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—
Chair

Mr. Leon Benoit

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• (1535)

[English]

The Vice-Chair (Mr. Paul Szabo (Mississauga South, Lib.)): This meeting is pursuant to the order of reference of Monday, October 18, 2004, Bill C-11, an act to establish a procedure for the disclosure of wrongdoings in the public sector, including the protection of persons who disclose the wrongdoings.

This afternoon we are pleased to have two panels. In the first witness group we are going to hear from, I believe, a very important witness, the Canadian Broadcasting Corporation. As you know, colleagues, this came up the last time this bill was with us, and again now. It's an important question, and we certainly look forward to hearing the representations of the witnesses from the CBC.

We have with us Mr. Pierre Nollet, vice president, general counsel, and corporate secretary; and Mr. Steven Guiton, executive director, strategy and government relations.

Gentlemen, welcome. We look forward to your comments, and I'm sure the members will have questions for you.

Please proceed.

[Translation]

Mr. Pierre Nollet (Vice President, General Council and Corporate Secretary, Canadian Broadcasting Corporation): Mr. Chairman, thank you for inviting us to appear before this committee on the subject of disclosure of wrongdoing, and particularly the protection of persons who disclose wrongdoing. Certainly, much has transpired since we were last before this committee in May to impart CBC/Radio-Canada's position on what was then Bill C-25.

We are, therefore, grateful for the opportunity to contribute our views to your consideration of Bill C-11.

As was the case with the former Bill C-25, CBC/Radio-Canada fully supports the principles of this legislation.

[English]

CBC Radio-Canada embraces the need to both protect any person who would disclose wrongdoing and to establish suitable mechanisms to ensure transparency, accountability, financial responsibility, and ethical conduct.

As drafted, Bill C-11 recognizes the essential value of public institutions, including CBC Radio-Canada, to Canada's parliamentary democracy and the importance of ensuring public confidence in the integrity of those who serve the public.

CBC Radio-Canada both recognizes and appreciates that its views and concerns with respect to the former Bill C-25 were taken into account in planning, developing, and drafting this new bill, which has now come to committee for review.

[Translation]

Today, we would like to provide the committee with an update on CBC/Radio-Canada's activities since our May appearance, and share the corporation's perspective on some of the language of proposed Bill C-11.

At our last appearance, CBC/Radio-Canada pledged to this committee that it would proceed with the development of a whistleblowing policy that would meet the government's objectives.

The corporation has since made good on this promise. Prior to the tabling of this bill, the board of directors adopted a corporate policy on internal disclosure of information concerning wrongdoing in the workplace. We have met with the unions twice—before and after the policy was adopted by the board. Employees were informed of the new policy this past November. Implementation is now underway, and employees have been advised that the corporation's policy and guidelines might need to be adjusted, as required, to ensure alignment with the government's legislation.

CBC/Radio-Canada's policy provides for a process whereby disclosure can be made to the employee's immediate supervisor, to the executive of the corporation who is responsible for this policy—myself, in this case—or to an independent officer appointed by the board of directors. The process is confidential. The Shared Services Organization, a group created to improve the efficiency of CBC/Radio-Canada's IT, human resources and finance operations, was given the mandate to support the disclosure process, to implement measures to protect confidentiality, and also to provide relevant authorities with progress reports.

The process is supervised by the board of directors' audit committee, whose members are independent of management and government. Where necessary, investigations will be conducted either by the corporation's law department or by the independent officer, who may be assisted by the internal auditor from a reputable accounting firm.

The policy guarantees that employees will not face reprisals for disclosing wrongdoing. It does not create new disciplinary measures for employees who make disclosures in bad faith.

[English]

CBC Radio-Canada, since the outset, sought to maintain a balance between its steadfast support of the principles of this legislation and the need to ensure the corporation's journalistic, creative, and programming independence as set out in the Broadcasting Act.

CBC Radio-Canada does not want the whistle-blowing legislation to prevent its journalists from freely investigating acts of wrongdoing. This paramount concern was taken into consideration in the amendments made to the bill. Clause 18 of the bill attempts to reflect this principle.

Greater legislative clarity would be achieved if the bill made reference to the principles of freedom of expression and journalistic independence as outlined in the Broadcasting Act. We suggest wording to this effect in exhibit 1, which I have provided to the clerk.

Similarly, clause 32, with respect to requests by the president of the Public Service Commission, attempts to protect freedom of the press. However, the concept of undue disruption of the gathering or dissemination of news does not exist in law. Consequently, we suggest that you may want to replace it with a concept taken from the Broadcasting Act. In effect, it would be preferable, in our view, to use the concept outlined in subsection 46(5) of the Broadcasting Act, which emphasizes the freedom of expression and journalistic independence. In exhibit 1, you have the actual wording we're proposing to that effect.

• (1540)

[Translation]

Section 5 requires Treasury Board to establish a code of conduct for the federal public sector. Section 6 indicates that chief executives of federal departments and organizations may also establish their own codes—tailored to meet the needs of their organizations—provided that they are consistent with the Treasury Board's code of conduct.

Given that CBC/Radio Canada already has in place a code of conduct that governs the daily performance of its employees, and that takes into account the corporation's distinctive characteristics, we would value greater legislative clarity as to which code would apply in what context or circumstance.

Finally, clarification as to the legislator's intended meaning of “bargaining organizations” in section 5(3) would also be welcome with respect to the development of the Treasury Board's broader code. Certainly, CBC/Radio Canada would want to be consulted if another code of conduct is to apply to the corporation. The term “bargaining organization” generally refers to unions, not the employers and, in our view, would exclude us from negotiation and consultation.

My yearly meetings both with the Office of the Auditor General and my other colleagues from various crown corporations convince me that CBC/Radio Canada is well known among crown corporations for being at the leading edge of corporate governance standards. We continually stay abreast of developments in this area. It is important that Canadians be able to place their trust in us. I am hoping that we have provided a clear demonstration of this today.

Again, I am grateful for the committee's invitation to appear and for the consideration that has thus far been given to CBC/Radio Canada with respect to this legislation.

[English]

I'm certain that Bill C-11 can meet our shared objective of ensuring transparency, accountability, financial responsibility, and ethical conduct without constraining CBC Radio-Canada journalists from continuing to report publicly on acts of wrongdoing or unduly encumbering the creative, journalistic, and programming independence that is fundamental to CBC Radio-Canada's ability to fulfill its mandate as the national public broadcaster for the benefit of all Canadians.

Thank you, Mr. Chairman.

The Vice-Chair (Mr. Paul Szabo): That's the entire presentation.

Mr. Guiton, did you have anything to add, or shall we go straight to the questions?

Mr. Steven Guiton (Executive Director, Strategy and Government Relations, Canadian Broadcasting Corporation): Straight to the questions.

Thank you.

Mr. Paul Szabo: Fine.

Mr. Preston, please.

Mr. Joe Preston (Elgin—Middlesex—London, CPC): Thank you very much.

In your brief, are you asking to be excluded from Bill C-11 because of your own independent whistle-blowing protection that you've given your employees, or are you asking for Bill C-11 to be complementary to the program you have put in place?

Mr. Pierre Nollet: Actually, it's probably neither of those. We're not asking to be excluded, to be clear. We're not asking to have special treatment either.

What we have done is actually fulfill the promise we made to the committee. The bill is not in place yet. Still we wanted to demonstrate that we were true to our word in the sense that we want this to work. We want to have the ability to benefit from this process. We want the employees to be protected as well. Therefore, we are prepared to work with both situations. In the case where the bill is not immediately passed, our policy will be in place. When the bill is passed, we'll adapt our policy to whatever the bill ends up being.

We're not asking for any special treatment. The only thing we're suggesting in the amendments we're proposing here is clarity. It's nothing else. We believe we have the same objective. Amendments were brought to the former bill in this new one, which I believe achieved what we wanted to achieve at the outset. It's a matter of...
[Technical difficulty—Editor]

Mr. Joe Preston: So it's a matter of just cleaning up some of the wording on it. You liked the amendment that has been made that specifically applies to the Canadian Broadcasting Corporation and Radio-Canada.

Can I ask you some questions about your internal whistle-blowing product, if you will? You said that you spent some time, obviously, developing it. You discussed it with the bargaining units you deal with as to what they thought would work. Can I have some clarification? Is it an internal product or is it a bought-from-the-outside product? Is it totally internal?

• (1545)

Mr. Pierre Nollet: I would say probably 98% is internal. The only external part is the independent officer, which is the additional element we brought to the system in order to bring it both credibility and sufficient independence to ensure that there would be an oversight and possibility for transparency without intervention from internal management, if you wish.

Mr. Joe Preston: It needs to have that appearance. There needs to be an independent officer for your employees to be able to go to, someone who doesn't look like they will immediately go to the board of directors or to someone else with the person's problem. Great.

You said in developing this plan that you spoke with all your bargaining units, you talked to the employee groups, and you came up with a program you thought would work. I commend you on that. It appears as though it isn't the same situation given the department that drafted this bill. Talking to your bargaining units is a great place to find information about how you might design a program that will work.

You're asking for clarification on a couple of points there. You've included it in your brief. Can you explain in short terms, or very specifically, why adding the words you're talking about would make this more protective or more specific?

Mr. Pierre Nollet: What I'm basically trying to achieve is...I think the concept is that we want to base any kind of exception that is built in the bill on the fact that we are a journalistic entity or an entity that benefits from a certain independence because of its freedom of expression concept. Unfortunately, they haven't used the concept "freedom of expression" in the bill.

I'm saying that since it's a well-known concept, since it's been debated in courts all over the place, why not just use that concept as it relates to CBC? There is a specific provision in the Broadcasting Act that says "in the pursuit of its objects...and powers". So it's only in that relation obviously, and that's fine, and that's what the Broadcasting Act provides for already.

Mr. Steven Guiton: It's also so that we don't create duplicate language. The language already exists in the Broadcasting Act, so why not just transport it into it?

Mr. Joe Preston: You're not asking for a broad exclusion. It's very specific under that one amendment, the one clause, 18, I think. So you're asking simply to clean the language up so that it covers common language used in your industry?

Mr. Pierre Nollet: What they've said in the bill is basically applying to the dissemination of news and information. We all understand the objective. That's what we do, the dissemination of news. But the concept in law is translated as freedom of expression or freedom of information. I'm only asking, why don't we refer to the concept in law? That's all; nothing else.

Mr. Joe Preston: All right. Excellent.

Your whistle-blowing plan in CBC is currently in place? It's up and running?

Mr. Pierre Nollet: It's being implemented. It's 7,000 employees. It's several hundred managers. The way the policy works is you actually have a various option type of disclosure. So you can go to your supervisor, you can come to the senior officer, and you can go to the independent officer. If you choose not to go to the supervisor, because it targets him for some reason, you can come to me or you can go to the independent officer. If it targets the president, you go to the independent officer.

But assume you're going to your supervisors. I have hundreds of managers to be trained, and that's what we're in the process of doing now. We have started to train the managers to inform them about what they have to do, what's their obligation, what are their duties, how should they handle it, because we want to maintain the confidentiality. It's a fairly cumbersome process. It's only starting where....

What we're missing really now is the independent officer. We are searching for one, and it's someone who needs to be appointed by the board. We have criteria for the selection of this person, including that they be a bilingual person, a person who has credibility in the community, who has experience with a similar function, like a forensic accountant or an experienced lawyer who is now retired, or some similar type of function. They would be someone who all the people in the system could basically trust, so they would have a bit of grey hair maybe.

• (1550)

Mr. Joe Preston: Your independent officer obviously is your investigator on this, so you're looking for someone with the ability to also do that. Will this same person be the one who—

The Vice-Chair (Mr. Paul Szabo): Hold that thought. [Translation]

Mr. Sauvageau, you have the floor.

Mr. Benoît Sauvageau (Repentigny, BQ): I think that Mr. Preston and I would like to apply for the position. That is what Mr. Preston wanted to say.

Good afternoon, and welcome. I would like to ask you a few questions. You were asked whether your code of conduct has yet been put to the test. At the moment, everything is at an embryonic stage, in other words, the independent officer has not yet been appointed. That is what you just said. Have any of your employees filed a complaint under the new code which you implemented in November? Are the 70,000 employees aware of the code? Have any of them filed a complaint?

Mr. Pierre Nollet: No. We have not had any complaints thus far.

There are 7,000 to 8,000 positions in our organization. We do not have 70,000 employees.

Mr. Benoît Sauvageau: There must have been a slip in the interpretation, or perhaps I misunderstood. My apologies, I must have misunderstood.

No complaints have been filed. We are faced with two possibilities: either you are perfect, or people are not aware of the new system.

What are the main differences between Bill C-11 and the policy which you have introduced?

Mr. Pierre Nollet: The main differences are primarily the process followed by, and the involvement of both our board of directors and our audit committee, which has a special role to play, as well as the introduction of the position of independent officer. These are probably the two main differences when compared to what is provided in Bill C-11. The definition of the expression “wrongdoing” is virtually identical: we speak of the misuse of public funds.

Mr. Benoît Sauvageau: Firstly, how do you guarantee confidentiality, and, secondly, how do you protect people from possible reprisals? Did you use actual sections from Bills C-11 and C-25 as a basis for your policy? People who have appeared before the committee, for example, people who have disclosed acts of wrongdoing, such as Mr. Cutler who worked in Hong Kong, told us that even if Bill C-11 had been adopted, they would not have been better protected. The same thing would have happened to them; they would still have lost their jobs. What aspect of the wording of the sections affords protection from reprisals?

Mr. Pierre Nollet: I do not have the exact wording in front of me. Basically, we tried to mirror as closely as possible what the bill intended to do. Allow me to consult my notes so that I can give you as precise an answer as is possible. The protection that we offer provides people with the possibility of requesting that they be allowed to resume their position and that they be compensated. In fact, they can ask the independent officer to determine whether they have been victim of reprisals, the term “reprisals” being defined as “wrongdoing”. The independent officer has the power to determine whether the measures taken against the employee did indeed constitute wrongdoing.

Mr. Benoît Sauvageau: I would like to begin by congratulating you on the inclusion of exhibit 1, a copy of which we all received. I have a message for all witnesses, those who have already appeared before the committee and those who may well do so: we like to receive concrete proposals. I say that both in my name and on behalf of the committee. That is something that I like.

Could you please send us the sections concerning protection against reprisals, in order that we can use them as a basis for our own work? The most serious criticism that we heard expressed about Bill C-11 had to do with the independent officer. Thankfully, you too heard this criticism and, by appointing an independent officer, avoided making the same mistake.

Criticism has also been made regarding the lack of protection against reprisals. It is as a consequence of these two shortcomings that the members of the Public Service Alliance of Canada and those who have already disclosed wrongdoing are saying that the bill is unsatisfactory. I would like you to send us a copy of your sections. It is not that I do not believe you; quite the opposite, I do believe you. It would simply be helpful to have a copy of your sections when we are preparing amendments to Bill C-11.

•(1555)

Mr. Pierre Nollet: That will be no problem.

Mr. Benoît Sauvageau: You said that you have not yet received a complaint. That brings me to another point. With the chairman's permission, I would like to ask one last question. It is not directly

related to Bill C-11, so perhaps it will be deemed out of order. You should also feel free not to answer the question.

Today, the president of Treasury Board tabled a report on crown corporations. It said that, although no timeframe has been determined, Radio-Canada/CBC is open to the idea of eventually being subject to the Access to Information Act. Currently, you are not subject to the Access to Information Act. Is this going to change, as is mentioned in the report? Do you have a timeline in mind, even if it does not feature in the report?

Mr. Pierre Nollet: I would ask that you give me time to read the report. That is indeed what the media is reporting, and what the summary indicates, but I have no idea how they have approached the question nor by what means they intend to reach this end.

I understand that they wish to discuss with us how it could be achieved while providing us with certain protections, something which seems perfectly reasonable to me. We still have to discuss what protection they plan to offer us. It is their program rather than mine.

Mr. Benoît Sauvageau: We could say that, within certain parameters, you essentially have no objection to being subjected to the Access to Information Act. Is that correct?

Mr. Pierre Nollet: As you say, it depends on the parameters.

[English]

The Vice-Chair (Mr. Paul Szabo): Mr. Boshcoff, please.

Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.): Have you seen the recent report on the review of governance framework for Canada's crown corporations?

Mr. Pierre Nollet: Is that the Auditor General's or the one by Mr. Alcock?

Mr. Ken Boshcoff: This is from the Treasury Board Secretariat.

Mr. Pierre Nollet: No, I haven't read this report. It just came out today, I believe. I haven't read that yet.

Mr. Ken Boshcoff: It came out in the morning, though.

Mr. Pierre Nollet: I'm currently dealing with board appointments.

Mr. Ken Boshcoff: Let's talk about some philosophical things in general then. No matter what happens, the mandate is that crown corporations are still ultimately responsible to the minister. No matter what happens, the board is accountable, and finally when the buck stops, it's the minister who has to be responsible. Is that fair enough?

Mr. Pierre Nollet: That's hard for me. I don't know if the report actually says that. Is that what the report says?

Mr. Ken Boshcoff: Can I read it?

Mr. Pierre Nollet: It's a bit surprising if it says that, but yes, please do.

Mr. Ken Boshcoff: Boards are accountable to the responsible Minister for ensuring that the activities of Crown corporations are in line with their mandates.

Mr. Pierre Nollet: I don't know if there are specifics with respect to the Broadcasting Act. That's not what the Broadcasting Act says. The Broadcasting Act says we are accountable to Parliament through the minister, which is a very different situation.

Mr. Paul Szabo: Let's try a little bit harder to stay close to Bill C-11.

Mr. Ken Boshcoff: That's where I'm getting to, Mr. Chairman. Thank you, though.

When we talk about disclosure, the aspect of mandating directors to act honestly, in good faith, means that essentially there has to be some mechanism to do that, and of course this is where it comes in. Are the directors complying with the intent of whistle-blowing legislation? The material here isn't up-to-date in terms of what we're doing now. It's pretty general and leaves it at disclosure of wrongdoing. When we get to it, really it means understanding all of this with this amendment in mind. Does the CBC have a preference for being involved with the Public Service Alliance or being separate?

Mr. Pierre Nolle: It's hard to tell. As for the Public Service Commission—I'm assuming that's what you're referring to—we have absolutely no experience with these people. We don't know how they're dealing with matters. We have never faced them on anything. It's very hard to pronounce on this. We thought the concept of the independent officer was probably the best route for us at this time because there was nothing else available. I really don't know which one is best overall. It's hard to tell.

•(1600)

Mr. Ken Boshcoff: Let's discuss the corporation as it stands and the nature of the volume or extent of wrongdoing, or the number of complaints per minute, per day, per hour that are received, or the perception that there either is considerable or negligible wrongdoing within the CBC. What is your experience with the demand for some form of mechanism?

Mr. Pierre Nolle: So far in my experience, and I've been with the corporation for seven years, and even according to our previous policies, when some significant wrongdoing was found, I had to be notified. In seven years I've been notified three times, and we've dealt with the three issues in question. I'm not expecting a lot more. I don't think we have a population of employees or managers who are prone to this kind of business. There's just not very much room for that. They have many other things to do, so I'm not expecting a lot more than this.

Mr. Ken Boshcoff: This committee is now at a stage where it's trying to decide what is the appropriate mechanism for itself in terms of the size of the organization that will be mandated to take care of whistle-blowing in general.

What we're trying to also get is a pulse for the extent or nature of this. If you felt it was rampant throughout your organization so that you would have to hire fleets of people to account for a daily flood of whistle-blowing, or that there is to your knowledge some considerable latent backup or pent-up demand, I think that's also something I'd like to know about.

Mr. Pierre Nolle: I don't expect that at all. We're just not that type of organization. There are other organizations in the government business that make decisions about the future of Canadians. These may be areas where whistle-blowers may be more interested or have more to say.

Within CBC we have to say we put it on air, pretty much. It's hard to hold them back.

Mr. Ken Boshcoff: Thank you very much.

The Vice-Chair (Mr. Paul Szabo): If I may, this might help the members for the rest of the questioning.

Is your definition of wrongdoing the same or similar to what is in Bill C-11?

Mr. Pierre Nolle: It's very similar. It's almost word for word the same thing, even though it may disappoint Mr. Sauvageau. It's close to it. The only difference may be in the definition of policies. I'm not sure if Bill C-11 targets policies.

The Vice-Chair (Mr. Paul Szabo): The wrongdoings are ostensibly criminal activities or breaking other laws of Parliament or civil law. Carrying out reprisals as well is a wrongdoing. Some of the evidence we have had is that these kinds of acts are actually quite rare. I think we've talked about the Radwanski situation as an example, that this was a pretty serious matter.

If you have this mechanism set up, if it's not being used for these kinds of problems, are you falling into dealing with human resources grievances, or have you set up a filter that instructs employees to use the normal HR processes?

Mr. Pierre Nolle: Indeed. That's basically what happens. Our various policies are already in place to deal with, let's say, harassment. If you have those issues, there's already a process in place, and we continue to follow those processes.

The Vice-Chair (Mr. Paul Szabo): Excellent. Thank you.

Thank you, Mr. Boshcoff.

Mr. Lauzon.

Mr. Guy Lauzon (Stormont—Dundas—South Glengarry, CPC): Thank you very much.

[Translation]

Welcome, Mr. Nolle, welcome Mr. Guiton.

[English]

You mentioned that it doesn't matter to you whether the CBC is included under Bill C-11 or whether you have your own form of whistle-blowing....Then you mentioned that freedom of expression would be the caveat that wouldn't be.... Who would be involved in those kinds of positions? Would it be 1,000 of your 8,000 employees or 14?

•(1605)

Mr. Pierre Nolle: You could probably say all the journalists, pretty much. It's hard to say. Again, it really depends on the actual situation we're talking about and how it's carried out. It's not the individual it targets. It's really what is the disclosure about. It's not the individual per se. We don't put a label on people to say, hey, you have a special exemption. It's not that. It really refers to the actual disclosure—whether it falls within wrongdoing or not and whether it falls under freedom of expression or not.

Given how the bill is drafted now and provided it's improved with this wording, I think it allows exactly for that protection. Let people who would be journalists in that context—it's hard for me to tell you how many we have altogether—report on government activities.

Mr. Guy Lauzon: Would it be safe to say that by and large the majority of your employees would probably have access to this whistle-blowing legislation?

Mr. Pierre Nollet: All employees have access, including journalists. Nobody is excluded. Everyone is included.

Mr. Guy Lauzon: Maybe most cases would qualify. Is that a better way of saying it?

Mr. Pierre Nollet: I would say it's probably the opposite, in a way. I think we're mixing up two concepts here. I think the exception found in the bill is dealing with granting the ability to our employees to report on air about government wrongdoing if there is some. That was precluded by the previous bill.

It was probably ill conceived at the outset, but it has been corrected; it has been fixed. They've tried to say, wait a minute here, just because it's a government institution, journalists who belong to CBC should still be able to do their job. That's all they're fixing in the bill, and that's fine because that's what we wanted to fix. However, all of those employees are covered by our own policy, which means that if they want to disclose something about CBC, they'll be protected, all of them.

Mr. Guy Lauzon: Let's say a decision was made that you were covered under Bill C-11 directly, as are all other government employees.

Let me do it another way. Let's say an employee, a clerk in one of your offices, witnesses what he or she thinks is some wrongdoing. Can you walk me through the process of how they would go about seeking redress under your policy right now?

Mr. Pierre Nollet: Initially they have the choice of how they want to disclose and to whom. They can do it by fax or by e-mail. We have already set up a 1-800 number on which they can dial in, and there is also regular mail. All these processes are available. They can do this with their supervisor, with me, or with the independent officer.

As I said before, the SSO then creates a confidential file that is separate from the HR file of each of the disclosers and the subjects. It's not part of their HR file. They're creating a special, separate, confidential file that will then be managed. If it goes to the supervisor, the supervisor has various options. That's basically what we're going to start doing now: train them in those options, which include whether there is anything that can be mediated, what kind of issue this is, and if there is an issue to be investigated. If so, then it has to move up the line to the independent officer or to the senior officer in the corporation in order to determine the type of investigation needed.

At the end of the process—

Mr. Guy Lauzon: The employee reports it to a supervisor. Who decides whether an investigation is needed or not? The supervisor?

Mr. Pierre Nollet: No, it would be up the line. It would be either me or the independent officer. The supervisor is not in a position to make that decision. The policy doesn't grant him the power to make that decision.

Mr. Guy Lauzon: The employee reports to the supervisor, and the supervisor then takes that complaint and goes where with it? To you?

Mr. Pierre Nollet: Any supervisor has to report to me on any complaint they receive. They have to also decide on the complaint in some ways, like what they recommend, what they'd do, and what they've done with it.

I'm in charge of reporting to the independent officer on what happened, and the independent officer basically is there to play the *chien de garde*, to say that five complaints have been filed and that only one has been resolved, and to look at how it was resolved and what happened to the others. This independent officer then reports to the audit committee. We have an annual report, which will be published on the Internet in order to ensure transparency in the process about what is happening within CBC.

• (1610)

Mr. Guy Lauzon: The independent person hasn't been hired yet. Is that my understanding? Am I right?

Mr. Pierre Nollet: That's correct. Believe it or not, it's more difficult to convince people to take on this job than other things.

[Translation]

The Vice-Chair (Mr. Paul Szabo): Mr. Godbout, you have the floor.

Mr. Marc Godbout (Ottawa—Orléans, Lib.): Thank you, Mr. Chairman.

Thank you to the witnesses for having appeared before the committee. Essentially, you have your own whistleblower's legislation. You are perhaps not the best people to evaluate your policy, but do you feel that whistleblowers are afforded enough protection? You have surely had feedback on this point. I am not referring to the piece of legislation which we are studying at the moment, but, rather, to Radio-Canada's policy. Are your staff satisfied with the protection afforded to those disclosing wrongdoing? In your opinion, does your policy offer a cast iron guarantee?

I also have a question on our own bill which I will ask later.

Mr. Pierre Nollet: We have to be fair to our employees. As a matter of fact, our employees haven't really begun to use the process, so they aren't completely familiar with it. I don't have any reliable feedback. The people we did speak to seemed impressed with it, including the unions when I met with them to give them information on what the appropriate remedies might be. That was my understanding.

Up until now, I haven't received any negative comments, but it may be early days yet to judge that. When the employees have had the time to familiarize themselves with the process, understand it, assimilate it and implement it, we may have more appropriate comments.

By and large, the remedies provide for ordering the return of a person who is the victim of reprisals in the course of his or her duties, plus financial compensation that would cover lost wages, payment of legal fees if necessary, as well as damages for any harm the person may have suffered after the whistleblowing.

I believe that with this series of remedies, we are going as far as any legislation to compensate people who are victims of reprisals. I really don't know of any other mechanism that is more complete than this.

Mr. Marc Godbout: Would the same be true for the anonymity of the whistleblower? In your opinion, does the system afford this individual sufficient protection?

Mr. Pierre Nollet: That's what we're trying to put in place. We created a separate organization to receive and manage complaints. According to our policy, the name of the whistleblower must remain confidential. You must understand that there will probably be situations where the person who is the subject of the whistleblowing may want to know who blew the whistle, which is somewhat more delicate to manage. We have to be able to give people who are the subject of whistleblowing enough information to allow them to defend themselves appropriately while respecting the rules of natural justice without putting the whistleblower in an impossible situation.

The guideline is to maintain confidentiality except when it's absolutely necessary to do otherwise. That's what it translates into.

Mr. Marc Godbout: Getting back to our bill which is currently under consideration, do you think the protections it contains are sufficient? Are they similar to the ones you have in your process?

•(1615)

Mr. Pierre Nollet: I get the impression that your protections are equivalent to what we will have in our policy. Therefore I would say they are sufficient. At least I found them sufficient for our purposes. I think it's certainly a very good start even though it may not be the end of the process.

[English]

The Vice-Chair (Mr. Paul Szabo): Why don't we do a rapid round of one question all around? We'll see how we do, and then we'll have a wrap-up and we'll be able to be on time for our next panel.

I think Mr. Preston, Mr. Poilievre, and Mr. Sauvageau each had a question.

Mr. Scarpaleggia, do you have one?

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): No, I'm fine.

The Vice-Chair (Mr. Paul Szabo): Okay. Good.

So we have three more questioners here, and then we'll do a wrap-up.

Mr. Joe Preston: We recognize that there are two points to whistle-blowing. One is someone coming forward with a wrongdoing. The second part is the reprisal that might happen to that person after the fact.

In your policy, do you use just a protection of the whistle-blower as a remedy to that situation, or is there punishment of the person perpetrating the reprisal?

Mr. Pierre Nollet: In effect, both are there, because the independent officer has the power to investigate the reprisal and declare it wrongdoing, which leads, then, to disciplinary measures, because we in our policy have said that if you commit a wrongdoing, it is a misconduct. You can't leave a misconduct not punished somehow. You have to act on it.

Mr. Joe Preston: Thank you very much.

The Vice-Chair (Mr. Paul Szabo): Mr. Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): If Bill C-11 does apply to the CBC, how would the mechanisms created under Bill C-11 cross-pollinate with the existing disclosure mechanisms in your corporation?

Mr. Pierre Nollet: I would have to see the ultimate draft, but if it was in its current form, I would probably have to modify the current policy to abolish the independent officer concept, most likely, because it wouldn't be needed any more. It would then be governed by the president of the PSC. That's one possible option. I don't know if there are many more conflicts, but that's certainly one.

Mr. Pierre Poilievre: I didn't hear what you just said in that sentence.

Mr. Pierre Nollet: I don't know that there are many more conflicts between the policy—sorry, I meant differences. “Conflict” is a legal term.

The Vice-Chair (Mr. Paul Szabo): Mr. Sauvageau.

[Translation]

Mr. Benoît Sauvageau: I have two brief questions.

Your disclosure policy seems very interesting to me. Instead of sending us only your chapter on protection and reprisals, send us the complete text and we will do a comparative examination to see how your policy could apply.

Could you also send us the promotional tools that you've put in place? If this policy regarding the disclosure of reprehensible acts exists since November, you've undoubtedly conducted a promotional campaign so that your 7,000 employees can be aware of it and make use of it. Could you also send us the tools that you used for this awareness campaign? When Bill C-11 is finally delivered, after a very long gestation, we may get inspiration from your awareness campaign in order to conduct a similar one within the public service.

Mr. Pierre Nollet: Bear in mind what I said earlier. There was perhaps some misunderstanding. Since the independent officer has not yet been appointed, we still do not have all of the information. So, what you are asking for now is not readily available. We are at the start of our process. We are developing the communication tools. We have provided employees with basic information on the policy. But, there are directives that go along with the policy. All of those things were developed afterwards.

I will be in a position to provide you with all of those aspects later. But do not hold your breath, because our employees have not yet familiarized themselves with everything. I would like to do it after our employees have familiarized themselves with it.

Mr. Benoît Sauvageau: I misunderstood you. I thought that it had been in force since last November.

Mr. Pierre Nollet: The policy has been adopted, and we are currently implementing it. To date, we have provided basic information on what we adopted, what we have done, and what remains to be done.

As I said earlier, travelling across Canada to train hundreds of managers who may receive complaints is a long process. It would be perilous to have everything up and running before we have our independent officer and before we have completed training our managers. It would probably create an undesirable situation. I think that we need to be careful and train our people properly for it to be effective.

• (1620)

Mr. Benoît Sauvageau: When do you plan to do that? When do you think the system will be operational? When will people be able to file complaints?

Mr. Pierre Nollet: They can file complaints now. It has always been possible. The mechanism will be fully implemented once our independent officer has been appointed by the board of directors. Once that has been done, we will be able to start.

[English]

The Vice-Chair (Mr. Paul Szabo): Mr. Guiton, I believe you had a comment.

[Translation]

Mr. Steven Guiton: We have a communication plan. It is not fully in place, but we have developed it. We can send it to you if you want.

[English]

The Vice-Chair (Mr. Paul Szabo): We have a final question, I believe.

Mr. Boshcoff.

Mr. Ken Boshcoff: If I'm to judge from your responses to these questions, there seems to be a rather productive culture in the CBC... responsible for culture. How will you account for the fact that you've been relatively "wrongdoing-free", if there is such a thing? Is it the nature of the organization? What have you been doing to eliminate problems before they arise? How do you account for the low number of complaints and concerns?

Mr. Pierre Nollet: I would say it's probably due to the nature of the organization and the quality of its people.

Mr. Ken Boshcoff: It doesn't have to be a long answer. Thank you.

The Vice-Chair (Mr. Paul Szabo): First of all, thank you kindly for your interventions and answers. I think the committee is quite delighted with the information we've been able to get.

I want to congratulate the CBC, your board and your management, for following through on a commitment you made in the last Parliament when we were going through the prior whistle-blowing bill. You understood the need to address this potential problem area and you've taken those steps to introduce it. I think as we move forward to hopefully adopting Bill C-11 in some form or other, it's pretty clear that the CBC in terms of the comfort level of its employees will have a running head start simply from the actions that have been taken, and I think that's helpful. So I want to publicly congratulate the CBC for taking a responsible initiative on behalf of your employees and Canadians.

I think the members understood the proposed amendments, and we want to assure you that they will be carefully looked at to ensure

the bill properly reflects section 2 of the charter. Paragraph 2(b) protects the rights and the basic freedoms, including freedom of the press. It's certainly very important.

There is one question that I'm not sure whether or not you have had an opportunity to put. Under the Criminal Code, should someone become aware of a criminal act, a violation of the Criminal Code, the person is obligated to report such a matter; otherwise he or she is subject to being held to be equally culpable or culpable to some extent. Does your bill in some way encourage people to acknowledge it is the responsible thing to do, that it is not only obviously a legal obligation to report criminal wrongdoing, but it's also a good corporate thing to do—to bring it to the attention of the system you've established in the best interests of the corporation? And are you in a position to protect the identity of those people, who, if not protected, may be exposed to reprisals that might otherwise not happen?

• (1625)

Mr. Pierre Nollet: I need more explanation of the second part of your question, but to the first part regarding the Criminal Code and the obligation and what we did in our policy in that respect, the answer is that we support in the policy the duty of loyalty to the corporation. What we haven't done and where we distinguish from the previous bill—I'm not too sure about Bill C-11—is we haven't created a specific misconduct or anything like that because you do not fulfill your duty of loyalty.

What we've decided to go with is the traditional definition found in law of the duty of an employee to be loyal to his or her employer, and we decided not to create yet another type of criminalization, if you wish. We opted to stick with what's known today and to deal with the current situation.

On the second point, I'm not too sure I understood correctly what you asked. I apologize.

The Vice-Chair (Mr. Paul Szabo): I probably did not express myself very well. It has to do with the issue that in the event an allegation is brought forward, under certain circumstances the person being accused has a right to know who the accuser is. In this regard, to the extent possible, it's obviously desirable, I've often thought, that when somebody makes an allegation, the allegation will then be assumed by the independent officer. In fact it will then be the officer in the conduct of the investigation who will take the responsibility of being the person making the allegation, in which case the identity of the originator could be held confidential.

Mr. Pierre Nollet: Yes, we've provided for that. That's what the process provides for, with the exception of the natural justice rule. If ultimately this is to lead to the dismissal of an employee, the subject of the disclosure, obviously we'll need witnesses, and we can't really hang our hat on the investigator. We'd probably have to bring in the actual employee who has the evidence, if it's necessary. There are limitations to what you can achieve with confidentiality. What I think is important is 98% of those cases will be settled, dealt with, without any trial. Without anything in that context, confidentiality would be protected.

The Vice-Chair (Mr. Paul Szabo): Excellent. Gentlemen, thank you both on behalf of the committee.

We're going to suspend until we get our next panel of witnesses.

•(1628) _____ (Pause) _____

•(1632)

The Vice-Chair (Mr. Paul Szabo): We will resume our meeting, meeting number 21.

Our second panel is from the Association of Professional Executives of the Public Service of Canada. We're pleased to welcome Mr. Robert Emond, president, Wendy Parlow, visiting executive, and Colette Nault, special adviser to executives. Welcome to you all.

Mr. Emond, I understand you have a statement to make to the committee, and I'm sure the committee will have questions for you. So please proceed.

Mr. Robert Emond (President, Association of Professional Executives of the Public Service of Canada): Thank you Mr. Chair.

Mr. Chair, members of the committee,

[*Translation*]

Thank you for this opportunity to speak to you about disclosure on behalf of the Association of Professional Executives of the Public Service of Canada.

As you may know, APEX is a voluntary, non-profit organization which fosters excellence in leadership, and promotes learning and networking. It is a strong advocate on behalf of the approximately 4,000 executives in the federal public service.

This legislation is very important to the executive community; executives wear three hats with respect to the disclosure of wrongdoing. They are employees with expectations about the level of protection and support that will be afforded to them should they disclose wrongdoing. They may also, as a result of their management role, be the subject of disclosures of wrongdoing. As leaders and managers, they are also responsible for the resolution of instances of wrongdoing as they are identified.

[*English*]

Our association and its members support the spirit of the proposed legislation. We are committed to maintaining the highest standards of integrity in the federal public service. We believe that no one should be exempt from being cited through the disclosure process, that wrongdoing must be addressed swiftly, and that the process by which it is addressed must be open and transparent. At the same time, it should offer all parties the protection of the rules of natural justice.

We are pleased to note that the proposed legislation is in accord with the position that the officer responsible should report directly to Parliament. The association does not support the creation of an entirely new body. We believe either the Auditor General or the president of the Public Service Commission would be an appropriate choice for this function, provided that the services provided by the Public Service Commission that are operational in nature be moved elsewhere. In fact, when we appeared before the committee on a predecessor bill last fall, we advocated that the Public Service Commission be the body responsible, and we really hold that position today.

We believe the disclosure process must be based on values. Therefore, we were pleased to see in the preamble a commitment to the establishment of a charter of values of public service, as well as the importance given to the promotion of ethical practices in the public sector. We support the provision that anyone responding to an allegation can be assisted or represented either by counsel or someone else. This is an important issue for executives, who do not have a union to represent them.

It should be noted that currently executives who do obtain legal advice do so at their own expense—an issue that we continue to discuss with the central agencies in respect of the indemnification policy currently in place. This situation should not be replicated in the context of this legislation. This is why we ask that it be modified to clarify that legal expenses will be covered by the employer so long as the respondent has not been found guilty of any wrongdoing.

•(1635)

[*Translation*]

Since APEX members will be affected by the legislation, both as potential complainants and as potential respondents, we seek to ensure that the legislation is balanced, effective and provides for the timely resolution of disclosures.

While the current version of the bill is, in our view, a great improvement over the previous proposal, APEX still has four key areas of concern. Let me touch on each of these.

Let us start with the scope of protection. Senior executives may be in a position to observe wrongdoing at the political level. APEX believes that it should be clear in the legislation that this legislation also applies in the case of wrongdoing committed by ministers or their staff, and that there would be protection for an executive making a disclosure.

[*English*]

Secondly, we believe the definition of wrongdoing must be limited to issues of significant public interest. The proposed legislation provides parameters for some of the wrongdoings identified. For example, allegations of mismanagement are limited to a gross mismanagement in the public sector. However, no such limitations are established for misuse of public funds or a public asset, and that could increase the possibility of frivolous complaints.

Furthermore, codes of conduct have not yet been developed. From the perspective of clarity and certainty in the law, APEX is concerned that the legislation might come into effect before such codes are in place. We would like to see the mention of codes of conduct removed from the definition of wrongdoing, where it currently stands, or be assured that the legislation would not be implemented in this regard before such codes are in place.

We strongly support the creation of codes of conduct both for the government as a whole and for individual departments and agencies. This exercise would be an important step in building the culture change required within the public service. This change in culture should, for example, make it possible to have frank and open discussions on sensitive issues, without fear of reprisal or censure. Once detailed codes are in place, they would also be useful as evidence before the courts in the future interpretation of the law.

In the proposed legislation, in subclause 5(3), there is provision for consultations with certified bargaining agents before the Treasury Board can establish a code of conduct for the federal public service. We would like to emphasize the importance of consultations throughout the implementation of the new legislation. Consultations should not be limited to our unions in the public service. Rather, I believe professional organizations that represent the interests of excluded employees, such as the executives and the Association of Justice Counsel should be recognized.

[Translation]

This is an area of particular concern to executives in light of experience with the internal harassment policy. There must be protection for those who bring sincere and significant complaints. This must also, however, be a means of dealing with frivolous and vexatious complaints which may be brought strategically by disaffected staff in response to management interventions.

APEX believes that there should be time limits established for the making of a complaint and the duration of an investigation. The longer an investigation takes, the greater the potential impact on the person who has disclosed the wrongdoing, the alleged wrongdoer and the workplace. Someone who has disclosed wrongdoing is always vulnerable. On the other side of the equation, an alleged wrongdoer always suffers a stain on his or her reputation, whether or not he or she is ultimately cleared of doing wrong. Time limits, in our view, would be consistent with a fair and efficient process.

APEX also would like to see in legislation the standards of information required to accept a complaint for investigation as well as standards for action when a complaint is deemed to be frivolous or vexatious. There should be a clear definition of what constitutes vexatious or frivolous complaints and some guidance on what might constitute bad faith in bringing a complaint.

APEX also feels that there should be consequences for those who abuse the process. The previous version of the proposed legislation included the potential for disciplinary action in cases where a public servant "makes a disclosure that is frivolous, vexatious or in bad faith..." APEX would like to see this provision reintroduced in the proposed legislation. A clear statement of this nature is more likely to discourage frivolous or vexatious complaints.

Where individuals are alleged to have committed a wrongdoing, we ask that the law stipulate that they be provided with enough information to know the case against them and that they have an opportunity to respond to these allegations. Under the proposed legislation, the President of the Public Service Commission must "ensure that the right to procedural fairness and natural justice of all persons involved in investigations is respected, including persons making disclosures, witnesses and persons alleged to be responsible for wrongdoings".

However, subsequent provisions in section 28 leave it to the president's discretion whether a person whose acts or conduct have been called into question is notified of the investigation and whether they have the opportunity to answer the allegation. The latter point, which we disagree with, is inconsistent with the former, which we support.

•(1640)

[English]

Particular impact on executives when disclosing wrongdoing: executives will face particular personal and financial challenges when disclosing wrongdoing. As I mentioned previously, they will not necessarily have the moral or financial support of a union representative to advise and assist them, and furthermore, under the current policy they will have to obtain legal advice at their own expense.

When accused of wrongdoing, executives are vulnerable to censure if there is an allegation of wrongdoing within their area of responsibility. We believe that the law should ensure that no informal or formal disciplinary action, such as a negative performance review or a reassignment to a less responsible position, be taken against a respondent unless the investigation is concluded and wrongdoing has been confirmed.

Given our experience with the current harassment policy, we believe this is an important consideration. We have great respect for the integrity and the ability of the vast majority of public service executives. We are confident that in most cases it will be established that wrongdoing, if alleged, did not occur, and with this in mind we would like to propose that some provision be made for the rehabilitation of an executive's reputation when an allegation is found to be unsubstantiated. This could take the form of a letter from the chief executive or deputy head to all staff if requested by the individual.

Furthermore, should the executive decide not to remain in the public service, APEX suggests that the executive's career transition be facilitated by financial and non-financial measures such as those found in the executive employment transition program. Again our concern here relates to some of our experience with the current harassment policy.

Finally, I would like to close by saying that we strongly support the spirit of this initiative. We recognize the challenges inherent in creating an environment that will encourage disclosure of wrongdoing. We are as committed to protecting the career potential of someone who has made a disclosure in good faith as we are to protecting those who might suffer because of a disclosure made in bad faith. A delicate legislative balancing act is required.

•(1645)

[Translation]

I would like to thank you for your attention. We would be pleased to answer any of your questions.

[English]

Thank you.

The Vice-Chair (Mr. Paul Szabo): Thank you very much, Mr. Emond.

We'll start the questioning.

Mr. Preston, please.

Mr. Joe Preston: Thank you, and thank you for coming before us today and helping us look at Bill C-11.

You did make some recommendations on Bill C-25 while it was before committee. Between the two, were you asked in any way to help supply information to build Bill C-11?

Mr. Robert Emond: No, we were not, Mr. Chairman.

Mr. Joe Preston: You represent 4,000 executives in the federal public service. Are any of these 4,000 represented by other bargaining units too?

Mr. Robert Emond: No, they would not be.

Mr. Joe Preston: They would not. Thank you.

You stated in your brief that you would be satisfied with the president of the Public Service Commission as, if you will, the landing spot for whistle-blowers, but you also stated you wanted someone who was independent of Parliament. My understanding is that the president of the Public Service Commission reports through a minister to Parliament. Do you not have a concern there?

Mr. Robert Emond: Mr. Chairman, we did nuance our recommendation, as we did when we last appeared in September. We said the Public Service Commission, with its current operational responsibilities that it is still exercising given the evolution of the Public Service Modernization Act and the mandate of the commission, be removed because that would create a problem.

I spent eight and a half years at the Public Service Commission and my recollection is that the Public Service Commission, while reporting through a minister, does so only for the purposes of tabling its annual report in April. I believe the president of the Public Service Commission is at arm's-length from the government.

Mr. Joe Preston: It is independent enough.

Mr. Robert Emond: Yes.

Mr. Joe Preston: You also mentioned the Auditor General as being one of your choices, but not the creation of a new—

Mr. Robert Emond: The creation of a new entity, Mr. Chairman, we think will create a problem. First, it will be more expensive. Second, it will add yet another recipient of complaints. There are already a number of entities within the federal sphere that do receive complaints from employees, be it in respect of staffing or issues of interpretation of the collective agreement, human rights. Quite frankly, we do believe that the Public Service Commission could play a very effective role. We acknowledge that the commission is perceived at this time, in part because of its operational responsibilities, as potentially being a little bit too close to what we would refer to as the employer, but we think that will be resolved as the modernization act gets implemented.

Mr. Joe Preston: You also mentioned in your brief that senior executives may be in a position to observe wrongdoing even at the ministerial level and that you're not certain the protection for those senior executives is written into Bill C-11.

Mr. Robert Emond: I will ask my colleague, Wendy, to comment. I'm not a lawyer. I didn't read that into the proposed legislation.

Ms. Wendy Parlow (Visiting Executive, Association of Professional Executives of the Public Service of Canada): From our perspective it's a point of clarification. We didn't find something that said it would not apply, but by the same token, we didn't find

something that said clearly, yes, it also applies in these circumstances.

Mr. Joe Preston: Then you want to see us put an amendment in that states that as a fairly clear piece, so there is no exception to this rule that the political level is not excluded from wrongdoing.

I have a similar worry to your own on the code of conduct. I guess that's what we're calling it. The legislation calls for this code of conduct to be in place and then later on says that a violation of that code of conduct is counted as a wrongdoing. I have some concern about having that in there when we have yet to describe what the wrongdoing could be. We haven't written the code of conduct, and then we're calling it a wrongdoing later on in the act.

So you're asking that the code of conduct should be written first, or that clause should be removed from the list of possible wrongdoings.

• (1650)

Mr. Robert Emond: Yes, Mr. Chairman, there may be a way to deal with this concern by having something that brings this particular part of the statute into effect once the code of conduct is tabled by the President of Treasury Board and the time has passed, etc., but it struck us as a little bit odd that one would have this reference to a code of conduct that doesn't exist.

Mr. Joe Preston: It strikes me as odd or wrong that we're going to apply another list of things counted as wrongdoings when that list hasn't been written yet. I think it allows us maybe a flexibility that shouldn't be allowed.

You also stated, though, that there are some other limitations in some of the other things that we count as wrongdoing, be they a misuse of public funds or public assets or whatever. You're not asking for us to remove those as elements of wrongdoing, are you?

Mr. Robert Emond: No, we're simply pointing out that perhaps there is a way to amplify in order to make sure we're talking about significant problems.

Mr. Joe Preston: So you'd like the legislation to somehow talk about degrees of wrongdoing.

Mr. Robert Emond: If I might be permitted an example, Mr. Chairman, I spent 32 years in the federal public service, so this may seem a little trivial, but it has gone on. An individual asks to borrow a computer for doing work at home and approval is given by the manager. An employee observes such an individual walking out with the computer at 5:30 and says this person is stealing a computer, and therefore that employee triggers the system. It's that kind of thing that we're getting at.

The bill proposes to deal with mismanagement in terms of gross mismanagement, so there's a bit of a quantifier. We're not saying one shouldn't deal with public funds, public assets, but I think there's a degree—

The Vice-Chair (Mr. Paul Szabo): Just for our edification, somebody's walking out the door with a \$10,000 computer, but what you're suggesting is that this really isn't what we're looking for.

Mr. Robert Emond: Mr. Chairman, most of the computers one would walk out the door with have a value, in my experience—and that was a lot of experience in National Defence in particular—of about \$800 today, and there is a loaner program. And by the way, there are security protocols. When you take the computer out, you're supposed to have a sheet. But the employee who observes this may draw the conclusion that, oops, I have to trigger the system. That might be dealt with by putting a lot of emphasis on ensuring that the first step in this respect is that—and this is a very tough area—small issues are raised with the supervisor, the manager, etc., who probably could answer the question in a flash.

The Vice-Chair (Mr. Paul Szabo): All right. I think we take your point. You're really referring to materiality and the idea that there should be some reasonableness. I don't think employees are going to have to figure out whether that computer is an \$800 Dell that's a desktop model that would be pretty obvious if someone is carrying it out. But I can tell you that if they're carrying out an IBM ThinkPad with wireless capability, with 5-gigabytes-plus memory coming out the sides, recordable DVD, and all that other stuff, it's \$7,000 plus tax, plus peripherals, plus the other....

As a matter of fact, I have seen some of the reports on the large numbers of computers that have disappeared from government offices right across the system. This is rampant, quite frankly. I'm not sure how you feel about it, but I would say that it seems to be so frequent that this is precisely the kind of thing that should come out, because if you steal my penny, you will steal my dollar.

Mr. Robert Emond: Mr. Chairman, I would not quarrel at all with what you say. I would simply suggest that I would have people deal with the problem by improving the control on the materiel from a management point of view.

• (1655)

The Vice-Chair (Mr. Paul Szabo): I hope they always do.

I think we have to move on to Mr. Sauvageau, but we're going to have a rapid round afterwards as well.

[Translation]

Mr. Benoît Sauvageau: Ladies and gentlemen, good afternoon. I would like to ask you a number of questions about paragraphs 5, 10 and 14 of your presentation.

In paragraph 5—and Mr. Preston spoke about this—you state that you do not endorse the establishment of a new body, and that this duty could be taken up by the Auditor General or by the president of the Public Service Commission.

Every witness that we have met, except for the president of the Public Service Commission, has told us that this duty should not be performed by the president of the Public Service Commission. Whistleblowers who have disclosed wrongful acts have told us that the Public Service Commission should not carry out this role.

I agree with you on one matter. Only a couple of people agree with us on this issue, and I am pleased to meet one of them. This duty should preferably be the responsibility of the Office of the Auditor General, in the same way that it is for the Environment and Sustainable Development Commissioner. I don't feel much support on this issue, but then again I am used to that.

In paragraph 5, you state that the establishment of a position similar to that of the Commissioner on the Environment and Sustainable Development would be a positive step. I am referring to an independent officer of the House, who would not submit reports to Parliament through a minister, and in whom public servants would have a great deal of faith. Is this what you are saying?

Mr. Robert Emond: Yes.

Mr. Benoît Sauvageau: I am pleased to hear this. At least there is one other person who agrees with me on this matter. However, we do not agree on the role that the Public Service Commission should play. We can't agree on everything.

In paragraph 10, you state that Bill C-11 should also apply to ministers. Don't you think that this could lead to vexatious and futile complaints? I think that you are the first people to talk about including ministers in the legislation. The legislation was intended to apply to all public servants, so you surprise me when you say that. I will need to be convinced, but I remain open-minded. So, indeed, can you convince me on this matter?

Mr. Robert Emond: Mr. Chair, the bill is not clear. It is very possible that the legislation applies to both ministers and to exempt staff. We have simply said that further clarification was necessary. This idea comes from APEX, because we represent the federal public service's senior management. Also, we are perhaps more in tune with the reality of the situation than most.

Mr. Benoît Sauvageau: What you are saying is interesting. I had never considered the issue of ministers. You have just clarified my understanding of the scope of the bill. Indeed, it would seem that the bill only dealt specifically with public servants. It remains to be seen what the bill's scope would be if it also applied to ministers. Now, when I tell you that I am surprised, I don't mean that I am unpleasantly surprised. I am quite simply surprised.

In paragraph 14, you state that the bill should only apply when federal public service codes of conduct are implemented. In other words, you would not want to see the bill adopted if these negotiated codes of conduct are not also implemented. Now, that is a problem for me. We are young and in good health, but will we live to see the day that such a thing occurs? Should we wait for the bill to be passed, and for fresh negotiations on codes of conduct, that would need to be brought into line with the bill... At the normal rate... How long do you think all that would take?

Mr. Robert Emond: We indicated that one way of allaying our fears would be to remove the reference to codes of conduct in the definition of "acts of wrongdoing". I would hazard to say that a lot of work has already been done in preparing the codes. However, the problem is that it is hard to predict how a code that does not exist today will be applied.

• (1700)

Mr. Benoît Sauvageau: Basically, you are hoping that bargaining agents are already in the process of starting to draft these codes of conduct, at the same time that the committee is considering Bill C-11 and any possible amendments. Is that what you are saying? Am I missing something obvious?

Mr. Robert Emond: You have a bill before you, but there was another previous bill, and work has been done on these codes. Furthermore, a public service code does exist, but I can't remember its exact title.

Mrs. Colette Nault (Special Advisor to Executives, Association of Professional Executives of the Public Service of Canada): It is called the Values and Ethics Code for the Public Service. It was developed a few years ago. However, when we talked about it to those who worked on this bill, it did not seem to be the same code.

Mr. Benoît Sauvageau: We are going to reinvent the wheel. I would like to see the Values and Ethics Code for the Public Service. I would like to thank you very much. I have no further questions.

Mrs. Colette Nault: We will send you a copy of the code.

[English]

The Vice-Chair (Mr. Paul Szabo): Thank you very much, Mr. Sauvageau.

We'll go now to Mr. Scarpaleggia, please.

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

I'd be happy to share my time with my colleague, Mr. Boshcoff.

I thank you very much for being here today. You have an important point of view to share on this issue. It's the first time we've really had the opportunity to get the point of view of managers as to the impact of this legislation on their working environment.

Am I to understand correctly that you feel this bill would inevitably create a chill within the workplace? Over the years I've spoken off the record to many who work in the public service, and I must say, one gets a sense that morale is not that great in the public service these days. It's been in published reports. From the stories I hear, a lot of managers feel under siege. I don't know to what extent this is prevalent.

Would this bill, if it became law, create a chill to the extent that, instead of trying, for example to deal with difficult employees by calling the employees to order in some way, managers would just sweep the issue under the rug and let the employees more or less twiddle their thumbs in the corner so as not to upset the apple cart? Is there a possibility that without proper safeguards this bill will prevent managers from taking decisions?

Mr. Robert Emond: It is a concern, and that is why in our presentation we suggest some areas of change. In fact I referred to concerns that arise out of our current experience with the harassment policy. Maybe I could ask Madam Nault, who is involved in executive counselling for executives who find themselves in difficult situations, to speak to it.

Mr. Francis Scarpaleggia: Do you feel the safeguards you propose would eliminate the potential for that chill, or will it always be there now, a permanent culture shift?

Mr. Robert Emond: I think there has to be a permanent culture shift. I think the emphasis has to be on creating a sense that people can speak out in the workplace without individuals taking actions against them or ostracizing them or so forth.

We're in an area of significant transition and have been for several years now. I don't think with the changes we've proposed that the

situation would be made worse by putting such a piece of legislation in place.

Mr. Francis Scarpaleggia: If your safeguards were adopted, you feel that things would be set right again.

• (1705)

Mr. Robert Emond: Excuse me, Mr. Chairman, I'm not saying they'd be set right, but rather I don't think the situation would be exacerbated.

Mr. Francis Scarpaleggia: I'm interested in hearing Ms. Nault.

Mrs. Colette Nault: Maybe I could talk to you briefly about what I see. I must tell you that I quite often see senior executives who have been dealing with either a performance or a disciplinary issue with an employee who are then slapped with a number of grievances through the grievance process and harassment complaints, and if that doesn't work, then the employee will send a letter to the deputy minister accusing the executive of psychological harassment and abuse of authority. It is I think a major area of concern that this bill must not result in managers' hands being tied to the point where they cannot properly exercise their authority.

Mr. Francis Scarpaleggia: On the issue of the independent agency, I understand that one of the reasons the unions would not want to see this group within the Public Service Commission is they feel that everyone who worked for the Public Service Commission has already worked in a number of departments and everyone knows each other. If you actually walk along Sparks Street on a sunny May or June lunch hour, everyone knows everyone, and there's chatting and exchanging. They feel this would compromise their anonymity perhaps.

What do we do? How do you get around that? Whether you have a separate agency or not, do you not hire people who worked in the public service before? Do you not hire people who were with the public service unions, because then the agency would maybe play too much of an advocacy role, and so on? It's very complicated. It seems to me there's no perfectly objective system to deal with this.

Mr. Robert Emond: I don't think you can create a perfectly objective system, but again, part of the problem with the perception of the Public Service Commission has been its operational role. It was the staffer of the Public Service of Canada, and that really brought it in. It carried out a number of activities on behalf of what we call the employer, the Treasury Board.

But with its newly focused mandate, once that actually gels, and there is a clear understanding on the part of the individuals who are working in this area of endeavour about the importance of discretion, objectivity, etc., I think you can deal with the problem. If you created yet another agency, presumably individuals would either be hired from within the public service or from outside, and they'd be walking around Sparks Street meeting with their colleagues, and on and on.

We are just of the view that to create yet another entity is not cost-effective in the long term.

Mr. Ken Boshcoff: Thank you.

On the question of the extent of the problem from your perspective, nationwide, we know that in terms of issues similar to this, Mr. Keyserlingk's office gets maybe 90 a year, of which he might investigate 28 or 30. So what's your feeling on what might be a pent-up demand or a latent number of people waiting to come forward once this legislation is enacted? Would you say it's rampant, or do you have a feeling for what is really out there?

Mr. Robert Emond: I couldn't quantify it, but I think it's important to underline the fact that day in and day out, problems are brought to the attention of supervisors, managers, and executives, and the problems do get resolved. There are a number of mechanisms that are currently in place to deal with transgressions generally.

The difficulty is with those individuals who, quite frankly, don't have the honesty to protect the public interest in financial terms, in terms of behaviour, or whatever. You mentioned figures from Dr. Keyserlingk's report. It suggests to me that the demand out there would not be rampant, because as members of the committee are aware, each department is required to put in place a senior ethics officer. There has been a regime. There hasn't been the independence that is associated with the proposals, yet there hasn't been a flood. The Auditor General, from time to time, receives brown envelopes about these kinds of problems—not many, apparently. So it's very hard to quantify.

• (1710)

Mr. Ken Boshcoff: You asked why it wouldn't be so wise to create another agency, in terms of expense, and the nature of who would apply and probably receive these positions. Let's just deal quickly with the Public Service Commission. If it is perceived that they are not independent enough, couldn't the legislation be toughened and strengthened or adapted to make it more independent?

Mr. Robert Emond: When I worked at the Public Service Commission, and I left in 1985, the Public Service Commission was an agent of Parliament and reported, for the purposes of its annual report, through the minister for tabling—period, full stop—in a manner that is similar to other parliamentary agents. The difficulty with the Public Service Commission over the years has been that it has engaged in an awful lot of operational work, which are normal activities of the employer. With the Public Service Modernization Act, a refocused mandate, the emphasis on audit functions within the commission, I think the problem can be dealt with.

I don't know if the legislation governing the commission's status has been modified over the years. I don't think so.

Mr. Ken Boshcoff: Let's shift quickly to the Auditor General, whose office is geared, obviously, to do investigations. It is by its nature a very public office that deals with very public investigations. It reveals data and information on the shortcomings in governmental process and the nature of corrective measures, and it's all done pretty much in a “this is what we discovered, this is what you're doing wrong” way. At this stage it's my impression that it doesn't really have the capacity to do private, confidential, discretionary investigations of individual concerns.

Do you think the Auditor General's Office is capable of adding this capacity to that operation, or do you think the nature of what it does now would preclude it from an additional role?

Mr. Robert Emond: I think the nature of what it's doing currently would make it difficult. The focus of the Auditor General is audits, in some cases some specific investigations, but always with the intent of reporting—and reporting in a public way. I think the Auditor General could create the capacity. I think it would be difficult. I see a potential disconnect in terms of the work that's expected versus the kind of work the AG has done historically.

Mr. Ken Boshcoff: I want to ask one question. What is your relation to the Canadian Association of Professional Employees?

Mr. Robert Emond: There is no relationship with the association.

The Vice-Chair (Mr. Paul Szabo): Okay. We're going to move to Mr. Poilievre. I think we're at the point where we want members to make sure they get their significant questions out. Then we'll go to Mr. Godbout.

Mr. Sauvageau, did you have anything final that you wanted to raised?

Mr. Benoît Sauvageau: No, it's okay.

The Vice-Chair (Mr. Paul Szabo): You're fine.

Okay, we'll move on, and then we'll have a wrap-up.

Mr. Pierre Poilievre: Thank you for your testimony.

Is it not fair to observe that your organization disproportionately represents those who will be accused of wrongdoing under this act, as opposed to those who will be doing the accusing?

Mr. Robert Emond: I would certainly suggest that it will be those who are the recipients of the accusations.

Mr. Pierre Poilievre: How has that fact informed your observations today, the fact that your members are disproportionately likely to be the recipients of complaints? How has that prejudiced your presentation?

• (1715)

Mr. Robert Emond: I don't think it has prejudiced our presentation. I think it has resulted in us making the kinds of suggestions to ensure an appropriate and effective balance in whatever legislation emerges.

Mr. Pierre Poilievre: In your presentation you discussed the consequence that should exist for vexatious or frivolous complaints. I may have missed it, but I don't know that you made the same recommendation for consequences for reprisals against whistleblowers.

Do you make that recommendation, that there should be consequences for reprisal? And if so, what consequences should exist?

Ms. Wendy Parlow: We did not speak to the issue of reprisals. Certainly, we do not support reprisals. We would support the measures that are proposed to ensure that when reprisals take place there is corrective action; there is a reaction to that.

At the same time, we have some concerns that not all reprisals will be as obvious as the ones described in the draft legislation. They can be very subtle, and that's going to be a difficult issue.

Mr. Pierre Poilievre: One of the complaints we have heard from other organizations representing employees is that the legislation fails to specify consequences for those in the public service who exact reprisals against whistle-blowers. Do you agree that this is a blind spot in the bill?

Mr. Robert Emond: I don't see it in the legislation, you're right.

Mr. Pierre Poilievre: Do you believe that's a problem?

Mr. Robert Emond: Let me be very clear. If an individual manager, be it an executive or below or a deputy, takes reprisals against a whistle-blower, I think that's intolerable behaviour.

Mr. Pierre Poilievre: Should there then be consequences specified in the bill to punish that individual?

Mr. Robert Emond: Again, I don't know that you would want to go as far as specifying the punishment, but if there is a lack of clarity in terms of the fact that there should be consequences for that kind of behaviour, then I guess I've perhaps missed it. But let me again repeat that it is unacceptable behaviour.

Mr. Pierre Poilievre: All right. I still would have been interested in knowing if there should be specified consequences for those who carry out reprisals, but I'm just going to move on to my next question, which I'm told is my last.

You mention in point 15 that you want the bill to be mindful of "frivolous and vexatious complaints". As I read the bill, one of its strengths is that it lists very clearly what constitutes whistle-blowing, "This Act applies in respect of the following wrongdoings", and it lists (a), (b), (c), (d), (e), and (f). Under which of those points could you envision frivolous complaints being made? This is clause 8, on page 4 of the bill.

Mr. Robert Emond: I think the concern with frivolous and vexatious complaints has to do with an individual making allegations of wrongdoing that are not supported at all, or the same individual making fifteen complaints against the same manager, which goes back to a scenario described by my colleague Ms. Nault. That's what we have in mind.

Mr. Pierre Poilievre: You don't believe any of the specified areas to which this act applies—(a), (b), (c), (d), (e), or (f)—could give rise to frivolous complaints, do you?

Mr. Robert Emond: Any of these could give rise to a frivolous complaint, because a frivolous complaint is something that is made in bad faith but under the guise of one of these particular clauses.

The Vice-Chair (Mr. Paul Szabo): I think we have a pretty good idea that we have to consider this as part of the review of the bill.

Finally, Mr. Godbout, please.

• (1720)

Mr. Marc Godbout: Thank you, Mr. Chair.

First of all, I'd like to congratulate you on a very thorough presentation. Obviously you've put lots of thought into this, and it shows in your presentation.

[Translation]

In paragraph 10 of your brief, you state that there needs to be additional protection for senior managers subject to unfounded

complaints. Or, at the very least, that the degree of the protection to which they are entitled needs to be more specific.

Can you clarify what additional protection the legislation should provide them? I refer to paragraph 10 of your presentation.

Mr. Robert Emond: When referring to exempt staff, ministers, etc., additional protection is not an issue for us. We are simply stating that it is not clear whether the bill shall be applied in the context that we describe in paragraph 10.

Mr. Marc Godbout: Nothing more for senior executives.

One part of your presentation with which I do agree is that this is an example of exceptional legislation. I believe that we have a top quality public service, and this includes senior management. I wanted to say that for the record, especially since there are a lot of public servants in my riding.

I would like to make a final comment. I agree with what was said about frivolous acts that may be reported. I am concerned that the law should make the distinction between a wrongful act and any other act.

Don't you believe, if the process is adequate, that it should be up to the agency to judge whether or not a wrongful act has been committed? In fact, that is the initial step of the process.

Mr. Robert Emond: Mr. Chair, it is more a question of the impact on the individual. Should someone make a frivolous or vexatious allegation, it is the individual who has been targeted who will suffer. Even if the agency, or the president of the commission, were to decide to not carry out an investigation on what is determined to be a frivolous allegation, the fact remains that the individual's reputation has been attacked, whether it be a manager or another employee. This is what concerns us.

[English]

The Vice-Chair (Mr. Paul Szabo): Thank you, Mr. Godbout.

I want to thank you, Mr. Emond, Ms. Parlow, and Ms. Nault, for your testimony. Some issues have come up that I think have reminded us of some concerns that have been raised by others. Concerning frivolous matters, clearly, regardless of the system, there may be cases, and we will have to deal with them.

Mr. Emond, you also raised the aspect of cost. It's pretty hard to nail this down, but if you assume that wrongdoings, as defined, might be relatively rare occurrences, we would certainly want to know what the cost of Bill C-11 would be to set up a basic system to be on standby, as it were. When every department, agency, crown, etc., has to have a chief executive and a designated senior officer in the loop on everything to do with this legislation, that's taking their time, even though they may never have an incident or an allegation to address.

There are over 100 different bodies. That's over 200 people minimum. It's probably more like 300 people. They have to have paper, and they have to have the books, and they have to have the connections and be kept up to speed on the conduct...This is going to be an extremely expensive situation. You raised the point about whether or not some substitute might be even more expensive, and we don't know that, but as a consequence of your raising it, that certainly is one item we'd want to consider.

For all of that and the other points you have raised and for providing us with an excellent report, we thank you kindly.

Just for the members' planning, we do have a meeting next Tuesday in this room. From 3:30 to 4:30 we're going to have Ms. Joanna Gaultieri, who is, as you know, a whistle-blower, and from 4:30 to 5:30, we have the Association of Canadian Financial Officers. Our chair is also not going to be available, so we'll probably be much the same group.

After assessing all matters, I have decided that on Thursday we will not have a meeting. As we bump up to the break and people need to make plans, it would appear we will not be scheduling a meeting, and you can make your plans accordingly.

Thank you.

The meeting is adjourned.

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