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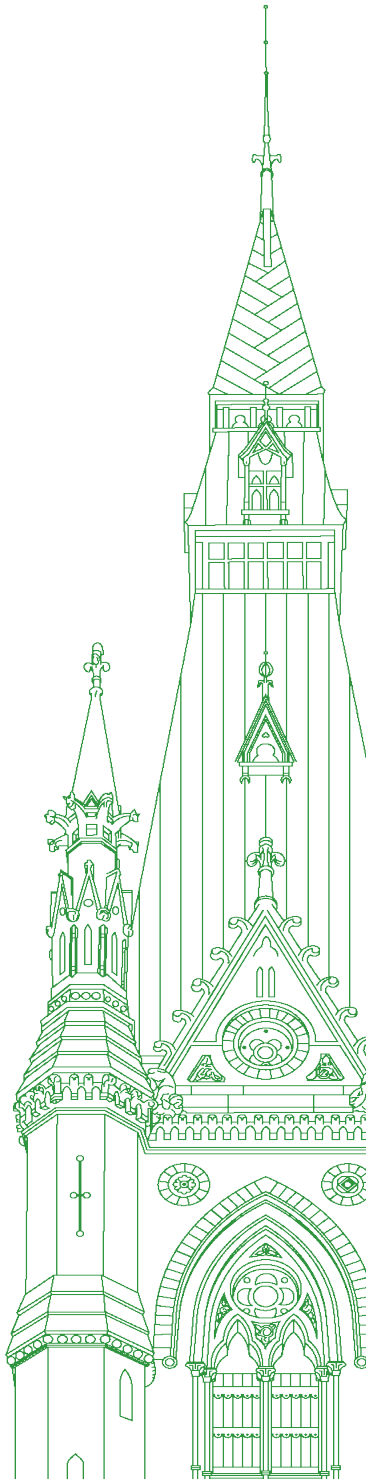

Chair: Mr. Kelly McCauley

Standing Committee on Government Operations and Estimates

Wednesday, May 17, 2023

● (1645)

[*English*]

The Chair (Mr. Kelly McCauley (Edmonton West, CPC)): Welcome to meeting 67 of the House of Commons Standing Committee on Government Operations and Estimates.

Pursuant to the order of reference adopted by the House on Wednesday, February 15, 2023 and the motion adopted by the committee on Monday, May 1, 2023, the committee is meeting for clause-by-clause consideration of Bill C-290, an act to amend the Public Servants Disclosure Protection Act.

Very quickly, like the last meeting, we're going to keep it relatively casual, I hope, so that we can have banter back and forth without spending too much time formally recognizing....

I would ask, though, that if we are referring to our witnesses from Treasury Board, we not ask them directly. Please go through the chair so that we keep it a bit more formal for those witnesses.

We have with us again Ms. Sauvé and Ms. Boyi, our legislative clerks who are helping today.

Before we start, Ms. Sauvé is going to explain very quickly something we need to cover before we can continue.

Ms. Marie-Hélène Sauvé (Legislative Clerk): Thank you, Mr. Chair.

Just quickly, this is in reference to the subamendment that was adopted to amendment G-3 at the last meeting. I have consulted with the jurilinguists, and they are advising that the committee adopt by unanimous consent a very small change in the numbering of the subamendment.

If you recall, in the second part of amendment G-3, which amends subsection 2(1) of the act, we had a list, (a), (b), (c), (d), of what "listed measure" means. Under paragraph (d), we added the contents of amendment NDP-4, which we renumbered paragraphs (d.1), (d.2), (d.3), etc. What the jurilinguists are advising is that instead the committee use roman numerals i, ii, iii, iv, etc., under paragraph (d).

That's just a numbering change. It doesn't affect the content of the subamendment or this amendment itself. I am seeking the unanimous consent of the committee to make that small change.

The Chair: Colleagues, we have unanimous consent, I assume, so we'll make the changes.

Some hon. members: Agreed.

The Chair: That's wonderful. Thank you very much.

(On clause 4)

The Chair: Returning to the consideration of C-290, we're on clause 4, amendment BQ-4, which is page 15 of the package.

[*Translation*]

Mrs. Julie Vignola (Beauport—Limoilou, BQ): Thank you very much, Mr. Chair.

I would like to make a suggestion. Of course, the amendment is very well drafted and is intended to ensure that no interference of any kind is used in retaliation against a whistleblowing public servant, and that includes foreign interference. I don't know if I have the right to propose this myself, but I would suggest adding a clarification that foreign interference be understood within the meaning of the regulations. That would make it consistent given the other amendments we've adopted. The point is really to make sure that, regardless of...

[*English*]

The Chair: You can't amend your own amendment—

[*Translation*]

Mrs. Julie Vignola: That's what I thought.

[*English*]

The Chair: —but perhaps someone else will.

[*Translation*]

Mrs. Julie Vignola: I was wondering whether—

An hon. member: It's possible if we have unanimous consent.

[*English*]

The Chair: Ms. Kusie.

[*Translation*]

Mrs. Stephanie Kusie (Calgary Midnapore, CPC): I'm willing to—

Mrs. Julie Vignola: I'm sorry, but I have pointed out that foreign interference would be added to the list of wrongdoings.

I don't know if Ms. Kusie would like to move that.

[*English*]

The Chair: We'll hear from Ms. Kusie and then Mr. Fergus.

[*Translation*]

Mrs. Stephanie Kusie: I can move Ms. Vignola's amendment.

Mrs. Julie Vignola: Thank you.

Mrs. Stephanie Kusie: You're welcome.

[*English*]

The Chair: Mr. Fergus, do you want to chime in before we step forward with this?

Hon. Greg Fergus (Hull—Aylmer, Lib.): Yes, I would.

[*Translation*]

I would like to begin by thanking Ms. Vignola and Ms. Kusie for proposing this amendment.

However, I still feel that the definition is not solid enough by any means. When we think of foreign interference in the public service, we need to recognize, firstly, that there is no definition of political interference. Moreover, we are often talking about situations that occur within the public service, not about acts committed against the public service in general. But if we are talking about political interference, it seems to me that it is something that comes from outside, that is, it is something that is external to the public service and is directed towards the interior of the public service, rather than acts committed within the public service. That's why I think the definition is problematic.

What I thought was useful, we already have... Sorry, I don't know what happened to CPC-3 at the last meeting. We adopted it, didn't we?

Mrs. Julie Vignola: Yes, it was adopted.

Hon. Greg Fergus: I think CPC-3 is what we need here. It was... No, sorry, I'm mistaken.

Mrs. Stephanie Kusie: CPC-3 dealt with political interference within the meaning of the regulations.

[*English*]

The Chair: Ms. Kusie, move closer to your mike.

[*Translation*]

Hon. Greg Fergus: Indeed, you're right.

Mrs. Stephanie Kusie: BQ-4, on the other hand, deals with foreign interference. I think those are two completely different things. In fact, I'm sure of it.

[*English*]

Hon. Greg Fergus: As I said, foreign interference is usually directed at the public service, not within the public service.

We have a definition that we're working on in the Criminal Code in terms of foreign interference, which I think would be a better use...than adding something in here that doesn't have its own definition.

I would recommend, if other members agree, that this is not an amendment to the clause that we should support.

● (1650)

The Chair: Ms. Kusie.

[*Translation*]

Mrs. Stephanie Kusie: Given what we have seen in the Standing Committee on Procedure and House Affairs, the Standing Committee on Foreign Affairs and International Development and the Standing Committee on Public Safety and National Security, I think the context of foreign interference is really clear. It's worth amending the bill by adding a provision that deals with foreign interference in a stand-alone and separate way. I think that makes sense.

[*English*]

The Chair: Yes, Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: Thank you.

By adding a stand-alone provision on foreign interference and specifying that the definition falls within the meaning of the regulations, we are giving the government an opportunity to properly define foreign interference. We've taken this approach with other definitions, including political interference.

In addition, though I am not saying this is the case, it's possible that there is interference from outside right now and that people are turning a blind eye, one way or another, because they or members of their family are being threatened. It is to prevent these types of situations from occurring inside the public service itself that we are asking for a specific provision for foreign interference.

[*English*]

The Chair: I think we might be agreeing on the same thing, so I'm going to have Ms. Sauvé confirm what we want to put in there.

Ms. Marie-Hélène Sauvé: Thank you, Mr. Chair.

[*Translation*]

I would just like to confirm the proposed wording, which includes the subamendment: It would read “foreign interference in the public sector”, after which we would add wording similar to that contained in CPC-3, that is, “foreign interference” having such a meaning as may be prescribed”.

[*English*]

The Chair: Are we comfortable, colleagues?

We have a subamendment on BQ-4. Do we need it read back or can we move ahead?

[*Translation*]

Mrs. Stephanie Kusie: Can you repeat that?

Ms. Marie-Hélène Sauvé: Yes, of course.

If the subamendment is adopted, BQ-4 would propose that BillC-290, in clause 4, be amended by adding after line 36 on page 2, the following:

> (c.2) foreign interference in the public sector, “foreign interference” having such a meaning as may be prescribed;

[*English*]

The Chair: Is the amendment to BQ-4 carried on division?

(Subamendment agreed to on division)

The Chair: Shall BQ-4 as amended carry on division?

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

The Chair: Shall clause 4 as amended carry?

(Clause 4 as amended agreed to on division [*See Minutes of Proceedings*])

The Chair: On G-4, Mr. Fergus, I assume you'll speak to that.

Hon. Greg Fergus: Yes. Thank you.

What Bill C-290 does is alter the role of the PSIC in a fundamental way. What we're proposing here is amending line 2 on page 3 so that in effect it will give Treasury Board the authority to issue policy on departmental internal disclosure processes instead of giving this power to the PSIC. There are a couple of reasons we would want to make sure that happens.

At the very least, this would be a brand new role for the commissioner. It will require additional resources for the commissioner to conduct this role. Frankly, this is what Treasury Board does in terms of establishing standards across government as to how things should work. It's not something that you'd want to have the PSIC describe.

As well, there are going to be some elements when there are going to be some disputes that won't involve the PSIC and that the commissioner will not have line of sight on, so it's better to have Treasury Board establish the standards and then for the commissioner to be able to evaluate things as a result of that standard.

● (1655)

The Chair: I have Ms. Vignola and then Ms. Kusie.

[*Translation*]

Mrs. Julie Vignola: I personally agree with G-4. However, I have a question, which I think the legislative clerk can answer.

Since the amendment doesn't specify that the policies will not have financial consequences, is the amendment in order? Under its current wording, would the amendment require a royal recommendation? I want to make sure that a royal recommendation is not necessary.

Ms. Marie-Hélène Sauvé: I don't have time to do an in-depth analysis so I can't answer your question, but, at first glance, that should fall to Treasury Board. So there shouldn't be any problems.

[*English*]

I don't know if maybe the officials would have something to add to that.

The Chair: We have Ms. Laroche or Ms. Stevens.

[*Translation*]

Ms. Mireille Laroche (Assistant Deputy Minister, People and Culture, Office of the Chief Human Resources Officer, Treasury Board Secretariat): Thank you for the question.

As Mr. Fergus said, that falls under the tasks and responsibilities of the Treasury Board Secretariat. We already have people who work on administering the act. It would be part of their responsibilities. If there is a cost, it would be very marginal.

[*English*]

The Chair: Yes, Ms. Kusie.

[*Translation*]

Mrs. Stephanie Kusie: We agree with that and support G-4.

[*English*]

The Chair: That's wonderful. Shall G-4 carry?

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

The Chair: On G-4.1, we have Mr. Fergus.

Hon. Greg Fergus: This is a new clause 4.1.

[*Translation*]

We've had good discussions with the Bloc Québécois on this issue. We understand that in drafting its initial proposal, it wanted to ensure that whistleblowers would have a greater choice of people to whom they could turn to make disclosures. However, the Bloc Québécois proposal opened the door too wide because, quite frankly, it allowed anyone to be contacted. We know that not everyone has the capacity or ability to receive disclosures.

That said, there needs to be more than one person in the senior public service or in a department designated to receive disclosures. I hope that our proposal is a good compromise. It would involve designating at least one other person, in addition to the person responsible in each department and agency. This would provide a wider range of people to whom complaints could be made about a problem or wrongdoing in the public service.

Mrs. Stephanie Kusie: Yes, we agree.

[*English*]

The Chair: Shall G-4.1 carry, then?

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

(On clause 5)

The Chair: CPC-4 is on page 17 of the package.

Colleagues, I'm not sure whether you have the page numbers on your agenda, so I'll just call them out as we go.

On CPC-4, we have Ms. Kusie.

● (1700)

[*Translation*]

Mrs. Stephanie Kusie: Thank you very much, Mr. Chair.

It's clear the government must have the flexibility to establish by regulation how support is defined. I think the support will be different in different situations. I think the government or the department needs the flexibility to determine what kind of support will be provided, given each situation.

[*English*]

The Chair: Next we have Mr. Housefather.

Before we do that, if CPC-4 is adopted, then BQ-5 and G-4.2 cannot be moved due to a line conflict.

Mr. Housefather.

Mr. Anthony Housefather (Mount Royal, Lib.): Thank you very much, Mr. Chair.

I support the recommendation, and I support Ms. Kusie's amendment.

I want to propose what I think will be a friendly subamendment, which is to add the word “nonfinancial” after the word “prescribed”.

The whole point of this is to avoid a royal recommendation. We want to ensure that there is no confusion that there is some financial involvement here that would require a royal recommendation.

By defining it the way Ms. Kusie has and adding the word “nonfinancial” before the word “support”, I think that would resolve the problem of the royal recommendation.

Hopefully that would be considered a friendly amendment, especially since I believe the Bloc amendment coming afterwards, which is trying to do that, wouldn't be receivable given the line conflict.

Thank you, Mr. Chair.

The Chair: Thanks, Mr. Housefather.

If you don't mind, I am going to ask our legislative clerks whether they think that is needed.

Ms. Sauvé.

Ms. Marie-Hélène Sauvé: Thank you, Mr. Chair.

My understanding of the ruling made by the Speaker in the House of Commons was that the heart of the issue for the royal recommendation with Bill C-290, as it was originally written, was with the definition of “public servant” and not necessarily with the notion of supports.

If the committee wants to be more precise and make sure...then this would appear to be admissible, yes.

The Chair: Go ahead, Ms. Kusie.

[*Translation*]

Mrs. Stephanie Kusie: It's always a good idea to be more specific. I don't like the idea that we could face problems in future because we were not specific enough.

[*English*]

The Chair: That's wonderful.

Mr. Housefather, do you want to...? I think we just want to reconfirm the wording you proposed.

Mr. Anthony Housefather: Sure. It would be to add the word “nonfinancial” after the word “prescribed” and before the word “support”.

[*Translation*]

In French, we would add the words “non financier”. It would therefore read “soutien non financier”.

[*English*]

The Chair: Ms. Kusie.

Mrs. Stephanie Kusie: I've been asked—for clarification, perhaps, in English—that we act with precision now just for fear in the future that, if we were to move the bill along, there would be some type of reason...this reason for which it did not meet the standard for a royal recommendation, so that it could not advance.

It's better to be more precise now, I think, just not to have the risk.

Thank you.

The Chair: Are we ready to...?

Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: The subamendment proposed by my colleague is interesting, but the proposed wording is already included in BQ-5. If need be, we could set aside CPC-4 and adopt BQ-5, which already contains the term “non-financial,” in addition to listing examples of non-financial support that may be provided. We used the word “including” to indicate that the list is not exhaustive and that these are not the only possible examples.

In that case, we could set aside CPC-4 and adopt our amendment, which is already comprehensive.

● (1705)

[*English*]

The Chair: Ms. Kusie, we would have to vote on the subamendment before we can get to withdrawing. I'm sorry.

Mr. Fergus, go ahead.

Hon. Greg Fergus: Let's vote on the subamendment, and then we'll go from there. I apologize.

The Chair: We're voting on Mr. Housefather's subamendment.

(Subamendment agreed to on division)

The Chair: Do you want to say something now, Mr. Fergus?

Hon. Greg Fergus: We have some choices among us here.

Thank you very much, Ms. Kusie and committee members, for supporting the subamendment.

Now the choice is.... I think Madame Vignola wanted to us to take a look at BQ-5. I'm going to ask you to think about another one, and that would be G-4.2, which is very similar.

The reason I would go with Ms. Kusie's, right off the top, is that it's very clear. It's “nonfinancial support”.

The reason I wouldn't vote for BQ-5 is that it says, “provide nonfinancial support”—excellent—“including assistance, advice, referrals to appropriate resources and information sharing, to a public servant who has made”, and it goes on.

The reason I'm uncomfortable with the word “referrals” is that it identifies the.... It's not at the request of the public servant. Therefore, it would identify the public servant. We want this to be a confidential process.

If the idea is to vote down CPC-4, then I would say the better option would be G-4.2. However, if we vote for CPC-4, then we'll withdraw G-4.2.

The Chair: Ms. Kusie.

Mrs. Stephanie Kusie: I just think CPC-4 provides the greatest flexibility possible, so I feel the other options are too prescriptive. We would prefer CPC-4.

I share your concern regarding the “referrals”. I do share that.

Our order of preference would be CPC-4, then G-4.2 and then BQ-5.... I really would not prefer BQ-5.

The Chair: I have Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: Because I try, whenever possible, to search for consensus, I feel G-4.2 is a good compromise between CPC-4 and BQ-5. Rather than refusing to budge, let's just go straight to G-4.2, which is halfway between our amendment and the Conservatives' amendment. This represents a compromise bringing the various positions together. In my humble opinion, it would provide flexibility as well as some clarity.

[*English*]

The Chair: That's wonderful.

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

The Chair: Shall CPC-4 carry as amended?

● (1710)

[*Translation*]

Mrs. Julie Vignola: [*Inaudible*]

[*English*]

The Chair: I'm sorry. I'll go back to you, Ms. Vignola. I thought you said we agreed on consensus to CPC-4 as amended.

[*Translation*]

Mrs. Julie Vignola: No, it was amendment G-4.2.

[*English*]

We defeated CPC-4 and BQ-5.

The Chair: Okay, I apologize: CPC-4 is gone, so on BQ-5, are you withdrawing BQ-5, then?

[*Translation*]

Mrs. Julie Vignola: Yes.

[*English*]

The Chair: On BQ-5—

Mr. Majid Jowhari (Richmond Hill, Lib.): CPC-4 is voted down. BQ-5 is withdrawn. Now we are on G-4.2.

The Chair: Can we go straight to a vote on that, colleagues? Shall G-4.2 carry?

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

The Chair: We're now at NDP-5, which is on page 19.

Mr. Johns, welcome to the game.

Some hon. members: Oh, oh!

Mr. Gord Johns (Courtenay—Alberni, NDP): We don't have to say much. Hopefully, everybody's on board. We can walk through it if you like.

I think due process is often routinely denied to whistle-blowers. The commissioner can't prevent reprisals but only address them after the fact, and the commissioner and tribunal processes often take years. Serious harm can be done to the whistle-blower during that time. They may give up on their efforts to protect the public interest through their disclosure.

This amendment would allow whistle-blowers to receive due process, because they would be protected from damaging reprisals before they cause serious harm. It's already the job of chief executives to ensure a safe workplace. This is another logical part of that.

The Chair: Next is Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: I would propose a friendly amendment to ensure that the amendment, if passed, would not require a royal recommendation. I don't have the exact wording, but it should be clarified that we are referring to non-financial support as provided for in paragraph 11(1)(a).

I don't know if it's necessary. In any event, my impression is that the amendment, as it stands, would require a royal recommendation. To ensure that it will not require one, I would add a reference to paragraph 11 (1)(a).

[*English*]

The Chair: Madam Sauvé, go ahead.

Ms. Marie-Hélène Sauvé: Thank you, Mr. Chair.

[*Translation*]

As I mentioned earlier, the Speaker of the House, at the time of his ruling, did not seem to see a problem with the concept of support.

That said, if you would like to propose a subamendment, you can send us the wording in writing. That way we can be sure we are agreeing on the same thing.

[*English*]

The Chair: Mr. Fergus is next.

[*Translation*]

Hon. Greg Fergus: I, for one, am not really comfortable with Mr. Johns' proposed change. It's not that I think it's unnecessary, but I think it's a little redundant. It says “procedures, including risk assessments”. What procedures? Who will define or establish them? There already is a procedure in place. I don't know what new procedures are going to be established here. I find this amendment redundant.

[*English*]

The Chair: Go ahead, Ms. Kusie.

Mrs. Stephanie Kusie: Without amendments.... Actually, I'm not even sure that any amendment would make us support this. We feel this should be determined by Treasury Board policies internally and not be—and I'm using this word a lot—“prescriptive” within the bill itself. As it stands, we will not be supporting amendment NDP-5.

● (1715)

The Chair: Did you have anything else, Mr. Johns? Do you need a couple of moments, or...?

Colleagues, bear with us.

Ms. Vignola, go ahead.

[*Translation*]

Mrs. Julie Vignola: I wish we could clarify NDP-5, but I understand that the clarification may feel like it takes away flexibility. Nonetheless, I like the idea of providing every available support to the people involved, so that their situation doesn't worsen and they don't have to go through situations like the ones we heard about in committee.

I therefore move to keep NDP-5 as is, but add a reference. In the French version, after the words “*pour leur fournir*”, it would be “*le soutien prévu à l'alinéa a) de la même loi*”. In the English version, after “to provide them”, it would be “support as in paragraph (a)”. Thus, we would also be introducing a reference as well to ensure that a royal recommendation is not required, in addition to putting in place whatever safety net is necessary to adequately protect whistleblowers.

[*English*]

The Chair: Ms. Kusie.

Mrs. Stephanie Kusie: I just think we are fundamentally opposed to including risk assessments for those involved in the disclosure and providing support. It's too much. I think the Treasury Board should have the flexibility to, again, sort of evaluate the situation as to the necessary procedures. I could potentially talk to my team about stopping it after “procedures”. Again, I think it's very prescriptive. I'm trying to think of another word.

The Chair: I'm going to interrupt here. Although we'd like to get some consensus on this important bill, I'm not sensing the numbers being interested in moving forward with this. I'm not sure if there is a path forward, so I'm wondering if we should just go to a vote. I'm not forcing it, but I'm sensing that.

Mrs. Stephanie Kusie: Yes. I think we and the government are in alignment that we're just not comfortable with this amendment. I think it would be better if we could avoid the discomfort of a vote.

Mr. Gord Johns: We'll avoid that.

The Chair: We have to vote on the subamendment first and then get to the amendment.

(Subamendment negatived)

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

The Chair: Mr. Johns, we're with you again for amendment NDP-6, which is on page 20.

Mr. Gord Johns: Is it possible, through you, Mr. Chair, to ask the experts to ensure this would not be a problem, in terms of requiring any additional funds? I can't see how it would, but I just want to make sure.

● (1720)

The Chair: I was going to bring this up, because the legislative clerks have gone through it. It has been evolved and looked at. I understand none of them would run into that problem. I'm not sure whether we need to address each one, but I'll have them answer your question.

Ms. Laroche or Ms. Stevens, you could probably answer for us. Would it require royal recommendations?

Is that what you're asking, Mr. Johns, on NDP-6?

Mr. Gord Johns: Yes.

Ms. Mireille Laroche: We don't know what the president would actually.... We can't say anything on that. I'm sorry.

Mr. Gord Johns: Obviously, it has to be real quick, so we can fly through this.

The Chair: Perhaps Ms. Sauvé can take a stab at it.

Ms. Marie-Hélène Sauvé: Thank you, Mr. Chair.

I apologize. I didn't hear the question.

Yes, on the royal recommendation ground.... Again, this already falls under the role of the Treasury Board and would be covered by the initial royal recommendation. It accompanies the act as it's currently written. It wouldn't lead to new spending that would require a royal recommendation.

Mr. Gord Johns: [*Inaudible—Editor*] so I said I'd bring it here.

This extends the duty of protection for a reasonable time frame, preventing delayed reprisal. We know there are some bad actors who wait until the formal proceedings are over and then carry out acts of reprisal with impunity. This amendment would help protect disclosures after the processes are over, when they become more vulnerable because the spotlight is no longer on their case.

It's not hypothetical. There are numerous reported cases of this happening. This would give the whistle-blower confidence that the protections they're receiving will be effective and not just transient and temporary.

The Chair: Go ahead, Mr. Fergus.

Hon. Greg Fergus: Once again, my sense would be that this lacks the consent of the whistle-blower. I think that's the problem. The whistle-blower gets identified. By making sure the support could be provided up to three years after the person...the department would know who the whistle-blower is and would be contacting them. The point is there's supposed to be a confidential process in place. I'm not certain I would want new people to be brought into this.

Maybe I could ask the department whether they have some views as to how this works, in terms of the three years past the date when they denounced an action.

Ms. Mary Anne Stevens (Senior Director, People and Culture, Office of the Chief Human Resources Officer, Treasury Board Secretariat): The reprisal protection under the PSDPA starts at the reprisal, not at the disclosure. If you're reprised against two years after your disclosure, that's when the protection begins. This may be redundant.

Mrs. Stephanie Kusie: On similar grounds as with the previous amendment, we will not be supporting this, in order to move the process along and in fairness to the members.

Thank you.

The Chair: Go ahead, Ms. Kusie.

The Chair: Go ahead, Mr. Johns.

Mr. Gord Johns: After the decision has been made, could there be further reprisals, where this would be necessary or useful?

Ms. Mary Anne Stevens: I'm sorry. After...?

Mr. Gord Johns: If there were further reprisals that took place....

Ms. Mary Anne Stevens: Yes. After any reprisal, you are protected under the PSDPA.

Mr. Gord Johns: Okay.

The Chair: Are you asking about additional reprisals, Mr. Johns?

Mr. Gord Johns: Yes. After the formal proceedings are over, acts are carried out beyond that timeline.

The Chair: Ms. Stevens or Ms. Laroche, go ahead.

Ms. Mireille Laroche: Let's say there was a reprisal, and there was a decision as to whether it happened again, and then there were further reprisals. The person could go back to the PSIC and be protected.

● (1725)

The Chair: Are you looking for a vote, or are you looking to withdraw it?

Ms. Stevens and Ms. Larouche, thank you for that.

Colleagues, we need unanimous consent for Mr. Johns to withdraw that, I assume.

Excuse me for two seconds.

(Amendment withdrawn)

(Clause 5 as amended carried)

The Chair: I'm sorry, colleagues. We're now on new clause 5.1, with amendment LIB-5, which is on page 20.1 of the package.

Go ahead, Mr. Jowhari.

Mr. Majid Jowhari: Thank you, Mr. Chair.

We are proposing a new clause, 5.1. The amendment reads as follows: That Bill C-290 be amended by adding after line 16 on page 3 the following new clause:

> 5.1 The Act is amended by adding the following after section 11:
>
> 11.1 The Treasury Board may establish policies regarding the duties set out in subsection 11(1).

Before I hand it over to my colleague, Mr. Fergus, I will just say that here we are talking about how, when we set up an evaluation for an internal department, we also need to set up standards against which TBS can do that evaluation.

The Chair: Ms. Kusie, go ahead.

Mrs. Stephanie Kusie: As we have been consistent in our support for flexibility in regulation, we will be supporting this amendment.

The Chair: Colleagues, shall amendment LIB-5 carry?

(Amendment agreed to on division)

(On clause 6)

The Chair: We're now on to amendment G-4.3, which is on page 20.3 of your package. Seeing as amendment G-4.1 passed, we can actually do G-4.3.

Mr. Fergus.

[*Translation*]

Hon. Greg Fergus: We drafted this amendment following a discussion with Mr. Garon and the Bloc Québécois to find alternatives so that there would not be only one person responsible for receiving complaints. If this amendment is adopted, more than one person will be able to receive them, and the necessary processes will be established. This way, we would ensure it can be established in any department or agency without it being difficult to define. This meets the need that Mr. Garon identified.

[*English*]

The Chair: If amendment G-4.3 passes, then amendment NDP-7 goes away. There's a line conflict. If this passes, NDP-7 goes.

Colleagues, I won't suspend unless it's going to drag on for more than a couple of minutes. We will allow time to chat among yourselves.

Ms. Kusie, go ahead.

[*Translation*]

Mrs. Stephanie Kusie: We agree with that. It makes sense. We will support G-4.3, which would amend clause 6 of the bill.

[*English*]

The Chair: Are we ready to go to a vote, colleagues?

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

The Chair: Thank you, colleagues.

Amendment LIB-7 has been withdrawn.

Shall clause 6 carry as amended?

(Clause 6 as amended agreed to on division [*See Minutes of Proceedings*])

The Chair: We have a new clause 6.1, on which there is amendment G-4.4, which is on page 21.2 in the package.

We should be calling out “Bingo!” here.

Mr. Fergus, go ahead.

● (1730)

Hon. Greg Fergus: G-4.4: That was my bingo call.

All right. This will help us get to a definition of what is a conflict of interest. This is using the Conflict of Interest Act to define political interference by having internal complaints referred to the Ethics Commissioner, who can investigate them. This allows that if there are Conflict of Interest Act complaints that are made internally with the department, they will be referred to the Ethics Commissioner. This is G-4.4.

The Chair: Do you need a few moments, colleagues, or can we move forward? We're on page 21.2.

Go ahead, Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: I'm trying to understand this amendment. My interpretation is that it gives the whistleblower less choice. Some of the information in the disclosure could fall within the scope of this bill, but if the senior officer decides otherwise, the whistleblower might have to take the complaint elsewhere, that is, to the commissioner, instead of immediately receiving support.

I want to make sure I understand the intent of this amendment. It's unclear to me. It's as if we were giving the whistleblower less choice.

[*English*]

The Chair: Mr. Garon is next.

[*Translation*]

Mr. Jean-Denis Garon (Mirabel, BQ): I'd like to add something: the Conflict of Interest Act does not protect anyone in the event of reprisal. Essentially, if this amendment were to be adopted, it would narrow the scope of the bill by removing protection in case of retaliation. Yet this is completely contrary to the spirit of the bill. It's a direct assault.

[*English*]

The Chair: Go ahead, Mr. Fergus.

[*Translation*]

Hon. Greg Fergus: That is certainly not our intent. We want to make sure that the right procedures apply at the right time.

I'll ask officials to explain the scope of this amendment.

[*English*]

The Chair: Go ahead, Ms. Stevens.

Ms. Mary Anne Stevens: Thank you, Mr. Chair.

There is currently a section in the PSDPA whereby if the Public Sector Integrity Commissioner receives a disclosure that should be dealt with or that is a topic that is covered by the Conflict of Interest Act, he refers those disclosures to the Conflict of Interest and Ethics Commissioner, and they're dealt with under that act. Because the disclosure was originally made to the PSIC, though, you receive the protections of the PSDPA.

This amendment would do the same thing for disclosures internal to departments, so that if the subject matter should be dealt with under the Conflict of Interest Act, it would be dealt with by the Conflict of Interest and Ethics Commissioner, but because the disclosure was already made under the PSDPA, they would be protected by the protections of the PSDPA. It would have the added benefit, related to something I said on Monday, that you wouldn't be asking a public servant to investigate, potentially, a minister or exempt staff. It would be done by the Conflict of Interest and Ethics Commissioner, who already works in that realm.

● (1735)

The Chair: Go ahead, Mr. Garon.

[*Translation*]

Mr. Jean-Denis Garon: I just want to make sure I understand.

This means that if the complaint were made under the Conflict of Interest Act, it would be the Conflict of Interest and Ethics Commissioner who would receive the complaint, but in the event of retaliation, the usual protections in the bill would continue to apply, without the complaint being processed.

Ms. Mary Anne Stevens: Yes.

Mr. Jean-Denis Garon: All right, I understand. Thank you.

[*English*]

The Chair: Go ahead, Ms. Kusie.

[*Translation*]

Mrs. Stephanie Kusie: I just want to say that we support the amendment.

[*English*]

The Chair: Thank you.

[*Translation*]

Mrs. Julie Vignola: Mr. Chair, I have a question.

For the sake of clarification, given the information we have just heard, would it not be necessary to add, at the end of proposed subclause 12.1(1), after the word “ethics” and the comma that follows, the following: “while ensuring continuity of protection for the whistleblower”, to ensure that there are no gaps in the protection for whistleblowers?

[*English*]

The Chair: Please turn your mike on, Mr. Fergus.

[*Translation*]

Hon. Greg Fergus: I can answer that question, Mr. Chair.

In fact, the gap that Mr. Garon and Mrs. Vignola have just pointed out is closed in LIB-12. The amendment proposes to replace the beginning of section 68 of the Conflict of Interest Act with the following:

[*English*]

> If a matter is referred to the Commissioner under subsection 12(2) or 24(2.1) of the Public Servants Disclosure Protection Act, the Commissioner shall

That allows us to cover the gap you just identified.

The Chair: Go ahead, Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: LIB-12 proposes to add a new clause to the bill with the proposed wording referring to subsection 12(2) of the Public Servants Disclosure Protection Act, but it doesn't exist.

Hon. Greg Fergus: That's exactly the new provision proposed in G-4.4.

Mrs. Julie Vignola: All right, I understand. It's because it hasn't been adopted yet.

However, the new subclause doesn't provide any new protection. It reads:

> (2) If a senior officer refuses to deal with a disclosure under subsection (1), the senior officer must inform the person who made the disclosure and give reasons why he or she did so.

It doesn't say at all that the whistleblower will be protected.

Hon. Greg Fergus: Clause 42 is a new clause that will be added to the bill, after line 14 on page 12. We are now proposing that a new sub-clause be added to the bill.

Mrs. Julie Vignola: Yes, it is subclause 12.1(2), which I just read.

Hon. Greg Fergus: What is proposed in the new clause 42 will specifically address that gap by clarifying what is the commissioner's responsibility and—

Mrs. Julie Vignola: No.

Hon. Greg Fergus: I can ask the officials to give you a specific answer, but from my understanding, that is what it is.

Mr. Chair, can Ms. Stevens enlighten us?

[*English*]

The Chair: Please go ahead, Ms. Stevens, and thank you.

Ms. Mary Anne Stevens: Thank you, Mr. Chair.

Madame Vignola, I think I can reassure you that it's actually in the definition of “protected disclosure”. It's a disclosure made by any public servant,

> in the course of a procedure established under any other act of Parliament;

Whether it's under the PSDPA or the Conflict of Interest Act or the Privacy Act, you are still protected by the reprisal protections of the PSDPA.

● (1740)

[*Translation*]

Mrs. Julie Vignola: Does it protect the whistle-blower's anonymity?

[*English*]

Ms. Mary Anne Stevens: The difficulty is that it's hard to protect when you don't know who they are.

[*Translation*]

Mrs. Julie Vignola: So the whistle-blower is not protected because they do not remain anonymous.

[*English*]

The Chair: Please go ahead, Mr. Fergus.

Hon. Greg Fergus: Any whistle-blower would have to declare to someone that they are denouncing an activity or an act. They would have to denounce it to the person, and then they are protected and their privacy is protected. Is that not correct?

Ms. Mary Anne Stevens: Yes, that's correct.

Hon. Greg Fergus: Can you clarify, then, your answer to Ms. Vignola, in terms of how that protection is extended to those whose complaint would best be addressed by the Conflict of Interest Act?

Ms. Mary Anne Stevens: A disclosure under any act of Parliament is protected by the Public Servants Disclosure Protection Act. If I understood correctly, the question was about anonymous disclosures. It is difficult to protect those who make anonymous disclosures, because you don't know who they are. You don't know whom to protect.

Hon. Greg Fergus: I don't think she meant that to be an anonymous disclosure.

[*Translation*]

Mrs. Vignola, were you referring to persons making anonymous complaints or to protecting their identity?

Mrs. Julie Vignola: I was talking about protecting their identity.

Hon. Greg Fergus: That's what I thought.

Ms. Stevens, you misunderstood the question.

Ms. Mary Anne Stevens: I'm sorry.

Hon. Greg Fergus: Now that the question has been clarified, can you answer Mrs. Vignola?

[*English*]

The Chair: Then we're going to Mr. Genuis.

[*Translation*]

Mrs. Julie Vignola: Actually, it's fine. I might be slow to catch on, but once I've got it, it's fine.

Ms. Mary Anne Stevens: Okay, thank you.

[*English*]

Mr. Garnett Genuis (Sherwood Park—Fort Saskatchewan, CPC): Thank you, Mr. Chair.

This amendment speaks of referring matters to the Ethics Commissioner.

I think it's important to take this opportunity to underline how absurd the situation is that we are in right now, not having an Ethics Commissioner. As members know, the government appointed the sister-in-law of a minister as Ethics Commissioner, who then resigned. Now we're in a situation in which we don't have an Ethics Commissioner, which creates all kinds of ongoing problems and challenges and limits the ability of the office to act. This amendment underlines the fact that we need to have an Ethics Commissioner in place, given the important work the Ethics Commissioner is supposed to be doing.

Thanks.

The Chair: Are we ready to move forward with the vote on G-4.4?

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

(Clause 7 agreed to on division)

(On clause 8)

The Chair: On clause 8, we have NDP-8 from Mr. Johns.

Mr. Gord Johns: This amendment allows disclosure to the public when the disclosure is not dealt with in a timely and appropriate manner.

The commissioner is routinely delayed in dealing with disclosures, in some cases for years, while keeping the whistle-blower uninformed or misinformed. It's often evident to the whistle-blower that investigations have been inadequate when the commissioner has declined to obtain information offered by the whistle-blower, failed to interview key witnesses, and publishes the final report—without the whistle-blower's knowledge—containing false statements. Such actions effectively deny due process to all parties, protect alleged wrongdoers and constitute a type of reprisal against the whistle-blower. They also fail to protect the public interest by allowing wrongdoing to continue.

When this happens, a protected disclosure should be able to be made to the public. When the responsible officials fail to deal with wrongdoing and reprisal in an appropriate and timely manner, whistle-blowers could go to the public. This would motivate responsible officials to execute their duties in a timely and appropriate manner and give all parties timely due process.

● (1745)

The Chair: Thank you, Mr. Johns.

Go ahead, Mr. Fergus.

Hon. Greg Fergus: I'm going to be opposing this amendment, but not because I don't think it's an important one. It's because it's unnecessary. Section 19.1 of the Public Servants Disclosure Protection Act, or the PSDPA, actually provides coverage for anyone who goes to the Integrity Commissioner with any information on wrongdoing. Former public servants are expressly recognized in that section.

The Chair: Ms. Vignola, did you have your hand up?

Mrs. Julie Vignola: Yes.

The Chair: I'll come back to you, Mr. Johns.

[*Translation*]

Mrs. Julie Vignola: I understand that the purpose of this amendment is to ensure that investigations by the commissioner do not drag on. I am still concerned about protecting the whistle-blower though. If that person goes to the media and makes a statement with their voice altered, are they still protected? The amendment does not say so, and I think that is a major problem.

[*English*]

The Chair: Ms. Stevens or Ms. Laroche, do you want to chime in on the question?

Ms. Mary Anne Stevens: This amendment appeared.... At present, a disclosure may be made to the public under very specific circumstances when there isn't enough time to make a disclosure elsewhere or to make it through the regular procedures, or when there's a substantial and specific imminent danger. In this case, it's basically that, if you've made a disclosure and either the PSIC or the senior officer has decided not to investigate, you are free to go public, and they may have made the decision not to investigate on very good grounds. It opens the door very wide for going public with any type of complaint.

The Chair: Are you able to answer Ms. Vignola's concerns, as just expressed, about the whistle-blowers going to the media and what protection they have?

Ms. Mary Anne Stevens: If a whistle-blower goes public under circumstances that are protected by the PSDPA, then they would be protected. It appears that, if this amendment passes, they would be protected from reprisal.

[*Translation*]

Mrs. Julie Vignola: The fact remains that it would be up to the whistle-blower to make that choice, being fully aware of the implications. They might decide to make a public disclosure in order to potentially have the matter dealt with more quickly, knowing that their identity would no longer be protected. By adding the proposed wording, we are still giving the whistle-blower that choice.

Very well, thank you.

[*English*]

The Chair: We will go to Mr. Housefather and then Ms. Kusie.

Mr. Anthony Housefather: Thank you, Mr. Chair.

As I understand it, the act already protects whistle-blowers who would go public in very specific situations, such as if there was imminent harm. This, I believe, vastly extends the ability of a whistle-blower to go public for just about any reason if they're unhappy that the senior officer, or whoever is investigating, decides not to pursue the case or finds that no action needs to be taken. I think that really distorts the system.

I can understand, sometimes, when the system is not working or when there's a time issue, that you might need to go public. However, this assumes that the officer who is charged to investigate is utterly incompetent, because any time you don't agree with that decision, you're then distorting the system and going public. To me, there's no point in having a whistle-blower system if this wide-ranging article is put in place, giving people the chance to go public in the event that they're ever dissatisfied with the decision of the person who is charged under the system to render the actual decision.

To me, if I had this in my company—we obviously had whistle-blower policies in my old company—this would entirely distort the process, so I am against it. I think there are times when you allow a whistle-blower to go public to be protected, but this is vastly overreaching in this amendment.

Thank you, Mr. Chair.

● (1750)

The Chair: Thank you, Mr. Housefather.

Ms. Kusie.

Mrs. Stephanie Kusie: We share similar concerns to Mr. Housefather. As well, we're concerned that there may be reasons beyond what the public servant knows or sees perhaps. Therefore, we will not be supporting NDP-8.

Thank you.

The Chair: Can we move to a vote, colleagues, on NDP-8?

Some hon. members: On division.

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

The Chair: Shall clause 8 carry?

Some hon. members: On division.

(Clause 8 agreed to on division)

The Chair: Shall clause 9 carry?

Mr. Anthony Housefather: Mr. Chair, I have a point of order.

On clause 8, you said that it carried on division before, I think, anybody had a chance to react. I would like a recorded vote on clause 8.

The Chair: Are you talking about clause 8 or NDP-8?

Mr. Anthony Housefather: NDP-8 was defeated on division. Then you said clause 8. I would like to have a recorded vote on clause 8.

The Chair: Sure.

Mr. Fergus.

Hon. Greg Fergus: The reason we would like to have a vote on clause 8 is that we think clause 8 should be negated. That's largely because this whole clause applies only to protected disclosures. Former public servants can't have been reprised against. They're no longer public servants, so there's no stick with which to beat them.

That's the reason we would want to negate clause 8.

The Chair: Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: For our part, we want to retain clause 8 because former public servants can continue to suffer reprisals even if they are no longer employees. In particular, there can be threats to their life or to that of their children, and even threats to their pension, which is illegal. That is why we want to retain clause 8.

[*English*]

The Chair: Mr. Garon.

[*Translation*]

Mr. Jean-Denis Garon: This is an important message. Among the witnesses who appeared before the committee, Luc Sabourin did not receive his pension for four years as a form of reprisal. The spirit of this clause is to prevent that kind of thing.

[*English*]

The Chair: Mr. Fergus.

[*Translation*]

Hon. Greg Fergus: I would like to expand on what Mrs. Vignola said.

Such reprisals are already illegal, so former public servants are protected. For instance, it is already illegal to prevent someone from receiving their pension as a form of reprisal.

[*English*]

The Chair: Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: Yes, it is already illegal, but it still happens. There are public servants who did not receive their pension for months, if not years. It might be illegal, but it still happens.

If we insist on clause 8, it is because it gives public servants an additional safeguard. It is to prevent any further cases such as Mr. Sabourin's, or threats such as those received by Ms. Dion.

[*English*]

The Chair: Mr. Garon.

[*Translation*]

Mr. Jean-Denis Garon: I would like to add something briefly.

Luc Sabourin, who appeared before the committee, did not receive his pension, even though that is illegal under the current act. We have been told that the act does need to be amended nonetheless.

● (1755)

Mrs. Julie Vignola: What's more, the individuals at fault were not punished in any way.

[*English*]

The Chair: Ms. Kusie.

Mrs. Stephanie Kusie: We are in favour of maintaining clause 8.

Thank you.

The Chair: Mr. Fergus.

Hon. Greg Fergus: I'd like to ask our officials a question in regard to this.

Could you please clarify how post-employment actions are covered? Is it illegal to conduct reprisals against somebody who has left the public service? I'm not certain if you're familiar with the case of Monsieur Sabourin. If you are, you could use that as an example. If you're not, perhaps you can leave us with an example of how clause 8 is not necessary.

Ms. Mary Anne Stevens: Under the current version of the PSDPA, in section 19.1 former public servants may make a complaint of reprisal to the PSIC. They are not prevented from making a reprisal complaint.

Clause 8 of the bill, the way it is currently written, has nothing to do with that. It's adding references to former public servants in making a disclosure to the public or the right to provide information to the public. It doesn't affect their right to make a reprisal complaint in any way.

The Chair: Mr. Garon.

[*Translation*]

Mr. Jean-Denis Garon: In conclusion, I would add that this was a unanimous recommendation made by the Standing Committee on Government Operations and Estimates in its 2017 report.

[*English*]

The Chair: I'm sorry. Could you clarify?

[*Translation*]

Mr. Jean-Denis Garon: The subject of clause 8 was included in the recommendations of the 2017 report of the Standing Committee on Government Operations and Estimates. And it was a unanimous recommendation.

[*English*]

The Chair: It was a translation error. Thank you.

Colleagues, we'll do a recorded vote on this.

It's a tie, so I will say yes.

(Clause 8 agreed to: yeas 6; nays 5)

The Chair: Thank you.

I will slow down so that we don't run into this again.

Mr. Housefather, thank you again.

(On clause 9)

The Chair: We're on to clause 9. Shall clause 9 carry?

Hon. Greg Fergus: For very much the same reasons, Mr. Chair, I'd like to recommend that we don't carry clause 9. Adding the term "former public servant" is unnecessary. We heard that in one of the responses that Ms. Stevens gave.

Anyone may provide the Integrity Commissioner with information on wrongdoing, and former public servants are already expressly covered by section 19.1, as I pointed out in the previous argument, with a right to complain of reprisal.

This imposes a burden on them, Mr. Chair, that just really isn't necessary.

The Chair: Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: Since the justifications are exactly the same as for the previous clause, I would ask that we simply vote now.

● (1800)

[*English*]

The Chair: Ms. Kusie.

[*Translation*]

Mrs. Stephanie Kusie: We would rather retain this clause.

[*English*]

The Chair: Colleagues, shall clause 9 carry?

It's a tie, so I'll say yes.

(Clause 9 agreed to: yeas 6; nays 5)

(On clause 10)

The Chair: We're on to clause 10 now, colleagues, and we have G-5, on page 23 of the package.

Mr. Fergus, you're up again.

Hon. Greg Fergus: I hope this will go quickly, Mr. Chair.

This is going to be consistent with what we agreed to earlier in terms of making sure the complainant has the reasonable belief that reprisal has taken place against them.

The Chair: Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: That's fine for us. That way, the concept of good faith is replaced by the term "reasonably", which is an international standard.

[*English*]

The Chair: Ms. Kusie.

[*Translation*]

Mrs. Stephanie Kusie: We agree.

[*English*]

The Chair: Shall G-5 carry?

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

The Chair: Mr. Johns, you're up again on NDP-9, which is on page 24 of the package.

Mr. Gord Johns: This removes some subjective requirements and other barriers to the filing of complaints. Currently, whistleblowers may be denied protection by the commissioner on various grounds that are subjective, arbitrary or inappropriate, and all commissioners have made full use of such provisions to reject or close cases.

An analysis of the PSIC's case management database for 2007 to 2010 revealed that 40% of disclosures were rejected for "a valid reason", with no reason given, and 35% because they were better dealt with by someone else. In most cases, they were fobbed off to the grievance process. Whistle-blowers who make disclosures in various forms, timings and circumstances need to be protected, and the public interest does not care about the semantics of the disclosure process and the exactness of the form of the disclosure.

That's why we moved this.

The Chair: Thanks, Mr. Johns.

I have Mr. Fergus.

Hon. Greg Fergus: I appreciate what Mr. Johns is trying to accomplish, but I don't think this is the way to do it. The purpose of this clause becomes very unclear. There is a form by which.... It's important to have a clear process by which complainants would lodge their complaints. If we take away that obligation, almost any type or form of complaint would be submitted, and then you'll have arbitrary determinations: Why are some in some forms accepted in one department and not another? I think it could lead to a lot of confusion.

I'll exaggerate, but sometimes receiving a form written on crayon on the back of a napkin is not the right thing to do, nor do you want to have another system in which you have to fill it out in triplicate and have it all attested. It needs to be a pretty standard approach, and this is the reason I wouldn't want to remove this aspect of.... I wouldn't want to support this to remove that obligation.

The Chair: Mr. Housefather is next.

Mr. Anthony Housefather: Thanks, Mr. Chair.

Having been an officer in a company who was designated to receive whistle-blower complaints before, I want to point out how difficult this would make it for the person who is receiving the complaints. This would allow, for example, a person to walk up to somebody at a Christmas party and make a complaint and to then have that person declare that the discussion was a valid complaint.

You really need a standard form in writing to be received to know when you're supposed to start investigating or not. If you take out "in a form [reasonably] acceptable to the Commissioner", you know.... The way to handle it is to look at the form and, if we're not happy with the form, to make suggestions about how the form could be made more simple. It's not to completely remove these words and mean that a verbal discussion with somebody somewhere becomes a complaint.

I would just say from experience that this will not work, and it would make things much more difficult.

Thanks, Mr. Chair.

● (1805)

The Chair: Next is Mr. Garon.

[*Translation*]

Mr. Jean-Denis Garon: I do understand the objections of my colleagues, Mr. Housefather and Mr. Fergus. Yet the process is not at all clear in the current wording of the act. By leaving the phrase "in a form acceptable to the Commissioner", absolutely no guidelines are provided as to that form. It simply restricts the process. There is nothing in the bill saying that the commissioner may not accept a verbal complaint in a particular case, for instance.

This is a recommendation that was made by certain witnesses, specifically Mr. Hutton, if I am not mistaken. The witnesses made two important points. First, they said that a complaint had to contain very specific words, the magic words, in order to be deemed acceptable, and that the absence of those words was in some cases a reason for the complaint to be dismissed. Secondly, they said that restricting as much as possible the form in which a complaint can be submitted served to restrict the process.

The current process is not any clearer. The commissioner has full latitude to determine what is acceptable. Nothing prevents the commissioner from setting guidelines and providing tools for whistleblowers to use without necessarily excluding other methods.

[*English*]

The Chair: Go ahead, Ms. Kusie.

Mrs. Stephanie Kusie: Thank you, Chair.

I view this as not the same but similar to the situation in which there is currently no sitting Ethics Commissioner. If the forms acceptable to the commissioner are deemed unacceptable by our witnesses, then really, the form should be adjusted—not this amendment inserted. In my opinion, this means that clearly the forms acceptable to the commissioner are not satisfactory to the whistleblowers and those should be evaluated. I think there's a problem that exists that this amendment does not effectively address systematically and in the right way, as it should be. We will not be supporting this. That's the outcome.

Thank you.

The Chair: Mr. Garon.

[*Translation*]

Mr. Jean-Denis Garon: I understand completely so I will not waste our time.

The current wording says that the complaint must be in a form that the commissioner deems acceptable, but the commissioner could wake up one day and decide that smoke signals are the only acceptable method and that forms are no longer accepted. You know what I am saying.

Even if this amendment were adopted, the problem would not be completely resolved, but I think the amendment is nonetheless a step in the right direction rather than the wrong direction.

Even though I disagree with you, I do of course understand your position.

[*English*]

The Chair: Next we'll have Mr. Housefather, then Ms. Kusie and then Ms. Vignola.

Mr. Anthony Housefather: Thank you, Mr. Chair.

[*Translation*]

I agree with Mr. Garon that there is no need to waste any more time.

[*English*]

This type of form is exactly what other commissions.... The way it's worded here is how it's worded with the Canadian Human Rights Act, for example, in terms of making a complaint. This is the standard wording.

I would suggest that the OGGO committee has every ability to ask the commissioner's office what form they are using. We can look at the form and we can make suggestions if we find that the form they are using is incompatible with what we're looking for.

There is no reason to change the act and take away the fact that there is a standard form. To me, it is totally reasonable and makes life easier for the commissioner to have one standard form.

Thank you, Mr. Chair.

The Chair: Ms. Kusie.

Mrs. Stephanie Kusie: Yes, that's essentially my point. It seems to me that the fault is with the form or the forms that are acceptable to the commissioner, whichever it is.

I believe it's a problem that is not best solved by this amendment.

● (1810)

The Chair: Ms. Vignola and then Mr. Johns.

[*Translation*]

Mrs. Julie Vignola: I would like to suggest a favourable amendment. You may decide whether it is reasonable.

Instead of referring to an acceptable form, we could say a reasonable form, as stipulated in the regulations. That would leave the door open and it would be possible to make changes, upon closer scrutiny.

Even if my suggestion is not accepted, I will survive.

[*English*]

The Chair: I'll go to Mr. Johns and then Mr. Fergus, and then we can read back what we have.

Mr. Gord Johns: I would support the friendly amendment, because right now it's arbitrary. It's “in a form acceptable to the Commissioner”.

It's already arbitrary, so I would support this friendly amendment.

The Chair: Mr. Fergus.

Hon. Greg Fergus: I was going to suggest that perhaps in defeating this amendment by Mr. Johns....

Mr. Chair, I turn to you, because this is my first clause-by-clause evaluation that I've done in a long time.

Perhaps there would be some way that we report this back with a note asking for Treasury Board or the commissioner to take another serious look at the way that complaints are received, to make sure that it's in a form that is accessible.

Is there some way we could try to get them to take a look at this again?

The Chair: Mr. Fergus, you have put me on the spot. This is the second one we've done in seven and a half years on OGGO.

Maybe our legislative clerks can weigh in on that, though I suspect I know the answer.

Ms. Marie-Hélène Sauvé: Yes.

The report on the bill itself would contain only the text of adopted amendments and any mention of deleted clauses.

If the committee wanted to submit additional observations, it would have to be a separate substantive report of the committee—similar to reports on other types of studies.

The Chair: Go ahead, Mr. Johns.

Mr. Gord Johns: It's like acceptable form. It's not a standard, right now. I would support Mr. Fergus. If there's an additional report we can make recommendations in, I would support that, so there is a clearer....

The Chair: Do you withdraw the NDP-9 amendment?

Mr. Gord Johns: I seek to withdraw it, on the agreement that we support Mr. Fergus's pathway, which is the additional report.

● (1815)

The Chair: Or the subamendment....

I'm sorry, colleagues. We'll come back.

We'll deal with the NDP amendment and the suggested subamendment.

Ms. Vignola withdraws her subamendment and Mr. Johns withdraws his amendment.

Mr. Fergus suggested a couple of things. We would need a motion from the committee to do such a thing, whether it is for a letter to the Public Sector Integrity Commissioner or a report to the House—one line.

That would have to come from you.

If you wish, colleagues, we can withdraw the two. We can suspend for two or three minutes—we're running out of time—and you can hammer out something, as Mr. Fergus suggested.

Go ahead, Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: We agree with what you suggested regarding the report to the House.

We also agree that the meeting may be suspended for a few moments to allow us to discuss this with our colleagues.

[*English*]

The Chair: Are you withdrawing your subamendment to Mr. Johns'...?

[*Translation*]

Mrs. Julie Vignola: Yes, we withdraw it.

(The subamendment is withdrawn.)

[*English*]

The Chair: Colleagues, we'll suspend. It's 6:18. We'll suspend until 6:23 so you can work out a motion.

Is that agreed?

Okay, we'll suspend for five minutes tops.

● (1815)

_____(Pause)_____

● (1825)

The Chair: I call the meeting back to order.

Colleagues, we are back a bit later.

I want to clarify, Mr. Johns, that you've withdrawn NDP-9. I wish to wait until we have the motion.

(Amendment withdrawn)

The Chair: I think Mr. Genuis has the motion ready. We're going to wait a couple of seconds again.

Mrs. Stephanie Kusie: I believe it's fine. I'm waiting for my advisers to give me the final approval.

Mr. Garnett Genuis: All right. Thank you.

The motion I'd like to move is “That the committee report to the House that it believes, in light of testimony it has received, that there should be a standard by which the Integrity Commissioner receives complaints that is simple and accessible, and that the committee ask that the Integrity Commissioner provide feedback on this report to the committee by letter.”

● (1830)

The Chair: Can we add a deadline?

Mr. Garnett Genuis: Sure. How's “within 90 days”?

Hon. Greg Fergus: We won't be sitting, so let's make it the end of September.

Mr. Garnett Genuis: Yes, okay. Let's make it “by the end of September”.

The Chair: The end of September. Sure.

Ms. Joanne Thompson (St. John's East, Lib.): Chair, could we get that shared?

The Chair: It's going to the clerk right now.

Ms. Joanne Thompson: Good. Thank you.

Mr. Garnett Genuis: The problem is it can't be distributed unless it's translated. We're wordsmithing on the fly.

Hon. Greg Fergus: Send it to me and I'll translate it for you.

The Chair: Go ahead, Ms. Vignola.

A voice: It's GregGPT.

[*Translation*]

Mrs. Julie Vignola: I can assure you that tools such as ChatGPT and Google Translate are far from perfect. It is easy to see the difference.

We were going to make the same request as Ms. Thompson, that the motion be provided in writing.

[*English*]

Hon. Greg Fergus: Can we proceed, and then come back to this?

The Chair: We're not going to be able to get it in written form today, obviously.

Mr. Majid Jowhari: Can we skip a clause and go for another clause, and then come back to it?

The Chair: We can. We need UC to skip over, as I understand it. I'll double-check.

Colleagues, we'd have to allow or have all of clause 10 stand, as in we'd have to come back to all of clause 10. We can't just do NDP-9...G-5, even though we've already moved past it. We'd have to come back to clause 10, which we can do, and get to clause 11, and then follow up with this motion at our next meeting on Bill C-290.

Mr. Garnett Genuis: What's your plan?

The Chair: We're going to go to about 6:45, colleagues. We have resources until 6:41, and then we'll make up for the suspended time.

Are we agreed? We'll let clause 10 stand.

An hon. member: On division.

The Chair: It has to be UC, so I assume we have unanimous consent to allow it to stand.

Hon. Greg Fergus: Allowing it to stand means that we're going to come back to it.

The Chair: Yes, that is correct.

(Clause 10 allowed to stand)

(Clause 11 agreed to on division)

(On clause 12)

The Chair: We have clause 12, with G-7, which is on page 26 of the package.

Mr. Fergus, I assume you're going to discuss this.

Hon. Greg Fergus: Yes, I will.

This clause prevents overlap with other recourse mechanisms for reprisals, Mr. Chair. What you want to avoid is having multiple processes being conducted on the same issue by different administrative bodies with different mandates and objectives. Not only would that be a waste of resources, but there could be inconsistent determinations with different remedies that come about.

What this would do, by simply removing this reference, is make sure that we're getting rid of any frivolous or intentionally malicious disclosures. It's consistent with that international standard of asking people to bring forward things on reasonable belief of the verification of that action that should be denounced.

The Chair: Thanks, Mr. Fergus.

Colleagues?

Ms. Kusie.

Mrs. Stephanie Kusie: We are in agreement.

The Chair: Shall G-7 carry, colleagues?

Ms. Vignola.

● (1835)

[*Translation*]

Mrs. Julie Vignola: Does that mean that amendment G-7 eliminates possible avenues of recourse for public servants? If I understand correctly, since we are withdrawing lines 24 to 32, we are therefore eliminating the proposed paragraphs a) and b) in subclause 12(1) of the bill, as well as subclause 12(2). Is that correct?

By saying that a public servant may no longer use the provisions of this act if they have already used the provisions of other acts or of a collective agreement, we are removing avenues of recourse. That is completely at odds with the precedent established in Therrien. We cannot do that.

[*English*]

The Chair: Go ahead, Mr. Garon.

[*Translation*]

Mr. Jean-Denis Garon: I understand what Mr. Fergus is saying, in principle. At first glance, it does not seem unreasonable.

But I would like to expand on what Ms. Vignola said. I do not know if my colleagues remember the case of Sylvie Therrien, a former public servant who worked in the area of employment insurance. At one time, the Harper government circulated an internal memo saying that all employment insurance applications from seasonal workers had to be denied because they were costing the government so much. As Ms. Therrien stated in a grievance filed under her collective agreement, she had no other avenues of recourse. It was deemed that she already have an avenue of recourse. This public servant, Ms. Therrien, was therefore left without recourse. She was lucky, though, because the union took the case all the way to the Federal Court of Appeal. In the end, the Federal Court of Appeal ruled, through a mechanism that is exactly like the one proposed in amendment G-7, which is similar to the one proposed in G-6, that workers' rights had been violated. If we were to adopt G-7, we would be doing the exact same thing again. That is why we are opposed to it.

What we have in the bill does not provide multiple avenues of recourse; rather, the purpose is to ensure that a worker is not left with no recourse, as established by the Federal Court of Appeal and in the case law.

I would like my colleagues to reconsider their position on this. We think this amendment really contradicts the bill, which does not include the risk of multiple avenues of recourse.

[*English*]

The Chair: Did you want to respond, Mr. Fergus?

Hon. Greg Fergus: I do, because, more to the point, amendment G-7.1 on page 26.1 would.... Do I have that right? I'm trying to think of the one where that applies. We are going to be leaving open.... I believe what will happen is we're actually going to be making sure we remove overlap so we don't have those differing results and differing procedures.

I'm going to ask our officials if they could shed some light on the Therrien case and how this can help clarify our role, so we don't have any overlap and duplication.

[*Translation*]

Ms. Mireille Laroche: Thank you very much for the question.

Under the current Public Servants Disclosure Protection Act, there are four reasons for which a complaint may be deemed inadmissible, including:

> a) the subject-mater of the complaint has been adequately dealt with, or could more appropriately be dealt with, according to a procedure provided for under an Act of Parliament, other than this Act, or a collective agreement;

In the proposed wording of Bill C-290, this reason would no longer be in the act, nor would the reason that the complaint was “not made in good faith”.

Amendment G-7 serves two purposes. First, it reinstates the two provisions that were to be removed from the act to make sure there is no overlap. Secondly, the concept of good faith is replaced by reasonable grounds.

● (1840)

[*English*]

The Chair: Go ahead, Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: Let me explain once again why the bill seeks to repeal those two paragraphs in the current act. It is precisely because the Federal Court of Appeal ruled in Therrien that a worker could not be prevented from asserting their rights, even through legislation. Amendments G-7 and G-8 would restore those two paragraphs that are in the current act, but this contradicts the decision in Therrien and therefore contradicts the case law.

Let me repeat, these two paragraphs in the current act mean that workers cannot exercise their rights. We cannot allow that. That is why they would be repealed by the bill, and that is why we cannot accept amendments G-6 and G-7.

[*English*]

The Chair: Go ahead, Mr. Fergus.

[*Translation*]

Hon. Greg Fergus: To make sure there is no discrepancy, I invite my colleagues to consider two further amendments we would like to make. The first is amendment G-7.1, which I had started talking about. There is also amendment LIB-9, on page 32.1 of the bundle of amendments, which pertains to another part of the act. Not only would the first amendment create a procedure, but, further to the second amendment, if the commissioner decided to not an investigation or to dismiss a complaint that he deemed unfounded, he would be required to provide another option to the whistle-blower or inform them of the most appropriate mechanisms further to the disclosure.

[*English*]

The Chair: Ms. Vignola, before you start, I understand that the motion has been distributed.

We have only about three or four minutes. I don't think we're going to settle clause 12 today. Are we comfortable leaving this and getting to the motion?

(Clause 12 allowed to stand)

The Chair: I just want to confirm with Mr. Genuis that he meant September 30, 2023, for the date.

Mr. Garnett Genuis: I don't think that necessarily needs to be in the text, as long as that's well understood, but....

The Chair: Okay.

Colleagues, are we comfortable just going back to the motion and getting that done?

Are there any objections to the motion? Do we all agree to it?

Mr. Johns, I just want to double-check with you.

Mr. Gord Johns: Yes.

The Chair: Ms. Vignola...?

● (1845)

Mrs. Julie Vignola: It's okay to me.

The Chair: Are we fine with the motion as distributed?

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

The Chair: That's wonderful.

We have only one minute, so I'm going to suggest that we adjourn. Before we do, colleagues, our next meeting....

We're quickly running out of time here. The next meeting available to us is June 12, which I had set aside for the line by line for the Governor General. I'm hoping we can do one hour with the GG line-by-line, get that report done, and then continue this in the second hour. Hopefully, we can finish this by June 14.

If there are no objections to that, we'll consider that our plan going forward.

Go ahead, Mr. Fergus.

Hon. Greg Fergus: I always tell my family, “seize victory”, but I'm still going to ask this question.

I don't know if the analysts or the clerk could give us an indication of how much time it will be after the 14th before they would be in a position to report this back to the House, so that we respect, I think, the unanimous consent that we want Bill C-290 to be reported back to the House before the summer break.

The Chair: The cut-off is the 21st, assuming that the government does not prorogue.

Hon. Greg Fergus: Just don't negotiate something else.

The Chair: The cut-off for reporting back is the 21st. We have the 14th and the 19th open to us right now.

We will go to Mr. Johns and Ms. Vignola, and then Mr. Jowhari.

Mr. Gord Johns: Mr. Chair, can you give us a quick rundown for the 29th, the 31st, the 5th and the 7th so that we can have a quick discussion on this?

The Chair: On the 29th we are welcoming back the minister for PSPC for the main estimates, and then the second hour is the bureaucrats.

On the 31st is the TBS minister. The President of the Treasury Board will be here for one hour, then the bureaucrats.

The 5th and 7th will be two hours each with the departments. We've been putting off for them to come to discuss with us the refusal to obey the order of the committee to hand over the unredacted documents.

The 12th is tentatively the GG report.

Colleagues, maybe we can leave it with the 29th and 31st, one hour with the minister. My understanding is that Minister Fortier has said she will do an hour and 20 minutes on the 31st. The rest of the time we could get back to this, or we could continue with the department, the DMs, for the estimates, which is tradition.

Next is Ms. Vignola, then Mr. Jowhari, and then we'll go back to you, Mr. Johns.

[*Translation*]

Mrs. Julie Vignola: First, I have a question. I know the ministers have busy schedules, but would it be possible to postpone their appearance to June 5 and June 7?

[*English*]

The Chair: No.

[*Translation*]

Mrs. Julie Vignola: Okay.

[*English*]

The Chair: I assume no, but it's also way past the reporting back to the House.

[*Translation*]

Mrs. Julie Vignola: Secondly, I'm not sure if this falls under committee business, but I would like to mention that this is the last meeting that Mathieu, my favourite political staffer, will be attending. Mathieu is leaving and starting a new job next Monday. I just wanted to thank him publicly for his excellent work and support.

Voices: Hear, hear!

[*English*]

The Chair: Are we celebrating his new job or shaming him for leaving us? I'm not quite sure.

Thank you. We'll miss you, sir.

Mr. Jowhari, and then we'll go to Mr. Johns.

Mr. Majid Jowhari: Mr. Chair, is it possible for the committee members to consider continuing the clause-by-clause on the 5th and 7th and having the departments come on the 14th, etc.? The 5th and 7th give us the opportunity to continue and finish this and mitigate all the risk, and then we have the departments coming in.

By no means is this in any way trying to push the departments up. We're one way or another supportive of either continuing on the 5th and 7th or bringing in the departments on the 5th and 7th. It's just I'm worried that we're not going to be able to get through this. The other option is the 5th and 7th with the departments, and then do another clause-by-clause, so at least we get the clause-by-clause going.

● (1850)

The Chair: We've booked and cancelled them twice already.

I would just suggest.... We're all here tomorrow. I will find time to do a subcommittee to look at the calendar. I'll ask everyone to think about the estimates process, to do the minister only and then clause-by-clause for the second hour. I'll find time tomorrow or Friday to do a subcommittee to hammer out the schedule, acknowledging the importance of this bill, but also, I think, a rather incredibly important issue of departments refusing an order of the House.

A voice: We're not here on Friday.

The Chair: Oh, that's right. I will find time to chat with the subcommittee members tomorrow, but I'll ask you to go away with some thoughts and we'll work on some options.

Mr. Johns, was there something else? We have to adjourn because of resources.

Mr. Gord Johns: No. I actually like what he said there, because I want to get this bill through, but that's the only thing I agree with everybody on.

Some hon. members: Oh, oh!

An hon. member: You won't agree with anything—

The Chair: Okay, we'll do the subcommittee tomorrow.

If there's nothing else, we will adjourn right now.

Thank you, colleagues.