



House of Commons
CANADA

Standing Committee on Government Operations and Estimates

OGGO • NUMBER 050 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Tuesday, June 28, 2005

—
Chair

Mr. Leon Benoit

All parliamentary publications are available on the
"Parliamentary Internet Parlementaire" at the following address:

<http://www.parl.gc.ca>

Standing Committee on Government Operations and Estimates

Tuesday, June 28, 2005

•(1115)

[English]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good morning, everyone.

We're here today to discuss Bill C-11, the whistle-blower legislation, and continue with the clause-by-clause, but before that there is other business of the committee.

The first item of business, pursuant to Standing Order 108(2), is examination of the leasing agreement between the federal government and Alexis Nihon.

Mr. Poilievre had a motion at the last meeting. It was passed by the committee but we didn't pass a motion to report it to the House, so Mr. Poilievre wants to move a motion that we report his motion to the House.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): The substance of the matter has been dealt with. Now it's just a matter of having the committee pass on the report. I would so move.

(Motion agreed to)

The Chair: The second order of business is a motion by Pat Martin. Proper notice has been given.

He actually presented two motions. One is out of order because it mentions members of the other place, the Senate, but Mr. Martin has another motion he would like to move.

Mr. Martin.

Mr. Pat Martin (Winnipeg Centre, NDP): Actually, Mr. Chair, I'm not interested in moving this motion today. I would like to put it off until a subsequent meeting.

The Chair: Sorry, Mr. Martin. I had the impression you did, but that's just great. So we will not deal with that motion today; it remains available for further business.

We will, then, continue with the clause-by-clause on Bill C-11. At the last meeting we were on clause 21.

There have been some discussions this morning. Actually, we never talked to any member of the governing party; we just had informal discussions among the Conservatives, the Bloc, and the NDP. We want to go back to clause 20. There's some important business there.

Are there any objections by anyone to going back to clause 20?

An hon. member: That was carried.

The Chair: Yes, it was, so we would have to move a motion.

Mr. Paul Szabo (Mississauga South, Lib.): Since we're not aware of what you're talking about, perhaps someone could advise us as to what the issue is.

The Chair: I think Mr. Preston will move the motion.

There is a concern that if the public service commissioner—of course, after the royal recommendation passes—becomes the commissioner.... The commissioner can make recommendations for action to protect people disclosing wrongdoing, but other than that there are really no teeth to the legislation. Where do you go from there if the recommendations are ignored?

What these amendments would do is specifically put in the legislation that the commissioner could choose, if his or her recommendations were ignored or if he or she felt they weren't being dealt with appropriately, to refer this issue to the courts on behalf of the public servant. The commissioner would do it on behalf of the public servant but not open it up so any public servant could take it to court him- or herself, because of course under this clause 20 the expenses would be paid, and we could see a problem with that. Having the commissioner do that would be another issue.

It's on page 8, under subclause 20(4); that's where we'd like to do that.

If we need a motion to go back, we can do that.

Mr. Szabo.

Mr. Paul Szabo: Mr. Chairman, we're not going to get consent to reopen that clause, the reason being that there was a discussion about this. I think Mr. Heintzman laid out very clearly for the committee that when you have, effectively, an officer of Parliament, you change their role once you give them the authorization to go beyond making the recommendations. This isn't protection of that role. That role can be jaundiced by going beyond, say, the normal purview of an officer of Parliament. It's certainly possible, but it does tend to make the office something it was never intended to be.

I can assure members that this is serious. We should, I think, again hear from Mr. Heintzman so he can reaffirm the importance of not customizing this role in such a manner. There are existing venues and procedures in place to deal with a matter once a wrongdoing has been found and a recommendation pursuant to that has been made by the commissioner.

The Chair: Mr. Szabo, actually, let's have this issue opened and then debate it.

Mr. Preston, you're next on the list.

Mr. Paul Szabo: No. There's no consent.

The Chair: Mr. Preston.

Mr. Joe Preston (Elgin—Middlesex—London, CPC): The point I'd like to make is one Mr. Szabo didn't answer in his statement there, and that is, if a recommendation is made by the public service integrity officer—

• (1120)

The Chair: Mr. Preston, before we get into a debate, could we have a motion to go back to clause 20?

Mr. Joe Preston: Certainly. I would make that motion.

The Chair: Is that agreed?

Mr. Paul Szabo: Could the clerk please explain the process and the rules of procedure with regard to reopening a clause?

The Chair: We're just going to see what the ruling is here. I believe we can go back.

Mr. Sauvageau.

[Translation]

Mr. Benoît Sauvageau (Repentigny, BQ): While you are looking into this, could Mr. Heintzman give us his opinion? Even if it is determined that we cannot reopen the clause-by-clause study, we will nevertheless have Mr. Heintzman's view on this. I would respectfully suggest we do that.

[English]

The Chair: Sure.

Mr. Heintzman, would you like to comment on this issue? The intent is to put it under subclause 20(4). Just comment on that and we'll have a ruling here, in a minute, on the motion.

Mr. Ralph Heintzman (Vice-President, Public Service Values and Ethics, Public Service Human Resources Management Agency of Canada): I'm loath to comment yet, Mr. Chair, because I'm not exactly sure of what is being proposed. If I may, I might make a comment on subclause 20(4), because I think it may be being misunderstood.

The purpose of subclause 20(4)—and I'll ask Michel LeFrançois to comment on this if I may—is to keep separate the normal grievance procedures in the public service and this reprisal protection process in which the board is involved.

Michel.

Mr. Michel LeFrançois (General Counsel, Secretariat Legal Services Branch, Treasury Board of Canada Secretariat): Mr. Chairman, what Mr. Heintzman is saying is completely accurate. Both of these boards hear these complaints and reprisals, but generally, a complaint of a reprisal could also be the subject of a grievance. What the statutes in part 2 of the Canada Labour Code, on which this is modelled, simply state is that if you're going to pursue a complaint against a reprisal before the labour board, you're not to pursue a grievance at the same time, because they're dual avenues for the same purpose. That is the only reason subclause 20(4) is there. It's modelled on a provision that's already in part 2 of the Canada Labour Code.

The Chair: Then there are two issues. First, what if the commissioner, after the government amendments come forth, finds

that his or her recommendations are not being acted upon? What recourse does the commissioner have?

Mr. Ralph Heintzman: The commissioner and the complainant would essentially have two avenues of recourse. The commissioner can report to Parliament at any time on a matter on which his recommendations are not being followed. He can bring that matter in front of Parliament.

The Chair: The Auditor General does that on a regular basis, and most often the reports aren't fully acted upon.

Mr. Ralph Heintzman: That's the first part of the answer. The second part of the answer is that in the case of a reprisal, there is a reprisal protection regime—you're in the process of creating it—by which a board can make an order to a department to do a whole series of actions to remedy the reprisal.

The Chair: Can make a what to the department?

Mr. Ralph Heintzman: An order—you adopted it last time.

The Chair: What happens if the department doesn't follow through on the order?

• (1125)

Mr. Ralph Heintzman: It has no choice. It's a court order.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): That's the board. That's not the commissioner.

Mr. Ralph Heintzman: That's right.

Mr. Guy Lauzon: I think the chair is asking what happens if the commissioner makes a recommendation and the recommendation is not acted upon. Going to a board—

Mr. Ralph Heintzman: The board has the power to make the order. As we discussed last time, if you choose to create an officer of Parliament, as I think is your intention, you can't at one and the same time give that person an order power or make him or her a tribunal, because tribunals can't report to Parliament.

Mr. Guy Lauzon: I think what we're trying to achieve, Mr. Heintzman, now that we know that when the Auditor General makes recommendations they're not always acted upon, is to ensure that these recommendations the commissioner makes end up being acted upon. That's what we're looking at trying to achieve, if I'm saying this properly.

Mr. Ralph Heintzman: I can only repeat what I just said. There are two avenues in the bill at the moment. First, because it's an officer of Parliament, he or she can bring the matter to the attention of Parliament. If you choose to make an officer of Parliament, then I think, in a sense, that's the tool you have available to you because you are creating an officer of Parliament.

The other avenue, if it's a reprisal, is that there can be an enforceable order from one of the tribunals that clause 21 would authorize to do any of the things in clause 26: permit the complainant to return to his duties, reinstate them, pay them compensation, and so on. You have a very forceful mechanism there to impose on a department a remedy, in the case of a reprisal.

The Chair: Concerning these boards, am I correct in saying that the board members, or the chair of the board, are chosen by the government?

Mr. Ralph Heintzman: They are appointed by order in council.

The Chair: It is by order in council; there's the issue. What kind of teeth would this commissioner really have, then?

The second issue is in subclause 20(5). It says:

The Board must hear and determine the complaint if it decides not to so assist the parties or the complaint is not settled within a period considered by the Board to be reasonable in the circumstances.

A great concern of whistle-blowers is that often one of the toughest things they have to deal with is that they are in limbo for a long period of time. In other words, this board could take an awfully long time to make a decision.

Is there any real requirement on the part of the board to make a decision within a set period of time? What's to stop the board from taking two years to make a decision? Meanwhile the whistle-blower is in limbo over that period of time.

Mr. Ralph Heintzman: First of all, Mr. Chair, let me preface my comments by saying that when you're in a situation where you want somebody to issue an order, you have to have due process. That is to say, you have to have the ability to present evidence, you have to have the ability for cross-examination, and so on. That requires some time.

What the boards have told us is that they have to do a triage of cases. For the cases that are for them urgent cases—that is to say, for example, if someone had been fired and therefore needed to be reinstated—they believe it would be dealt with within a period of six months. But you understand that for that process, if they can't mediate the process under subclause 20(5)... What subclause 20(5) has to do is merely an alternative dispute resolution mechanism; i.e., can we get the parties to agree without a proceeding? If you have a proceeding, you have to go through due process. That requires some time.

The Chair: Yes, I guess it's the length of time.

Anyway, I have Mr. Szabo.

You never actually made a statement on this, but unanimous consent is required to go back to a clause that has been dealt with, and clause 20 was dealt with. I'm assuming there is not unanimous consent, and we will not go back to that clause. It can be dealt with in a new clause, or somewhere else within the proposed legislation.

Let's proceed. Mr. Szabo, you have the floor. Madame Thibault will be after Mr. Szabo.

• (1130)

Mr. Paul Szabo: Mr. Chairman, I want to help, if I can, make sure that people are reassured that everybody around the table wants this bill. It is very easy, and I'm afraid we continue to fall back into the situation where we assume the worst or assume people are acting in bad faith.

We're talking about established process, and Mr. Heintzman has laid out for us that we're trying to protect the integrity of this officer of Parliament.

The example was given that the Auditor General reports to Parliament and sometimes Parliament does not act on those recommendations. The difference here is that this officer of

Parliament is making his recommendations to a board, and the board is bound to hear those, or to take, first of all, the findings—

An hon. member: Where does it say that?

Mr. Paul Szabo: Because it is an order, and I think Mr. Heintzman just laid it out, that if the information is right, and the order is made to a department to take action as a consequence of a wrongdoing having occurred, they are bound to do it.

Having said that, if we get into this debate again, if someone is going to try to move this in another area, that's entirely their right. But I would like, Mr. Chairman, to also advise that I know the committee has dealt with the concern about persons such as contract persons, people who are not public servants who have information that may be relevant to an ongoing investigation, or in fact information that may be relevant to an investigation that should take place. We have discussed it and we agree.

What I would like to do is... I have copies. Could the clerk make copies for the members?

I have amendments to clause 23. These are government amendments to deal with this issue of commencing an investigation, and also a consequential amendment to clause 34 that includes the concept "or as a result of information provided to them". This should, I believe, cover the concerns raised by the committee and with which I think the committee concurs.

I would like to give these to the clerk and have them properly circulated.

The Chair: Are there any objections?

We'd certainly deal with Mr. Preston's first, therein, and then Mr. Szabo's.

Is that agreed? It depends on the line numbers, of course. We're on clause 21, but we still have Madame Thibault with something to say.

[*Translation*]

Ms. Louise Thibault (Rimouski-Neigette—Témiscouata—Les Basques, BQ): I would just like to make a comment, Mr. Chairman. You made some comments and my colleagues on my right have done the same, and I do not want to remain silent and thereby suggest that I subscribe to these comments.

When people make certain comments, this suggests that people appointed by the governor in council or chosen by the government are automatically partisan and not professional. There are doubts about their legitimacy and questions about the way they will carry out their duties. In my opinion, we should definitely not be putting everyone into the same category. Of course, there are always some unfortunate incidents, but such things happen in a very tiny minority of cases. I would not want people watching or listening to think that I or the Bloc Québécois in any way support the comments that were made.

That is all I wanted to say. Thank you.

[*English*]

The Chair: Thank you, Madam Thibault. I would hope there wasn't an intent on anyone's part to cast doubts on anyone else.

We are on clause 21. We did deal with the Conservative amendment CPC-37 on page 68 of the package last time. It was withdrawn, actually. Now we are on to Conservative amendment CPC-38 on page 69 of the package.

Mr. Guy Lauzon: That was withdrawn.

The Chair: Was it withdrawn? Okay. That is withdrawn then, as well, as is CPC-39. We have agreement on that.

There are no amendments to clause 21 then.

• (1135)

[*Translation*]

Ms. Louise Thibault: We are going to be moving that a new clause, 21.1, be added, sir. I thought that was part of clause 21.

[*English*]

The Chair: Madam Thibault, clause 21 is separate from clause 21.1. We will deal with clause 21.1, which will deal with Bloc amendment BQ-9a, next.

(Clause 21 agreed to)

The Chair: We're on clause 21.1, the Bloc amendment BQ-9a on page 70.1 of the package.

Madam Thibault.

[*Translation*]

Ms. Louise Thibault: Thank you. I am sure people have read the amendment. As you know, several times during our hearings, while we were hearing from witnesses, I insisted a number of times that the bill contain transition measures to protect people when confidentiality cannot be maintained for various reasons. This will probably be the exception. There must be ways of giving the whistle-blower a temporary assignment elsewhere in order to protect him or her. I would like to thank the people who worked on this wording. I fully agree, I signed the amendment and I hope colleagues will agree to add this new clause 21.1.

Thank you.

[*English*]

The Chair: Is there any other comment on that amendment?

Mr. Szabo.

Mr. Paul Szabo: Thank you, Mr. Chairman.

We've also had an opportunity to review this. I think, as a proposed transitional measure, it appears to be quite constructive, and we're going to support this motion.

The Chair: Monsieur Lauzon.

[*Translation*]

Mr. Guy Lauzon: I agree with you, Ms. Thibault, but do you think we should add that the person must remain at the same salary level?

Ms. Louise Thibault: At the same salary level?

Mr. Guy Lauzon: Yes. That is not stated. That might make the clause stronger.

Ms. Louise Thibault: I thought that went without saying, but apparently it is not stated. I must reread the text. As far as I am

concerned, the individual must not be penalized. Of course people in this situation must remain at the same salary level and enjoy all the benefits, such as leave time, and so on.

Mr. Guy Lauzon: Agreed, but perhaps we should put forward a friendly amendment.

[*English*]

Mr. Paul Szabo: There are rules in HR policy. I have a feeling that it has to be the same salary.

Mr. Guy Lauzon: I understand the intent.

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: If you read subclause (6), Mr. Lauzon, you will find an answer to your concerns. It states: (6) The public servant may be temporarily assigned duties in another portion of the public sector if both the chief executive of that other portion and the public service consent to the assignment and the duties are comparable to the public servant's normal duties. The assignment is deemed not to be a reprisal if the public servant's consent is given.

Generally, when the duties are comparable and the temporary assignment is done with the person's consent, it is very likely that he or she will be at the same salary level.

[*English*]

The Chair: Okay, we're ready for the question on new clause 21.1, the referral to clause 6.

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

(On clause 22—*Duties*)

The Chair: We have a government amendment to clause 22, G-12 on page 71.

Madame Marleau.

• (1140)

Hon. Diane Marleau (Sudbury, Lib.): I'll move that amendment. Mr. Heintzman may want to give an explanation, but it's just cleaning up the language.

The Chair: Is there any discussion on this?

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

The Chair: On page 73, we have CPC-40.

Pierre is not here. Is someone else going to speak on this?

Mr. Joe Preston: Mr. Martin's amendment is on page 72.1. Perhaps he would like to....

The Chair: There is a line conflict. It looks like CPC-40 and CPC-41 are the same. Whose is CPC-41?

Mr. Joe Preston: It's mine.

The Chair: Okay, Mr. Preston, CPC-41 is the same as CPC-40, so would you like to move it?

Mr. Joe Preston: I guess I'd like to know.... Mr. Martin's seems to be pretty good too. I will move it, yes.

The Chair: Mr. Martin's is NDP-7. Is that the one you're talking about?

Mr. Joe Preston: Yes.

The Chair: There doesn't appear to be a line conflict. It must be somewhat different, is it?

Mr. Joe Preston: In essence, it's the same, now that I'm reading it.

The Chair: Are you deferring to Mr. Martin?

Mr. Joe Preston: Either way—I'll move mine if that moves things along.

The Chair: Okay, Mr. Preston has moved CPC-41.

Mr. Joe Preston: It simply inserts the ability for people who are under contract to the government or in a contract relationship with the government to also come forward with disclosures of wrongdoing.

The Chair: Okay.

Mr. Szabo.

Mr. Paul Szabo: By now the members have the copy of the proposed amendment to clause 23. That actually is going to be broader than this because it's going to deal with anybody who is not in the public service as defined, so that's contractors and anybody else. It is quite a bit broader, so I'd ask the member to consider maybe withdrawing this and dealing with the contractor issue in clause 23.

Mr. Joe Preston: Is there a concern about dealing with it in both places?

Mr. Paul Szabo: This is very specific, Mr. Chairman, to contractors. The other includes contractors and anybody else. It really opens it up for the commissioner to receive information during an investigation or just information at any time, which may in fact trigger an investigation. It's tighter that way.

I don't know, to me....

Mr. Joe Preston: If it goes in, I don't really have any problem.

The Chair: Mr. Martin is next on the list.

Go ahead, Mr. Martin, and then Mr. Lauzon.

Mr. Pat Martin: Thank you.

I don't fully understand how we jumped past my motion, but I don't mind debating—

The Chair: We haven't, actually, Mr. Martin. We're not quite to it yet. The Conservative motions were first.

Mr. Pat Martin: Okay.

The comment I would make to either of these, NDP-7 or CPC-40, is that I think I may have been too narrow in my scope, even with my NDP-7. I think where we should be going, and where we ultimately could find consensus, is that the commissioner could accept information from any source, regardless of whether it's somebody contracting with the federal government or somebody getting grants from the federal government. Any source whatsoever that has knowledge of wrongdoing should be able to come forward.

My fear is that by my NDP-7, and even by Mr. Preston's CPC-40, any time we draw a line, somebody is going to fall on either side of that line, and we're going to exclude someone. So in the interest of having access to any information of wrongdoing, the commissioner should be able to accept information from any source.

I'll qualify it once more...if need be. I am concerned with some of the language I put in here, that it's anybody who is contracting with the Government of Canada. That could mean foreign countries. We could be broadening this whistle-blowing legislation to include contractors in Saudi Arabia or something, and offering the same protection from reprisals to people who are not public servants, who are in a faraway land. This whole thing would collapse under its own weight.

What I was trying to get at was that if some well-meaning clerk at Groupaction or some similar company saw something that smelled bad, that person would have somewhere to go to bring that information forward. That was my goal with this motion. I think we could satisfy that goal by simply saying the commissioner could accept information of wrongdoing from any source.

• (1145)

The Chair: Mr. Martin, you've made your comments, and I hear your comments. How do you want to proceed here?

Mr. Pat Martin: Well, I am going to withdraw NDP-7 when I get around to it, but on the motion currently being debated, perhaps the mover would like to reconsider and adjust or amend that motion.

Mr. Joe Preston: I would also withdraw CPC-41 in favour of government 12a.

The Chair: Mr. Lauzon.

Mr. Guy Lauzon: I have some concerns, and I'd like an explanation from Mr. Heintzman on the second part of that clause.

Could you give me an explanation of why it's necessary that it be in there?

Mr. Ralph Heintzman: I'm not sure I know what you're referring to.

Mr. Guy Lauzon: It's under subclause 23(2), government 12a.

Mr. Ralph Heintzman: I think the substance of Mr. Szabo's proposal is in clause 34. The changes in clause 23 are merely consequential, to make clause 23 reflect what is in clause 34.

So it's purely a technical addition of some wording to reflect what is being proposed for clause 34.

The Chair: I would just note, Mr. Lauzon, that we will be getting that amendment, which goes with the others as a consequential amendment, in a couple of minutes. It's on its way.

I believe, Mr. Sauvageau, you wanted to speak on this.

[*Translation*]

Mr. Benoît Sauvageau: I would like a clarification. I am not against anyone being able to denounce any wrongdoing before the commissioner. I believe that we want the act to be as broad as possible. However, I do have one reservation: he is going to need a 1-800 line with many telephone operators.

Let's take the example of an MP's office. I receive telephone calls from people complaining about incidents that occur in the Laval subway station. People confuse municipal, provincial and federal affairs. They are always calling us to talk about scandals. If we were to give a 1-800 scandal number, the Ethics Commissioner would receive numerous telephone calls from citizens. You could change the rug at the local employment centre and people would see that as a scandal. You could set up ashtrays outside somewhere else and once again people would see that as an outrage.

Yes, we have to expand the act, but in five years, perhaps we should review the telephone logbook and assess the calls made by the public.

[English]

The Chair: Merci, Monsieur Sauvageau.

Mr. Preston.

Mr. Joe Preston: As I said, I would be willing to look at withdrawing government 12a, but now that I've heard it's attached to G-34, I'd rather wait until I see it in conjunction.

Also, we've jumped straight through clause 22 into clause 23 by going to G-12.

The Chair: We're not going there. We were dealing with your motion, Mr. Preston. And you've withdrawn it?

Mr. Joe Preston: Well, contingently, I guess.

The Chair: Mr. Szabo, you're asking a lot.

Until we get the amendment to clause 34, let's continue. We'll just leave Mr. Preston's amendment and go to the next amendment. Amendment CPC-42 is dealing with the same thing again.

Mr. Lauzon.

The Chair: Okay. So amendments CPC-42 and NDP-7 are withdrawn.

Let's go on to amendment BQ-10, page 76.

Monsieur Sauvageau.

Mr. Guy Lauzon: I would like to withdraw amendment CPC-42.

Mr. Paul Szabo: Trust me.

[Translation]

Mr. Benoît Sauvageau: Mr. Chairman, I am just rereading the amendment. It replaces, in clause 22, lines 29 to 31. I will do as the Liberals did; I will ask Mr. Heintzman for his opinion. No, wait. I believe that this is simply to provide for confidentiality. Paragraph (f) of clause 22 is further clarified. In English, it says:

[English]

“establish procedures”.

[Translation]

the current clause (f) reads as follows: (f) establish procedures to ensure the confidentiality of information collected in relation to disclosures or investigations;

We would like to replace it with the following: (f) establish procedures for processing disclosures and ensure the confidentiality of information collected in relation to disclosures and investigations;

I believe that we are simply clarifying the wording in paragraph (f). There are no major changes. These are technical changes.

Am I mistaken, Mr. Heintzman?

• (1150)

Mr. Ralph Heintzman: I think that the effect of your amendment is to add, in French, the words “à suivre pour le traitement d'une divulgation” and, in English,

[English]

“for processing disclosures”.

[Translation]

Mr. Benoît Sauvageau: That's right.

Mr. Ralph Heintzman: He is adding certain clarifications.

Mr. Benoît Sauvageau: It is not changing the meaning; it is simply adding clarification.

[English]

The Chair: Any questions?

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

The Chair: We're on to amendment CPC-43, page 77.

Mr. Preston.

Mr. Joe Preston: I move this. Again, we're at the point where we're talking about whether the commissioner can make recommendations or directives or in some way be firmer in ensuring that what they ask to be done by chief executives of different branches of the government actually happens.

I think we've already had your explanation that this cannot happen. Is this a policy issue? Is this a legislative issue? What is it?

The Chair: Mr. Heintzman, you're being asked for your comments.

Mr. Ralph Heintzman: I think it's really a constitutional issue, Mr. Chair. It has to do with the relationship between Parliament and the executive. If you have an entity that is reporting directly to Parliament, you can't give them an order power over the executive. I think that's the fundamental issue here, having decided to make this an officer of Parliament.

Mr. Joe Preston: Although I enjoyed your explanation earlier that the commissioner has the ability to then make a report to Parliament to make sure it happens, we certainly have seen instances of where that doesn't happen. What can we put here to make this so that it has to be followed?

Mr. Ralph Heintzman: In the case of the commissioner, I don't think you can. If you had chosen to have the commissioner as a person not reporting directly to Parliament, then you could have considered whether you wanted them to have both an investigative function and a tribunal function. There are entities that have both.

Mr. Joe Preston: Well, then, this may be the spot where I would like to put in, after paragraph 22(h), perhaps new paragraph 22(i), giving the commissioner the ability to refer any complaint to the courts.

The Chair: Mr. Heintzman or Mr. LeFrançois.

Mr. Ralph Heintzman: Nobody can refer a matter to the courts. Michel.

Mr. Michel LeFrançois: Mr. Chairman, that's my understanding as well, that some officers of Parliament have a role to play before the courts, like the Information or Privacy Commissioners, in matters when the court is determining an appeal of a decision of that officer of Parliament. But the conundrum—you may recall, Mr. Preston, that we discussed this last week—is that you can't just throw something on the lap of the court. It has to be the subject of a prosecution.

Mr. Joe Preston: I recognize that, but I'm looking for guidance in this case. You see, my conundrum, as you put it, is that I'm at a point where we cannot possibly give this officer of Parliament enough power so that the recommendations are followed.

Mr. Michel LeFrançois: We're talking about two things. Because, as Mr. Heintzman has pointed out, the model chosen here is an officer of Parliament, the committee in so doing, in my view, has decided that any power of execution of its decisions are political in nature, as opposed to legal. That's a choice. It comes with the territory, so to speak. You can't have one that's neither fish nor fowl.

Mr. Joe Preston: I'm clear with that explanation. We've gone that route a bunch of times. What's my solution?

Mr. Michel LeFrançois: If you want this to be part of the executive, with order-making authority, such as these boards, for instance—the labour boards have order-making authority that may be enforced through the Federal Courts Act—then you choose that route and you give it the teeth, and you're perfectly able to give it the teeth.

If, however, you choose the officer of Parliament model, that's the conundrum you're in. What you've chosen in so doing, with respect, is to give it a political or moral authority so that Parliament will see to the execution of the recommendations.

• (1155)

Mr. Joe Preston: And we see how that sometimes falls down.

The point I'm trying to make here is that we have a whistle-blower who's being reprisal against, and even the commissioner says there is a reprisal. They make recommendations to a minister or to some department to fix it, and the recommendations aren't followed. The only recourse now left is that the public servant individually goes to civil court.

Mr. Ralph Heintzman: No.

Mr. Michel LeFrançois: If I may, Mr. Chair—sorry, Mr. Heintzman—no, there are real teeth.

Mr. Joe Preston: Good. That's what I want to hear.

Mr. Michel LeFrançois: If a board hears the reprisal the board has actual legal order-making power that no deputy can ignore. If the deputy ignores that, it's to his or her peril, because they may be found in contempt under the Federal Courts Act.

Mr. Joe Preston: So the teeth in this are not the recommendations under paragraph 22(h). The teeth are the board.

Mr. Michel LeFrançois: For reprisals, absolutely.

Mr. Ralph Heintzman: Mr. Preston, if you look at subclause 20(6), it enumerates all the things the board can do to remedy a reprisal,

paragraphs 20(6)(a), 20(6)(b), 20(6)(c), 20(6)(d) and 20(6)(e), which are very extensive powers.

Then, if you look at subclause 20(7), it states that “The President of the Public Service Commission”—which of course will read “The Public Sector Integrity Commissioner”—“has standing in any proceedings under this section for the purpose of making submissions.”

So in the hearings of that board, the commissioner would be present.

The Chair: I'd like to follow this through a little more, because we're trying to see how this is likely to work.

You're saying, then, this new position will be the commissioner, once the royal recommendation passes, should it pass. Then the commissioner, of course, in a report to Parliament, can make a recommendation, and Parliament, or a committee of Parliament, could table a report in the House requiring government to take action.

I know that might not be your area of expertise, but that is the case, isn't it?

Mr. Ralph Heintzman: I think that's correct. I would just add that probably the commissioner's first step would be a report to the chief executive with recommendations to take action. If for some reason the chief executive didn't take the action, the commissioner would then have the opportunity to bring that to the attention of Parliament, this committee, and you would then be able to take the political action necessary to effect an outcome.

Mr. Joe Preston: If it's all right, I will withdraw that motion.

The Chair: Thank you, Mr. Preston.

It's helpful to have this discussion.

Next is Mr. Scarpaleggia, and then Mr. Lauzon.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): I appreciate the questions Mr. Preston asked. Actually, they follow up on some other questions I was asking last week. I would suggest, though, that obviously we don't want to reopen the Canadian Constitution.

Quite honestly, I think if the commissioner reports a specific case to Parliament, I have a sense that the deputy will act very quickly. That's my point. That's the only point I wanted to make. I think we're covered on this.

The Chair: All right.

Mr. Lauzon.

• (1200)

Mr. Guy Lauzon: Mr. Heintzman, my understanding is that this person, this commissioner, would be the same as our official languages commissioner when this is in force, reporting to Parliament and everything.

I'm a member, with my colleagues sitting around the table, of the official languages committee. The Commissioner of Official Languages reported to our committee her frustration with what the government was doing with the plan of action in her last two reports. She reports that to Parliament, but how does she get the departments that are lagging behind to take that action? Is this person going to be caught in the same dilemma? The problem can be pointed out, and the need to do something about it, but how do you correct the problem?

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I would like to say two or three little things.

First of all, I know that you control the committee and that you do so with a great deal of expertise, but I'm wondering why we are debating motions that have been withdrawn.

Secondly, Mr. Lauzon has to compare apples with apples and oranges with oranges. There are independent agents of Parliament, but they have different mandates. I am sure that the Commissioner of the Environment and Sustainable Development does not have the same mandate as the Auditor General who, in turn, does not have the same mandate as the Ethics Commissioner. These are independent agents of Parliament, but they have quite different mandates.

I would respectfully submit that when a motion has been withdrawn, we should stop debating it.

[*English*]

The Chair: Mr. Sauvageau, I was tending to other business and missed the fact that he had referred to an amendment that we had already withdrawn

We'll go back to Mr. Preston's amendment. It is C-41. He had agreed to withdraw that if the two amendments from Mr. Szabo were as expected. Those amendments are G-12a, which would be page 77.01, and G14a, which would be page 89.1. Page 89.1 is the one we've just received. It amends clause 34 of the bill.

Now we can go to Mr. Szabo's amendments. Perhaps you could explain them, Mr. Szabo, and we'll move them.

Mr. Paul Szabo: I will move—

The Chair: We'll have to pass clause 22 first, and then we're on to clause 23.

(Clause 22 as amended agreed to)

(On clause 23—*Restriction—general*)

The Chair: Mr. Szabo, we'll deal with them together because they are tied together. If you would go ahead under clause 23, your amendment does come before amendment RCMP-14. Go ahead.

Mr. Paul Szabo: Mr. Chairman, I move amendment G-12a. I simply note that, as Mr. Preston points out, there is a subsequent amendment to clause 34 when we get it, which adds the rest of the information necessary to effectively achieve the objective of the committee, the objective being that any information brought to the commissioner with regard to an ongoing investigation or that may in fact lead to a subsequent investigation would be permitted. I simply

move this. I think the members were agreed. I would simply call for the question.

The Chair: This is up for discussion, again, on the understanding that we will deal with G-14a at the same time—they are tied together. We will vote on G-12a, but that vote will be applied to G-14a. Let's have the discussion on both of them.

Mr. Szabo, do you have anything further to add on G-14a?

Mr. Paul Szabo: No.

The Chair: Okay, then, go ahead, Mr. Lauzon.

Mr. Guy Lauzon: I have just a point of clarification. On G-12a, subclause 23(2), the part that concerns me is the explanation. It says:

(2) The President may not deal with a disclosure under this Act if the matter could be dealt with under the Public Service Employment Act, unless he or she is satisfied, on reasonable grounds, that the disclosure relates to conduct of a systemic nature or the taking of a reprisal.

What if this is a company doing business with the government? We talked about that. Would this exclude those individuals?

• (1205)

Mr. Ralph Heintzman: Subclause 23(2) actually would disappear when the amendments are brought into the House to create the commissioner. That subclause 23(2) is really necessary in the case of the president of the Public Service Commission, but it will be deleted when the amendments are brought before the House to alter it from the president to the commissioner.

The Chair: Is there any other discussion?

Are we ready for the question on G-12a, which will be applied to G-14a as well?

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

The Chair: We're on clause 23, RCMP-14. That was Mr. Szabo or Madam Marleau.

Mr. Paul Szabo: Mr. Chairman, that is a consequential amendment to the inclusion of the RCMP. I don't have anything further to add.

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

(Clause 23 as amended agreed to)

(On clause 24—*Right to refuse*)

The Chair: We'll go to clause 24. The first amendment on clause 24 is G-13, page 78 of the package.

Madam Marleau moves that.

Hon. Diane Marleau: Yes, there are very small changes. They're all just to clean up the language. If anybody has any questions, I'm sure Mr. Heintzman will be pleased to explain.

The Chair: Is there any discussion on this?

Go ahead, Madam Thibault.

[*Translation*]

Ms. Louise Thibault: Thank you, Mr. Chairman.

Ms. Marleau, I believe that, in the past, we avoided stating that the public servant had to use any other available mechanism.

Hon. Diane Marleau: Is that what it said?

Ms. Louise Thibault: It says: (a) the public servant has failed to exhaust other procedures otherwise reasonably available;

I thought that we had said that the public servant could go directly...

Hon. Diane Marleau: It says here that the commissioner could say... You should follow.

Ms. Louise Thibault: I am sorry, Ms. Marleau, but the president of the commission...

Hon. Diane Marleau: Do you think that this is important?

Ms. Louise Thibault: It says: 24. (1) The President of the Public Service Commission may refuse to deal with the disclosure if he or she is of the opinion that

If we look at subclause (a), in my opinion this would entail some significant consequences, but our distinguished witnesses may enlighten us.

Hon. Diane Marleau: Mr. Heintzman could do it.

[English]

The Chair: Mr. Heintzman, would you like to make your comments on that, please?

Mr. Ralph Heintzman: I think this is really to give the commissioner the flexibility to deal with disclosures. There are many reasons a commissioner might decide it would be better for some other mechanism to be used. Really, most of these are intended to give that flexibility and to give some guidance to him and others as to grounds on which he or she might decide that it would be appropriate for some other process to be followed.

The Chair: Thank you.

Hon. Diane Marleau: I have a question. Does it have to be written in law for him to have the right to do that? I don't think it has to be written in that many words. Is that correct?

The Chair: Mr. Heintzman or Mr. LeFrançois.

Mr. Ralph Heintzman: You need to be clear about his or her authority to refuse or not to refuse. Obviously, the degree of detail is a matter for the committee to decide.

Hon. Diane Marleau: We don't want this to be misconstrued, Mr. Chair, as wanting the internal process to come first. We don't think it necessarily has to be that way. We want the person to have the right to choose to go directly to the commissioner or to use the internal process. We don't want to force them to only go the one way. That's our fear with that clause.

• (1210)

Mr. Ralph Heintzman: You already adopted clauses 12 and 13, which gives them that option if the circumstances require them to go to the commissioner.

The Chair: Thank you.

Mr. Preston.

Mr. Joe Preston: I'll go further on what Madam Marleau is saying. Paragraph 24(1)(a) says that the president can refuse to deal with it if he doesn't think the public servant has gone far enough. I

know that we've said they don't need to, but the subclause clearly states that the commissioner can refuse the public servants and send them backwards.

I don't want to go back to my boss. I'm at your office now. Should the ability lie with the complainant or with the commissioner?

The Chair: Mr. Heintzman or Mr. LeFrançois.

Mr. Ralph Heintzman: I think that Dr. Keyserlingk has said to you on many occasions that it's very important for the person who receives a disclosure to have the discretion on how to deal with it. There are many reasons to decide either to pursue it or not to pursue it. It's very important for the officer to have that discretion and make a judgment.

For example, if you look at paragraph 24(1)(d), on the length of time, it was a recommendation that Dr. Keyserlingk specifically made to you in his submission. He said that the commissioner should have the right to decline to investigate something if there had been an excessive lapse of time and it could no longer really be investigated.

The Chair: Thank you, Mr. Heintzman.

We have Mr. Sauvageau, Madam Thibault, and Mr. Boshcoff, just so you know you are on the list.

Monsieur Sauvageau.

[Translation]

Mr. Benoît Sauvageau: You referred to clause 13, Mr. Heintzman. I would like to ask you some additional questions on that.

Under proposed paragraph 24(1)(a), the President of the Public Service Commission may "refuse to deal with a disclosure" if "the public servant has failed to exhaust the procedures otherwise reasonably available."

It seems to me that there are sufficient guidelines in clause 13, which says: 13.(1) A public servant may disclose a wrongdoing to the President of the Public Service Commission if

Then the cases where the public servant can take action are outlined in paragraphs (a), (b), and (c). It seems to me that there are sufficient guidelines for the public servant who wants to disclose a wrongdoing and that it is not necessary to subsequently state that the commissioner may refuse...

There is also an issue of perception associated with the bill. I do not think that public servants will read it from start to finish, but they might have the impression that their right to disclose wrongdoing is being limited. That is how I would interpret it. I would tell myself that the commissioner could at any time refuse to hear me, even if I had complied with paragraphs 13(1)(a), (b), and (c), and the other clause.

I have the impression that the proposed paragraph 24(1)(a) could be interpreted by potential whistle-blowers as a limit on disclosure.

I do not know if you agree with me.

[English]

The Chair: Mr. Sauvageau, are you asking for Mr. Heintzman to respond to that?

[Translation]

Mr. Benoît Sauvageau: If he agrees to respond.

Mr. Ralph Heintzman: I do not think that my role here is to provide opinions.

Mr. Benoît Sauvageau: That is what I thought.

[English]

The Chair: Okay.

Hon. Diane Marleau: I would like to propose we remove that article from this motion.

The Chair: Madam Marleau has made a motion to remove paragraph 24(1)(a) from her amendment.

Hon. Diane Marleau: And then renumber the others.

The Chair: Right, all of that.

Is that agreed?

Some hon. members: Agreed.

The Chair: Is there further discussion? We have a list still.

Madam Thibault.

[Translation]

Ms. Louise Thibault: Now that paragraph (a) has been removed, I no longer have a problem with it.

[English]

The Chair: Merci.

Mr. Boshcoff, then Mr. Preston.

Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.): Mr. Heintzman, if Mr. Keyserlingk had indicated that 80% of the issues that are coming forward have some place to land, is there any fear that by removing paragraph 26(a) or by this amendment here, instead of people going to where they should be going, this will become the giant funnel and essentially attract all the business?

• (1215)

Mr. Ralph Heintzman: There is some risk, I would say. The less explicit you are that people should use the proper procedures that are provided, there could be some tendency for even more things to come in the first instance to the commissioner and then have to be sorted out to other processes. You are keeping in, as I understand it.... One of the grounds would be:

the subject-matter of the disclosure is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under another Act of Parliament

That indicates that you don't want to duplicate processes. If there is an adequate procedure already provided, you don't want to get in the way of that. You're also keeping paragraph (f), which is in a sense a general discretion for the commissioner if there is a valid reason for not dealing with this disclosure.

I think your point is correct that the effect of removing paragraph (a) will be, possibly, to bring more things to the commissioner that he has to redirect somewhere else, as he already does with the vast majority of things and a very large proportion to come.

Mr. Ken Boshcoff: As a committee we seem to have, at least now, some focus and understanding that there is effective legislation with teeth to deal with this. I think that fear is gone.

The second thing is that we've narrowed the amplitude so it's not necessarily a worldwide situation where everyone who thinks they've got something on the Canadian government can flood some line. I want to make sure that the legislation that we do is focused and effective. I'm really hoping that for the kinds of things that come to this, the legislation is very clear that this is for serious whistle-blowing and wrongdoing, and that it isn't something else that is more appropriately dealt with in another package. I have to feel comfortable that this clause, as proposed, will do that.

The Chair: Mr. Heintzman.

Mr. Ralph Heintzman: My answer is that the removal of paragraph (a) does involve some risks of the kind that you describe.

Mr. Ken Boshcoff: Thank you, Mr. Chair.

The Chair: Mr. Heintzman, is this not dealt with in paragraph (f) under the general clause "there is a valid reason for not dealing with the disclosure"?

Mr. Ralph Heintzman: As I pointed out, Mr. Chair, that is a general discretionary authority for the commissioner. It doesn't provide any guidance to the reader, as it were. For the commissioner, it provides him with a general discretionary authority.

The Chair: We have two more on the list—Mr. Preston and Madam Thibault.

Mr. Preston.

Mr. Joe Preston: I'm not sure there isn't a line item conflict here with the next motion, CPC-44.

The Chair: There is, actually, but this one did come first.

Mr. Joe Preston: Then I'll move it under this one and perhaps we won't have to do the other; that is, to simply change the words, "frivolous or vexatious or made in bad faith" to match what we've done elsewhere in the document, to be "made in good faith". That would have to be a friendly amendment.

The Chair: We just want to see. We think maybe we did that. If we accept G-13, those words are gone—

Mr. Joe Preston: Amendment G-13 clearly says "frivolous or vexatious or made in bad faith". So I've made a friendly amendment to Madam Marleau, who moved this.

The Chair: Madam Marleau, do you accept that as a friendly amendment?

Is that accepted by the committee?

Some hon. members: Agreed

The Chair: Thank you, Mr. Preston.

There is one more speaker. Madam Thibault.

[Translation]

Ms. Louise Thibault: I will be brief, Mr. Chairman.

For me and for the Bloc, it is very important to not start by imposing the condition outlined in paragraph (a). That is why we are opposed to paragraph (a) and we wanted to have it removed. It is essential for public servants who, for valid reasons, want to disclose wrongdoing to have confidence. If, at the outset, limits are imposed by saying "one may not" or "the Commissioner will", that casts a shadow on the situation. It should be very sunny, very clear, very transparent. Clearly, people will have confidence in someone who has that mandate. Once we have reports and when we evaluate the act in three, four or five years, the person will be in a position to tell us what difficulties he or she faced. At the same time, we have benefited from the comments made by Mr. Keyserlingk, who told us not to forget about certain aspects, because he has experience. I think it is very important to establish as few limits as possible, while making the tool very operational. Thank you.

• (1220)

[English]

The Chair: Merci, Madam Thibault.

Any further discussion?

Mr. Heintzman.

Mr. Ralph Heintzman: May I ask a question for the benefit of those at this end of the table? In the changes suggested for proposed paragraph 24(1)(c), was it suggested that we take out the words "not sufficiently important", or simply take out the words "frivolous or vexatious" and replace them with "not made in good faith"?

The Chair: The latter.

Mr. Ralph Heintzman: Thank you.

The Chair: All right.

Thank you for the clarification, Mr. Heintzman, because apparently we didn't have it clear here.

Mr. Ralph Heintzman: CPC-44 would have done both.

The Chair: Right.

Mr. Preston, you've dropped amendment CPC-44?

Mr. Joe Preston: It's withdrawn. Yes.

Mr. Guy Lauzon: I'd like to withdraw CPC-45.

The Chair: Amendment CPC-45 is withdrawn as well.

I would just like one minute, please. We have to check something out here.

We have a conflict in two government amendments; amendment G-13 is the one we were just discussing and then RCMP-15. You're dealing with the same clauses there, but different amendments, so if a member of the government could suggest a way out for both government amendments.... They seem to be in conflict.

Hon. Diane Marleau: Didn't we deal with that already?

The Chair: We haven't dealt with it yet. It's coming up, and we just want to deal with it.

Ms. Susan Baldwin (Procedural Clerk): That's the RCMP amendment.

The Chair: Actually, the next one we deal with is RCMP-15, so let's deal with it.

Mr. Joe Preston: Is that amendment G-13 to match RCMP-15?

The Chair: Mr. Preston, I'm not sure we caught that.

Mr. Joe Preston: I was just offering a solution: that if we've accepted government 13, we just amend it with RCMP-15, which simply adds the words "RCMP" to it. Am I right?

The Chair: Is that agreed?

Let's just see whether that does it for sure.

So we'd take the RCMP-15 and replace proposed subclauses 24(2) and 24(3) from government 13. All right?

I think that should work.

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

The Chair: All right, so amendment RCMP-15 has passed.

Shall amendment G-13, as amended, carry?

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

(Clause 24 as amended agreed to)

(Clause 25 agreed to)

The Chair: We have withdrawn clauses 44 and 45. We have passed amendment RCMP-15.

If you need more time on these, just let me know.

(On clause 26—*Delegation*)

The Chair: On clause 26, we have amendment RCMP-16.

Madame Marleau, that was in your package.

Hon. Diane Marleau: That's right. I have it here. That's to include the RCMP as one of the consequential amendments that were put forward and basically accepted when we amended the bill—unless somebody has a problem with that one.

• (1225)

The Chair: Is there any further discussion on amendment RCMP-16?

(Amendment agreed to) [see *Minutes of Proceedings*]

(Clause 26 as amended agreed to)

(On clause 27—*Purpose of investigations*)

The Chair: On clause 27 we have amendment CPC-46, on page 82 of the package. Amendments CPC-46 and CPC-47 have a line conflict.

Mr. Guy Lauzon: Amendment CPC-46 allows the commissioner to bring wrongdoings to the attention of the ministers, chief executives, the public, and law enforcement authorities when he or she sees fit to do so.

The Chair: Is there any further discussion on that?

Mr. Paul Szabo: I would like to ask the official. This seems to encourage certain other activities that others may pressure an officer of Parliament to do. I'm wondering about the protection of privacy, and of anonymity, and other matters. I'm not sure this is absolutely necessary to discharge the responsibilities of the officer.

I wonder if Mr. Heintzman might give us an assessment.

Mr. Ralph Heintzman: There are a number of issues the committee might want to consider in relation to this proposed amendment. A couple of them are technical, and then there's a wider policy issue.

First of all, on the reference to law enforcement officers, there is a serious legal problem, because it would run into conflict with the charter; i.e., the authority for the persons designated by this bill to refer things to law enforcement officers would make them agents of law enforcement, which would immediately invoke all the questions of criminal protections and other things. There is a serious technical issue there.

Second, clause 27 does not just refer to the commissioner. It refers to all investigations under this act, so it would include the investigations undertaken by senior officers in departments. As we know, at the moment there is actually more investigative activity taking place in departments than at the public service-wide level of the commissioner. Obviously, it is not intended that those people should be reporting in the ways described here. That is something that needs to be considered.

Third, there is no reference here to boards of directors, and of course this bill applies to the whole public sector; therefore, the relevant authority to whom things would be brought is not the minister in that case, but the board of directors.

Finally, really the policy issue you want to consider is whether adding something like this would create a potentially misleading impression. That is to say, the commissioner's role is to publicize rather than to correct. The commissioner's role, in future as at present, I believe, under this bill would not normally be to bring individual acts of wrongdoing to public attention. He would normally report in general terms. The primary purpose of the investigations is to correct wrongdoings in organizations rather than to publicize. So you might want to consider what kind of message you want to give with this kind of amendment.

The Chair: Thank you, Mr. Heintzman.

Mr. Lauzon.

Mr. Guy Lauzon: I fail to share your concern. How would you see this as publicizing a wrongdoing if they went to the minister, the chief executives—well, the public—and law enforcement? I don't think those people would publicize the issue.

• (1230)

Mr. Ralph Heintzman: The clause in its current form says the purpose of investigations is to bring the existence of wrongdoings to the attention of the people who can correct them so they will correct them. The amendment suggests it's to bring wrongdoings “to the attention of ministers of the Crown, chief executives, the public” and to law enforcement officers.

Mr. Guy Lauzon: I think, Mr. Heintzman, it says it allows that. It doesn't necessarily direct the commissioner to do so; it says it allows the commissioner to do so. I would think that would be done as an exception rather than as a rule.

Mr. Ralph Heintzman: The clause sets out the purpose of investigations. What this says is the purpose would be to bring them to the attention of the public and to law enforcement officers in addition to chief executives. As I said, I think in the latter case there's

a serious technical problem—more than technical, a serious legal problem. In the case of the public, there's a policy issue you will probably want to debate.

The Chair: Thank you, Mr. Heintzman.

Mr. Lauzon, continue.

Mr. Guy Lauzon: What if we were to move the words “where appropriate” to before “the public” to read “and, where appropriate, the public”?

Mr. Paul Szabo: The point is made. I would move for the question to be called.

The Chair: Madam Thibault is on the list here still.

[*Translation*]

Ms. Louise Thibault: Thank you.

My dear colleague, I have a great deal of difficulty with your suggestion. For me, the purpose of the investigations is not what you are describing here. I am completely satisfied with clause 27. I am always thinking about the whistle-blowers. They may think that, when they are disclosing wrongdoing, the purpose of the investigation would be—to use your expression, that I am translating—to publicize, to use it. Of course, there will be reports at some point, but I think that the objective of the investigation must be to remedy the situation. The whistle-blowers must not be led to believe that the main objective is to publicize the situation. I see that as an extremely perverse effect. Moreover, there are all the other effects that Mr. Heintzman kindly mentioned.

Thank you.

[*English*]

The Chair: Thank you, Madam Thibault.

Mr. Lauzon, final comment.

Mr. Guy Lauzon: This is just a point of information for Madam Thibault. There's just one thing. We heard from the American witnesses—could they have averted lots of danger with the nuclear reactors? Also, for example, there are cases like our BSE, where some of our witnesses ultimately went public. When it comes to an issue of public safety, shouldn't that be in there?

The Chair: Mr. Heintzman.

Mr. Ralph Heintzman: It's not my place to give an opinion, but I would just point out that first of all, you have authorized public servants to go public in the circumstances prescribed by this bill if there is an imminent and substantial danger to public safety and health. You are also in the process of creating an officer of Parliament, so the officer of Parliament will be able to bring something to the attention of Parliament at any time if he or she judges that the public interest requires it.

The Chair: Thank you, Mr. Heintzman.

Mr. Boshcoff.

Mr. Ken Boshcoff: Mr. Chair, in view of that statement and the natural flamboyance that whistle-blowing would attract, I would ask Mr. Lauzon to perhaps withdraw this. We have good effective stuff here now. I think there'll be a substantial amount of publicity and public awareness that comes simply from that gesture.

•(1235)

The Chair: Mr. Lauzon has agreed to withdraw it.

Thank you, Mr. Boshcoff.

On the line conflict, amendment C-47.

Mr. Joe Preston: I withdraw C-47.

The Chair: Amendment C-47 is withdrawn.

Amendment C-48 is on page 84 of the package.

Mr. Guy Lauzon: This is meant to clarify the method in which investigations are conducted. It is pretty straightforward.

The Chair: Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I am very sorry, Mr. Lauzon, but I think subclause 27(2) is very clear. It states: (2) The investigations are to be conducted as informally and expeditiously as possible.

That allays any concerns I might have about the way the investigations are conducted.

[*English*]

The Chair: Okay. Is there any other discussion?

Mr. Guy Lauzon: I withdraw it.

The Chair: Okay. It is withdrawn.

(Clause 27 agreed to)

(On clause 28—*Notice to chief executive*)

The Chair: On clause 28, there are two proposed amendments. The first is amendment C-49 on page 85.

Mr. Joe Preston: I move it, and simply state that I can't figure out why the commissioner must notify the chief executive concerned in the department in which they're doing the investigation.

The Chair: Okay. Is there any further discussion?

Mr. Szabo.

Mr. Paul Szabo: Mr. Chairman, I can see that the premise for all these amendments has been caution. There may be a case where the chief executive is the person who is the wrongdoer. On these matters, you have to assume that the integrity commissioner is not going to go to the chief executive and discuss the matter, if the chief executive is in fact the person who's under investigation.

Mr. Joe Preston: He must notify the chief executive concerned.

Mr. Paul Szabo: Yes, unless the chief executive is the matter of the investigation, which they're going to find out anyway. Isn't that right?

All right. I think I understand the point. We could debate, but we're not here to debate the merits of it. The motion is clear. I would move that the question be put.

The Chair: The way that you put the question is inadmissible in a clause-by-clause.

Mr. Paul Szabo: I withdraw the question.

The Chair: Okay.

Madam Thibault has a question.

[*Translation*]

Ms. Louise Thibault: I would like to ask Mr. Preston a question. If we remove these lines, Mr. Preston, how will we explain that the chief executive must be accountable and carry out the responsibilities that come with the mandate of this other entity? If you remove that, will this individual be the last one to be informed when there is an investigation? Unless he or she is guilty. The individual will obviously be informed some day, because he or she will be charged. Your amendment seeks to remove the base.

[*English*]

Mr. Joe Preston: Agreed.

The Chair: Okay. There is no further discussion. We'll go to the question.

Is it agreed to support this amendment?

Mr. Paul Szabo: Could we get a pattern as to how the questions are going to be called?

The Chair: Mr. Szabo, in this case, there's obviously no agreement, so we will go to a vote.

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

The Chair: Amendment C-50 is another proposed amendment to clause 28.

Mr. Preston.

•(1240)

Mr. Joe Preston: My trouble with this is that no person has the right to be heard by the commissioner; it says "no person is entitled as of right to be heard by the President", in this case the commissioner. We'd like to put in that the person making the disclosure or the person alleged to have committed the wrongdoing would have the right to be heard by the president.

The Chair: Mr. Szabo.

Mr. Paul Szabo: I would ask the officials if they have some comment. I'm a little bit confused, and I'm concerned that this may be limiting to the discretion of the commissioner.

The Chair: Mr. Heintzman or anyone at the end, Mr. Szabo has asked for your input.

Mr. Ralph Heintzman: Well, there are several points.

If the person is somebody accused, they must be informed. That's required by the act.

Secondly, in investigations you don't normally give anybody the right to be heard. It's up to the investigator to decide who they're going to investigate. It would be like saying in a police investigation that somebody had a right to be investigated by the police or to have a hearing.

Thirdly, in a case of whistle-blowing, the whistle-blower is not an accuser; the whistle-blower is a witness. He is simply bringing information, and once that information has been provided, the whistle-blower may no longer have any further role in the process.

Mr. Joe Preston: I'd be willing to withdraw this if I could be assured—I understand that this is under “Investigations”, and that's probably where my fault lies here—that the accused has the right someplace to be heard.

Mr. Ralph Heintzman: Oh, yes.

Mr. Joe Preston: Then I would withdraw this.

(Clause 28 agreed to)

Mr. Ralph Heintzman: Mr. Chair, I can answer the question. It is in subclause 28(3).

The Chair: Thank you, Mr. Heintzman.

(Clause 29 agreed to)

(On clause 30—*Powers*)

The Chair: On clause 30, we have amendment CPC-51 on page 87 of the package. That's Mr. Preston.

Mr. Joe Preston: Again, to me this is somewhat like giving notice to the henhouse that the fox is coming. It's under “Investigations”, so if I have your word that this is the case, I will withdraw the amendment.

(Clause 30 agreed to)

(On clause 31—*Exception*)

The Chair: For clause 31 we have amendment RCMP-17. Madam Marleau, it's from your package of RCMP amendments.

Hon. Diane Marleau: They're both the same. One includes the RCMP and the other one is a change in that for the Canada Evidence Act.

Mr. Paul Szabo: We should withdraw G-14.

The Chair: No, G-14 is actually replaced by RCMP-17. We'd agreed to that.

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

(Clause 31 as amended agreed to)

(Clauses 32 and 33 agreed to)

(On clause 34—*Power to investigate other wrongdoings*)

• (1245)

The Chair: Under clause 34, we have already dealt with amendment G-14a, which was carried. So clause 34 has been amended by amendment G-14a.

(Clause 34 as amended agreed to)

(On clause 35—*Information outside public sector*)

The Chair: On clause 35, we have amendment BQ-11, on page 90.

Monsieur Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau: I am wondering about something. Perhaps someone will be able to answer my question.

Clause 35 states: 35. If the President of the Public Service Commission is of the opinion that the matter under investigation would involve obtaining information that is outside the public sector, he or she must cease that part of the investigation and he or she may refer the matter to any authority that he or she considers competent to deal with it.

I interpret that as follows. If, in the course of the investigation, the commissioner has to turn to outside sources, he must stop the investigation and turn the matter over to another authority.

Let us take the example of the sponsorship scandal involving Groupaction and other companies. These companies are outside the public service. Does that mean that in such a case, the integrity commissioner would be required to stop investigating the matter and turn it over to someone else?

Under our amendment, we want to amend this clause so that the integrity Commissioner [...] shall cooperate with the person who has possession of the information in order to obtain the information and continue the investigation.

If it is necessary to turn to another court or a different authority, so be it, but the integrity commissioner can continue the investigation by cooperating with these sources rather than stopping the investigation. Perhaps we have misinterpreted clause 35, but, in cases where there is an outside source, we would not want the commissioner to be prevented from continuing the enquiry. We want the commissioner to be able to cooperate with this source.

[*English*]

The Chair: Thank you, Monsieur Sauvageau.

Is there any discussion on this amendment? No discussion?

Madame Thibault.

[*Translation*]

Ms. Louise Thibault: I would like to know whether our witnesses have any comments on this, because this is a significant change we are putting forward.

[*English*]

The Chair: Okay, Madame Thibault, we'll be happy to do that. A member has to request that there is a response before we get a response. You're doing that.

Mr. Heintzman, could you give a response to that?

[*Translation*]

Mr. Ralph Heintzman: I think Ms. Thibault is right. This amendment broadens considerably the powers and authority of the commissioner and authorizes him or her, although not very clearly, to go beyond the public sector. In its present form, clause 35 states that the commissioner's mandate is to carry out investigations in the public sector regarding wrongdoings that occur within the public sector. If it is necessary to investigate activities outside the public service, the commissioner must turn information over to another investigator who would have a mandate, so as to comply with federal and provincial areas of jurisdiction, for example.

It is true that the effect of the amendment is to broaden considerably the investigative powers and authority of the commissioner. However, the wording of the clause is not very clear in my opinion. What is meant by "cooperate with the person who has possession of the information"? What is meant by "continue the investigation"? Does that mean that the commissioner can use his investigative powers outside the federal public service? These are some of the questions I am wondering about.

• (1250)

[English]

The Chair: Is there any further discussion?

Mr. Boshcoff.

Mr. Ken Boshcoff: I don't want to be necessarily negative, but if it actually makes things less clear, the legislation will be less effective, so I prefer that we vote against it.

The Chair: Is there any other discussion?

Madame Marleau, go ahead.

Hon. Diane Marleau: I'm just slightly concerned that if we amend it, we're really going far out of our respective responsibility.

[Translation]

You mentioned the sponsorship scandal. I would like to ask Mr. Heintzman whether he expects that is how it would be. If the commissioner were to receive a complaint about contracts that have been awarded, he or she could investigate, but for matters relating to the company that is part of the problem, the commissioner might have to turn the information over to the police so that they can investigate to determine whether fraud was committed. The commissioner would not have the authority to look at the private company's books to determine whether or not fraud occurred. Is that what is being said?

Mr. Benoît Sauvageau: No.

[English]

The Chair: Mr. Sauvageau, and then we'll ask Mr. Heintzman for his input.

Mr. Sauvageau.

[Translation]

Mr. Benoît Sauvageau: The word "cooperate" does not mean that the commissioner does all the work. It means that the commissioner cooperates with someone else. Generally, it takes two or more to cooperate. Third, as I interpret this clause, if the government has a problem, as in the case of the sponsorship scandal, the integrity commissioner must say, under clause 35, that he is ending that part of the investigation because there is an outside source, even if the problem has to do with the public service and an outside source. Of course, if things stay in-house and we are causing our own problems within the public sector, there is no problem, because clause 35 covers the entire public sector. However, if it is a problem involving both the public and private sectors, according to clause 35 as it is worded at the moment, the integrity commissioner will be required to end the investigation. At that point, Parliament will lose all control over the matter.

Hon. Diane Marleau: I do not know whether clause 36 will cover your concerns. There are two similar clauses. One does one thing and the other does something else.

Mr. Benoît Sauvageau: If I am told that in a situation similar to the sponsorship scandal, where a source outside the public sector is involved, the integrity commissioner would comply with section 35 by continuing his investigation—which I doubt—I will accept clause 35 as it is worded at the moment. If I am told that my fears are valid and that the integrity commissioner will have to end the investigation in order to comply with the act, I would say that clause 35 in its present form could cause problems.

Hon. Diane Marleau: Do you have an answer, Mr. Heintzman?

[English]

The Chair: Madame Marleau has asked Mr. Heintzman for his input.

[Translation]

Mr. Ralph Heintzman: I would like to add a clarification in response to Mr. Sauvageau's comments. According to our interpretation of clause 35, the commissioner would not have to end the investigation; it could be continued. The commissioner would be required to end only that part of the investigation having to do with matters outside the public service. The commissioner could therefore continue the investigation on the subject generally within the confines of the public sector.

What was your question, Ms. Marleau, please?

• (1255)

Hon. Diane Marleau: Do you think that clause 36 might allay their concerns?

Mr. Ralph Heintzman: Yes, to some extent. If the commissioner thinks he has found indications in the public sector that crimes have been committed, he may turn this information over to the police.

[English]

The Chair: Thank you, Mr. Heintzman.

I have two more names on the list, Mr. Lauzon and Mr. Scarpaleggia.

Mr. Lauzon.

Mr. Guy Lauzon: I'm in agreement with Mr. Sauvageau. It seems to me that clause 35 indicates in both English and French that "he or she must cease" the investigation, and—

Mr. Ralph Heintzman: You dropped the words "that part of".

Mr. Guy Lauzon: Okay. I'm sorry. Excuse me. I didn't see that.

The Chair: All right.

To Mr. Scarpaleggia then.

[Translation]

Mr. Francis Scarpaleggia: The commissioner could continue to monitor the situation to ensure there are no reprisals.

Mr. Ralph Heintzman: Absolutely. He or she could also draw the matter to Parliament's attention.

[English]

The Chair: Okay.

Are we ready for the question on amendment BQ-11?
(Amendment negatived) [See *Minutes of Proceedings*]

(Clause 35 agreed to)

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliamentary Internet Parlementaire at the following address:
Aussi disponible sur le réseau électronique « Parliamentary Internet Parlementaire » à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.