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Chair

Mr. Tom Lukiwski

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•(1615)

[English]

The Chair (Mr. Tom Lukiwski (Moose Jaw—Lake Centre—Lanigan, CPC)): We don't have the entire committee here, but since we were delayed by votes and our witnesses have been patiently waiting, I think we will start. We do have quorum.

Madam Smart, thank you very much for being here. I know we attempted on two or three other occasions to fit schedules and we weren't successful, so we do appreciate your appearance today.

I think you understand how the committee works. We'll have an opening statement from you, followed by a series of questions by committee members.

Without further ado, Madam Smart, the floor is yours.

Ms. Anne Marie Smart (Chief Human Resources Officer, Office of the Chief Human Resources Officer, Treasury Board Secretariat): Thank you very much, Mr. Chair.

Thank you for inviting me here today as part of the committee's important legislative review of the Public Servants Disclosure Protection Act.

As you may know, this act is an important part of the Government of Canada's integrity framework and we take it quite seriously. We feel that integrity is the cornerstone of good governance and democracy. By upholding the highest ethical standards, public servants safeguard and enhance public confidence in the honesty, fairness, and impartiality of the federal public sector.

To this end, the act sets out the measures to promote an ethical climate. It establishes the foundation to promote a culture of right-doing and a positive ethical climate through measures such as the creation of the Values and Ethics Code for the Public Sector, which applies to some crown corporations, separate agencies, and the core public administration. The code, along with the organizational codes of conduct, describe for public servants at all levels the values and ethical practices that guide direction, decision-making, and behaviour across the public sector.

[Translation]

The act also encourages employees in the public sector to come forward if they have reason to believe that serious wrongdoing has taken place, and it provides protections for employees against reprisal when they do so.

The act therefore addresses issues that are both complicated and highly sensitive in nature, with the result that the legislation itself is complex.

That said, I would welcome any proposals your committee might make to simplify this legislation.

[English]

To date, I've read the testimony. I know your committee has heard testimony from a very diverse group of witnesses and I think you should be commended for considering such a wide variety of perspectives.

The challenge before your committee as it weighs the evidence is a very important one, and I'm very much looking forward to your committee's recommendations for improving the legislation and how it functions. I recognize that there are areas where the act could be improved. It has been in place now for almost 10 years. It is to be expected that, during this time, issues in its administration, the mechanics of its procedures, or in the scope of what the legislation covers would become evident and I think you've found a few.

For example, it has become apparent that it is important to protect not just the discloser, but others who may be associated with the case, even if that association is mistaken.

•(1620)

[Translation]

Mr. Chair, I also agree that the legislation should make it as easy as possible for someone to come forward and to be protected when they do.

Options might include simpler and more direct access to the Public Servants Disclosure Protection Tribunal, or the implementation of a reverse onus for the employer to prove that no reprisal has taken place.

[English]

It is worth noting that several witnesses have also echoed the importance of having different disclosure channels available. Several technical recommendations have also been brought forward by the stakeholders you've heard from to address some of the specific areas of the act as it now stands.

Another issue to be considered is whether there is sufficient direction in the legislation around the investigation process for internal disclosures and perhaps how these investigations might be appropriately related to the disciplinary investigations of individual wrongdoers.

I think this legislative review also represents an opportunity for clarification of the interplay between this act and other legislation, such as the Privacy Act and the Access to Information Act. It would also be useful for the committee to consider these matters with a view to balancing the protection of the discloser with the rights of the accused.

I've also followed with interest the testimony of witnesses from several international jurisdictions. Each jurisdiction's regime has its strengths and weaknesses. I would certainly welcome your advice on how to apply the many lessons learned in these other jurisdictions to find solutions that will work in the Canadian context.

[Translation]

For example, I believe further efforts are required to raise awareness of the act and the system currently in place.

This includes an understanding of the roles and responsibilities of employees, supervisors and deputy heads, and of the resources available to employees should they wish to disclose a wrongdoing.

[English]

These include the Public Sector Integrity Commissioner and the organization's designated senior officer for disclosure.

Mr. Chair, the Government of Canada is committed to promoting a positive and respectful public sector culture that is grounded in values and ethics. As I said in my introduction, I believe that a well-functioning disclosure regime plays a very vital role in such a culture.

For my part, I very much look forward to your recommendations for ways to improve this important piece of legislation and I will take it very seriously.

[Translation]

Thank you.

[English]

The Chair: Thank you very much, Madam Smart.

We'll start with our seven-minute round, and I will remind all committee members that these proceedings are televised.

[Translation]

Mr. Ayoub, you have seven minutes.

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

I want to thank the two witnesses for being here today.

I'll start by asking a question to clarify an answer that we may have already received. I'll ask you the question right away, so that I don't forget it.

Some witnesses have suggested that we let the Office of the Public Sector Integrity Commissioner of Canada take corrective action when wrongdoing is found. However, the act doesn't aim to replace other mechanisms or processes set out by different legislation or collective agreements, such as criminal proceedings under the Criminal Code, grievance procedures or harassment complaint processes. A possible alternative is to allow for the use of the

information gathered in an Office of the Public Sector Integrity Commissioner of Canada investigation during the disciplinary procedures carried out pursuant to the Public Service Labour Relations Act when wrongdoing is found.

What's the current discipline system? What do you think of this proposal?

Ms. Anne Marie Smart: Thank you for the question.

[English]

If there's a wrongdoing found, I know that sometimes the commissioner can make some suggestions for where to look for discipline, but it's up to the deputy head. The deputy heads at my level are accountable in the public service for discipline and for managing the human resources within a department. The deputy heads, in those cases where wrongdoing is found, do immediately start looking at possible discipline. In some cases they may hire a third party to look at what should be done. When I was reading your committee's testimony, I noted that it's one of the areas where oftentimes the deputy head has to start all over again with a separate investigation and can't use the investigation that's been done by the commissioner into wrongdoing. If that could be made available to the deputy head for the investigation, I think it would certainly help facilitate proper discipline.

They have a wide range of mechanisms available to them. If the deputy head, for example, thinks that they could be in some kind of conflict, they can also ask another department or somebody to look into the discipline for them. There are various mechanisms that exist, but it is the deputy head who does the report.

• (1625)

[Translation]

Mr. Ramez Ayoub: Mr. Trottier, do you have anything to add?

Mr. Carl Trottier (Assistant Deputy Minister, Governance, Planning and Policy Sector, Treasury Board Secretariat): No.

Mr. Ramez Ayoub: Let's talk about the current discipline system. What are the types of discipline? Do you have a few examples?

Mr. Carl Trottier: The disciplinary action may be limited to a very simple reprimand. When you talk about discipline, are you referring to the current system seen by the Office of the Public Sector Integrity Commissioner of Canada?

Mr. Ramez Ayoub: Yes.

Mr. Carl Trottier: It may involve corrective action, but these are recommendations, of course. It may go as far as the individual's dismissal, but again, these are recommendations.

As Ms. Smart said earlier, the recommendation is good. However, a full investigation must still be carried out when the deputy minister conducts his investigation.

Mr. Ramez Ayoub: The broader collection of information will speed up the processing time and will enable a decision to be made and recommendations to be provided more quickly without the need to start over.

Mr. Carl Trottier: Indeed.

Mr. Ramez Ayoub: That's what I understood.

Other witnesses have said that the current internal mechanism should be completely removed and rebuilt. I imagine that you must have been a bit troubled to hear that. It may not be the best solution. It's not what the Commissioner told us and it's not part of the recommendations.

What do you think of these findings or stances?

[English]

Ms. Anne Marie Smart: I read it with great interest, but I came down on the side that right now an employee has a lot of choice in the channels that he or she picks for dealing with wrongdoing. Some employees feel quite comfortable and would like to disclose wrongdoing within their own organization to a manager or to the senior disclosure officer. Others, for whatever reason, choose to go to the commissioner. I think that they should have that range of choice.

If they're not feeling comfortable within the department or the ministry, I think that having the arm's-length commissioner is a good thing. If they are comfortable, however, and would feel that they don't want to go to an outside source....

[Translation]

Mr. Ramez Ayoub: I want to add something.

When I hear a witness say this, I think a significant change must be made. It seems that whistleblowers don't have much confidence. Some people seem to have enough confidence to come forward and provide privileged information, but others appear more reluctant to do so.

Some foreign specialists who have had other experiences elsewhere consider Canada's current system so flawed that it needs to be started again from scratch. The system doesn't seem to have a strong enough foundation.

Are you open to a review of the system? I'm not saying that we should start again from scratch, but we need to build a stronger foundation to restore people's confidence so that they use the system correctly.

• (1630)

[English]

The Chair: Please keep it brief.

Ms. Anne Marie Smart: I'd be open to looking at whatever the committee recommends. As the chief human resources officer, I have the values and ethics code. We work with the departments very closely. We make sure they have their own code of conduct. We make sure they have a senior disclosures person there.

I'm quite comfortable and confident that we have a pretty robust—though it could always be improved—system in place. I like the fact that there's also an arm's-length commissioner as an option for employees. I'm all about giving people the choice.

The Chair: Thank you very much.

Mr. McCauley.

Mr. Kelly McCauley (Edmonton West, CPC): Welcome. Thanks for being with us today.

I'm going to start off with section 4. I'm wondering what Treasury Board has done to fulfill the duties required under section 4 in the way of initiatives or activities.

Ms. Anne Marie Smart: You're talking about the act? As the chief human resources officer, I have the code. I'm responsible for all the people management, human resource codes.

Mr. Kelly McCauley: Right. The reason I'm asking is that we've heard a lot of testimony.

Ms. Anne Marie Smart: Right.

Mr. Kelly McCauley: We've looked at surveys throughout the public service. The faith in the whistle-blower act is very low. There's a large amount of—I don't call it ignorance—misunderstanding of the code for their protection. As required by the Treasury Board under section 4, it's very clear. I'm asking you what the Treasury Board or your department done has to address this, to disseminate this information under its responsibilities.

Ms. Anne Marie Smart: I'll tell you what we do. Can it be improved? Of course. What we do is we have an annual report that we collect. All the departments have to put in a report to us every year. I have the code. I make sure that every department has the right sort of structure in place, including a senior disclosure officer. In addition, they have to have their own code.

Each department, each organization, is different. By providing them with guidance—

Mr. Kelly McCauley: I'm just going to interrupt.

It says, "Treasury Board must promote ethical practices in the public sector and a positive environment...disseminating knowledge of this Act and information".

It sounds like it's just getting offloaded onto CEOs and not going any further.

Ms. Anne Marie Smart: No, no.

Mr. Kelly McCauley: Have you seen the surveys?

Ms. Anne Marie Smart: We actually do the surveys.

Mr. Kelly McCauley: Okay.

Ms. Anne Marie Smart: We administer the triennial surveys.

Mr. Kelly McCauley: Have you seen the other alarming results?

Ms. Anne Marie Smart: Which ones are you referring to?

Mr. Kelly McCauley: I've looked at quite a few that show that more than 50% don't have faith in the program—

Ms. Anne Marie Smart: Right.

Mr. Kelly McCauley: —and there is, again, a lack of understanding or knowledge of what their protections are.

I'm just curious.

Are we not getting the information out enough? Is Treasury Board not doing its work, as required under section 4?

Ms. Anne Marie Smart: I'll explain what we do.

When the departments put up their own code, they don't just put it up. There are engagement processes that they do with employees.

Mr. Kelly McCauley: How do we follow up to make sure that's actually getting done, or that it's proper code?

Ms. Anne Marie Smart: We do. We check in. We have monthly meetings with them.

There are best practices shared. In many cases, if somebody is doing an integrity week as a theme, we suggest it to other departments. You actually heard from some of the best practices, Health Canada and the Public Health Agency with the ombuds-person, so—

Mr. Kelly McCauley: Considering their record, I'm not sure if I would use them as a best practice.

Ms. Anne Marie Smart: I'm just saying that for them, it works.

Mr. Kelly McCauley: I just want to bounce over to section 10, because I don't have a lot of time.

Section 10 requires that CEOs, as you've mentioned, establish procedures and manage disclosures. Has this been done, and what kind of guidance and direction are they getting?

It's one thing to say that they each have to have their own code, but the system has failed our public servants. It has failed our taxpayers. It has failed people dealing with the government, quite massively.

It's wonderful that we're doing this, and we have very non-partisan agreement that we have to fix this issue, but what's Treasury Board doing?

Ms. Anne Marie Smart: All I can tell you is that we make every effort to make sure that the codes are talked about, and that people are aware of them.

Mr. Kelly McCauley: Do we have tracking, besides saying—

Ms. Anne Marie Smart: We have tracking. It used to be a three-year survey, so three years ago we found some alarming—

• (1635)

Mr. Kelly McCauley: Do you have tracking follow-up to make sure that their responsibility to the CEOs—

Ms. Anne Marie Smart: We've now gone to an annual survey, so that tells you—

Mr. Kelly McCauley: The annual surveys say that it's not getting done.

Does your department track what the CEO said, and which guidelines were followed?

Ms. Anne Marie Smart: If they haven't done it, we follow up. If they're not doing dissemination, awareness, and making sure the support is available.... Part of it is making sure that there is a respectful, healthy workplace, right?

Mr. Kelly McCauley: Right.

Ms. Anne Marie Smart: That's at the heart of it.

Last week the deputies all signed a pledge to make sure that they have a workplace that is respectful.

Mr. Kelly McCauley: Let me just ask some quick questions because I'm almost out of time.

Should we be teaching this in our School of Public Service? We understand it's a phenomenal institute.

Ms. Anne Marie Smart: We do.

When you're first hired, you get a copy of the code, so what does it mean? It's mandatory that you take the...at the Canada School—

Mr. Kelly McCauley: Well, yes, it's mandatory that they receive it. How are we following up to make sure they're actually reading it, and so on?

Ms. Anne Marie Smart: It's a mandatory three-hour online course with a test at the end.

Mr. Kelly McCauley: I know, but you know what? The Phoenix training was mandatory and it wasn't done. How are we tracking that this is getting done?

Ms. Anne Marie Smart: If someone hasn't taken it, the information is given to the department that it needs to be done.

Mr. Kelly McCauley: You've talked about a culture of doing the right thing. Do you think we are doing the right thing? Do you think we have that culture?

Ms. Anne Marie Smart: I know there is not a cookie-cutter approach to it. You're talking about awareness, education, and support.

If you're going to raise awareness like we are doing on mental health, getting rid of the stigma of talking about it, and saying that there is an issue, then you also have to have the support. It's your employee assistance program—

Mr. Kelly McCauley: We're hearing that we haven't got that culture yet—

Ms. Anne Marie Smart: Right.

Mr. Kelly McCauley: —and we're working toward it.

On a scale of one to 10, where do you think we are, at nine? Are we almost there?

Ms. Anne Marie Smart: You know what?

Mr. Kelly McCauley: We're hearing that it's at about two.

Ms. Anne Marie Smart: I had read the triennial, the 2014...so I know where the hot spots were. The next annual survey is out in about two months and I'm going to be delving into those results.

Mr. Kelly McCauley: Where do you think we are in terms of the culture right now?

Ms. Anne Marie Smart: I think there is continuous improvement.

Mr. Kelly McCauley: I hope you do recognize there is a long way to go.

Ms. Anne Marie Smart: As I say, there is lots to be done.

The Chair: Thank you.

We're on to Mr. Weir, for seven minutes.

Mr. Erin Weir (Regina—Lewvan, NDP): To follow Mr. McCauley's example of asking you about specific provisions of the act, one of those provisions is that the legislation itself should be reviewed every five years. That clearly didn't happen, so I'm wondering how Treasury Board interprets that requirement.

Ms. Anne Marie Smart: That...I wasn't there. After the five years, it just didn't happen. I'm pleased that it's happening now. There is, I know, the five-year requirement. That's all I can tell you on that one.

Mr. Erin Weir: Okay, but given that requirement, how does it come about that Treasury Board didn't conduct a review after five years?

Ms. Anne Marie Smart: I have no idea. I've been in the job for a year and a half, so....

Mr. Erin Weir: Have you any thoughts, Mr. Trottier? Okay.

I'd also like to ask about the definition of "wrongdoing". We've discussed the code of conduct a fair bit. I'm wondering why wrongdoing isn't defined to include Treasury Board policies in general.

Ms. Anne Marie Smart: Just to make sure I understand, do you mean putting it in a lot of the policies?

Mr. Erin Weir: It seems that Treasury Board policies are one of the main types of governance over the public service, so it seems logical that wrongdoing might be defined to include violations of those policies.

Ms. Anne Marie Smart: We have various codes—values and ethics, harassment, prevention of harassment—so it's sprinkled throughout and defined in various ways in a number of the policies. I can pull them and send them to the committee, if that would help you.

Mr. Erin Weir: Okay, but I don't think wrongdoing, under the act, is defined as broadly as we're discussing right now. I guess that's my question.

Ms. Anne Marie Smart: You're correct.

Mr. Erin Weir: Do you think it should be redefined to cover all Treasury Board policies?

Mr. Carl Trottier: We have a lot of other mechanisms that oversee the policies and oversee compliance with policies, so in my view, I don't think there is a necessity to broaden it to include all policies. Those are being covered already through other compliance mechanisms.

•(1640)

Mr. Erin Weir: Do you think the definition of wrongdoing is good the way it is now, or do you feel it is too narrow in some respects?

Mr. Carl Trottier: We believe the definition is an appropriate definition as it is now, but this is about opening the books and taking a look at it, so we would welcome the committee's views on that.

Ms. Anne Marie Smart: Yes.

Mr. Erin Weir: Certainly, many other witnesses have expressed the view that the definition of wrongdoing is too narrow, and that this is one of the reasons why very few whistle-blowers have availed themselves of the formal process.

I also want to ask about Treasury Board's role in implementing, monitoring, and evaluating the whistle-blower protection processes in individual departments and agencies. Could you tell us what sort of reporting requirements are in place? I know that Mr. McCauley touched on this survey, but I think we're maybe looking for something more robust than that.

Ms. Anne Marie Smart: There is a requirement for annual reports. The departments, the organizations, must submit an annual report to me. I roll them up, and I must submit them within six months after the end of the fiscal year. Every fall there is a requirement for the minister to table that report in Parliament.

Mr. Erin Weir: Based on that reporting, could you give us a sense of which departments and agencies are the best, or the worst, in terms of whistle-blower protection?

Ms. Anne Marie Smart: I certainly have aggregate numbers in terms of how many complaints are made, and disclosures and investigations—

Mr. Erin Weir: That's not exactly what I'm asking for. I think the committee has seen those numbers. I guess I'm asking for more of an evaluation of how well the system is or isn't working in different departments. Are there certain departments that you would hold up as the gold standard of whistle-blower protection? Are there certain departments where it's been a particular problem, where there are particular weaknesses in the system?

The Chair: Mr. Weir, perhaps I can help. Are you looking for a subjective opinion from Madam Smart?

Mr. Erin Weir: It doesn't have to be subjective. I'm assuming the Treasury Board—

The Chair: I'm not sure if there's any empirical evidence outside of the numbers she's already provided, but if you're asking for an opinion, I think that's a legitimate question. I just want to make sure Madam Smart understands.

Mr. Erin Weir: Indeed.

I guess my sense is that Treasury Board is making an evaluation of how well the system is working beyond just reporting the number of complaints. I'm asking if you can share that type of evaluation with the committee, if that's the type of analysis Treasury Board is doing.

Ms. Anne Marie Smart: Well, I'll tell you what I do. What I insist on is that all organizations are reporting to me, and when or if a report of wrongdoing against an organization is found, I make sure that report is made public and put on the government website. I take it quite seriously.

I can't rate them, but there's no department that comes to mind, in my time in the job, that hasn't complied with the requirements.

Mr. Erin Weir: Does Treasury Board audit the whistle-blower protection systems of the armed forces, CSIS, and the RCMP?

Ms. Anne Marie Smart: As you know, they fall outside the act, but they must have a comparable system in place. We expect they are reporting it and telling us what they are doing as well in follow-up.

Mr. Erin Weir: They do, then, report to Treasury Board in the same way as other departments, and you monitor and work with them?

Ms. Anne Marie Smart: Yes, they do absolutely.

Mr. Erin Weir: I certainly appreciate that they are outside the PSIC system, and that's why I'm asking about them.

Ms. Anne Marie Smart: Yes, it's the forces, CSIS, and the Canadian Security Establishment.

Mr. Erin Weir: One issue that has come up a bit at this committee is the importance of independent investigations. Certainly having them is a worthy objective, but it seems to me that an even more important goal might be to have independent decision-making or independent adjudication after the investigation has been completed.

Do you agree with that statement?

Ms. Anne Marie Smart: Under the Financial Administration Act, the deputy heads are responsible for managing the act. I can't think of—

I'm sorry. What was the second part of your question again?

Mr. Erin Weir: I guess what I'm getting at here is that there might be a problem with the senior management of the department ultimately being the arbiter of a system that could involve whistleblowing against them or against other senior management.

• (1645)

Ms. Anne Marie Smart: All deputy heads have the authority and the responsibility to take the reports and take them seriously.

If there is an apparent or perceived conflict and they are worried about it, they have the option of either asking another department to carry it out or asking the commissioner himself to carry it out.

The Chair: Unfortunately, I think we'll have to cut it off. I gave you a little extra time, Mr. Weir, from my own agenda.

Mr. Erin Weir: I appreciate it.

Ms. Anne Marie Smart: I misunderstood the question at first.

The Chair: Mr. Whalen, take seven minutes, please.

Mr. Nick Whalen (St. John's East, Lib.): Thank you, Mr. Chair, and thank you, Ms. Smart and Mr. Trottier, for coming to speak with us today about this important review of the act, timely as it is.

I have some questions that relate to what we envision the act might be and the types of objects we should see for the act. I'm not sure whether this is something you are able or are prepared to respond to, but concerning the right of expression, the preamble to the act talks about balancing the duties of loyalty versus the duty to have the freedom of expression granted by the charter.

I'm trying to reconcile what possible duty of loyalty there could be that needs to be protected when someone is trying to disclose wrongdoing.

Maybe you can describe for the committee what type of duty of loyalty might be violated here and why this needs to be a consideration in the act.

Ms. Anne Marie Smart: In what context is this....?

Mr. Nick Whalen: I can read it. This is the fourth paragraph of the preamble to the act. It says:

public servants owe a duty of loyalty to their employer and enjoy the right to freedom of expression... and that this Act strives to achieve an appropriate balance between those two important principles

I'm trying to see where this duty of loyalty even plays in. Aren't they being loyal by disclosing wrongdoing?

I'm trying to find out why that's even in the preamble and maybe get your views on whether or not it can come out.

Ms. Anne Marie Smart: When you sign your letter of offer, you have the code, you sign the code, you take the training. If you come across wrongdoing, I think it is an employee's duty, if you like, to tell somebody. If they are not comfortable internally, as I said, they have the external commissioner to whom they could disclose as well.

Whether it's loyalty or... I don't know why they put it in the preamble, but I'm saying that as a public servant who has signed the code of ethics and values and takes it to heart and works in the federal public service, I would think most if not all people would say it's their duty to report wrongdoing if they see it.

Mr. Nick Whalen: Right. There should, then, be no conflict between the obligations and rights under this act and the duty of loyalty to the employer, because they are meant to be synergistic, aren't they?

Ms. Anne Marie Smart: I'm not aware of the assumptions and the discussion that put that in. I'm just describing to you how I see it.

Mr. Nick Whalen: In terms of other objectives of the act, how important is confidentiality to the disclosures in the majority of cases? Shouldn't we be encouraging a more open system, in which any disclosures of possible wrongdoing can be discussed in an open and frank way, or is it truly important to have confidentiality?

Ms. Anne Marie Smart: My views are based on my experience in the public service. I think confidentiality is absolutely imperative. If the reports come out and they start to name the wrongdoer...

Mr. Nick Whalen: I was talking about the reports that would name the discloser. It's a different question, but maybe you can answer my first question first.

Ms. Anne Marie Smart: Why don't I finish?

Mr. Nick Whalen: Okay.

Ms. Anne Marie Smart: If it's really serious, why shame them? You want the person to rehabilitate, take whatever discipline is coming, and then hopefully learn lessons from it. Depending on the seriousness, it's always on a case-by-case basis. But I don't see any gain in disclosing names in that situation. I would respect the Privacy Act on that one.

Mr. Nick Whalen: Okay. My question was about the need to protect the identity of the person who's bringing forward the claim. Maybe you can answer that, and then we'll probe a little into why we're protecting the wrongdoers.

•(1650)

Ms. Anne Marie Smart: If you knew who was putting forward the claim.... Again, it depends on the situation, but if I knew that my name was going to become public, I might not want to make the disclosure. I think we're trying to have a culture where employees feel that when they see wrongdoing, and they have some evidence, and they really feel very strongly, they should be able to disclose and be guaranteed confidentiality.

Mr. Nick Whalen: As a citizen, not even as an MP, when I think there's wrongdoing, it should be disclosed, and the perpetrators of the wrongdoing should be punished. If we have a system in place that is preventing the wrongdoers from being appropriately punished because their identities are shielded, the investigations are shielded, it sounds as if our act protects the wrongdoers more than it protects the people trying to correct the wrongdoing. It's been spoken about at length in our committee. Do you disagree with that statement?

Mr. Carl Trottier: I think what Anne Marie is saying is that we have to keep sight of what the objective is here. First of all, it's to prevent wrongdoing. How do we go about preventing wrongdoing? We conduct investigations and we give discipline. There has to be an awareness that discipline can come out of this exercise. It's not the shaming that comes out of this, it's the discipline that needs to be offered.

Mr. Nick Whalen: Sorry, I'm going to stop you there, Mr. Trottier, because “wrongdoing” is defined in the act as “a contravention of any Act of Parliament”, “a misuse of public funds”, “a gross mismanagement in the public sector”, “an act or omission that creates a substantial and specific danger to the life...”. This isn't about prevention when the whistle-blower is coming forward. It's about actual, identified wrongdoing of an extremely serious nature. To circle the wagons and protect— we don't want to be too tough on the wrongdoer—boggles the mind of normal Canadians, who think that if this happened in the public sector someone would go to the police, and the police would investigate, and there would be a public hearing, and, rightfully, the people would be named. And they should be shamed because they have specifically endangered the lives and the health of persons or they have grossly mismanaged the public sector funds or they've contravened an Act of Parliament. These are criminal offences. Why should public servants have more protections than the average Canadian with respect to this type of malfeasance?

The Chair: Mr. Whalen has obviously asked a very interesting question. Unfortunately, because of the time constraints we have, we're going to have to see if you can get the answer in with one of the other questions.

Mr. Clarke, you have five minutes.

[Translation]

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

[English]

Madam Smart, if you want to answer, I'll let you answer this question.

Ms. Anne Marie Smart: Go ahead.

Mr. Carl Trottier: We entirely agree with the seriousness of the acts, but the issue is that discipline needs to be imposed. The action is corrected through the discipline and not necessarily through the shaming. The reason I say not through the shaming is that most of the situations are probably not as clear as the ones you describe. In some situations some people can be wrongly accused, and then shamed. So it becomes very grey. The individual might still be there tomorrow and having to be rehabilitated, as the CHRO mentioned, and having to work in an environment. But you're looking at an extreme situation. You're saying that something terrible happened. We probably would be firing that individual if it was a situation that warranted it. There needs to be some way to rehabilitate individuals who have to work in the environment again.

Mr. Nick Whalen: Once again, it's about protecting the wrongdoer.

[Translation]

Mr. Alupa Clarke: Ms. Smart, do you speak French?

Ms. Anne Marie Smart: Yes.

Mr. Alupa Clarke: Okay.

In the document you sent us in February to share your view of the Public Servants Disclosure Protection Act, on the second last page, in the first paragraph of your conclusion, you said,

[English]

“I believe that the Act is largely working as it was intended.”

Ms. Anne Marie Smart: Yes.

[Translation]

Mr. Alupa Clarke: In the past two months, we've heard from representatives of the Whistleblowing International Network, from the Integrity Commissioner, from representatives of different government departments and agencies, and from foreign experts, in particular at the beginning of this week. Most of these people said that the act didn't work very well, that it wasn't well written, that it had many shortcomings, and so on.

How do you explain this discrepancy between your confidence in the act and what we've heard from other witnesses?

•(1655)

[English]

Ms. Anne Marie Smart: I read the testimony as well, but from my perspective of where I sit I think that we have quite a robust integrity regime. We have the code. I make sure that through the code employees sign their letters of offer. They get the code, and they have to go for training at the Canada school. All departments, all agencies, all organizations, have to have senior disclosure officers. They have to do their own code. They have to do some awareness throughout the department. They submit the annual reports to me, I roll them up, we put them in Parliament.

When situations arise, they have the choice of channels. They can disclose internally. They can go to the commissioner.

I think it's pretty solid. Do I worry? I think Mr. McCauley pointed to some of the survey results from a few years ago where employees were worried about reprisal, which was one of the areas. I take that seriously. I think that when you find that, you need to redouble your efforts to have a healthy, respectful workplace where people don't fear—

[Translation]

Mr. Alupa Clarke: You do say that the act works well.

[English]

Ms. Anne Marie Smart: Right.

Mr. Alupa Clarke: You say it's "working as it was intended."

[Translation]

I was wondering whether that was a Freudian slip. One of our experts on Monday evening said he felt that this act was created to protect senior bureaucrats and ministers. I am saying this in good faith, Ms. Smart.

You say that it works

[English]

"as it was intended."

[Translation]

However, according to those experts, it protects

[English]

high wrongdoers.

[Translation]

Your analysis of the act is very different from what the experts we heard from said about it. They don't agree with that conclusion.

[English]

Ms. Anne Marie Smart: All I can tell you is that from the Treasury Board, from where I sit as the chief human resources officer, I think it can always be improved but I wouldn't scrap it and start again. It would be something of a process of continuous improvement. If there are departments or areas where—

Mr. Alupa Clarke: You would scrap it and start again?

Ms. Anne Marie Smart: I said I would not.

Mr. Alupa Clarke: Okay.

Ms. Anne Marie Smart: Obviously, if the committee recommends that, we'll look at it, but in my experience the fact that it exists, the fact that organizations have to go through these steps, employees go through steps, and the fact that people do come forward, speaks to the fact that it's good that it's there.

The Chair: I think we'll have to end it there.

[Translation]

Mr. Alupa Clarke: Thank you.

Ms. Anne Marie Smart: Thank you.

[English]

The Chair: Thank you very much.

Monsieur Drouin, five minutes, please.

Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.): Thank you, Mr. Chair, and thanks to the witnesses for coming here today.

I want to just go back to a few things that Mr. McCauley touched on about public service culture. You mentioned that you require public servants to read the values and ethics code, and there's online training that you have to do. What else is done within the public service to ensure that there is that good working environment?

Ms. Anne Marie Smart: There are a number of things going on. It's not just one-time, one-step. In departments, as you mentioned, they go for training. They have to pass the training, it's mandatory training. In their departments there are constant armchair learning sessions. Some of the groups get together on a monthly basis and talk about best practices, like what are departments doing. Mental health is one area where the government as a whole has been really focusing in the last year, and part of that was because the public service employee survey said that people were afraid to disclose. There was a real stigma about talking, and they were afraid in the workplace.

There have been concentrated efforts by having deputy heads be the champions, and going out there and making sure that those conversations are taking place. It's not just at my level. It's with all levels within their departments.

● (1700)

Mr. Francis Drouin: So anybody managing somebody, all the way down to managers and directors?

Ms. Anne Marie Smart: All the way down to people working on the front line, directors. It's called breaking the stigma.

Mr. Francis Drouin: How are you measuring that impact?

Ms. Anne Marie Smart: A few ways. The survey is one critical tool. I do the one big survey, right across the whole enterprise, as we call it. We've gone to annual so that we can track these types of things when we find them. In 2014, you found some problems. Deputy heads put in place action plans, but you don't know whether those action plans work unless you have an annual tracking. I also know that some departments are also doing their own check-ins with employees, whether it's through what they call post-surveys.... There are many ways to do it, but it is all about ensuring that you have a healthy respectful work culture.

Mr. Francis Drouin: I was hoping to get your opinion on this. We've heard from this committee that, yes, identity protection is important, but Ottawa is a small town. Once you declare a problem, it's fairly easy to identify who's working on what project in Ottawa at the federal government.

Ms. Anne Marie Smart: Right.

Mr. Francis Drouin: I find it hard for public servants to have their identity protected once they decide to use the public disclosure act and go that route. There was some mention about allowing staff priority to be given to public servants who disclose. It warrants an investigation to be given staff priority so they can move to another organization if, obviously, there is space available.

Is that something that you would champion?

Ms. Anne Marie Smart: It's perfectly within the authority of a deputy head to do. They're responsible for the human resources, the people management within their departments, so they could do it.

I took your question the other way. The fact that Ottawa is such a small town in many ways, and people know what you're working on, is all the more reason to make sure that identity is protected, that you do do things confidentially, and that there is the Privacy Act.

Mr. Francis Drouin: It's done. We say it's done. Of course their identity is not going to be revealed—

Ms. Anne Marie Smart: Right.

Mr. Francis Drouin: —but it's pretty easy...just on procurement, you can identify who's working on what project. If they're declaring wrongdoing on a certain project, it's fairly easy to identify which team is working on that, and then employees talk.

Ms. Anne Marie Smart: It is case by case. If that employee is finding that they're uncomfortable, they would probably go to their HR, their senior disclosure officer, who would talk to the deputy head. The deputy head, as I say, has full authority to move, give leave...there is a good tool box there to use in those cases.

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

Mr. Kelly McCauley: Thanks very much.

Every department in the government has its own little army for whistle-blower protection. We seem to hear it's quite ineffective. One of the issues is people are afraid to go within their own department to whistle-blow. One of the suggestions is to make those people inside departments independent and reporting separately to a chief investigator.

What are your thoughts on that?

Ms. Anne Marie Smart: You're not saying abolish them, but rather just have them report other places?

Mr. Kelly McCauley: No, right, because again, some of the words we're hearing—it has been expressed here as well—are that the system is set up to protect the departments, protect the bureaucrats.

Ms. Anne Marie Smart: Right.

Mr. Kelly McCauley: We've heard that from witnesses. We've heard it from experts. We've heard it from—I've got another word for it—the victims of the system, where you bring it up, and it's circle the wagons and protect the bureaucracy, protect the system at all costs.

Ms. Anne Marie Smart: It will sound bureaucratic to you but it's true. It will come in to a clash between the deputy heads who have responsibility for the people in the department, so having somebody sitting in the department but reporting elsewhere—

Mr. Kelly McCauley: Right, and that's part of the issue. What do you think of the suggestion of having the protection for these employees, independent implants inside the departments, so they can go to them, and they're reporting to an independent investigator?

Ms. Anne Marie Smart: As I say, I think it would set up a clash between the authorities of deputy heads to manage people versus—

Mr. Kelly McCauley: I think you've just answered my question on how we should go, because it sounds like our system is set for the deputy ministers to protect, rather than protecting the staff—

Ms. Anne Marie Smart: Well, it's the deputy ministers' to manage—

• (1705)

Mr. Kelly McCauley: —a clash will be to protect—

Ms. Anne Marie Smart: —they manage the departments.

Mr. Kelly McCauley: I would suggest that with whistle-blowers, their responsibility is to protect the employees and the taxpayers.

Let me just quickly move back to section 10 again. Who's ensuring that the CEOs have fulfilled their requirements? I'm trying to figure out what directions they're receiving from Treasury Board about whistle-blower procedures and standards so that there's equal treatment for all of the public servants. Then also with the code of conduct, I know it says it must be consistent with the code of conduct set by the Treasury Board. Who is following up to make sure that in this whole myriad of departments it is consistent, and who is giving them direction to ensure they are following this?

Ms. Anne Marie Smart: We at Treasury Board do that.

Mr. Kelly McCauley: In what way are you? Just give us some examples of what you're doing.

Ms. Anne Marie Smart: I'll give you a couple of examples.

They have to report to us every year on their statistics, so there's no hiding of this.

Mr. Kelly McCauley: On reporting statistics, how are you ensuring that public servants department by department are receiving equal treatment and equal protection? It seems that it's being shifted off so that the CEOs have to develop their own plan, and it sounds as though Treasury Board is just shifting it off and not following up.

Ms. Anne Marie Smart: I didn't want to leave that impression. We give them not direction but guidance on what should be included in a plan.

Mr. Kelly McCauley: Who is following up to make sure they're doing that?

Ms. Anne Marie Smart: We do. If they haven't—

Mr. Kelly McCauley: Do you do audits, or do you just wait for them to say they're doing that?

Ms. Anne Marie Smart: No, we follow up and we make sure. I don't think we've done an audit per se.

Mr. Kelly McCauley: Okay.

Ms. Anne Marie Smart: I do know that if a department is trying to hide something—I'm not saying they are—and if something is really off track, that kind of information tends to come out now through the annual surveys. You can figure out—

Mr. Kelly McCauley: Do you think an annual survey once a year is enough to follow up?

Ms. Anne Marie Smart: We follow up. If we're getting good material, that's good. If we're not getting it and the survey says there's a problem there, we'll follow up and ask what action plan is being put in place.

Mr. Kelly McCauley: In light of everything we've seen and heard in the last couple of months, do you think what we're doing right now is adequate?

Ms. Anne Marie Smart: Do you mean in terms of whistle-blowing?

Mr. Kelly McCauley: I mean in terms of following up to make sure our public servants are protected and people dealing with it are protected as intended under the act. It sounds very much as though....

I'm going to pick on Health Canada. It was before us, and we've had two cases in, I think, seven years or something. The question was whether our system is that bad or those guys are perfect, and it was just kind of shrugged off as, "Ah, who cares?" That's maybe a bit harsh, but it sounds as though we have this act and we have requirements, but no follow-up.

The Chair: Unfortunately, Mr. McCauley, we're going to have to leave that as a statement rather than an open-ended question, because we have five minutes left for Madam Ratansi.

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

I was quite interested in your opening statement in which you said that the act is an important part of the government's integrity framework and that integrity is the cornerstone of good governance and democracy.

From the way you have replied to all the questions that have been answered, from a process perspective, you have processes in place. However, from the evidence we have gathered from all the different people who have come before us—and there have been experts and whistle-blowers who have come before us—the process is not as solid. As a chief human resources officer, do you sign the contracts of all deputy ministers, or is doing that delegated somewhere?

Ms. Anne Marie Smart: I don't; the Clerk of the Privy Council does.

Ms. Yasmin Ratansi: Do you approve of their jobs? How do they get selected to be deputy ministers or ADMs, or whatever?

Ms. Anne Marie Smart: If they've come up through the system, there is a fairly rigorous system of performance management that is done on everyone, all executives, all employees in the public service. For executives, just as an example, there are performance contracts and agreements required under our policy.

Ms. Yasmin Ratansi: So who does the audit of those performance agreements?

What I'm leading up to is that we have heard that the bureaucracy—and I'm looking at the whistle-blowers—and the bureaucratic culture protect the wrongdoer, and most of the time the wrongdoer appears to be upper management. But at one point I think you must have responded that you would like to protect the wrongdoer, because of the rate of false allegations. How many false allegations have you received?

• (1710)

Ms. Anne Marie Smart: I don't....

Ms. Yasmin Ratansi: This is where we are in a tandem: we don't know who is right, who is wrong, but we're trying to listen to this act, saying, well, the act is a bad act, according to a lot of the witnesses, and we'd like to improve it and improve the processes in place.

I have a scenario that I'd like to share with you. As a chief human resources officer, you are hiring a CEO of an organization. The CEO does not have an accounting designation, but he or she has to sign off on those financial statements. Now, he or she does not know the complexity of the financial statements, so he goes two levels down to the financial officer, who probably is designated and would lose his designation if he were ever, in the private sector, to sign something that was not worthy. How does the financial officer protect himself if the CEO says, "Sign or you lose your job"? And how do they come to you?

We're talking about billions of dollars here. If you do not understand the complexity of the financing of the government and you're signing off, and you're relying on your third level, where is that integrity? Where is good governance?

Ms. Anne Marie Smart: Just in terms of a factual correction, all deputies are appointed by the Prime Minister on the advice of the Clerk. They're not through the chief human resources officer.

Ms. Yasmin Ratansi: Let's talk about CEOs.

Ms. Anne Marie Smart: The deputy heads are the CEOs of the department, so they're also kind of the accounting officers as well. They rely on or they have a chief financial officer in just about all cases.

I'm not the money expert—I'm not the comptroller general—but for any kind of money there is a due diligence process between central agencies and departments. Anything that's being signed off has to be audited and attested to.

I don't know if you have a specific case in mind.

Ms. Yasmin Ratansi: No, no. I'm thinking money, and I'm asking who does it. If the comptroller general is reviewing all these things, then I'm fine.

The whistle-blowers who blow the whistle are ethical, yet they get penalized. I want your opinion on that. If you can't give it to me now, perhaps you can just send it to us.

Ms. Anne Marie Smart: Okay.

The Chair: Colleagues, it looks like the bells are ringing.

Ms. Yasmin Ratansi: What is it for?

The Chair: I don't know.

The motion is that the debate be now adjourned. We are finished with our witnesses, but we've had another witness, Madam Therrien, patiently sitting here almost all day. We would need unanimous consent to have even 10 or 15 minutes—

Ms. Yasmin Ratansi: Agreed.

The Chair: Or we could suspend and come right back here after the votes.

Ms. Yasmin Ratansi: Can we give her 10 or 15 minutes now?

The Chair: Certainly.

An hon. member: Let's do that.

The Chair: Then why don't we do that now, colleagues, if we can?

Madam Smart and Mr. Trotter, you are excused. Thank you very much. We appreciate your attendance.

Madam Therrien, welcome.

Colleagues, I have a couple of quick housekeeping items. We are in a bit of a unique situation. Mr. Yazbeck is here as counsel to Ms. Therrien, to provide advice. That can only be accommodated with the permission of the committee.

Are there any problems with that? No?

Mr. Yazbeck, welcome.

• (1715)

Mr. David Yazbeck (Partner, Raven, Cameron, Ballantyne & Yazbeck LLP): Thank you.

The Chair: Madame Therrien, since we have votes and we have approximately 25 minutes until votes commence, we are left with perhaps at most 15 minutes here. We can do one of two things. We can have your opening statement and perhaps one round of questioning, or not even a round but one or two questions, then go for the votes and come back.

My question to you is, would you be prepared to extend your stay with us this afternoon? It would probably take about 20 minutes to get us to votes and back and another 10 or 15 minutes for the votes, so we're looking at extending your stay by about another half hour.

Ms. Sylvie Therrien (As an Individual): That's okay with me, but I don't know whether all these people want to stay. Do they have no choice?

The Chair: This is a very good committee, and I think they're very interested in hearing your testimony.

Why don't we do this, colleagues, so that we don't have a disjointed set of questions? Perhaps we can have Madame Therrien's opening statement, then depart and then return.

Madame Therrien, I understand you have a very short opening statement because you want to leave time for questions, but you can certainly expand upon it, if you wish.

There are now 25 minutes, so if you could give your opening statement, we'll then determine whether we have a chance for at least one or two questions.

Ms. Sylvie Therrien: I have a short opening statement.

The Chair: Certainly.

Ms. Sylvie Therrien: I want to thank the committee for giving me the opportunity to speak to you.

The Chair: If you wish to speak in French, please feel free to do so.

[*Translation*]

Ms. Sylvie Therrien: I prepared everything in English, but I can talk about it in English or in French.

I just want to talk about my whistleblowing experience. It was very difficult.

You talked about various ways to proceed when making a disclosure. I started out by going through the internal channels and turned to people who were higher in the organizational structure. It did not work at all, as they did not think it was a problem. They even threatened me. They told me that if I made unfounded allegations again, it would not work. You talked about the possibility of an independent person investigating. That would be much better, as people protect each other when internal channels are used. They are all colleagues and they protect each other. So there is a sort of a cover-up. I was told that there was no problem.

I then suffered major reprisal in my workplace. I was ostracized, and no one wanted to talk to me. They also started questioning the way I worked. Nothing I was doing was right. If I took a five-minute break like everyone else, they would say that I had taken 10 minutes. I was really hounded, and all my actions were scrutinized and questioned. It was very difficult.

When it comes to using internal channels, anonymity is important because, at the end of the day, those who commit wrongdoings are often in positions of power. They are often high-ranking officials. So if we are under those people, we suffer a great deal. We are put through the ringer, as they say. In any case, that was my experience.

I then went to the union representatives, who told me that the only way to proceed was to file grievances.

Do you know that it was employment insurance quotas I disclosed?

• (1720)

Mr. Ramez Ayoub: Yes, I do.

Ms. Sylvie Therrien: Okay. So I don't need to come back to that.

I was told that the only way to proceed was to go through the grievance process. That is what I did. Fortunately, I had Mr. Yazbeck to help me, as the experience was horrible. I went through two years of hearings and so forth. It was very difficult. Hearing horrible things said about me severely affected me on a psychological level. The employer has a lot of resource, doesn't it? It has a lot of our resources. It has many lawyers and a host of people whose goal is to find all sorts of flaws, to destroy us and our reputation. That is what the employer does.

The hearing with the grievance arbitrator was terrible. The process lasted two years. He concluded that, as the issue did not fall under his jurisdiction, he could not render a decision.

I also turned to the Office of the Public Sector Integrity Commissioner of Canada. In the beginning, I was told that the organization was there to protect whistleblowers. But the process was very complicated. I had to fill out forms, and everything was so complex.

At first, people didn't really know what it was about. I didn't know that there was an integrity commissioner. When I finally filed a complaint, I was told that too many weeks had passed, and the complaint was inadmissible.

Fortunately, Mr. Yazbeck was there. Thanks to his knowledge, he resubmitted my complaint to the integrity commissioner, and it was accepted.

Finally, they decided that the fact that I had lost my job and my security clearance and was suspended without pay did not constitute reprisal. Yet that was the important point I wanted to make—that the government, in reprisal, had fired me to shut me up. It used my example to deter other whistleblowers who may have wanted to talk. I was a good example of what shouldn't be done.

I have said a lot already. I don't know whether I should continue.

I am now in limbo, sitting on the fence. On the one hand, the arbitrator does not want to make a decision because the matter supposedly does not come under his jurisdiction; on the other hand, Mr. Friday is waiting for the arbitrator to render his decision. We almost wonder whether they are talking to each other to make my case slip through the cracks and ensure that it will not be resolved. One is waiting for the other to make a decision, and finally nothing happens.

On the one hand, I am asking this committee to review the act and the policies in order to properly protect whistleblowers. The statutes must focus on the whistleblower. It is very important to protect whistleblowers, and not to protect those who are already in power.

● (1725)

On the other hand, I am wondering whether your committee could, in some way, tell Mr. Friday that he does not have a choice, that he must refer my case to the Public Servants Disclosure Protection Tribunal, since the situation is ridiculous and there is no need to wait anymore. Your action would very clearly indicate that you defend whistleblowers. Your committee would show that it is serious about this issue. It would show that your committee does not just talk, receive briefs and produce reports. It would be a move that would say a lot.

Then the act should be reviewed. It's not just for me. It's true that it would help me, as personal consequences were huge in my case. I am no longer employable, I have no money and I am in debt. It would help me, but it would also be for....

[English]

The Chair: Madam Therrien, we're going to have to cut it off there. We'll go to the votes, and we'll be back probably in about 30 or 35 minutes.

We'll be back with many questions for you, I am sure.

[Translation]

Ms. Sylvie Therrien: Okay.

[English]

The Chair: We'll be back as soon as we can.

● (1725)

(Pause)

● (1805)

The Chair: We will reconvene.

Thank you, witnesses, for your patience.

Colleagues, Mr. Yazbeck has been classified as a witness. Should any of our committee members have questions, he is available to answer them.

Ms. Therrien, thank you for your opening statement.

Colleagues, I think we'll start with the full seven-minute round of questions. If there are additional questions after that, we can continue, but let's see where seven minutes each gets us.

Monsieur Drouin, we have you up first, for seven minutes, please.

[Translation]

Mr. Francis Drouin: Thank you, Mr. Chair.

Ms. Therrien, thank you very much for being here today. Your testimony has definitely shed some light on this issue.

I would like to come back to your experience, if I may.

When you found out about the quotas and all the surrounding issues and you made the decision to disclose, what was the process? Did you immediately feel some sort of belittlement from your employer or your supervisor?

Ms. Sylvie Therrien: We were approaching the end of the fiscal year, and I realized that there were quotas. Every month, we would receive report cards congratulating us, for example, on having saved \$370,000 in employment insurance and we were told that we had to make further efforts. The report cards came from a very senior manager somewhere in Edmonton, a very highly ranked official in charge of everything. He would send us report cards to congratulate us on our good work, as we had saved a certain amount of money for the government, and he would tell us that we had to increase the savings achieved in employment insurance to \$500,000. Those report cards clearly indicated what was expected of us. Each investigator had to achieve savings of \$40,000 a month, or \$485,000 a year. It was very clear.

As it was the end of the fiscal year and they wanted us to save a great deal of money quickly before the year was out, we received weekly emails reminding us to identify cases involving penalties or violations. We were told that, if we found any such cases, we had to send the information as soon as possible, so that it would be recorded before the end of the fiscal year. It was a race for savings. It no longer had anything to do with a service we provide to Canadians who apply for employment insurance. It was no longer a matter of ensuring that they met the criteria, but rather of figuring out whether they were trying to defraud the system. The main concern was to determine how much money we could help the government save.

Mr. Francis Drouin: When you made the decision to blow the whistle on the situation you felt was wrong, did you bring it to your supervisor or did you check how the internal process worked?

Ms. Sylvie Therrien: We actually talked about it among colleagues. I also talked about it with my team leader. Sometimes, they would not say good morning to me, but would rather say:

[English]

“Hey, Sylvie, have you finally put the penalty on this guy?”

[Translation]

In reality, there was no penalty to be imposed in that case. That is what I would hear instead of good morning.

At some point, the team leader told me that I had to refuse benefits to an individual who had applied for them, under the pretext that he had not really looked for work in accordance with the criteria. The individual was an aboriginal who lived in a remote village with only one store. He worked in the fishing industry. Since he was a seasonal worker, he was out of work.

Finally, we talked about some cases in the office. During those conversations, the people around me saw that I was against the way we were processing the files. Do you understand? That is how it came about. In our daily work, it was a matter of case-by-case observation. When I felt that an individual was entitled to employment insurance benefits and I should grant them those benefits, I was told not to do it.

• (1810)

Mr. Francis Drouin: I assume you had some friends in your workplace. How did they feel about the situation?

Ms. Sylvie Therrien: I did not have many friends, given the way I was seen. It was clear that my team leader and my manager did not like me very much. People are afraid to associate with whistle-blowers.

One day, I was having coffee with one of my colleagues, and he told me that he really refused to see unemployed people as criminals.

Mr. Francis Drouin: How long had you been you in your position?

Ms. Sylvie Therrien: I had been there only for a few months.

Mr. Francis Drouin: Before you had that job, did you work in another area?

Ms. Sylvie Therrien: Yes, I worked in programs. We gave grants to community and social organizations to help them provide services to people in need. The Harper government, which was in power at

the time, decided to make cuts to those programs. So we were sent to play the role of police officers in employment insurance.

Mr. Francis Drouin: You really felt that you were pressured to constantly reduce the benefits paid, correct?

Ms. Sylvie Therrien: Yes, absolutely. We had to achieve good savings.

Mr. Francis Drouin: After that, once....

[English]

The Chair: Francis, you have 20 seconds.

[Translation]

Mr. Francis Drouin: If that's the case, I may as well yield the floor to my colleague.

Thank you very much, Ms. Therrien.

[English]

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

Mr. Kelly McCauley: Thanks for bearing with us while we had to run to vote.

I was an EI appeals chairman for several years. When you talk about savings, are you talking about overpayments, or fraud savings, or...? You talked about, I think, \$400,000 a year or \$500,000 a year. What would that cover, when you say “savings”? It's not from turning people down; it's from decisions, overpayments, and so on. Can you fill me in exactly?

Ms. Sylvie Therrien: It is both. It is refusing claimants' claims. It is the cutting of claims—

Mr. Kelly McCauley: Could I stop you there?

When you say refusing a claim, if a claim is denied because.... For the sake of argument, in Edmonton it was 599 hours that were needed. If they worked 580 and they didn't qualify, that's not savings. How are they trying to define “savings” when someone wouldn't have been eligible to apply under the EI Act?

I understand savings if they're going after people who were overpaid, or who left the country to go down to the States. There are always clawbacks. I'm just trying to figure out how they came up with this dollar value for savings. It can't be for turning people down, because the savings would have been in the hundreds of millions.

Ms. Sylvie Therrien: It was a lot. I don't remember the numbers.

Mr. Kelly McCauley: I'm just trying to get to what they determined as savings.

Ms. Sylvie Therrien: Yes, they included turning people down. For example, if a claim that was allowed was \$4,000, that would be \$4,000 given to that claimant. That was saving \$4,000 because we didn't allow the claim, as well as charging a penalty.

Mr. Kelly McCauley: Were you ever told to not follow the EI Act when turning down claimants?

Ms. Sylvie Therrien: I was not told clearly not to follow the EI Act.

Mr. Kelly McCauley: Did they ever hint at anything like that, to not follow the act?

Ms. Sylvie Therrien: Yes. It was hinted that we should find ways to.... "Oh, but he didn't go to the appointment he had for his work, and—"

Mr. Kelly McCauley: The reason I ask is this. The EI Act is very clear. It sets out very clear boundaries and very clear rules. What I'm trying to get at—and again, I'm talking about whistle-blowing—is whether people within the department told you to, basically, break the law or ignore the act, as required. You're saying they did.

•(1815)

Ms. Sylvie Therrien: They did in the sense that they push you so much to intimidate with your questioning. You can find fault easily with people when you intimidate and ask questions.

Mr. Kelly McCauley: Were these quotas ever put in writing to you as part of a performance...?

Ms. Sylvie Therrien: Oh, yes.

Mr. Kelly McCauley: It would apply to everyone then.

Ms. Sylvie Therrien: Yes.

Mr. Kelly McCauley: When this was presented to you, what were your thoughts; what were your next steps? Did you consult with the union about the whistle-blowing? What should you do? Did you look it up online? Is this correct or not? When you decided this was wrong, what were the next steps you took?

Ms. Sylvie Therrien: When I saw this was wrong, it was more about some cases that we were talking about in everyday life in the office. We were saying this person should be allowed. It was not the quotas and the 40,000 and everything....

Mr. Kelly McCauley: It's very disconcerting because in my time spent as an appeals chair, a lot of latitude was given to the EI commissioners to approve or deny, which is why you have the appeals from both the government and the claimant. But you felt that was taken away, that they were pushing you the other way?

Did the union ever explain why they didn't direct you to the whistle-blower path instead of filing a grievance?

Ms. Sylvie Therrien: No, I don't know. They said I had to go through the grievance process and when it went all the way to the end, then I'd be in the Labour

Mr. Kelly McCauley: Go to arbitration.

Who did you talk to within the department?

Ms. Sylvie Therrien: I spoke with my team leader, my manager at Harbour Centre.

Mr. Kelly McCauley: Did you express to them that this was wrong, that we need to fix this or why are we doing this?

I'm trying to figure out what they were telling you.

Ms. Sylvie Therrien: They told me I was too sensitive to do that job.

Mr. Kelly McCauley: Did they direct you to other avenues of addressing this?

Ms. Sylvie Therrien: No, they didn't give me any other avenues. They just said it was not a good job for me or I was too sensitive to do that type of job. I was used to giving money to people. Here we take money away from people; that was my manager telling me that.

Mr. Kelly McCauley: Did the harassment reprisal start immediately when you brought it forward?

Ms. Sylvie Therrien: Yes.

Mr. Kelly McCauley: Did you say why are you doing this or it just went full blown on you?

Ms. Sylvie Therrien: Not full blown. They changed my offices.

Mr. Kelly McCauley: I'm just wondering. Quite often you see wonderful performance appraisals for staff and all of a sudden there's an issue and it goes off a cliff. Was that your case, where everything was perfectly fine or relatively fine until you brought it up?

Ms. Sylvie Therrien: Until I brought it up. Then they decided to send me to another office because I said I wasn't comfortable working in this environment anymore.

So they sent me to another office, and it was even worse.

Mr. Kelly McCauley: Was that a demotion to move to another office or a lateral?

Ms. Sylvie Therrien: No, it was lateral.

The Chair: Mr. Weir.

Mr. Erin Weir: Thank you, Ms. Therrien, for appearing before our committee and also for your service as a whistle-blower.

One of my priorities since being elected has been to push for greater access and duration of EI benefits for laid-off workers in Regina. So I really value the work you did in exposing the federal government's attempts to deprive people of those benefits.

I appreciate the fact you've sat in on our meeting this morning, and of course I asked the Public Sector Integrity Commissioner about the relatively critical judgment of the Federal Court of Appeal in your case.

You heard his answer to that question, and I wonder if you or Mr. Yazbeck have anything to add to it.

•(1820)

Ms. Sylvie Therrien: As I see it, this man seems to avoid helping. He was saying at some point that he was neutral. I thought his role was to protect whistle-blowers, not to be neutral. I don't feel he's doing that; indeed it's the opposite.

He's trying to leave me in limbo now.

Mr. Erin Weir: In terms of that limbo, my understanding is that the Labour Relations Board has not yet ruled on whether it has jurisdiction to deal—

Ms. Sylvie Therrien: That's right.

Mr. Erin Weir: —with your case, and the Integrity Commissioner is saying that because the Labour Relations Board is considering it, he can't touch it. I asked the Integrity Commissioner about that as well, and I wonder if you or Mr. Yazbeck have a different interpretation of how the system should be working. Is Mr. Friday correct that he can't touch it as long as the Labour Relations Board is considering it, or is there more that the commissioner could be doing under the existing law?

Mr. David Yazbeck: I would say that he's incorrect in saying he can't touch it. He certainly has the discretion to decide not to touch it. In the Court of Appeal's judgment, in the reasons, it said that one of the things a commissioner might want to do is consider waiting until the adjudication process ends so that there is actually a decision at the end, and then make a decision whether it deals with reprisal or not.

But in this particular case, I can tell you that the evidence and the argument before the adjudicator did not rely on an allegation of reprisal at all. There's no dispute about that. So to me, the commissioner could have taken this up, because his original decision was that the reprisal was being dealt with in the adjudication so he didn't have to deal with it now. But that's simply not the case. The reprisal is not being dealt with in the adjudication process. So the commissioner could decide now to investigate Ms. Therrien's complaint.

Mr. Erin Weir: So you think it's the discretion of the commissioner and not the act itself that's preventing him from taking up this case currently.

Mr. David Yazbeck: That's right.

Mr. Erin Weir: To further pursue this theme of the different avenues that one might take in this type of case, you've got the commissioner, you've got the labour relations tribunal, and you have various internal processes in different departments and agencies. Ms. Therrien, do you feel you got any kind of useful information or guidance from the commissioner about what path to follow?

Ms. Sylvie Therrien: Not at all.

Mr. Erin Weir: Were there other ways of getting that information? Were there other bodies that you could go to?

Ms. Sylvie Therrien: No, not at all.

Mr. Erin Weir: Do you or Mr. Yazbeck feel that's one of the reforms we should be looking at: to establish some kind of entity that can give people guidance about what route to take in these kinds of cases?

Mr. David Yazbeck: I think so, yes. If you look at Ms. Therrien's circumstance particularly, she's wrapped up in this jurisdictional dispute, which frankly involves some fairly complicated legal arguments. If you were there on your own, you would just be overwhelmed and just obliterated by that. That's the kind of system we have, and this is a good illustration. You would have thought that

by now, four years later, the reprisal allegation would have been addressed, good or bad, right or wrong. But no, we're still waiting.

Mr. Erin Weir: Yes, this seems to be a recurring theme among whistle-blowers who've testified. On the other hand, the commissioner, I think, gave us some sense that his office might try to provide people with some information, but it sounds as if, at least in your case and I think some of the other cases we've heard about, that wasn't very adequate or very helpful.

I want to ask you more broadly, as a whistle-blower or as a lawyer representing whistle-blowers, if you have some specific reforms that you'd like to propose to the committee beyond the ones we've already touched on here.

Ms. Sylvie Therrien: I think that the idea that you talked about this morning about being whistle-blower-centred is a really good idea to really make sure that whistle-blowers are protected and that it's not such a complicated process. I have a good lawyer and it's fantastic, but why should it be like that? Part of it is because you're persecuted as soon as you make an allegation of wrongdoing, so you need a legal representative to defend you, but it shouldn't be so adversarial. They should have been investigating all the money they spent on trying to find who leaked the document to the press, and this and that. They could have investigated if there was quota and if it's true that the claimants didn't receive the EI money that they were supposed to receive. They should maybe investigate if what I was alleging was true or not. That could have been a better place to put taxpayer money, I think.

• (1825)

Mr. Erin Weir: Mr. Yazbeck, you have testified before, but I did want to give you another opportunity, if there were some particular reforms or proposals you want to put on the table for us to consider.

Mr. David Yazbeck: I don't want to repeat what I've said before and waste the committee's time, but something did come up earlier this evening when there were questions about the definition of wrongdoing. I do think that definition is much too narrow. You talk about "gross mismanagement". Well, it implies that mismanagement in the public service is okay, that it's not wrongdoing. That makes no sense to me.

The Chair: Thank you very much.

Mr. Whalen, you have seven minutes.

Mr. Nick Whalen: I think, based on the facts now, we can see that the EI process had become a boiler room and that the financial incentives put in place to find bad claims actually created too much incentive and may have created wrongdoing.

I don't necessarily think that would always be the case. Sometimes you need to have incentives put in place to motivate workers. It doesn't always necessarily mean that if you have incentives there is going to be malfeasance.

However, I think there is a reasonable apprehension here. So rather than focus on the specifics of this case, Mr. Yazbeck, when we're talking about disclosures, do we need to broaden the definition of to whom and to where we disclose the information and lower the good faith burden? It would be just whether the documents on their face might cause a reasonable person to believe that something is going wrong and is worth looking into.

Mr. David Yazbeck: I would agree with that.

I think there is difficulty in relying on the good faith obligation. I'm not condoning bad faith disclosures, but oftentimes people think of good faith as having, for example, a proper motivation. So if somebody is disclosing something because they want to get back at their supervisor, that's going to be bad faith and we don't want to deal with that disclosure. However, it could very well be that the supervisor was engaged in wrongdoing as well. Simply because there's some animus there on behalf of the discloser, that shouldn't disqualify that complaint. I do think we have to be careful with that.

I also think that, historically, in cases where people have gone public and they have been disciplined, the employer has often taken the position that you can't disclose wrongdoing unless you know the allegations to be true, the proof of truth requirement. That's going way too far, because sometimes you don't know and you can't know. Sometimes you just have a suspicion and want somebody to investigate to make sure whether it's true. Frankly, that's the whole role of the commissioner. If somebody has a suspicion, that should be sufficient, as long as it's reasonable and they're not acting in bad faith.

Mr. Nick Whalen: Mr. Yazbeck, I saw one of the articles about this particular case. It talked about 3% of claimants improperly applying for EI benefits. Anywhere between 1% and 5% seems to be almost a general rule in society for how likely somebody is to break a rule or a law, so it doesn't seem as though the 3% in the EI program is out of the ordinary.

In your work in whistle-blowing, do you have any concept of what the rate of false allegations might be? Is there any reason to believe that it's higher or lower than other types of bad behaviour?

Mr. David Yazbeck: I can't really answer that. I believe my clients have been making legitimate disclosures, or at least attempting to. I would imagine it's not far off, because we're dealing with human nature.

Mr. Nick Whalen: Even if someone did make an allegation that turned out to be wrong, what is the negative impact on the alleged wrongdoer if they're ultimately shown to be vindicated in the investigation?

Mr. David Yazbeck: I can see that there could be a personal impact. Investigations such as that are stressful. There would be a period of time where they're suspected of something. If they were to retain their own counsel, there would be a cost associated. So there could be implications there.

• (1830)

Mr. Nick Whalen: How often is it that someone needs to retain their own counsel? It seems universal that the departments retain counsel to protect the alleged wrongdoers.

Mr. David Yazbeck: I've seen it happen.

Mr. Nick Whalen: In these allegations, if there is an investigative power on behalf of the department, should it be more a natural justice process where the person who is alleged of the wrongdoing is afforded counsel and the government institution that's investigating the wrongdoing has counsel and then a separate adjudicative body? Is there a problem in our system where we have the investigator and the decision-maker in one body?

Mr. David Yazbeck: Yes, I agree. That can be a problem.

Mr. Nick Whalen: Further along the lines of how we can make this system better, rather than focusing on reprisal, if we focused on a duty to protect and support whistle-blowers and duty to protect and support those who make a disclosure of what they feel reasonably identifies some wrongdoing, would that have helped your clients? Do you think having that opportunity to sue under the tort of failure to live up to a duty to protect and support would be easier than trying to sue to prove reprisal?

Mr. David Yazbeck: I don't think so. I think that taking up that kind of litigation is going to be costly, can be difficult, and is uncertain. I think a regime that allows a body like the commissioner, or the equivalent of the commissioner, to do investigations of an expert body would be better, as long as it functioned properly and was efficient and objective, etc.

Mr. Nick Whalen: You wouldn't see any real difference between having the standard of having to show that someone breached their duty to protect and support the employee versus having to prove that there was a reprisal? That wouldn't make any difference? We heard in evidence earlier this week that the lower standard was more protective of whistle-blowers, the lower standard of someone failing to meet up to their duty to protect and support, versus having to prove reprisal, which is almost never done.

Mr. David Yazbeck: I'm actually not sure what the standard would be in that other situation. I'm not sure how a court would approach that. Certainly, it would be the civil burden of proof—right?—the balance of probabilities, etc. If you are proving reprisal, it's the same burden of proof. It's a balance of probabilities.

The problem with reprisals is that you start with a proposition that the act in question is legitimate and then you have to prove otherwise, and that puts a heavy burden on the complainant, whereas in the case you're talking about, there's a standard out there that's applicable to the respondent or the defendant. In a way it almost shifts the burden, so to speak, because we're looking at whether they complied with that standard.

When I think it through, I guess in that sense it might be easier. I just think that the nature of reprisal as an insidious, difficult thing in the workplace is uniquely suited to an expert investigator, an expert decision-maker, or an expert tribunal to deal with, as opposed to a court dealing with a more general duty on behalf of somebody vis-à-vis a complainant or employee. I think the need for expertise in this area is crucial. I draw on the human rights jurisprudence for that, because we know that human rights commissions and tribunals have developed an expertise that enables them to identify discrimination and find it.

Mr. Nick Whalen: Certainly, Mr. Yazbeck, with only seven cases under their belt, I'm not sure if our own tribunal has developed any material expertise.

Mr. David Yazbeck: Yes.

Mr. Nick Whalen: It sounds like the Court of Appeal has seen just as much.

The Chair: Colleagues, I want to do a quick consult with you. We've finished our first round of seven-minute interventions. Are there further questions? We can certainly continue.

Mr. Kelly McCauley: I have a couple of quick ones.

The Chair: All right. We'll go to Mr. McCauley and then to Mr. Ayoub.

Mr. McCauley, you have five minutes.

Mr. Kelly McCauley: Just to follow up, where did they transfer you to?

Ms. Sylvie Therrien: To another office in Burnaby. I was in Vancouver. They transferred me to Burnaby.

Mr. Kelly McCauley: Where were you living at the time? That's a bit of a hike.

Ms. Sylvie Therrien: I was living in Vancouver. It's not that far.

Mr. Kelly McCauley: Did they offer that? We've talked about protecting whistle-blowers by moving them to other positions. Did they offer that to you or did they just say, "here, go"? Or was that part of a resolution that they offered you?

• (1835)

Ms. Sylvie Therrien: It was part of a solution, but it was not really a solution because the reprisals continued and were even worse.

Mr. Kelly McCauley: Was that brokered with the help of your union? Or was this offered to you just when you started going up the levels?

Ms. Sylvie Therrien: It was not with the union.

Mr. Kelly McCauley: It was just part of the process.

When you came on board at any point in your career, did anyone ever inform you of any of your rights under the whistle-blower act? Did it ever get mentioned? I know that no one is going to mention the exact name of the act, but did it ever get mentioned anywhere along the line by any of the bosses or any of the people you spoke to as you went up the levels, or by anyone in HR?

Ms. Sylvie Therrien: Not at all.

Mr. Kelly McCauley: Was there anyone else involved? You mentioned a few people elsewhere noticing that what they were

doing was wrong. Did anyone else stick their neck out or speak out about it? Had you heard through the grapevine of anyone else who went through experiences similar to those you had?

Ms. Sylvie Therrien: It was not talked about openly, because of course they didn't want to be put through the same grinder that I was in. As I said, it was mentioned by that guy and another person as well. They—

Mr. Kelly McCauley: Did they mention it to you, or to the supervisors?

Ms. Sylvie Therrien: No, to me.

Mr. Kelly McCauley: You're not aware of anyone else mentioning it to the supervisors.

Ms. Sylvie Therrien: No.

The Chair: Mr. Ayoub.

[*Translation*]

Mr. Ramez Ayoub: Thank you, Mr. Chair.

Ms. Therrien, how long had you been in that position when you blew the whistle?

Ms. Sylvie Therrien: It was a new job. I started working there in October, and I made the disclosure in January.

Mr. Ramez Ayoub: So it was a new job.

Ms. Sylvie Therrien: Yes.

Mr. Ramez Ayoub: Had anyone else in your organization made such disclosures?

Ms. Sylvie Therrien: No, but I remember meeting people at Service Canada during a fundraising activity for me in Quebec. For a few minutes, we were in the Service Canada offices in the Lower St. Lawrence and...

Mr. Ramez Ayoub: I would like to move quickly, as we have only five minutes.

So no one else had....

Ms. Sylvie Therrien: Yes, a person who worked at Service Canada in the Lower St. Lawrence told me that it was true and that I did well to disclose what was happening.

Mr. Ramez Ayoub: However, they did not suffer any consequences.

Ms. Sylvie Therrien: They said that to me alone. They did not....

Mr. Ramez Ayoub: No one heard about it. There were no other consequences.

Ms. Sylvie Therrien: No.

Mr. Ramez Ayoub: Were you told that this had to do with internal management, with the administration, and that it was not a wrongdoing? Were you told that it really had to do with the administration, that the department was managed in that way and that no wrongdoing was being committed?

Ms. Sylvie Therrien: Yes.

Mr. Ramez Ayoub: Were you given that explanation?

Ms. Sylvie Therrien: Yes, I was.

Mr. Ramez Ayoub: You were not referred to your employer, your supervisor or their supervisor, so that they would explain the dynamics, the procedure, the reasoning behind it?

Ms. Sylvie Therrien: No.

Mr. Ramez Ayoub: Was there a probation period for your job?

Ms. Sylvie Therrien: The probation period was over.

Mr. Ramez Ayoub: That happened when you had been on the job for only a few months?

Ms. Sylvie Therrien: Are you talking about the new job? I was actually a permanent employee of the government, but I was in a new position.

Mr. Ramez Ayoub: So you had permanent employee status.

We are currently looking into the feasibility of a mechanism to protect not only whistleblowers, but everyone—employees, employers and Canadians. That way, we would ensure that whistleblowers could really do their job without fear.

I am not a judge and I do not have in-depth knowledge of your case, but you appear to be completely isolated. You are in no-man's land. No party is protecting you.

What kind of help did you get from the union?

● (1840)

Ms. Sylvie Therrien: Mr. Yazbeck actually helped me.

Mr. Ramez Ayoub: Very well, that answers my question. Thank you.

[*English*]

The Chair: Thank you very much.

Madam Therrien, Mr. Yazbeck, thank you very much. Your testimonies have been extremely helpful and illuminating.

We've had some difficulties, frankly, as a committee, getting in touch, or at least getting confirmation from whistle-blowers to come and testify before a committee. We've heard from many bureaucrats. We've heard from many officials who are in charge of whistleblower protection in other jurisdictions, but very few whistleblowers. There's a reason for that. In many cases, they're quite frankly fearful of reprisal, even by coming to our committee and testifying in camera.

I applaud your courage for appearing. I thank you for your testimony, your candour, and all of the suggestions both of you have made. It's going to be extremely helpful for our committee as we move forward.

We are adjourned.

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