be done that are perfectly legal within the collective agreement which negatively impact the employee; they could be attached to performance or other things, but they're being done for the purpose of reprisal.

Having a reverse onus in the act is another option. I can tell you that we do grieve things through the grievance process that have happened to employees that are probably reprisals for their speaking up, but it can't be the only avenue, because often it's not something —

Mr. Nick Whalen: Why not just change the avenue so that the labour relations arbitrators are allowed to take reprisal into account when they adjudicate? If it's found that they are a whistle-blower or that they're falsely associated with a whistle-blower or they fall under the expanded definition of whistle-blower that's being proposed by the commissioner, or the expanded definition of reprisal, why not just allow these specialized labour relations tribunals to adjudicate reprisal?

Mr. Scott Chamberlain: It's the same question as in the case of pay equity. You can do that, but you would want to make sure they have the same powers. They're arbitrating the collective agreement. The collective agreement doesn't provide damages that a person could get under the Public Servants Disclosure Protection Act. The arbitrators don't have the powers to do—

Mr. Nick Whalen: Right, but we're opening up the act here.

Mr. Scott Chamberlain: I'm not opposed to the concept, but the devil's in the details. As long as it's independent, outside, not confined to the department....

The difference with a grievance that's based on the collective agreement is that we can bring it to an independent tribunal or adjudicator at the end, but if it's a staff relations grievance that's not related to a collective agreement provision, it stops at the deputy head, so it's still contained within the department.

I'm not opposed to what you're saying, but there's a lot of work to be done to get to the point at which that solution would be effective. I think you'd want to test the broader powers with PSIC before you start going outside again.

Mr. Nick Whalen: Okay.

Mr. Ferguson, do you have any comments on whether or not, in your understanding, confidentially helps or hurts the situation?

The Chair: Respond very quickly, please, Mr. Ferguson.

Mr. Michael Ferguson: Really I don't, because all we do is what we're asked to do under the act. We've identified some limitations to what we are able to do, but confidentiality isn't something we've really considered from one angle or the other. It's just part of what exists.

The Chair: Thank you very much.

Gentlemen, thank you so much for being here. Your testimony has been extremely helpful and in some cases instructive.

I would also ask you, if you have any additional information to share with the committee that you think might help us in our deliberations, to please do so. You can contact our clerk.

Mr. Chamberlain, particularly I want to thank you for your recommendations. I should let you know, sir, that the one example and some other examples that you have given the committee concern me greatly, because the chair has received many responses from people we've attempted to get here as witnesses who have refused because they still feel that they would be subject to reprisal. It seems that the act designed to ostensibly protect whistle-blowers many times has the opposite effect: it punishes them.

That is of great concern to me. I would certainly appreciate any suggestions you have that can assist us when we're doing a thorough review of this act.

Thank you once again, all of you.

We will suspend for just a couple of minutes while we wait for our next panellists to approach the table.

● (0940)

(Pause)

● (0945)

The Chair: Colleagues, I'm going to have you return to your seats.

Thank you very much.

I want to welcome all of the witnesses who are with us again today. The meeting will probably end up being slightly truncated because we're about five minutes behind.

I would ask those of you who will be making opening statements to try to keep them as brief as possible to allow adequate questioning from our committee members. It's been our experience that even if you don't get to something in your opening statement, it usually comes out in the Q and As. That's where we find most of the information that's beneficial to us.

Our first panellist, representing The Professional Institute of the Public Service of Canada, is Ms. Daviau. I believe you have an opening statement.

Ms. Debi Daviau (President, Professional Institute of the Public Service of Canada): I do. Thank you very much.

Members of the committee, thank you for inviting PIPSC for your review of the Public Servants Disclosure Protection Act. I feel like I've been involved in whistle-blowing legislation in one form or another since I was a baby steward and the institute's general counsel was a new employment relations officer at the institute, so we've been in this for a long time.

This is Isabelle Roy, who is general counsel for the Professional Institute of the Public Service of Canada. She will help to answer some of your questions today as well.

Canadians rely on public services every day to make their lives safer, healthier, and more prosperous. Our members are the ones who provide those services.

PIPSC is Canada's largest union of professionals, working predominantly for the federal government. We're proud of our service to Canadians and we're committed to their well-being. Whistle-blowing fits that commitment. It is ultimately a testament to the integrity of public service professionals.

Let me reiterate that whistle-blowing is a service to the public. It only happens in the rarest of circumstances, when public service professionals have tried every other avenue for resolving a significant concern, only to have their concerns dismissed by higher-level authorities.

When public service professionals take the action of blowing the whistle on a wrongdoing, they are doing us all a service, and they're doing so in keeping with their deep commitment to protecting and promoting the public good. Sadly, whistle-blowing has also meant sacrificing your career for the sake of public interest, and it shouldn't be that way.

Think about PIPSC members such as Dr. Shiv Chopra, Dr. Margaret Haydon, and Dr. Gérard Lambert, who blew the whistle over concerns about the veterinary drug approval process within Health Canada. They knew the drugs given to cattle could have made each and every one of us sick. Think about it. Every time you drink milk, eat cheese, or enjoy a steak, you should be thanking these public service professionals, who put their careers on the line to save you from potential illness.

What did they get? They got 15 years in litigation, and their cases have yet to be completely resolved.

The work of this committee is to ensure that whistle-blowing is recognized and appreciated as a service, not punished as a betrayal. It's your work to ensure that we favour whistle-blowing, not put up insurmountable barriers in the way of whistle-blowers. That was the promise of the Public Servants Disclosure Protection Act, but sadly, it's failed to live up to that promise. Let's fix that.

Before I propose three specific ideas from PIPSC, I want to affirm our support for one recommendation that you've heard from almost every witness before this committee, and that's to reverse the onus of reprisal in law. Fear of reprisal remains one of the main obstacles to whistle-blowing, and the current law fails to address that concern.

Reprisal against whistle-blowers who disclose wrongdoing is often difficult to prove. As a result, it's rare that one could find a smoking gun that would assist in proving that the reprisals have taken place. The simple solution to this problem is to require a reverse onus, which means that an allegation of reprisal is assumed to be true unless the employer can rebut it.

In addition, we recommend to the committee to take the following three steps.

The first is to fix the investigation process under the Public Sector Integrity Commissioner. Our experience in representing members demonstrates that the commissioner's investigation processes are often unfair, lacking in thoroughness, and insensitive to whistle-blowers.

Think about the case of our member El-Helou. Two years after filing a reprisal complaint, the commissioner came back with a decision to dismiss two of the three allegations, but the Federal Court set aside the commissioner's decision on the basis of failure to investigate crucial evidence, and also a failure to make the parties aware of the substance of the evidence the commissioner had gathered.

Following the Federal Court decision, the commissioner decided to re-investigate the allegation it had already determined had merit to go to the tribunal. Now, four years after the initial complaints were filed, the commissioner came back to say that none of the allegations warranted referral to the tribunal. What kind of message does this send to public service professionals who see wrongdoing and want to blow the whistle on it?

In our experience, the deficiencies in the Public Sector Integrity Commissioner's process require unnecessary litigation and result in unacceptable delays. They have to be fixed.

Our second recommendation is to eliminate the Public Sector Integrity Commissioner's gatekeeper role and replace it with a direct access system. The commissioner performs a gatekeeper role in respect of reprisal complaints. This role means that only the commissioner can decide which complaints are referred to the tribunal. This gatekeeper role places enormous discretion in the commissioner as to how reprisal complaints are dealt with.

● (0950)

As a result, very few reprisal complaints have been referred to the tribunal. The committee should eliminate the gatekeeper role and replace it with a direct access system that would allow reprisal victims to go directly to the tribunal to get relief.

Our third recommendation is to close the outsourcing accountability loophole. As you may know, PIPSC is a leading voice in fighting against the government's overreliance on outsourcing. Our research has shown that outsourcing is costing the federal government money, jobs, morale, accountability, and productivity.

Federal overreliance on outsourcing is creating a shadow public service to which the rules, regulations, and guidelines for accountability simply do not apply, and that's true for the act you're studying. The shadow public service is a massive loophole when it comes to the the Public Servants Disclosure Protection Act.

First, the act has no jurisdiction over private companies that receive government contracts. If the whistle is blown on a wrongdoing and an investigation leads the commissioner outside the public service, the investigator's hands are tied.

Second, contract workers have absolutely no protection under the act. If a contract worker decides to blow the whistle on a wrongdoing committed by their company or the government authorities who awarded that contract, they have no recourse under this legislation. Worse still, these contractors do not even have the protection and the resources of a union like PIPSC to help them navigate life as a whistle-blower.

One has to wonder if the whistle would have been blown on Phoenix or the email transformation initiative before their implementation. If the right protections had existed in law, would these things have played out the way they have?

The government has to end its overreliance on outsourcing. I recommend that you study the issue of outsourcing in full, but in the context of your current study of whistle-blowing, I urge you to pay close attention to the accountability loophole created by outsourcing. It's a loophole that must be closed.

Finally, I want to point out that the important work of this committee in reviewing the Public Servants Disclosure Protection Act should be augmented with another accountability measure that is sorely lacking.

Years ago, the Gomery commission called for a code of conduct for ministers and their political staff to ensure political staff don't meddle in the work of professional public servants. As you know, one of the larger groups represented by PIPSC is the federal scientists, who over the past decade have felt the chill of government muzzling. I'm proud to say that our scientists work hard to enshrine the right to speak into their collective agreements, and now they're working with their U.S. counterparts as they fight to protect their scientific integrity against the Trump administration.

The same threat of muzzling and political meddling still exists for all other public service professionals. It's not only disrespectful and demoralizing to have ministers and their political staff undermine the professional work of public service experts; it's also an immense waste of public knowledge and expertise. Let's bring in a code of conduct that ensures muzzling and meddling in the work of public service professionals never happens again.

Thank you.

● (0955)

The Chair: Thank you very much.

Next up we have Mr. Rousseau.

Mr. Larry Rousseau (Executive Vice-President, National Capital Region, Public Service Alliance of Canada): *Merci, monsieur le président.*

Good morning, and thank you for inviting PSAC to talk with you about the PSDPA.

With me is Patricia Harewood. She is the legal officer with the collective bargaining branch at PSAC.

The act should provide guidance, support, and protection for public sector workers who wish to speak out against wrongdoing. It's been failing them from the start.

It's undisputed that workers are reluctant to come forward. When they do, they often experience great sacrifice in their personal and work lives. It sends a powerful message to others to remain silent. Perceived freedom to speak up without fear of reprisal is described as a basic need in the Canadian Standards Association's 2016 publication on whistle-blowing systems and best practices. CSA concluded:

> There is a strong relationship between the creation of a psychologically safe and healthy workplace and the creation of a whistleblowing system...given that both involve establishing and reinforcing a culture that gives employees “voice”, as well as confidence that concerns will be handled in a just manner.

Overall, a speak-up culture is not being applied in Canada, nor is there an independent process or effective protections for whistle-blowers.

The act has been extensively criticized for setting too many conditions on whistle-blowers and for protecting wrongdoers. It reins in whistle-blowers by restricting them to making disclosures to internal mechanisms; they can only disclose a wrongdoing directly to the Public Sector Integrity Commissioner, PSIC, in limited circumstances. A disclosure to the commissioner can be made if the individual has reasonable grounds to believe that it would not be appropriate to disclose internally. That effectively shuts many cases down.

The act also does not ensure the right to disclose all illegality and misconduct. The definition of “wrongdoing” selectively omits large areas, such as Treasury Board policies, breaches of which spawned the Gomery inquiry. Public disclosures are only permitted when there is not sufficient time to make a protected disclosure and when there are reasonable grounds to believe that the issue constitutes a serious offence under legislation. If public servants go to the media with a disclosure of wrongdoing that doesn't meet one of these exceptional requirements and they suffer reprisals as a result, the commissioner cannot accept their complaint of reprisal because technically they never made a disclosure under the act.

In addition, the commissioner can refuse to deal with any disclosure if the commissioner believes that the whistle-blower is not acting in good faith, or it is not in the public interest, or for any other valid reason. Between the year 2007, when the commissioner's office was established, and 2015, the office received 623 disclosures of wrongdoing; the commission's own statistics show that only 10, or 1.6%, were considered as founded under the act. The office also received 207 complaints of reprisals. Only 10, or less than 5%, were referred to a tribunal.

These low rates can be explained in part by shortcomings in the act. They also suggest that the Integrity Commissioner's office has not proven itself as trusted and independent. These failures matter because they help foster an unhealthy and ineffective culture of silence in the public service.

The act also has other significant failings. It does not redress all forms of harassment, particularly passive retaliation. Instead, it takes a narrow and short-term view of what may constitute harassment. In reality, whistle-blowers are typically harassed over long periods by every method imaginable. The 60-day time limit to complain about a reprisal is totally unrealistic, because those who file complaints are often experiencing significant stress as a result of the harassment.

Legal assistance provided to whistle-blowers is completely inadequate, with a limit set at $1,500, or $3,000 in exceptional circumstances. That doesn't even get you a deposit for a lawyer. One former commissioner did not approve any whistle-blower funds for legal assistance. This effectively helped protect alleged wrongdoers who would be represented by a government legal team.

If reprisal complaints are referred, the disclosure tribunal has no authority to award costs to complainants. These are often long-drawn-out cases that can last for years. For example, the recent Sylvie Therrien case started in 2013; it's still ongoing. The investigation of reprisal complaints by the Integrity Commissioner must be fair and transparent. The Therrien case shows that the commission has been plagued with issues in investigations that lack basic procedural fairness.

● (1000)

If there is a claim of reprisal, the onus should be on the respondent to prove that their actions against the whistle-blower do not constitute reprisal. This was a recommendation of the Gomery inquiry in 2006, but was never implemented. However, article 31 of Quebec's new whistle-blowing legislation includes such a reverse onus.

The disclosure act carefully blocks all possible avenues to access any details of the commissioner's investigation, putting them beyond the reach of access to information laws not just for a few years, but forever. In addition, tribunal hearings may be conducted in secret and need not be filed at the Federal Court. When whistle-blower cases are settled by the Canadian government, there is a draconian gag order attached that prevents whistle-blowers from ever even discussing the wrongdoing.

There are critical exclusions from the disclosure act. Security agencies are excluded from the act, and employees cannot approach the commission to report wrongdoing or seek protection from reprisal.

The law does not address private sector misconduct at all, and private sector information cannot be used. Therefore, government misconduct involving the private sector cannot be investigated. Public-private partnerships are on the increase, and as contractors perform an increasing proportion of the government's work, this is a gaping omission in the law. The recent Phoenix fiasco is sufficient evidence that the act must be extended to cover potential misconduct when the private sector and government are involved.

Adequate corrective measures are also missing from the act. An important purpose of whistle-blower legislation is to investigate and correct wrongdoing. While the act gives the commissioner power to investigate individual disclosures, it does not provide the tools necessary to finish the job properly. Overall, the act does not ensure corrective action to end wrongdoing. The commissioner has no power to order corrective action, sanction the wrongdoers, initiate criminal proceedings, or apply for injunctions to halt ongoing misconduct. The commissioner can only report the found wrongdoing to the departmental head and then to Parliament and hope that something happens as a result. When it comes to reprisals, the commissioner can apply to a tribunal, which will determine whether or not reprisals occurred. However, the tribunal has limited remedies to offer complainants. How can wrongdoing be deterred or honest employees protected when there is no reliable mechanism to sanction proven wrongdoers or those who engage in reprisals?

In summary, here are our key concerns about the act.

The investigative process must be fair and much more transparent. The onus should be on the respondent in complaints of reprisals. The 60-day time limit to report retaliation is much too short. The legal assistance available to whistle-blowers is insufficient. Details of the commission's investigations are blocked forever from access to information requests. The provisions for sanctions and corrective action are inadequate. Information about misconduct involving the private sector cannot be used, and former public service workers are untouchable in the sense that when they leave the public service, the commissioner cannot investigate allegations of their misconduct.

In short, significant changes must be made to the act if it is to actually protect public sector workers.

I'd like to thank you for your time today. Ms. Harewood and I are ready to answer any questions you may have.

Merci.

● (1005)

The Chair: Thank you very much.

Finally, we have someone who has had not only direct but personal experience with the issue before us.

Go ahead, Mr. Korosec.

Mr. Stan Korosec (As an Individual): And it's about time, I think, Mr. Chairman.

I've listened to colleagues here and I've read some of the testimony on the website from other things. You have someone here who's been a whistle-blower and was subject to reprisal, and, in my case and my two other colleagues' cases, termination.

Thank you, Mr. Chair, and members of the committee for inviting me today. When I was asked to participate in this, I was excited to do it, but it dug up a lot of bad memories too.

I will start by saying that if a public servant approached me today and asked me, “Should I blow the whistle, Stan, based on your experience?”, I would tell them, “If you can afford to be out of work for maybe up to a year and a half with no benefits, go through a lot of stress on co-workers and family, then go ahead and do it, but otherwise don't.”

I want to address certain sections of the act, how it affected my experience, how it affected my colleagues' experience too, and how maybe we could make things better.

With regard to a bit about me, I graduated from the University of Windsor with a business degree. I worked as an immigration officer at the Blue Water Bridge for two years, and for the next 18 years I was a proud member of the Ontario Provincial Police. In 2003, Blue Water Bridge Canada, a small crown corporation, approached me and hired me as their vice-president of operations, where I remained until my termination in March 2013.

In February 2012, I was a witness in a protected disclosure involving the CEO of the crown corporation. The investigation resulted in findings of wrongdoing by the CEO, who retired effective March 15, 2013. I and two others who participated in the disclosure were terminated two business days later, as they deemed our positions redundant. In effect, four days after the CEO resigned after being found guilty of wrongdoing, the board dismissed the next two senior officers at the crown corporation—the vice-president and the CFO—and one other manager. The following day, we filed a reprisal complaint.

Now before I go further, we didn't do this haphazardly. It festered for a long time. We went on the website and read the whole thing about how we're protected and how we shouldn't worry about it, that it will be dealt in an informal, expeditious manner, and that reinstatement was a possible remedy.

I'd like to address a couple of sections of the act here and tell you how it really went. Sections 19.4 and 19.5 gave the commissioner 15 days to decide whether or not to deal with the complaint when we filed our reprisal. As has been mentioned before, when the commissioner decides to refer it for an investigation, there is immediate protection to what I call “the reprisers”—I've called them other things—but it provides nothing for the whistle-blower. There is no protection at all. They're protected against any disciplinary action, while we're out of pay and have no benefits while the reprisers carry on as usual.

I know there has been talk about reverse onus. I strongly agree with that. It seems that it's very weighted to the other side, and not to ours. I felt as if I was guilty until proven innocent. They get the benefit of the doubt, and we don't.

I recommend that once the commissioner decides to investigate, the complainant—especially if the reprisal is a termination—should be reinstated, reassigned, or put on leave with full pay and benefits until the end of the investigation, especially in a small crown corporation. We were about 50 or 60 people, so reassignment was not really possible there, as opposed to being in Ottawa, where you have a large organization. That's one recommendation that I have.

Subsection 21(1) states that the proceedings before the tribunal are to be conducted “as informally and expeditiously” as possible. Regarding the informal part, as I told you before, I was a police officer for 18 years and I was used to testifying in a court-like setting. Well, the logistics for this tribunal that we went through.... It was held in a small hotel room that was very crowded. There were about two or three lawyers on the reprisers side, and we had the commission lawyers and our own lawyer. It was very intimidating, even for me a bit, but imagine somebody who's never been to court before, never been under that stress. They have to get up there in the stand; there's a justice there, and then they're getting hammered with cross-examination.

● (1010)

It's very intimidating for those people, and it's by no means informal. I think that has to change, or at least be taken into consideration, when the case goes to a tribunal.

Subsection 21.7(1) is about the remedies. At the beginning of our tribunal hearing, I recall that there was some discussion about the remedies listed. On the other side there are paragraphs (a) to (f), identifying different remedies, such as reinstatement, this or that, but they were arguing that it could be just one of those things, not cumulative. It could be this, or this. It was and/or. Therefore, I'm suggesting that in that subsection, and/or” be written in between each paragraph, so that argument is out of the way for the justice in the case when looking at remedies. It can be this, plus this, plus this.

Paragraph (f) talks about $10,000 for pain and suffering. Sorry, but that is woefully inadequate, especially when it comes to a reprisal where there's termination. Reprisals, as you know, can constitute anything from a smaller thing to the worst, and that's from zero dollars to a $10,000 range. Absolutely, that doesn't compensate someone for the pain and suffering of going through this whole process.

I'll leave it up to you to fix an amount, but $10,000 is way too small.

Subsection 20.4(1) reads, “If, after receipt of the report, the Commissioner is of the opinion that an application...is warranted... [he] may apply to the Tribunal” to determine “whether or not a reprisal was taken...and, if the Tribunal determines that a reprisal was taken...” they can make “(a) an order respecting a remedy in favour of the complainant; or (b) an order respecting a remedy in favour of the complainant and... disciplinary action against” the reprisers.

I don't understand why paragraph (a) is even in there. After a little research, my understanding is that most of the time paragraph (a) has been applied, which means there's no penalty for the reprisers, since that can't be considered. A reprisal is a reprisal is a reprisal. If you did it and it was found in the court, then there should be a penalties section applied, not the “or” in here, so that it's either you get the remedy or you get the remedy and there's discipline.

It doesn't make any sense. It's like having a section of the Criminal Code for theft with the option of no penalty. There has got to be some penalty there, some deterrent. If you want more people to go through this process, there has got to be something. It seems like it's slanted to the other side, and you know what I mean by the other side.

There was talk about legal fees. Personally, mine were $30,000, so there has to be more compensation for legal fees.

Lastly, I just want to say that when this was all going on back in 2013, the staff did the best job they could with what they had, and what they had was the act. I've heard things here that the staff is motivated, there's a new commissioner, and everything is great, but unless you change some of the legislation, they're only as good as what they work with.

Those are my comments. Thanks.

● (1015)

The Chair: Thank you very much.

Colleagues, we'll have enough time for one full seven-minute round, and we'll start with Monsieur Ayoub.

[*Translation*]

Mr. Ayoub, you have the floor and you have seven minutes.

Mr. Ramez Ayoub (Thérèse-De Blainville, Lib.): Thank you, Mr. Chair.

I want to thank the witnesses for being here this morning. I'll ask my questions in French. If you need earphones to listen to the simultaneous interpretation, don't hesitate to use them.

It's troubling. It has been a big morning. That's what I can say after listening to the previous witnesses and to Mr. Korosec describe a personal experience. Thank you for meeting with us.

At the same time, I remember the presentations given last week, when we met with the Commissioner and with RCMP and Public Services and Procurement Canada representatives. We asked the witnesses questions about the many whistleblower cases. We have the table and we've seen statistics in this regard.

My view is as follows. I wrote “the code of silence.” I heard it earlier. I've heard a bit about this type of thing. However, when we ask people, we're told that it wasn't what was said. People tell us that we must refer to the collective agreements, because there are different ways to raise and solve issues.

I'll go back to the basic principle, which is respect for anonymity when a disclosure is made. This obviously seems to be a big issue. Afterward, there's talk about the accountability of people who are singled out or investigated.

How do you see the issue of respect for anonymity in Canada in relation to the services here and in relation to other countries, where this doesn't seem to be the case and where anonymity appears to be less of a problem?

Ms. Daviau and Mr. Rousseau, do you have anything to say on the matter?

Mr. Larry Rousseau: I'll let Ms. Harewood respond first, but I'd also like to make a few comments.

Ms. Patricia Harewood (Counsel, Public Service Alliance of Canada): I want a few clarifications regarding your question.

You spoke of anonymity and the way this issue is addressed at the international level. Obviously, I can't talk about the international context as such. In terms of PSAC members, respect for anonymity represents a challenge. People are afraid to file complaints, either through the collective agreement or the legislation. They fear their anonymity won't be protected or respected.

Mr. Ramez Ayoub: Okay.

Ms. Patricia Harewood: This is obviously an issue. Unfortunately, I can't tell you how this issue is addressed at the international level.

Mr. Ramez Ayoub: We've heard talk of New Zealand and other countries where these situations occur, but where the protection of anonymity seems to be less of an issue than it is here.

Mr. Larry Rousseau: We need to be careful. In the first part of your question, you spoke of collective agreements.

Mr. Ramez Ayoub: Yes.

Mr. Larry Rousseau: In our experience with collective agreements, even in cases where the agreement was blatantly violated, people wait until they're desperate and they have no other avenue of recourse possible to file a grievance. This is even for something normal. A great deal of water may have flowed under the bridge before they file a complaint regarding malfeasance or wrongdoing. I wouldn't advise them to do so.

We would like to see provisions in the legislation that help actually protect anonymity. Mr. Korosec is absolutely right. In many cases, we're not talking about the vice-presidents of organizations. We're talking about mid-level employees who don't make disclosures on a routine basis. We really need to keep this in mind.

● (1020)

Mr. Ramez Ayoub: Our view of anonymity may be inadequate. We're trying to protect something that's almost impossible to protect. It's my own personal opinion, but I think that, in disclosure cases, the people involved sense it. Obviously, there will be a response to their actions.

We can address the issue the opposite way, by being more transparent in certain cases and by making the information public. Making the information public protects the person who disclosed it. The secret aspect often makes the situation worse, or at least doesn't help.

I see Ms. Roy nodding.

Ms. Isabelle Roy (General Counsel, Legal Affairs, Professional Institute of the Public Service of Canada): You brought up some good points.

It's important to understand that, in all disclosure cases, for the sake of natural justice, there must be an opportunity to respond. You mentioned it earlier. Anonymity is often impossible. Think of the small communities. Mr. Korosec may want—

Mr. Ramez Ayoub: He could give us an example.

Ms. Isabelle Roy: —to share some concrete facts. Just look at our members here in Ottawa, where most federal public servants can be found. It's quite easy to locate the individual who has the information that led to the disclosure. Anonymity often can't be protected.

The committee must decide on the potential impact of media attention. That said, under the current legislation, the commissioner doesn't have the chance to impose interim measures to protect the informer. There may be an attempt to keep the informer's identity confidential, but it's often impossible, despite people's best efforts and intentions.

Mr. Ramez Ayoub: This would be the best protection for a whistleblower.

Ms. Isabelle Roy: As Mr. Korosec said, interim measures are absolutely necessary.

Mr. Ramez Ayoub: I have only 30 seconds left, but I want to bring up a final point.

[*English*]

The Chair: You have less than 30 seconds, Mr. Ayoub.

[*Translation*]

Mr. Ramez Ayoub: It seems that only one person is responsible for a case being accepted or referred to the tribunal. However, a tribunal normally consists of a number of people who make a decision, which helps prevent situations such as the ones that arose before Mr. Friday's arrival.

[*English*]

Ms. Debi Daviau: Very quickly, for sure it's a bottleneck, and that's creating a situation in which not enough cases are making their way to the less biased body to be reviewed.

Mr. Ramez Ayoub: Thank you.

[*Translation*]

The Chair: Mr. Clarke, you have the floor and you have seven minutes.

Mr. Alupa Clarke: Thank you, Mr. Chair.

[*English*]

Mr. Korosec, thank you very much for being here. Thank you for your courage, your strength, and your action throughout all those years.

Since the beginning of this study, I have been 100% convinced that it's not worth studying if we don't have the presence of at least one whistle-blower. You're the only one who has accepted to come, and this is precious to us. Thank you very much.

I do not have any specific questions, but if you would like to tell us anything else, just go for it, sir.

Mr. Stan Korosec: Thank you.

Let me say that I did receive a communication from our CFO—who, by the way, had to move from Sarnia to Slave Lake, Alberta, to find a job, and he's still there—

Mr. Kelly McCauley: It's a nice community.

Mr. Stan Korosec: I'm not dissing Slave Lake, but from Sarnia, Ontario, to way up there.... His wife stayed behind. That's what he had to do to find work.

He wanted to participate. He started writing up his testimony, but then he just couldn't get through it. That's how badly it affected him. As well, Cathy Gardiner—she let me use her name—didn't find work. We were fired in March of 2013. She just found work late last year and is working two part-time jobs now. It's been very stressful on them.

I was lucky. I got another job four months after, but I wanted my old job back. In fact, Mr. Joy, our CFO, and I haven't spoken since. It's really hurt the relationship between the two of us.

It's easy to say change this and that in the act, but it's.... You guys don't even know the stress it involves, especially in a small crown corporation. We talked about protecting names. The CEO's office was next door to mine, and the CFO was there. It's a really difficult thing to do, especially in a small crown corporation. Keep that in mind in your deliberations.

Thank you.

● (1025)

Mr. Kelly McCauley: Ms. Daviau, do you think the definition of wrongdoing is not broad enough? Mr. Rousseau, Ms. Harewood, Ms. Roy, and Mr. Korosec, you can speak up.

We know there are a lot of issues. There were good intentions behind the act, but it's obvious that we need to update it, fix it.

Ms. Debi Daviau: Yes.

Mr. Kelly McCauley: One of the things that did come up from the witnesses was that the definition was just too narrow. Do you think that's an issue?

Ms. Debi Daviau: I think it is an issue, but I don't think it's as big an issue as having the right mechanisms in place to let it play out, when in fact—

Mr. Kelly McCauley: We've heard very clearly about the reprisals. I think all of us here have heard it very clearly. It's one of the first steps we have to take.

We've seen that every department has its own bureaucracy to handle complaints, but there are worries like “I don't want to complain to my boss about my boss.” One of the suggestions was to move it to a completely independent office, which would allow a bit more confidentiality and more, I guess, confidence that there wouldn't be a reprisal. Is having a separate, independent office something that you would agree with, in your professional opinion?

Mr. Stan Korosec: There is a mechanism for that. When we went through our training on disclosure a couple of years before this even happened, either you could have someone within your organization take the complaints or you could go directly. In a small organization, we chose, as management, to go directly there just to avoid that.

Ms. Isabelle Roy: I think the value of the internal disclosure mechanism in departments is questionable.

Mr. Kelly McCauley: That's what I'm trying to get at. We spend a lot of resources on that, but we under-resource—

Ms. Isabelle Roy: We do.

Mr. Kelly McCauley: —other offices that might be better served.

Ms. Isabelle Roy: I think you need only look at some of the recent wrongdoing findings that have been reported by the commissioner. You'll notice these are akin to harassment complaints. Not to minimize what's happened, but it's really harassment that's being whistle-blown.

For years there has been a policy and a process in place in departments to deal with harassment complaints. Why is it headed to the commission? That's a question this committee should look at, and at whether something is broken internally in departments that leads these complainants to go out to the commissioner to have real resolution to these issues.

Mr. Kelly McCauley: You look as if you want to say something.

Ms. Debi Daviau: Somebody suggested earlier to use the PSLREB or another body that's already set up. We were concerned about that approach because that body is already under-resourced and well behind schedule in dealing with the issues that it already has on its plate. From the perspective of resources and making sure that the proper attention and focus are paid to the protection of whistle-blowers, I think we need an independent or a one-stop shop, if you will, to at least give the Auditor General the ability to oversee these processes. Something is severely lacking.

Mr. Kelly McCauley: One of the other recommendations we heard earlier was about priority staffing. I'm not sure if you were here for the first part. The issue here is...I hate to use “whistle-blower”, but if a party moved to another department—

Ms. Debi Daviau: Yes. We like that—

Mr. Kelly McCauley: — is it workable, in your opinion?

Ms. Debi Daviau: I think so. It was the first time I'd heard that suggestion, but I do like it because again, while obviously the reverse onus is an important piece of this as well, the person going through this process need not be at home and shunned and wearing their scarlet letter “A” around town. They need to continue to be productive in their workplace.

Mr. Kelly McCauley: Yes, I don't think it would be a stand-alone, but it would be added protection, an added ability for someone to come forward with confidence that they're not going to end up like Mr. Korosec.

Ms. Debi Daviau: It's three years later, and they're working two part-time jobs.

The Chair: Unfortunately, we're out of time.

Mr. Stetski, you have seven minutes, please.

Mr. Wayne Stetski: Thank you.

One of the roles I serve is as NDP critic for national parks. I want to talk about the Phoenix pay system for a bit because I've been approached by a number of employees who were not getting paid. The minister's office was quite responsive in dealing with those individual concerns as we brought them forward, but there was also a group of employees who did not want to be identified, so there is still some concern. It's harder to intervene on behalf of a group, but we certainly intervened on their behalf as well.

When you look at the problems and how long the problems have existed with the Phoenix pay system, how would some of the recommendations you're making help or have helped so that this didn't drag on as long as it has? You have tremendous talent, both of you, in the groups you represent. Would a different legal system have helped prevent where we're getting to now? Perhaps even more importantly going forward, how can we better use the talents of the people you represent to prevent these kinds of things in the future?

I'll start with Ms. Daviau and then go to Mr. Rousseau or your representative.

● (1030)

Ms. Debi Daviau: Thank you.

As you know, we represent different members. The PSAC represents the compensation officers; however, we represent the IT people. I know for certain that early on in this project, in this Phoenix transformation—and I'll let PSAC speak to it—that they were raising alerts about the potential hazards we were facing with the transformation to Phoenix. We were also raising alerts from a systems perspective. Of course, early on it was about contracting this out without doing proper examination of the internal abilities to do this project. Government pay systems were built and maintained and run by our members for the 40 years that this system has been patched together. It continued to pay people, and we believe that Phoenix could have been completely averted had we had better avenues to prevent this from being contracted out.

However, in the context of the whistle-blowing legislation, we have further concerns that the more you contract out, the less ability there is to blow the whistle on wrongdoing. For example, if somebody over at IBM who's in charge of the Phoenix project is involved in wrongdoing, how do we even know about it, much less take steps to have that revealed to us? The further you get away into subcontracts, the less likely you will ever even find out that wrongdoing is occurring. That's where our concerns are.

Ms. Patricia Harewood: I think one of the issues with Phoenix is whether the definition of wrongdoing as it stands right now would have covered the kind of wrongdoing that has occurred due to Phoenix.

As Ms. Daviau has already pointed out, since the wrongdoing that is referred to in section 8 is within the public sector, it's very limited. It would not have covered the wrongdoing that was and is the Phoenix fiasco. Therefore, obviously this committee may need to look at a more expansive definition that would include the kind of misconduct or wrongdoing that has occurred with Phoenix.

Mr. Larry Rousseau: That said, I think it's important that to be fair, we wait to see what the Auditor General, in the appropriate instances, has to say once we've done the autopsy on just what the heck happened with Phoenix. I think that at this point we'll be able to look back.

I don't want to make it sound as if the wrongdoing was entirely on the private sector's side. It's possible, but it's possible there were things happening on both sides. We'll have to get to the bottom of that.

Certainly we'd like to see something in there, because people have been calling me for the past two years, telling me stuff, but they won't come forward. That's our problem. That's our problem, and that's what we need to address.

Mr. Wayne Stetski: Is there a better way forward?

Ms. Debi Daviau: For sure. We like a lot of the recommendations that PSAC is making about necessary changes to the legislation. Of course, we add on a few other perspectives. Obviously we're looking at it from a different angle. We're looking at it from the angle of protecting members who have faced a very long-drawn-out process.

I thoroughly enjoyed Stan's testimony, because it is very personal, as opposed to what we're doing, which is representative. Absolutely, we believe that if there were some changes to legislation, some tweaks to the process to give broader authorities to refer cases to tribunal and remove the bottlenecks in the system and the conflicts of interest, quite frankly, that would go a long way to fixing this. We've advocated for whistle-blowing legislation, as I've said, for as long as I can remember. The last change to the legislation was woefully inadequate. Hopefully we're going to get it right this time around.

● (1035)

Mr. Larry Rousseau: I think that if we go forward, every minister, every deputy minister, and every assistant deputy minister has to make it a mantra that wrongdoing potentially costs, whether it's private sector or public sector, an enormous amount of money—far more, probably, than the actual act that happened. They would go to their respective organizations and say, “We need leadership is to get to the bottom of it”, so that when Mr. Korosec brings it forward, it's not a culture of battening down the hatches and protecting the organization at all costs and expending people who are just trying to do good in the world. That's what we have to do going forward.

The Chair: Thank you very much.

Our final intervention today will come from Madam Shanahan.

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

Thank you so much to the witnesses for being here this morning. Your respective testimonies have been illuminating and also very moving. When I think that this act had a proviso that it was to be reviewed every five years, and this is the first time that we're reviewing it after 10 years, I can only imagine that any feelings employees had about having trust in the act were completely eroded during that time. Now we're back and we're trying to do a reset.

We heard from an earlier witness, Mr. Chamberlain, that he believes that PSIC can be remediated, if you will, and that he has confidence in it. I'd like to hear from each of the witnesses if you feel that's the case. If we're putting a lot more power into that office, how can we guarantee that at a future time—maybe the current one is okay—we don't have another rotten apple?

Ms. Debi Daviau: Broadly, I do think PSIC could be saved with the changes. However, I don't view it as putting more power into that office. I actually view it as a bit of a decentralization of the power of that office, and building in the oversight and the proper linkages, whether to the Auditor General's office or....

We talked briefly about harassment in the workplace. There are some severe disconnects right now that need to be pieced together in order for PSIC to work better, but I don't believe it lies in giving it more power—absolutely not. Right now we see it as a bit of a bottleneck, as the only body or the only person able to refer to a tribunal. That's proven to be problematic. No cases are really getting through that process. I think it could be saved, but not by giving it more power.

Mrs. Brenda Shanahan: Would it be just an add-on? The commissioner did have 16 recommendations. Do you agree with them, more or less?

Ms. Debi Daviau: More or less, yes.

Mrs. Brenda Shanahan: Ms. Harewood, would you comment?

Ms. Patricia Harewood: Just to add to what Ms. Daviau has said, I think some of the commissioner's authority or discretion would need to be removed, because there have been a number of testimonies in which you've heard people talk about how the commissioner is serving as a gatekeeper and cases aren't getting in the door. If there were more direct access and the commissioner had less discretion and had to refer certain matters to tribunal should there be a finding of reprisal through an investigation, that would certainly be advantageous, so removing some of the broad discretionary powers that the commissioner has would be of benefit.

Mrs. Brenda Shanahan: Thank you.

Mr. Stan Korosec: I'd agree with that, especially in section 20.4 (1), where you can decide whether it's just a remedy in favour of the complainant or a remedy with discipline. Take that out of there. I don't even know what the purpose of that was. We're talking about education and all that, but you have to make the changes to the act that everybody has been talking about here so that the people in the office and the commissioner have something good to work with, which helps us.

● (1040)

Mrs. Brenda Shanahan: Do you agree, Mr. Korosec, more or less, with the 16 recommendations?

Mr. Stan Korosec: I haven't read them, sorry, so I don't know.

Mrs. Brenda Shanahan: All right. Thank you.

Mr. Rousseau, Ms. Harewood, would you say yes, more or less?

Mr. Larry Rousseau: More or less, yes.

Mrs. Brenda Shanahan: I have a couple of questions.

Ms. Daviau, you talked about how much work is being contracted out. Do you have any statistics on how much that would represent?

Ms. Debi Daviau: Overall, we think it's about $11 billion a year. At least $8 billion of that is not intergovernmental, but rather contracted right out to the private sector, often even offshore.

Mrs. Brenda Shanahan: That's interesting.

I have a question, then, to Mr. Rousseau and Ms. Harewood. What about wrongdoing within the union framework? Is this an issue? How do you treat it, and would the unions be willing to come under PSIC under a revised mandate?

Mr. Larry Rousseau: We're not part of the public sector, of course; we're private sector. We're representing public sector employees. In terms of wrongdoing on the union side, I'm not sure I understand exactly what you are—

Ms. Debi Daviau: It's already covered off under a current bit of legislation, under the PSLREB. If unions either wrongfully discipline their members or do not properly represent their members, members already have an avenue of complaint that is independent from us.

Mrs. Brenda Shanahan: We're just trying to manage the loopholes.

Throughout this study my concern has been the funnel, the woefully few number of inquiries, let alone disclosures or findings or corrective action, across the board. As someone who has been in management, I can say it's gold to get that kind of information. You want to find out what's going on on the floor so that you can do something. At the most benign, it's a management tool enabling you to make some corrections, and of course at the most serious, it involves corruption and unsafe conditions for employees.

What would you think is the one thing that would most help to open up that funnel? We've talked about different measures. What would be the one thing that would most contribute to that?

Ms. Debi Daviau: We think reverse onus is probably the one most important thing here, because we heard from Mr. Korosec the kind of terror that a person goes through, as if they're a convicted criminal. A convicted criminal is innocent until proven guilty, but if you're a whistle-blower, you're guilty until proven to be right.

Mr. Larry Rousseau: When the water is ice cold, people just don't go swimming. There are the legal fees, as well. I mean, $1,500 for legal fees just isn't going to cut it.

The Chair: Thank you very much.

Once again, I want to thank all of our witnesses for being here. Your testimony has been extremely helpful. Mr. Korosec, as Mr. Clarke indicated, you're the first and perhaps will be the only whistle-blower to appear before us, so we very much appreciate your testimony.

To our colleagues, to our friends from both PIPSC and PSAC, there's always going to be an adversarial situation between unions and management, but everyone, and I mean everyone, knows the difference between right and wrong. It seems to me that a piece of legislation that was designed to protect whistle-blowers but ends up punishing them is just quite simply wrong. Your pointing out many of these examples to this committee has been extremely helpful as this committee continues its deliberations.

Thank you so very much for being here.

The meeting is adjourned.