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Chair

Mr. Tom Lukiwski

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● (0845)

[*English*]

The Chair (Mr. Tom Lukiwski (Moose Jaw—Lake Centre—Lanigan, CPC)): Colleagues, it being 8:45, we'll commence the meeting. Welcome, all.

Two of our guests today are appearing via video conference. We have Mr. John Devitt, who is the chief executive of Transparency International Ireland, coming to us via video conference from Dublin. We will also be joined by Mr. Tom Devine later this morning. He informed us that he would be a few moments late, but once he appears we will get his testimony as well. In person, we have Ms. Joanna Gualtieri from The Integrity Principle.

Colleagues, we have one hour for these three witnesses. I understand that all three have brief opening statements of approximately 10 minutes each. That will leave approximately 30 minutes for testimony and answers, which means that we'll have one seven-minute round of questions from our committee members, and then we'll move on to our second panel.

Mr. Devitt, we'll start with your opening statement.

Mr. John Devitt (Chief Executive, Transparency International Ireland, As an Individual): Thank you, Mr. Chairman. It's a great pleasure to present to the committee, and a great honour as well. I'm more than happy to assist the committee in its deliberations around reform of Canadian whistle-blower protections. I'll talk to you briefly about how the Protected Disclosures Act in Ireland came about and about key features of the act and some of our observations around potential impacts of the legislation here in Ireland.

By way of background, I'm chief executive of Transparency International in Ireland. We have been working on whistle-blower protection for about 10 years now. We launched Ireland's first and only free phone helpline for whistle-blowers in 2011, and we have assisted around 900 people so far. We also assisted the Irish government in drafting the Protected Disclosures Act in 2014. We provide advice to the Council of Europe, the United Nations Office on Drugs and Crime, and other agencies, and we have been offering assistance to other governments in their deliberations around whistle-blower protection.

We started exploring this issue in some depth back in 2009, and we published an assessment of legislation in Ireland. Up until 2014 there were around 18 pieces of legislation on the statute books governing how individuals should report a concern and the kinds of protections they would be afforded were they to make a disclosure. We found that whistle-blowers were afforded varying degrees of protections, depending on where they worked and the type of wrongdoing they were reporting. One could report a breach of the Pensions Act or the Chemicals Act or the Communications Regulation Act, but up until 2013, if you worked in a bank you weren't afforded the opportunity to report or to report with the knowledge that if you did suffer reprisal, informal or formal, you would have any rights to seek redress.

It wasn't really until the collapse of the Irish banking sector in 2008 that the Irish government took the issue of whistle-blowing seriously. Transparency International had been campaigning for some time. In 2010 we published a report, which led to a degree of consensus across party lines on the need for stronger whistle-blower protection. We had been campaigning for a piece of legislation similar to that which has been on the statute books in the United Kingdom since 1999, which would afford whistle-blowers protection irrespective of the type of wrongdoing they were reporting or where they worked. We campaigned for what became the Protected Disclosures Act in 2014.

The act draws from best practices in the United Kingdom, New Zealand, South Africa, and elsewhere. It focuses on workplace whistle-blowing. It applies to all sectors of the economy. It protects anyone so long as they have a reason to believe what they are reporting is true. False disclosures are not protected, or shall I say, false disclosures in which the individual is found to have known they were false are not protected. Someone can avail themselves of the protections so long as they can show that they had a reason to believe what they were reporting was true, even if it transpires that the information they shared was misleading or false.

Past disclosures are also protected, so any disclosures of information related to wrongdoing made prior to 2014 are protected. One unique feature of this legislation is the fact that it was the first to remove the requirement to demonstrate good faith, so the motivation of a whistle-blower is irrelevant.

● (0850)

There is, furthermore, no public interest tests in the legislation. All one has to do is show that one had reason to believe that the type of wrongdoing that is categorized in the legislation was taking place or was likely to be taking place.

All workers are protected, with the exception of volunteers, which is something we would like to see addressed in a forthcoming review of the legislation here. Contractors, agency workers and trainees, and interns working in hospitals are protected. All one has to do is also show that the information one is sharing is relevant. Relevant information is defined clearly in the legislation, and it's related to a type of wrongdoing described in the law.

The information also has to be information that has come to the whistle-blower or the worker in connection with their employment. Again, so long as they have a reason to believe that the information is true, they are protected.

The type of wrongdoing covered is similar to the wrongdoing categorized in the Public Interest Disclosure Act in the United Kingdom. It includes offences; breaches of legal obligation; miscarriage of justice; health and safety issues; damage to the environment; unlawful or improper use of public body funds; oppression, discrimination, or gross negligence by a public body; and concealment of information in relation to any of the types of wrongdoing above.

Workers are protected from unfair dismissal and penalization. That might include bullying. It might include relocation, informal sanctions, ostracization at work. There is a burden placed on the employer to prevent a worker from being bullied or from suffering any harm or detriment arising from a protected disclosure.

Also, uniquely, the Irish legislation provides the right of tort, so an individual can seek redress through the courts where they believe they have suffered harm as a consequence of making a protected disclosure. In addition, an individual has a right to take action against anyone who causes them harm where a disclosure or a protected disclosure has been made by somebody else, such as a family member or a colleague, and they themselves suffer as a consequence of that disclosure. For example, they might be suspected of having made a protected disclosure, but although they were not the person who made the disclosure, they suffer nonetheless. Whistle-blowers are also granted civil and criminal immunity for making a protected disclosure, and their identity is protected from being released without just cause.

Also, the law provides for interim relief for whistle-blowers. Within 21 days of receiving notice that they might be dismissed and they believe their dismissal is a direct consequence of having made a protected disclosure, they can seek redress through the lower courts. The lower courts can prevent their employer from dismissing them and can instruct the employer to reinstate them and keep them on the payroll until such time as their case has been brought before the employment courts, the workplace rights commission.

Employers have an obligation not to dismiss people making protected disclosures, not to penalize or harm them or allow others to do so. Again, they have an obligation to protect the identity of whistle-blowers. They also cannot contract out of their obligations, so they cannot write guiding clauses into contracts or post-employment agreements into settlements. Public employers must have protections or procedures in place. Each public body has to have policy and procedures in place, and must also report to the relevant government departments on the number of cases brought to their attention and the actions taken.

In addition, a whistle-blower can report to their own employer; to the relevant minister, if they're working within the public body; or to a legal adviser. All they have to do in such cases is show they have a reason to believe wrongdoing is taking place. If they have confidence that their employer is taking or will take their concern seriously or they have reason to believe that the information they're disclosing is substantially true, there's substance to their allegations, they can report to the prescribed body, which is generally speaking a regulator responsible for a particular body.

● (0855)

If in the event that they don't have confidence in their employer or the prescribed body, they believe their concern might lead to reprisal, where they can show that they're not personally benefiting or profiting from the disclosure, and other circumstances or conditions are met for the concerns being raised, and it's believed to be reasonable in all circumstances, they can report to a journalist or a member of Parliament.

The Chair: Mr. Devitt, unfortunately I'm going to have to cut you off there. We're well over the 10 minutes we've allocated for opening statements, and we do want to have an opportunity for our colleagues at the committee to ask questions. I'm sure that much of the information you may not have gotten to will come forward during the question and answer period. I apologize for the interruption.

Mr. Devine, I understand that you are with us now from Washington?

Mr. Tom Devine (Legal Director, Government Accountability Project, As an Individual): Yes.

The Chair: We will get to your testimony immediately. We're asking for an opening statement of 10 minutes or fewer. That will be followed by another presentation here in Ottawa, and that will be followed by questions from our committee members.

If you're ready with your opening statement, the floor is yours.

Mr. Tom Devine: Thank you very much, Mr. Chairman.

It's an honour to be participating today. Whistle-blower protection is really riding the wave of a global legal revolution. Thirty-five nations and six intergovernmental organizations, including the UN, the OAS, and the World Bank now have whistle-blower protection policies. In 1989 there was only one, the United States. GAP has had to draft or enact 33 U.S. or global whistle-blower policies or laws helping 8,000 whistle-blowers since 1977, so we're speaking from a base of experience.

Our primary lesson learned is that weak rights are counter-productive. They increase the chilling effect and associated secrecy when the rights on paper do not reflect reality in practice. As a result, organizations like the Council of Europe, the Organisation for Economic Co-operation and Development, and groups like ours have developed best practices that distinguish effective whistler-blower laws, which are nicknamed “metal shields”, from ineffective laws or “cardboard shields”. If you go into battle with a metal shield, it's dangerous but you have a fighting chance to survive. If you go into battle with a cardboard shield, you're going to die.

Unfortunately, Canada's law is a paper shield, the global lowest common denominator. Its rights are not even in the same league as those of African nations like Zambia or Ghana or former communist nations like Serbia. Using 20 evaluation consensus criteria, the act only passes one and a half, or has about a 15% score. Let's consider why.

The first criteria is the context for free expression rights with no loopholes. Arbitrary loopholes that are based on formality, context, time, and audience dilute the law's potential for accountability. They are stopping up the free flow of information for accountability, and they also create confusion and uncertainty when it's safe to speak out, which causes an associated chilling effect. This law does not protect disclosures to co-workers, which are necessary for the homework to make responsible disclosures, to law enforcement, to Parliament, to the public, or to the media, except in token circumstances.

The second criteria that I consider—and I consider a dozen of the 20 that are most fundamental—is subject matter for free speech rights with no loopholes. It's a given that the whistle-blower law must be protecting disclosures of any misconduct that betrays the public trust. The act does not cover the catch-all category for whistle-blower laws or any anti-corruption laws, or abuse of authority that betrays the public, although it may not be technically illegal. It does not even cover Treasury Board regulations that are significant for procurement.

A third criteria is protection against spillover retaliation. It takes a village of supporting witnesses, expert second opinions, and peer review for an effective, responsible whistle-blowing disclosure. This law does not protect those who assist or who are associated with, and are mistakenly perceived to be whistle-blowers.

Let's go to some criteria very significant for infrastructure. One of those is shielding whistle-blowers from gag orders. Any effective law must override, cancel out, any prior or future rules that contradict or override its free speech rights. They can only be modified by amending the whistle-blower law itself, but this law only protects against parliamentary restraints. Agency gag orders can cancel the national statutes through internal controls. Settlement gag orders are free to lack in secrecy that conceals illegality of public health and safety threats, which is unacceptable for a transparency law.

Let's go to the heart of this act, which is essential support services for paper rights through providing relief through informal investigations, in this case, the PSIC. This is very important so that there's a legitimate channel for closure as an alternative to due process proceedings that many unemployed whistle-blowers can't afford.

● (0900)

But in this act, with the PSIC and its commissioner, whistle-blowers have a toothless investigative agency that cannot even demand evidence of retaliation, that has a blank cheque not to “deal with” complainants' cases or their rights, that has immunity for its actions, and that operates in total secrecy. This is to enforce a transparency law.

Let's go to the next criterion, the right to a genuine day in court. That's the foundation for any credible legal right: the due process right to present evidence and confront accusers in courts reserved for society's highest-stakes issues. This is a whistle-blower law. Under this law, there is no right to any day in court. The PSIC commissioner has to file the lawsuits for the commissioners and hasn't argued a case in court for over a decade.

There shouldn't be any confusion. The lack of due process is the primary reason this act is not legitimate. The rights in the law will not be credible until whistle-blowers have the due process right to defend themselves. In fact, the law even cut out previously available court access, making itself the exclusive remedy.

The final criterion for an effective infrastructure is realistic legal standards to prove violations of rights. These are among the law's most significant features. They set the merits rules of the game for how much evidence is needed to deserve protection and for how much is necessary for each side to win.

On the merits test for protection, the global consensus is the “reasonable belief” test. This is the objective test that information is credible for another person with similar knowledge or experience. Significantly, the whistle-blower can be mistaken, although no law protects knowingly false disclosures.

However, this act uses the outmoded “good faith” standard. That has been discarded, because, first, it's subjective, which creates an inherent chilling effect, and second, because in many cases it led to putting the whistle-blower's motives for disclosing misconduct on trial even more than the alleged misconduct itself. While motives are relevant for credibility of evidence, they're totally irrelevant for deciding whether disclosing information should be protected. The point of whistle-blower laws is to maximize the free flow of information from all witnesses who could help the public and not to make moral judgments about why someone exposed misconduct.

The other part of legal standards is burdens of proof. Nearly all modern whistle-blower laws also have a two-part reverse burden of proof. The whistle-blower's burden is to prove a connection between protected activity and the damaging action, that the action was taken at least for partially illegal reasons. When that occurs, the burden of proof reverses to the employer to prove that it acted for lawful reasons independent of freedom of speech. This two-part reverse burden of proof is standard in almost all modern whistle-blower laws.

Canada's act has no burdens of proof. My understanding from talking with NGOs here is that in practice the burden is entirely on the whistle-blower. This hopelessly stacks the deck.

But once we get out of infrastructure, you have to have a realistic time frame to act on rights. It can take a lengthy campaign to find a good lawyer and gather evidence to file a winning lawsuit, and with a short statute of limitations, employees may not even know that they have rights before it's too late to act on them. Six months is the minimum. This act gives 60 days.

What's the bottom line for any whistle-blower law? It is relief for those who win, and unless there is a “make whole” commitment in the law to compensate whistle-blowers for all the direct and indirect damage from retaliation, they will still lose by winning, and the law will make the chilling effect worse. This has to also include the cost of litigation, such as the cost of hiring an attorney so that you have a chance to fight your case. This act does not include the “make whole” principle, and it has only token, dormant provisions for attorney fees.

Now let's go to preventing retaliation, personal accountability for retaliation. Without it, through liability—

● (0905)

The Chair: Mr. Devine, I'm sorry to interrupt. We're over time already, so I'm going to have to get you to wrap up very quickly, if possible.

Mr. Tom Devine: Thank you, sir.

Without disciplinary accountability, there is no deterrent value to the law. There has been no discipline in over a decade with this law, or credible corrective action, which is the primary cause for a chilling effect, even more so than fear of retaliation. There has been no significant corrective action in over a decade with this law.

Folks, thanks for inviting me. The Government Accountability Project applauds your rolling up for your sleeves for some very hard work, and you have our commitment that we will share any of our expertise and experience in helping you to accomplish that task.

The Chair: Thank you very much, sir. We appreciate your offer of assistance.

Finally, here in Ottawa, we have Madam Gualtieri, with an opening statement, please.

Ms. Joanna Gualtieri (Director, The Integrity Principle, As an Individual): Thank you, Mr. Chair, and thank you to all members of the committee.

It is a great privilege to participate in what I believe is a critical and essential function, and that is to restore trust in our public service by locking in legitimate rights for the protection of whistle-blowers.

Briefly, I am a lawyer with 25 years of work in this field. In 1998 I founded FAIR, the Federal Accountability Initiative for Reform, and I served as chair of the board for the Government Accountability Project, Tom's organization, in Washington, D.C. I authored two private member whistle-blower bills, introduced in the House in 2002 and 2004, and I've testified to five different Commons and Senate committees. It is fair to say, no pun intended, that my entire professional work for over two decades has been given to promoting the need to protect whistle-blowers and engaging the Canadian public in understanding the indispensable role they play in promoting accountable government.

My clearest understanding of the mighty role that whistle-blowers play in shining a light on corruption and holding powerful institutions to account is as a result of my own whistle-blowing. In 1992, I joined the then Department of External Affairs, and five months in, my life changed forever. I would like to share with you the betrayals of the public trust I discovered and endured, and the efforts at corrective action I took internally for six years, right up to the minister, and externally for 13 years in legal proceedings, but I can't because I am gagged. You must abolish this manoeuvre.

In the absence of being able to speak freely, I will read from a newspaper article by journalist Greg Weston, entitled “Enemy of the state”. It says:

> Joanna...had just joined Foreign Affairs as a property manager when she got her first glimpse of taxpayer hell, a Canadian trade official's Tokyo digs costing over $350,000 a year—in rent.
>
> Seems the official didn't fancy an $18-million mansion owned by the Canadian government in the same city, which...sat empty for almost four years.
>
> Unfortunately, Canada's outpost of opulence in Japan wasn't the only diplomatic money pit taking taxpayers for a ride of the limo kind.
>
> Almost everywhere she went, Gualtieri discovered Canada's official face to the world was laughing all the way to the public purse.
>
> Naturally, she screamed loud and long to her bosses....
>
> In her mind, she was just doing her job.

Put simply, whistle-blowers are employees who exercise their free speech rights to challenge abuses of power or illegality that harm or betray the public. They represent the highest ideals of public service: loyalty, honesty, and dedication. Let us consider their contributions.

Whistle-blowers save lives. They succeeded in shutting down nuclear plants that were 97% complete, because of shoddy building materials. They have compelled drug companies to withdraw dangerous and lethal drugs. In Canada, Dr. Nancy Olivieri, likely Canada's most prominent whistle-blower, endured 20 years of legal battles because she refused to stay silent about a drug that her data showed as harmful. Frances Kelsey, a Canadian hero, warned the FDA about the dangers of thalidomide. They didn't license it. In Canada we did, and we know the legacy.

Whistle-blowers protect our national security. Pioneer Daniel Ellsberg risked everything when he disclosed secret files, known as the Pentagon papers, about the lies and deceptions the American government promulgated about the Vietnam War. His disclosures to media are widely credited with bringing an end to the war.

If there is ever a doubt about the necessity for the right to blow the whistle to media, listen to what Justice Hugo Black, writing for the Supreme Court of the United States, said:

> Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die.... In my view, far from deserving condemnation for their courageous reporting, the New York Times, the Washington Post...should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the...war, the newspapers nobly did...that which the Founders hoped and trusted they would do.

I had the privilege to meet and talk with Frank Serpico, who blew the whistle on corruption in the NYPD. I wondered why we had heard so little of him until we learned that the trauma led him to seek quiet refuge in Europe.

● (0910)

Whistle-blowers safeguard the public purse and innocent investors. Wrongful spending of public money is nothing new, and neither is cooking the books. Time and again we have witnessed financial scandals—Enron, Nortel, the gun registry, HRDC, the sponsorship scandal, the Senate—in which whistle-blowing could have brought a pre-emptive end to the wrongdoing. Why, then, do we do so little to protect them?

The answer is again simple: powerful institutions do not invite scrutiny. When faced with challenge, the instinct is to extinguish the challenge without ever considering the merit of the matter. What, then, must we do?

First and foremost, we must recognize that leadership is the essential cornerstone of a change movement. Never has a government or politician in Canada shown consistent and passionate commitment to fight for the rights and protection of conscientious whistle-blowers. Your contribution to public life and the health of our nation will be remembered by your commitment to this current undertaking. All else flows from these principles: freedom of speech is a right, trust in our public institutions is paramount, and politicians owe a duty of care to their constituents.

The preponderance of testimony to this committee has been about fine-tuning the legislation. Some presenters have employed negativity and even ad hominem attacks against the Public Sector Integrity Commissioner himself. With 25 years' experience, I see this approach as missing the point. It is like building a fire station without any fire trucks. A law without the prerequisite processes in place to drive the law, without the cultural revolution required to educate the public about the existence and benefits of the law, has little relevance.

The first order of business is to engage in a broad, meaningful, educative movement at the grassroots, not with academics and consultants but with real-life whistle-blowers. They need to be heard. Second and parallel, we need real protection laws, not paper shields, as Tom says. Without real protection, it is presumptuous and immoral to ask whistle-blowers to step forward.

Martin Luther King, Jr., said:

> Morality cannot be legislated, but behavior can be regulated. Judicial decrees may not change the heart, but they can restrain the heartless.

Herein are the five key elements of any credible whistle-blower protection law.

The first is full free-speech rights. Tom has already spoken to this. Remember, we have a constitutionally guaranteed freedom of expression, and this means that a whistle-blower should be able to self-determine how to blow the whistle. In theory, PSIC is a sound idea, but two points must be made. First, it is naive to believe that an office like PSIC has the power, independence, and resources to take on cases of monumental impact and embarrassment to government. By definition, it is not a failing of the commissioner, but of the structure of the commission itself. Despite a $60-million budget, Justice Gomery could not get to the bottom of the sponsorship scandal.

To highlight the absurdity of a law that imposes exclusive domain on PSIC, consider the following. In Canada, a justice official in a Trump government with information about Russian interference would be compelled to blow the whistle to PSIC. Casting no judgment on any incumbent commissioner, it is absurd to think this would work. The budget is not independent. It is entirely dependent on government, more specifically Treasury Board, and we can see how government could neuter the office by cutting the budget. As Tom said, all disclosures must be protected.

Regarding forums, it is absolutely essential that whistle-blowers have access to our courts of justice. Retaliation is reported to be around 85%. They deserve access to our courts, not to a secondary process.

Then there is remedy. Tom spoke to this very powerfully. Whistle-blowers who suffer reprisals must be made whole.

Corrective action and public accountability is again a matter Tom spoke to. Until the government gets serious about taking corrective action and leading by example, nothing will change.

In conclusion, the task this committee faces is not an easy one, but it is a clear one. Commit to freedom of expression and embark upon drafting laws that respect this right. The evidence is overwhelming that the current law is fatally flawed. You must take action.

● (0915)

Remember, there are two core principles: one, investigate the wrongdoing and order corrective action, and two, ensure that the whistle-blower is given redress. The current law is focused almost entirely on a strict regime dictating and controlling how public servants blow the whistle. Protection is almost an afterthought.

I end with saying this. This year Canada celebrates 150 years of a proud and rich history. This committee has a unique opportunity to contribute to this milestone. I ask you to take the steps to finally secure meaningful and legitimate whistle-blower rights for our public service and protect the inalienable principle of the public's right to know.

Thank you very much for this opportunity.

The Chair: Thank you very much for your testimony.

Colleagues, as I mentioned before, we will have one seven-minute round, and we will start with Mr. Whalen.

Mr. Nick Whalen (St. John's East, Lib.): Thank you very much, Mr. Chair, and thank you, Joanna, Tom, and John for your passionate testimony this morning.

As our hearings proceed, I'm led to believe now that what we have before us isn't a protection act against disclosures or something that will protect whistle-blowers, but it's almost an act, it seems, to protect wrongdoers more.

Tom, you have some prepared remarks that appear to look at the Canadian law in the context of your international best practices. I'm wondering if all the witnesses could provide a copy of their written prepared remarks so that the committee has them available for its deliberations. Would that be possible?

● (0920)

Mr. Tom Devine: Yes.

Mr. Nick Whalen: Okay.

Did you reach all 10 points in your remarks, or did you have anything you wanted to add before you clewed up?

Mr. Tom Devine: I was able to cover all the points in the best practices that I thought were particularly significant.

One additional loophole, however, is that the law does not cover all the whistle-blowers who have significant evidence to disclose. The law doesn't cover intelligence agencies or people in the military. It offers only token protection for law enforcement. This is not consistent with international best practices.

The one point I didn't have a chance to make that I'd like to second from Ms. Gualtieri—with an exclamation point—is the need for a legitimate process as the foundation for modernizing and making over this law. A whistle-blower law that is just imposed by the experts will not have the necessary base of legitimacy for the rights to be affected. If there's not cultural acceptance and there's not a cultural revolution, the legal revolution will be irrelevant for our practical purposes.

I think a good contrast is some of the European countries that have made whistle-blower laws. Romania has a beautiful whistle-blower law on paper, but it was just dictated and shoved through their parliament, and it's been irrelevant in practice.

Serbia had a series of town hall meetings across the nation to get input from citizens. It had over a year's worth of summits with all stakeholders represented—media, labour, the chamber of commerce for corporations, prosecutors, the regulatory agencies, the parliament, and the law enforcement agencies—until there was a consensus on how to structure the rights most effectively so that they would have the most impact on their culture and society and would be the most compatible. I hope this hearing will be the start of that sort of ground-up process in Canada.

Mr. Nick Whalen: Thank you very much.

That's an interesting take on it. We are operating under a regime that we currently have in place as it stands.

This is a question open to all three of you. You've spoken about the need for the whistle-blower to be able to choose their forum of disclosure, and our act sort of has a one-stop shop. People are forced to go through the process set out in the act. In the countries that you've looked at elsewhere, has there been a dramatic or marked increase in the amount of whistle-blowing that is able to take place, or more wrongdoing uncovered in jurisdictions with a more open regime, where whistle-blowers are protected if they go to media or law enforcement?

The Chair: Perhaps we'll start with Mr. Devine. Then we'll go to Mr. Devitt and finally to Madam Gualtieri.

Mr. Tom Devine: Thank you.

Yes. There's a much higher volume of whistle-blowing disclosures when you don't have those arbitrary restrictions. Whistle-blowers have probably been the most dynamic political force in the United States in recent years, at least at the level of individual issues, if not elections. One of the premises for our law is that public freedom of expression has to be protected as a rule, rather than as a rare exception, because the government relies so much on the public record for its own oversight of law enforcement. That's been a premise in our rights since 1980, and it was recently upheld by our Supreme Court in a 7-2 decision that involved a case where public freedom of expression by a federal air marshal may have helped to prevent a more ambitious rerun of 9/11 when the government was asleep at the wheel. This is an essential component.

The Chair: Mr. Devitt, please.

● (0925)

Mr. John Devitt: We've seen a 150% to 200% increase in calls to our helpline, which provides access to legal advice for whistle-blowers since the legislation here was introduced. I guess the most important feature or impact of the legislation, which I didn't get to in my presentation, is the solitary effect it has for both employers and employees. Up until 2014, as I explained, there were around 18 pieces of legislation on the statute books. This patchwork quilt of legislation protecting private sector workers differently from public sector workers created enormous confusion and uncertainty amongst whistle-blowers. What the Protected Disclosures Act has done is set one standard for all employers that they have to meet, and it makes it clear to employees that they have options when reporting.

The Chair: Unfortunately, sir, we have to—

Mr. John Devitt: Now the distinction that, perhaps, we'd make, and with the call for endless opportunity—

The Chair: Thank you. Unfortunately, I'm going to have to cut you off there to allow Madam Gualtieri a brief response.

Madam Gualtieri.

Ms. Joanna Gualtieri: To be very brief, I think, fundamentally, the idea that we impose a regime on people who are serving the public interest is just wrong. I would say this: in the last 20 years since I started, or commenced, my speaking out about wrongdoing at Foreign Affairs, you can see that the energy around whistle-blowing in Canada has dissipated. We were starting to feel enlightened, and I have to tell you that the support I garnered from Tom Devine—he was the very first outside contact I made in September 1998—was critical. We have regressed since then, so we have to renew the public debate.

The Chair: We'll go to Mr. Clarke for seven minutes.

[*Translation*]

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

Hello, everyone.

I want to thank you three for participating in today's meeting.

My first question is for Mr. Devine.

In the committee's briefing documents, I read that you represented over 5,000 whistle-blowers. That's quite impressive. I imagine that you did so with the support of the employees in your office.

I want to know whether you could tell us any common traits identified among the whistle-blowers, or the common causes that led them to disclose certain information, if applicable. I also want to know how their processes ended.

[*English*]

Okay, I can speak in English.

The Chair: Let me just clarify....

Mr. Devine and Mr. Devitt, are you able to hear the translation?

Mr. Tom Devine: No.

Mr. Alupa Clarke: Okay, Mr. Devine, I'll just speak in English. It's not a problem.

I read in our committee briefing notes that you and your office defended up to 5,000 whistle-blowers, which is quite exceptional. I just want to know if you have identified any common traits in all those cases?

Mr. Tom Devine: I'm sorry, our sound was a little bit poor. I know you asked me about common themes in the whistle-blower cases. Is that your query?

Mr. Alupa Clarke: Exactly.

The Chair: Correct. Is there any commonality amongst the 5,000 cases that you have worked on?

Mr. Tom Devine: I think there are two common themes. One is the whistle-blower's motive for speaking out. That's universal. Whether it's something we put a positive or a negative value judgment on, they had to exercise those free speech rights in order to be true to themselves. If they hadn't acted on their knowledge, for better or worse, for good or bad reasons, it would have haunted them for the rest of their lives. It's something intrinsic to citizens of a free society.

The second common theme is that these were people challenging abuses of power that could not withstand independent scrutiny. That's why whistle-blowers are so effective when they work with us. They're exposing misconduct that can only be sustained if it remains secret and people don't know about it. That's what makes this law so powerful in terms of its potential to have an impact for change. In my opinion, since the time of religious leaders like Jesus and scientific leaders like Galileo and Copernicus, whistle-blowers have been the people who have changed the course of history.

● (0930)

Mr. Alupa Clarke: Interestingly, you compare our law, which is just black ink on a paper, with other laws, in Zambia, for example, or the law in the United States. Of course, as you know culture changes everything.

You spoke about culture, Madam Gualtieri, and education to make the public more sensitive, along with the grassroots people. I guess you were speaking about public servants and Canadians in general.

If we take into account the cultural aspect, I'm not sure if we can correctly compare laws between each country. For example, we were always told that, in the United States, there's a huge culture of whistle-blowing that has been going on forever, but this is not the case here. You spoke about the importance of having good due process procedures and to have tangible support or a village of people supporting each whistle-blower.

The question is to all the witnesses. What kind of proposal would you have for Canadian people to induce some cultural impetus for whistle-blowing?

The Chair: If I could ask all three witnesses to respond but for only about a minute each, I would appreciate it greatly.

Ms. Gualtieri, we'll start with you.

Ms. Joanna Gualtieri: I speak to university students. In fact, next week I'm going to the University of Western Ontario. I can tell you that they simply do not understand what is at stake here. Once they do, they are engaged and they feel enormous enthusiasm. I met with a journalism student a couple of weeks ago, and I was stunned. She said that very few of her colleagues knew what whistle-blower meant. There are ways to do this. Tom talked about Serbia. In conjunction with passing the law, he said that they had town hall meetings across the country. We can do that. Once we engage in that kind of outreach, I tell you the culture will change.

The Chair: Mr. Devine, do you have a brief response, please?

Mr. Tom Devine: Yes.

No matter what the culture, the magic word for any society is “consequences”. What's made whistle-blowers laws popular and the reason they have spread so much is effective education about the tragic consequences that could be avoided if it weren't for secrecy and the disasters that can be prevented when we have the knowledge to act in a timely manner. That's why whistle-blowers have gone from being pariahs to being on a public pedestal in the United States because they have made a difference.

The more that your process can foster, not just strengthening the law and adding more teeth to these rights but getting the word out about how this can make a difference in changing society, helping people's lives, and preventing unnecessary disasters or tragedies, you'll have the political support.

The Chair: Thank you very much.

Mr. Devitt, very briefly, please.

Mr. John Devitt: If there's one measure you can take to change culture, it's to create one single standard that employers and employees have to meet when making disclosures. Having one single, simple strong law in place is better than having 20 on the statute box. That's the approach the Irish government has sought to take. It's one that has gained ownership and buy-in from employers, trade unions, public bodies, and regulators.

In our own survey of attitudes towards whistle-blowing recently, we found that between 90% and 95% of employers said they supported whistle-blowers even when they're disclosing confidential information. It's important to have one single law on the statute box and a strong one.

The Chair: Thank you very much.

We'll now go to Mr. Weir for seven minutes, please.

Mr. Erin Weir (Regina—Lewvan, NDP): Thank you, Mr. Chair.

I'm kind of stunned that we've had seven minutes of Conservative questioning that did not pick up on the point about gag orders as they relate to the procurement of Super Hornets. I would like to ask all of our witnesses how they would reconcile exempting whistle-blowers from secrecy agreements or gag orders with the genuine need to read in officials who are involved in procurement of things that include commercially sensitive information.

● (0935)

The Chair: Mr. Devine, do you want to start?

Mr. Tom Devine: Sure. This has been a topic that has been heavily analyzed in the United States. The Whistleblower Protection Enhancement Act of 2012, which was passed after 13 years of study, has four of what we call anti-gag provisions in the law.

The principle is essential because otherwise agency secrecy agreements can cancel out the statutory free speech rights, or settlements can make a joke of the quest for justice by sacrificing the public interest. There has to be a responsible balance.

The boundaries in the United States are that if information is marked as classified for military reasons, or it's release is specifically prohibited by a statutory provision, by our Congress or your Parliament, you can't publicly release that information. Any other restrictions, however, are superseded, if the information is covered by the whistle-blower law. If it's evidence of illegality or threats to public health or safety or mismanagement, you don't have the free speech right to make a blanket disclosure. However, that particular part of the information, you cannot be gagged from. That's been in every U.S. whistle-blower law since 2000 because without it the laws would be circumvented easily.

The Chair: Mr. Weir, did you want to have responses from all witnesses?

Mr. Erin Weir: If the other witnesses have something to add on this, that would be great. If not, I have many other questions.

Ms. Joanna Gualtieri: I'll briefly address the gag order. There's something that is so fundamentally perverse that a whistle-blower, who by definition steps up with information of public value, is then forced into a gag order and forever prevented from speaking that which they basically made...that was a major feature of their life. It's so fundamentally wrong.

Tom has spoken to how you can go about reversing that Orwellian manoeuvre.

Mr. Erin Weir: Mr. Devitt.

Mr. John Devitt: The Irish Protected Disclosures Act, under section 23, prohibits an employer from forcing an employee to sign a gagging clause. It's very clear, irrespective of what. There are either exceptions for those sharing information that might be related or have an impact on national security. However, where public contracting is believed to be subject to wrongdoing, there are no provisions to prevent an employee from sharing information or making protected disclosure about that.

The Chair: Mr. Weir, you have about three minutes left.

Mr. Erin Weir: I think today's testimony suggests that we really need to overhaul our Public Servants Disclosure Protection Act. Assuming that we are able to get a strong piece of legislation in place, I wonder how often it should be reviewed. The current law speaks to review every five years. Our committee is now reviewing it for the first time in a decade. I wonder if our witnesses have any thoughts about what the right type of review period is.

The Chair: This time we'll start with Madam Gualtieri.

Ms. Joanna Gualtieri: I think that if the law is an effective law, a legitimate whistle-blower protection law, then you test it by seeing how it's working. If there was a need to review it, then you can take measures to undertake that. But the first order of business is to get a law in place that is our best effort, follows best practices, and then to let it do its work. I have no strong views about imposing a statutory review in the law. I think that if it is imposed and not necessary, it could waste a lot of public money. I think that you test to see how the law is working through real-life examples of whistle-blowing.

● (0940)

The Chair: Thank you.

Mr. Devitt, do you have a comment?

Mr. John Devitt: Yes. The Protected Disclosures Act is due to be reviewed again this year, three years after it was originally enacted. I just want to make it clear as well that the Protected Disclosures Act covers both public and private sector workers, and those in the non-profit sector, too. It's not just the public sector whistle-blower act.

The Chair: Mr. Devine.

Mr. Tom Devine: I think that the five-year period by statute is a reasonable one if you're going to have a structure for official review, but a review should be ongoing and continuous. Groups like ours are constantly evaluating the trends and how the law is being interpreted and enforced, and then informally briefing folks like you in Congress, so that they're aware of the latest trends and developments.

Our Congress, on average, has oversight hearings for comprehensive assessments of how the law is working about every other year just through legislative hearings like you're having today.

The Chair: Thank you very much.

Mr. Erin Weir: This is just a quick question for Mr. Devitt. Ireland has been upheld as the gold standard for whistle-blower protection, so I appreciate your testimony about the Irish system, but I do wonder if you've had a chance to look at the Canadian law and if you have any specific feedback on it.

The Chair: We only have a few seconds left, sir.

Mr. John Devitt: Sure, okay.

I think one flaw in the legislation, as I understand it, is that it is restricted to protecting workers in the Canadian public service or in crown-owned companies. This leaves private sector workers and those working in the non-profit sector unprotected. The fact also that PSIC is required to give clearance or forward on complaints about retaliation to a judicial body may prevent those cases where there is merit to the claims from being heard. In Ireland, there's no barrier to seeking redress through the courts.

The Chair: Thank you.

Our final intervention will come from Madam Ratansi.

Ms. Yasmin Ratansi (Don Valley East, Lib.): Thank you all. You've given us a lot of testimony. You've given us a lot of food for thought. Considering that this law was written in 2007, and we are doing a first review, and considering that it's not probably feasible to rewrite the whole thing, there must be some low-hanging fruit that we can capitalize on. For example, Mr. Devine, you said that the Canadian law is a paper shield and not a metal shield. How would you make it a metal shield?

We heard about the gag orders. We heard about the “good faith” clause being removed. What else would you do to make it a metal shield?

Mr. Tom Devine: I think the first cornerstone would be to eliminate the arbitrary restrictions on when protection applies, so that it applies whenever you're not engaging in some sort of illegality by blowing the whistle. There shouldn't be artificial restrictions that it's written or oral, or that it's to a certain person and not another.

The second cornerstone would be to give whistle-blowers access to court if they don't get a timely ruling from the PSIC. In the United States, usually the cut-off is about 180 to 210 days. If your informal remedy hasn't produced results by then, you're free to go to the next step and graduate to a due process remedy.

The third cornerstone for improvement would be getting in the modern burdens of proof that are part of the best practices for every recent national intergovernmental whistle-blower law.

The fourth cornerstone would be adding in the premise that you will be “made whole” if you prevail in your whistle-blower retaliation case so that you're not worse off even though you've won.

You can add all four of those premises without dismantling the portions of the law that are currently in existence.

Ms. Yasmin Ratansi: Thank you.

Madam Gualtieri, I am so sorry you were called the enemy of the state. As a whistle-blower, there should be a protection. You and, I think, Mr. Devine talked about PSIC being a toothless agency. You also mention “full free speech rights”.

What do you mean by that? Where should the whistle-blower go, straight to the media or to other agencies? If you say “media”, then I have a bit of a concern, and I'll explain why. Sometimes the media like to sensationalize the message.

How would you ensure that whatever you say, the content is what they report, not the headlines?

● (0945)

Ms. Joanna Gualtieri: One thing that has not been discussed here today is how whistle-blowers work in reality. I reflect that. Most of the whistle-blowers I've talked to, especially when you're talking about systemic wrongdoing—not individual acts, somebody stealing a TV or something of that nature—that permeates a government department, as in my case, spend a tremendous amount of effort trying to effect corrective action and be heard inside the organization. I did it for six years, right up to the minister's office.

Going to the media was not something that I relished. I had no experience in it, but what were my options? Going to the media was the last step. What has to be demonstrated is that there is an agency or a process in place that truly enables the whistle-blower to be heard, to participate in the investigation process, and not to be disenfranchised. They have to be part of the whole development of what is actually being exposed and investigated.

Whistle-blowers do not run to the media. Tom would, I believe, fully endorse that. Also, I think we have to remember that the media historically has been the channel or the avenue by which we, the public, and you, the politicians, have been informed about systemic wrongdoing.

Ms. Yasmin Ratansi: Thank you very much.

We heard from a lot of witnesses. Some of them said, “Okay, you need to strengthen your internal processes.” You have been subjected to the internal processes that you utilized. They also said to make the Public Sector Integrity Commissioner more proactive rather than reactive.

What would you say to that? I would like to get the opinion of the other two witnesses on it as well.

Ms. Joanna Gualtieri: I'm not entirely sure what you mean by being proactive. I'm going to assume that you mean they should go out and kick off investigations by themselves.

Ms. Yasmin Ratansi: That's what was suggested.

Ms. Joanna Gualtieri: I don't think that the office has the resources to do that. There will be plenty of public servants who, with a belief and a trust in the system, will come forward with information. That will keep the office very busy.

Again, Thomas highlighted that there really are two issues. One is the need to examine the wrongdoing. This act essentially attempts to do that, to get the information. You have to remember it's called the Public Servants Disclosure Protection Act, not the “discloser” protection act but “disclosure” protection act. That's an important distinction.

We have to investigate the wrongdoing, but we also need to have a body—not bifurcated the way it is now with a tribunal—that can very quickly and effectively take steps to protect and, if necessary, provide a remedy to the whistle-blower.

The Chair: Unfortunately we're out of time. I apologize again to all our witnesses. I think if we had adequate time, we'd probably be here for several hours. Your testimony has been extremely informative and I can assure you, on behalf of the committee, extremely helpful to us in our deliberations.

I would ask that all of you, however, should you have additional information you think would be of benefit to our committee, to please submit that through our clerk so we can include your additional testimony in our deliberations. Thank you once again for all your appearances.

We will suspend now, colleagues, for a couple of minutes while we wait for our next witnesses to approach the table.

● (0945)

(Pause)

● (0950)

The Chair: Colleagues, I think we'll get going as quickly as we can. We're running a little over time. We want to give adequate time for all of our witnesses to provide testimony and to have our colleagues around this table ask questions.

I welcome all of our witnesses here. I know you have been observing the testimony in the first hour. I would ask, if you could, to keep your comments as succinct as possible to allow for as many questions as we can ask in the brief time we have before us.

Mr. Conacher, welcome again. I haven't seen you for a while, since I was on the procedure and House affairs committee. Thank you for being here.

Madam Myers and Mr. Garrett, thank you as well.

First on my list is Mr. Conacher. Please provide your opening statement, sir.

● (0955)

Mr. Duff Conacher (Co-Founder, Democracy Watch): Thank you very much to the committee for the opportunity to testify today.

My name is Duff Conacher. I am co-founder of Democracy Watch, which started up in 1993. We now have 45,000 supporters across the country and another 100,000 people who have signed petitions in support of one or another of our campaigns, including our campaign to protect whistle-blowers who protect Canadians.

More than 21,000 people have signed a petition. The leaders of each federal party would have received those letters, and that's just in the last couple of weeks—a petition that we launched just two weeks ago on change.org. It calls for 17 key changes by the federal government, not just to strengthen the Public Sector Disclosure Protection Act but to strengthen whistle-blower protection overall.

Whistle-blower protection is not only needed for public sector workers. I know the system is currently open to anyone who might want to file a complaint with the Integrity Commissioner, but the Integrity Commissioner would have difficulty protecting people from retaliation who are outside the public sector currently. As well, private sector workers in federally regulated institutions are not protected by the law, and the overall system for private sector workers is very inadequate. There are some protections under competition law, labour law, and environmental law, but education as to where to go and the entire system of protection is far too weak, as it is for public sector workers.

The petition calls for 17 key changes to the federal government system to ensure that everyone who blows the whistle on business or government wrongdoing in the federal sector will be fully and effectively protected. As the current banking service scandals show, such protection is needed not just for public sector workers but for all federally regulated business workers.

I won't go through all of the 17 key changes in detail, but I am happy to give you detail. I have made a submission to the committee, so you will have them. They're set out in the petition.

Our first is ensuring that everyone is covered by the protection law and system, including political staff and also including CSIS, RCMP officers, and the military, who are currently not covered by any system.

Another is allowing everyone to file their complaint directly and anonymously with the protection commissioner. That commissioner should not only be the Public Sector Integrity Commissioner, but at the federal level we are proposing that there be a private sector central office set up to cover anyone in the federal private sector. It would be a clearing house, ombudsman-like office that would help them find the law enforcement agency they should go to, while protecting them as soon as they file a complaint.

Next is ensuring that the protection commissioner is fully and independently appointed and empowered to impose penalties. First of all, in terms of appointment, Ontario has the best practice appointment system. They only, unfortunately, use it for provincially appointed judges. An independent commission does a public merit-based search, comes up with a short list, submits that short list to the minister, and the minister has to choose from that short list for any position that's open on the provincial bench in Ontario.

That system should be used for all cabinet appointments, especially of anyone involved in law enforcement. Currently the ruling party chooses the Integrity Commissioner or all the other officers of Parliament. The opposition parties are consulted, but they don't have any power at all. Instead, an independent commission should be set up, as Ontario has done. It's the best practice in the world.

Next is requiring the protection commissioner or agency to conduct audits and to rule on all complaints publicly, in a timely manner, with the identity of all wrongdoers made public.

Currently, the Integrity Commissioner is using a discretionary measure under the Privacy Act to hide people who are employed by the public who have done wrong. It's just a bad idea. Those people can leave and someone else may hire them never knowing that they've actually done wrong. They may transfer within government, and the other people in a different government division do not know that they've done wrong.

It's a discretionary measure under the Privacy Act. There's no reason at all to hide name of a wrongdoer. Unfortunately, the Integrity Commissioner is abusing that discretion currently. It should be taken away from the commissioner.

● (1000)

The commissioner should also have the power to impose penalties, administrative monetary penalties, as a front-line enforcement officer so that we don't have to go through the whole process of the tribunal every single time.

Next, whistle-blowers need to be compensated fully for legal advice that they need, and they should also be rewarded adequately if they are reporting wrongdoing that is proven. That is because whistle-blowers stick out their necks and often either have to leave their jobs or move their jobs. In the U.S., it's a 10% rule, essentially, for both private- and public-sector whistle-blowing. They get 10% of what they saved the government or in terms of the fine under the securities law. We don't necessarily have to go that high, but I think at least one year's salary should be provided to somebody and also priority in transferring within government if their allegations are proven.

Finally, I have a couple of quick ones. First is allowing everyone to appeal to court if they disagree with the protection commissioner's ruling, making sure that's set.

A very important measure in the U.S. was proven that you need to reverse the onus so that the employer would always have to prove that retaliation was not taken against the whistle-blower. If you leave it that the whistle-blower has to prove it, in the first 2,000 cases in the U.S. where that was heard, the whistle-blower lost every time. It is often very difficult to prove retaliation.

Finally, ensure that there's an independent audit of the protection system at least every three years.

The federal Liberals have promised open government and openness by default. If the Liberals do not strengthen the whistle-blower protection law, they will not be able to keep that promise. You cannot have open government if whistle-blowers are not protected fully and effectively.

I welcome your questions. Thank you very much.

The Chair: Thank you very much. I appreciate the economy of words.

Madame Myers, please go ahead.

Ms. Anna Myers (Director, Whistleblowing International Network, As an Individual): Thank you very much.

[*Translation*]

It's a great honour to be here today.

[*English*]

It's an honour also to be in Canada. I'm a trained lawyer and called to the bar in Ontario, but I'm also a lawyer in the U.K. of the Law Society of England and Wales, and my career working on whistle-blowing has been in Europe and in the U.K.

I want to say that from a Canadian point of view, I started into this work because it seemed Canadian to me. It seemed to be about doing the right thing genuinely, honestly, when you come across wrong-doing. In the U.K. it was very much from a good governance, better regulation, good government point of view.

I think one thing you need to keep an eye on is that most laws that are being developed and have been developed around public interest whistle-blowing are both around the protection of the whistle-blower but also very much about freedom of and access to information—the public's right to know in the end, if they're being put at risk, if their lives and their taxpayer money is being misused.

I also worked a lot internationally, because as is the case for Tom Devine at GAP, there are few organizations that do this work. Where we were in the U.K., where I was deputy director for close to nine years, we actually helped draft a law that was put on the books. Organizations and governments and lawyers and jurists and parliamentarians came to us over the years, and so in the end I have set up Whistleblowing International Network with civil society organizations and a lot of public interest lawyers to talk about the tools and why this is so important internationally as well as within national jurisdictions.

I think this work that you're doing is deeply important for Canadian democracy. One thing that I think you've heard is that the object of the law seems already, if you read the preamble, very limited. In 2005, I remember, when the law came across my desk—because I was interested from afar—it felt like a very small step in a small direction. When I look at it now, it seems incredibly limited.

What has happened internationally is that the world has moved on dramatically. I also think that the law is not looking at it from the point of view of public information being dealt with properly—any information that discloses public interest issues—or of protecting those civil servants and others who raise those issues. It's also being too restrictive in the way that raising them is meant to go through a process.

One thing to look at is what the U.K. system did. They very much looked at protection as a way to facilitate the free flow of communication. It did not put any duties on the regulators. There was considered to be a system wherein different bodies had different regulatory authority. If they got information, it was within their mandate to deal with it. Then you'd be protected for going to that body. I think that was very much part of building on an already British system.

But for some of those regulators, as we've been through a period of deregulation and light-touch regulation, there has been a lot more perspective on making them do their jobs. Duties and responsibilities of the institutions to investigate and to deal with the issues have been greater and greater internationally. One way to think about it is in terms of accountability. Rather than how I blow the whistle and whether I do it right or not, it's a case of who is responsible if there is harm. Who has to account for it?

I don't mean scapegoating; I mean explaining your conduct. Closed systems of addressing information and protecting individuals always need to face the potential that they will be asked to explain their actions to an oversight body or to other systems.

When I look at the Canadian system now, although there are bits of independence, it looks like a closed system for the public service to deal with things and, even in the preamble, to maintain confidence in the institutions of government. That's an outcome for dealing with public interest information; it's not the goal. If the confidence is rightly judged not to be high enough and change is needed to regain it, you need to know about it.

This is where I see, in just the purpose of the law and the way it has been set up, that it is designed to be a little bit less than something that actually deals with the information that could be damaging and put people at risk.

You've heard a lot about the public-private split. That, again, was never part of the U.K. system. It fit in with the employment protection system that covered anyone with work. In fact they've extended it from being “employees”, in the legal definitions, to contractors, to interns, to all sorts of people who come across wrongdoing.

● (1005)

If you think about it as an early preventive method of dealing with things, you'll want people who come across wrongdoing to speak up early. Again, that's where I would think that the definitions and scope of the information in your law is too high for the early protection to happen. When people start to face retaliation or a shutting down of a system that doesn't want to be questioned, they become discredited over a long period of time, so you need to think about earlier protections, closer to the problems, and as well make sure that there are the routes outside so that those who are responsible earlier have to explain. That's where you have the safe alternatives to silence.

Direct access to remedies, I think you've heard a lot about that. I'm happy to talk further about that, but that's a natural justice issue. Not having that doesn't make a lot of sense.

As well, I think there seems to be a fundamental confusion around the scope of the public interest, about its being around conduct of individuals. In the reprisal element it's really important to think about detriment not being a *j'accuse* situation, that you have to necessarily find a wrongdoer in terms of the reprisals. You may have heard that the scope in the U.K. is around any detriment suffered, which is about not getting good evaluations, not having the career advancement. A lot of people will be involved in those decisions. There may not be someone out to get someone because of their disclosure, but a system that's starting to discredit them, that's not questioning, and that just carries on.

I've heard some statistics that maybe 50% or more of public servants in Canada at the federal level—it's even higher and I find that shocking—might feel either that they are not able to speak up about any kind of wrongdoing or ethical misconduct, or feel that they wouldn't be protected as part of the public service. There are a number of issues around the scope: the duties and responsibilities to respond to disclosures; making sure it is covering a wide range to fulfill the purpose of the act; the wide range of people who would have information that would be of value; that you look at it as who might be accountable for the wrongdoing rather than accountable for the way they tell you about it; direct access to remedies; and finally, access to information.

We've talked about the gag orders, but the idea that even the information that the Public Sector Integrity Commissioner's office receives is somehow never to be put in the public domain. I'm not sure if I've understood what the rules are of access to information of the PSIC's work over years, and if that cannot be eventually understood by the public. Those things, I think, are quite serious issues if you're talking about this as both a transparency and an accountability piece of legislation.

● (1010)

The Chair: Thank you very much.

Finally, we have Mr. Garrett.

Mr. Don Garrett (D.R.Garrett Construction Ltd., As an Individual):

Thank you for the opportunity and privilege to attend here today.

I was raised on a farm and started working as a carpenter apprentice and in the logging industry as a faller. In 1982, I became a bonded contractor at 27 years of age, which allowed me the freedom to tender publicly funded projects—that is, until I was put out of business by the federal government.

In October 2008, I was invited to tender a project at Kent prison, replacing porcelain sinks and toilets in 160 cells with stainless steel fixtures. I was the low bidder and awarded the contract. That is when the problems began.

On the first day on site, after unloading the materials, I was told that we could not proceed with work because of a snag. I received no explanation and eventually learned that the snag was asbestos. I later learned that Kent had just been seriously contaminated with asbestos exposure by allowing a contractor to grind floor tile that contained asbestos with no abatement procedures. The guards discovered the release, and after serious exposures to them, the inmates, and also workers from that contractor, apparently the guards took job action.

We were restricted to installing sinks only. Public Works then suspended the toilet installation by five weeks. Toilet installation required rebuilding leaking valves, but unknown to me and my crew, those valves contained very high concentrations of asbestos. No one told me this. I found it out through my own inquiries. By this time I, my crew, and many others in the facility had already been exposed.

When I reported this serious matter, instead of their acknowledging the problem, I was treated as the problem. It seemed that every effort was made to deny what had happened and to punish me. I reported this to the oversight branch of Public Works, under the control of Barbara Glover. They conducted an investigation, with Margherita Finn from the special investigations department coming to interview me in B.C. Now there was a spark of hope. To my astonishment, their verdict was that there was no wrongdoing.

I've gone nowhere with other agencies, so PSIC was my last hope. I submitted a disclosure of wrongdoing; however, dealing with PSIC turned out to be a nightmare. For example, they obviously gave my case very low priority. It eventually took 24 months to complete their investigation. At one point, they told me they could not speak to me because I was from the private sector, even though I was the whistleblower.

In all of the two years trying to communicate with PSIC, I probably had less than two hours of conversation with them. They kept me in the dark nearly all the time regarding the status of my case. Eventually a contractor investigator was assigned, who seemed to be very competent and thorough. She told me that based on the evidence it looked as if there was serious wrongdoing. She planned to come to B.C. to interview me and made a list of 29 questions she felt needed to be answered before that interview.

Everything went quiet. I found out after several months that her contract had been allowed to expire, rather than complete the investigation.

A new investigator, a member of the PSIC staff, was assigned, who wrapped up everything in a few days. He never spoke to me or key witnesses or attempted to have the 29 questions answered. The conclusion from the Integrity Commissioner, Mario Dion, was that there was no wrongdoing. It relied upon the assurances from the two departments that were implicated in the alleged wrongdoing: PWGSC and HRSDC.

His letter contained a reference to an asbestos-containing material or “ACM” survey done for Kent prison in 2004. Before receiving PSIC's decision of no wrongdoing, I did not know about the existence of that report on Kent, although PSIC did. This was new information to me. For over five years I'd been asking for information about asbestos in the Kent prison. Eventually, through ATIP, I received the ACM report. I have it here.

On page 3 of this report, the primary contact reference is shown as Michael Cuccione. He was the person who had invited me to tender and was also the project officer of my contract. Both Public Works and PSIC had hidden this document from me. This is a document that, had I been shown it at the start, would have saved me, my crew, and others from exposure to deadly asbestos. In fact, I did not need the whole document, but only the following two sentences:

● (1015)

> ...ACM gaskets are most likely installed on all mechanical systems (i.e. domestic water...) throughout the facility, however once these materials have been installed they are hidden from plain view and impossible to find without dismantling the system. Therefore, ACM abatement procedures should be exercised when this material is disturbed or removed during service work.

That's straight from the report.

I repeat, this is a document that Public Works and PSIC hid from me and from other witnesses while arriving at their conclusion that there was no wrongdoing. If I had known about this document, do you really think I would have exposed myself and my crew to asbestos? If I did, I would have been faced with huge fines from WorkSafeBC and most probably lawsuits from others.

Throughout the confusion of all this, I was supported by Allan Cutler and David Hutton. David offered to review the documentation I had assembled and wrote a 17-page report, which has been entered into the evidence for the committee. This report explains how PSIC concealed vital evidence from me and hobbled its own investigation.

Today, my circumstances have changed unimaginably. I have lost my bonding status and my business is bankrupt. My health may be at risk. I never know when I might receive the diagnosis of asbestos-related disease that is a death sentence. I'm now estranged from business associates, friends, and worst of all family, who believe that I must have done something wrong to cause all this.

Clients both public and private have quit calling me for work, an unofficial blacklist. This dispute with Public Works has overtaken my life and taken a serious toll. Many think I now have mental problems. In some respects they are correct, as I am on a path of becoming seriously affected by PTSD. I'm now the primary caregiver for our adopted daughter, a Romanian orphan with special needs who requires full-time attention. At times I feel I am scarcely hanging on to my sanity.

Yet the government is still not finished with me. I have launched a lawsuit against them, but I've been told that the Department of Justice will have a whole team of lawyers lined up that could run up my legal bills into additional tens or hundreds of thousands of dollars.

Both my father and grandfather served overseas in past World Wars, and they believed they fought to preserve our Canadian values of freedom and common decency, and in their honour I'm doing the same in a slightly different way.

Where do I turn to now? Do any of you know of a way that I can finally get some help without further confrontation?

Thank you.

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

Thank you all for your testimony.

We'll start with our normal seven-minute rounds.

[*Translation*]

Mr. Drouin, you have the floor for seven minutes.

[*English*]

Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.): Thank you, Mr. Chair, and I want to thank the witnesses for being here today.

I'll deal with a few points that Mr. Conacher brought up, but I want to talk to you—maybe to you, Ms. Meyers, if you have some experience around the world—about how much emphasis you put on culture. I know we have an act here, but it's back-ended. It is here that the worst-case scenarios happen.

How much focus do you put on culture within government to ensure that when issues arise, there is a level of confidence, that people can declare something's wrong, that there's a level of confidence within the bureaucracy such that people are comfortable? How much focus do you put on culture?

Ms. Anna Myers: A focus on culture without offering some clear, rational ways in which to raise things leaves a mixed message. I think people are incredibly smart and rational. They will have understood that somebody has tried something and that it didn't work. That's a message that gets around culturally much faster than one about what works. The proactive side of making sure that if you have a system you're going to rely on and that you tell people about it and do so really well is incredibly important, then, because you start to change the culture in terms of confidence in the system in place and being able to speak up.

Culturally in Canada I don't think you'll have much difficulty in saying that it is your duty and your responsibility—not in a legal way that duty can be, but as someone who's providing a public service. Even within private sector companies, they are providing services.

One of the backgrounds of public concern at work was consumer protection. Most of the background was actually private sector disasters—a sinking of a ferry, the explosion on an oil rig, and a bank that collapsed before we had the financial meltdown. You don't get a lot of push-back culturally, if you're talking about why you're doing it in the public interest and you're appealing to people's values and sense of wanting to do a good job and are providing them ways in which they can make sure that the people who are responsible and who will have to account for wrongdoing know about it and do something about it. Most of the shock comes when that doesn't happen.

I understood at the very beginning that in different parts of the world there are bodies within government who deal with civil servant codes of conduct and ethics. This is where I think this act became a bit confused, because it did that along with wrongdoing, and raising it somewhere, and also potential reprisals or detriment. It's trying to do an awful lot at once, and it doesn't seem to be doing anything very clearly for people and for the confusion and the questions people have. If you think about it, that's the default to silence.

● (1020)

Mr. Francis Drouin: Mr. Conacher, I'll get to you in a few seconds.

With regard to your recommendation number four, I want to ask, from the experiences of both of you across other jurisdictions with regard to priority transfers for whistle-blowers who decide to blow the whistle on a wrongdoing, whether other jurisdictions provide staff priority to ensure that whoever blows the whistle gets a lateral move, essentially, out of the organization.

From your experience in other jurisdictions, has any bureaucrat or any public servant stayed in the same organization once they blew the whistle, and is it realistic to think that we're really protecting their identity or their confidentiality within an organization? Is it realistic to think that we do that?

Mr. Duff Conacher: Other jurisdictions do allow that priority transfer.

Is it realistic? It depends, really, on the size of the organization and the wrongdoing. If only a few people know about the wrongdoing, then it is very difficult to protect someone's identity, because one of the few must have reported it and the others usually dig to find out who it was. In a large organization, though, in which lots of people know about something that's happened and someone reports it anonymously—and even the commissioner investigating doesn't know but just has enough written evidence and other evidence to actually prove a case—then the person can actually successfully do it anonymously. It is, however, difficult, and that's why those who don't want to report anonymously, who then face retaliation, should have the compensation of being able to transfer, or of a reward.

I didn't mention this when I was first presenting, but I'm sure you know and have heard that the Ontario Securities Commission has implemented an up-to-$5 million reward for whistle-blowing on Securities Act violations in Ontario. It just started last July. We have that example now in Canada, and you can argue about the amounts, but they are recognizing that people are going out on a limb and that financial compensation is not really a reward. It's really just a buffer to allow you to go out on that limb without having it cut off behind you.

Mr. Francis Drouin: Do you have anything to add Ms. Myers?

● (1025)

Ms. Anna Myers: Yes. I think there are a range of tools to help someone remain whole, either while an investigation is going on or if there's been an obvious reaction that's negative.

Transfers are one of the tools that need to be available. I've had cases where it seems that the whistle-blower gets moved to get rid of the problem. That makes everyone happy except the whistle-blower, who enjoyed their job, thought they were doing their job, and thought they were doing it very well, as in fact they were. In that situation, this can be a punishment.

You need a range of tools for this. I keep trying to find ways to think about it. A lot of the people I've worked with in the private sector are security people who started off in the police, and they get that you have a range of witnesses and people giving you bits of information. You don't expect them to prove it. You do your job, and you certainly don't put them in harm's way when you're investigating. We're not talking about criminal conduct necessarily, although we might be.

I think that's the issue for the public sector service. It's to be dealing with this sensibly from the beginning. People are smart. It's about getting people trained properly and what questions you're going to ask when people come to you. Sometimes having you dealing with it properly is the protection the person needs.

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

Mr. Kelly McCauley (Edmonton West, CPC): Good morning and welcome.

First of all, thank you for your words and your advocacy.

Mr. Conacher, I'll start with you. You mentioned protections outside the public service into the private sector. You mentioned federally regulated sectors only. Is that the intent just to start? Is that realistic, or possible, or is it too difficult to expand to the entire private sector?

Mr. Duff Conacher: I'm just talking about what's within the federal government's power. The provincial governments would have to strengthen their systems for the workers and the institutions that they regulate.

Mr. Kelly McCauley: Mr. Garrett had pretty much a horror story, and Ms. Myers as well. In Mr. Garrett's case, how do we protect the private contractors who are working for the government so they can whistle-blow without having their lives ruined or, more importantly, so that their companies are not blackballed?

If you have experience with other countries, please tell us how they do it.

Mr. Duff Conacher: Essentially, everyone needs to be protected, including suppliers to the government. The enforcement has to include follow-up audits to ensure that they are not losing contracts in the future simply because they've blown the whistle. It would be very difficult for a person such as Mr. Garrett.

I would like to pause here to say “best wishes” to him and to also note how courageous he is to be coming forward in telling this story, which really is a horror story.

Suppliers are in a vulnerable position, as much as anybody. I think there have to be ongoing audits just as a regular part of the practice of the commissioner and, especially in a case like this, follow-up audits, essentially keeping the case open so that a supplier continues to be protected from retaliation going on into the future by auditing whether bidding on contracts has been fair or whether they have subtly been taken off the list—because it's so easy to do.

Mr. Kelly McCauley: Ms. Myers, go ahead.

Ms. Anna Myers: One of the ways you can do it is as a public procurement service. This is where you're actually thinking about the bodies, the federal agencies, that do public procurement. They can have as part of their contract, first of all, that the organization must have their own whistle-blowing arrangements, that staff working on the project can come directly to the contracting department with any issues, and that they will take action if they find out that the private sector organization undertakes any punitive damage against that individual for having raised the issue.

There are tricks of the trade that mean you don't need to have a full legal protection system in place and that allow you, within that system, to say that you will not deal with companies that actually shut down that information or don't have good arrangements.

Mr. Kelly McCauley: I'm not as much worried about the companies coming forward. I'm worried about them being black-balled by bringing up issues of waste, mismanagement, etc.—

Ms. Anna Myers: I think it's in the same—

Mr. Kelly McCauley: —through the...if there were an ombudsman, perhaps.

● (1030)

Ms. Anna Myers: It's on the same lines. If you are raising issues that government needs to take into account, that's not a bar to making another....

Mr. Kelly McCauley: We've heard about a whole army of lawyers going up to Mr. Garrett.... We heard from Ms. Gualtieri as well about the government going after her for several hundred thousand dollars in legal bills. Do we write that into our new laws to protect them or to stop the government from going after...?

Ms. Anna Myers: I think that's partly to do with the weak system of protection they have, because if they are able to have their rights protected then it will not make sense, both for a cost benefit for the government and for the public damage that will be done.

Mr. Kelly McCauley: In your opinion, Ms. Myers and Mr. Conacher, which countries out there are doing it best? We've heard from Australia, Ireland, and the U.S.

Is doing this a combination of cherry-picking the best items or is there one we can use as a model?

Ms. Anna Myers: At the moment, I would say that the U.K. still has a good, solid base. The Irish law is called the “Public Interest Disclosure Act on steroids” by people around.... The Irish law is like the U.K. law, but on steroids. It actually did make some fundamental and important changes.

The Serbian law is a very good example of a system that did not have, culturally and legally, the issues around anonymity. They have a good law. On the Australian situation, I think you have talked to Professor A. J. Brown. They've developed it and kept an eye on it. Sweden has now taken some steps that may be—

Mr. Kelly McCauley: Ireland seems to be the only one that has a provision whereby a whistle-blower has redress through the courts to go after someone who....

Ms. Anna Myers: Yes. It's one of the first to put that in, although original laws that were put forward before as draft bills and haven't passed did have that capacity built in and—

Mr. Kelly McCauley: Do you think it's working?

Ms. Anna Myers: It's a very new law, so—

Mr. Kelly McCauley: To me, as a non-lawyer, that looks to be a way that the Mr. Garretts and Ms. Gualtieris of the world can be protected—

Ms. Anna Myers: Yes, exactly.

Mr. Kelly McCauley: —and not to be punitive, but it will send a strong signal that if you're going to retaliate, you're going to lose your job and you could be fired and lose your house, etc.

Mr. Duff Conacher: Earlier, I mentioned reversing the onus so that the employer would have to prove the retaliation has not taken place. I think that's important. Also important is giving the commissioner the power to levy administrative monetary penalties straight up, so that chief executives, heads of organizations in the government or private sector, would know that a personal penalty could be coming their way, not through a tribunal process that's going to take years but through a commissioner saying, “You did wrong and you're paying this fine.” If you make that significant enough....

As well, there was a question earlier about the training. I am doing my Ph.D. in law and looking at how to ensure people comply with good government laws. Behavioural psychologists point to a number of things that should be part of the training. One of the most important is that—

The Chair: Excuse me, Mr. McCauley—

Mr. Kelly McCauley: I think we might be out of time. I wanted to hear from Ms. Myers quickly. She was putting her hand up.

The Chair: Perhaps we'll get to it in the next intervention.

Mr. Weir, you have seven minutes.

Mr. Erin Weir: Ms. Myers, if you want to take a minute to respond to Mr. McCauley, that would be great.

Ms. Anna Myers: I was just going to say that's one of the laws, the Irish law is definitely in.... As for the Swedish point of view, we've talked a lot about how there are tiers of disclosure routes that people can go, so that's another way. Also, there's the injunctive relief in both the Serbian law and the Irish law, which stops it from going off on a tangent.

Mr. Erin Weir: One of the points we heard from the previous panel was that whistle-blower protection in other countries often encompasses the private sector, so I'm very glad that on this panel we have Mr. Garrett providing the Canadian perspective from the private sector.

Mr. Conacher, I'd ask you to elaborate a bit on your proposal to extend federal whistle-blower protection to the private sector.

Mr. Duff Conacher: Again, as the current banking service scandal shows, the federal government needs to pass a law protecting all federally regulated workers, and provincial governments need to do the same for both public sector and private sector workers.

We have a couple of areas covered, with competition law through the Competition Bureau and with the labour board under environmental protection laws, but what's needed, I think, is not only a blanket law but a place to go, so that everyone will know that if you have a problem, this office will help you and figure out which law enforcement agency you're supposed to go to with that particular problem. One of the details I didn't mention is that if you go to that law enforcement agency and they don't deal with it in a timely manner because of whatever conflicts of interest, problems, or flaws there may be there, then that central office should be able to take the case and move it forward so you're not left hanging, possibly being retaliated against, and waiting for two years for someone to get back in touch with you.

We have a current scandal, and we have another one with the food industry and CFIA. It was reported recently that they rolled over for the food industry in terms of a regulation. These private sector scandals show the inadequacy. It's likely that these situations would have been prevented if whistle-blowers had had a place to go and were fully and effectively protected.

● (1035)

Mr. Erin Weir: Mr. Garrett, how does that sound to you? Does that seem like the right kind of model, or do you have other ideas about how we could make the system work better for folks from the private sector?

Mr. Don Garrett: I really have no advice. People have asked me what they would do. I've had people coming to me, especially guards who worked at Kent, saying, "What can we do?" Before I came here, one guard told me he has evidence of six different incidents of asbestos exposure in Kent prison. That's before, during, and after my time. It doesn't stop.

I've listened to quite a bit of testimony here, and there's one subject I haven't heard and would like to impress upon you as parliamentarians. It's not anything to do with my case. Much of government has been told that we need to run government like business. There is an element of truth to that, but there is a distinct difference between government procurement and public procurement. So many things that are legal in the private sector are not really proper in the public sector. You have to disclose full transparency and accountability. The private sector doesn't have to do that.

There's a fundamental problem in government believing that we need to run government the same as the private sector. That's not totally true. When it comes to increasing efficiency and fixing problems, yes, but I don't agree with the almost decimation of our public tendering process. It's almost gone out the window. Really, it's the president of the Canadian Construction Association who should be here explaining this, not me. We're going to RFPs. We're going to P3s and design-build. These all work well in the private sector. They don't work well for government, because they don't have accountability and transparency. It's not there.

I'm way off topic, but there has to be a fundamental change.

I have an email here that I should have submitted. It's from senior management. I found it just before I came. It's one high-powered bureaucrat commending other bureaucrats, and the file that's referred to is my file. It says, "The project managers and the contracting officer have worked closely together over the past two and a half years to resolve this file, and should be commended for their tenacity. Overall the staff have been involved with the Department of Justice lawyers, the Office of Procurement Ombudsman Margherita Finn, and Garrett's legal representatives, as well as ATIP requests for file information."

This is fundamentally wrong.

Mr. Erin Weir: Thanks for bringing it to our attention. It's certainly not too late to submit that to the committee. I'd invite you to do so.

Mr. Don Garrett: That's just one of many, many emails. It's a system set up to attack the whistle-blower. I'm seeing it. There's a "three-D" process here—deny, delay, and eventually destroy the whistle-blower. I've lived it. I'm living it now.

Mr. Erin Weir: Thanks again for the testimony.

Ms. Myers.

Ms. Anna Myers: One of the things that the Office of Special Counsel in the U.S. does, which is built into their system and which I think if the Canadian government did would absolutely send the clearest message culturally and would in reality be more effective, is to not only give timely feedback to the person who made the disclosure but actually review a little bit when they're investigating.

These people are the ones who know who the investigators should talk to. They're not in it to win big money. They're in it to either get back to their job or to ensure that those around them are doing better at work. They are incredibly powerful in terms of making sure that the investigation and the ideas on how you should resolve it are really clear. I've seen that time and time again. No matter how fragile they are in other ways, they knew professionally what they were doing. They know what the problems are. They're your resource. They were, anyway, before they went out of their management structure to let you know.

● (1040)

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

Our final intervention will be from Monsieur Ayoub.

[*Translation*]

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

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

I want to thank the witnesses for being here today.

Thank you, Mr. Garrett. I sympathize with your bad experience.

For some time, we've been looking at the issue of whistle-blowers in Canada. However, I have the impression that we're moving in all directions across the country to try to solve a problem that, to be solved, requires a guide. I have the impression that a number of players are trying to get involved in the process at the same time and to justify themselves.

Ms. Myers, you said that whistle-blowers don't aim to make money. However, I learned today that the Ontario government offers five million dollars as a reward. I wasn't aware of this. I'm shocked, to say the least. We have to wonder about the goal of this type of practice. In reality, we want whistle-blowers who are actually experiencing a situation of this nature to be credible, but also to be protected. There's the protection issue, which is related to whether public disclosure occurs. However, I've realized that whistle-blowers carry everything on their shoulders.

Why couldn't a whistle-blower only sound the alarm and then be relieved of the responsibility? The case could be studied at the federal, provincial or municipal level, if necessary. The legal aspect of the proceedings would fall under an entity that would determine whether the whistle-blower is credible and whether the process should continue.

I want to hear your comments on the matter.

Ms. Anna Myers: In French, especially in France, whistle-blowers are called “lanceurs d'alerte”. It's an appropriate expression. The term “whistle-blowing” is used everywhere because it's neutral. However, there are still problems on the English side, even in England.

[*English*]

I would say that the reward system is a separate system. I have some concerns about it, but in a financial situation—the SEC is a financial—then they are paying, but they are also finding that without the protections.... Even with the SEC's experience in the U. S.—and I've been in the same room with the person who set up their whistle-blowing system—most of the whistle-blowers who come to them never get a reward. It's quite limited, and in fact they're doing it because it's wrong.

It put it out there. It appealed to the money-making side, and it works a lot in the American system. It has caused great upset in Europe as well, as has anonymity and anonymous reporting. You've had fascist states, and it has been, “Go only to the state, and we will keep you...and we'll use it against other people.”

There's another thing you have to think about, which is having more than one channel for people to go to: important channels, the right channels, regulators who have the mandate to deal with the issue, managers who have the responsibility to respond, a PSIC that allows that flow to keep going to the right places, not a closed system that then isn't accountable itself.

You're absolutely right. It's about taking the responsibility for the investigation away, but not the responsibility for doing the right thing away from whistle-blowers. It's not just saying come to us, like a child, and then you are not involved anymore.

● (1045)

Mr. Duff Conacher: We do have an office. It's the Public Sector Integrity Commissioner, but there are literally hundreds of cases that have still not been given the full investigation and fair investigation by that office. The current commissioner is someone who has been there pretty much through the whole time, and as far as we know, has never blown the whistle on what was massive wrongdoing by the first Integrity Commissioner and also wrongdoing by the second commissioner.

People have tried to protect Canadians by blowing the whistle on governments that were wasting billions of dollars approving dangerous goods, covering up scandals involving big businesses, gouging them, selling hazardous products, and covering up pollution and oil spills. Those people have been harassed, fired from their jobs, sued, silenced, and hurt by the government and big businesses—not just the federal government but provincial governments as well.

That's all because the laws in Canada are weak, and enforcement is negligently bad. We do have the framework of a system, but we need these many changes, the 17 listed in this petition that more than 21,000 people have supported, to make the system effective and to fully and effectively protect whistle-blowers.

Again, you can argue about how much a reward should be, but the best practice is to provide someone with a bit of a buffer so that they know when they're going out on that limb that they have a buffer if the limb gets cut off behind them because of negligently bad enforcement by someone who is not doing their job properly, as has happened hundreds of times in Canada in the last 10 years at the federal level alone.

[*Translation*]

Mr. Ramez Ayoub: I understand. I'm not necessarily against it, but I wonder about the scope of the reward. In some cases, it could be worthwhile.

I've also learned that no regular and statutory reviews are conducted. You mentioned this. The Auditor General conducts an audit, but there don't seem to be any real follow-ups.

What would be a way to restore the long-term credibility of an organization such as the Office of the Public Sector Integrity Commissioner, which conducts research?

[*English*]

The Chair: Please give a very brief answer if you can, Mr. Conacher.

Mr. Duff Conacher: I believe it would be difficult to see that happen with the current commissioner unless that commissioner would be required to commission a fully independent audit, not only of the commissioner's office but of how every department is dealing with whistle-blower protection.

It is something that hasn't been done since the first commissioner was audited, and it's long overdue. There should be an independent audit of the entire system by the Auditor General at least every three years, with the results, of course, made public.

The Chair: Thank you very much.

To all of our witnesses, your testimony here has been instructive and extremely informative.

Mr. Garrett, just on a personal note, probably no words of mine could ever express the sorrow I have for the situation you've endured over the number of years you've been fighting this battle. I can only hope that the final report and recommendations from this committee will go in some small measure, and hopefully a large measure, to redressing the situation that you've experienced. Hopefully no other employee that has either worked for the government or has done work on behalf of the government will have to experience what you experienced.

Thank you all for being here.

Colleagues, I think we should go in camera for just a few moments. My reading of this is that, based on the testimony we've been hearing over the last number of days, there may be additional witnesses who committee members would like to recommend we hear from as we continue this study. I know Mr. Weir has indicated he has some, and I think, Monsieur, you may have some as well.

I will excuse our witnesses and suspend for just a couple of minutes, and we'll go in camera for about five minutes.

[*Proceedings continue in camera*]