



House of Commons
CANADA

Standing Committee on Government Operations and Estimates

OGGO • NUMBER 006 • 1st SESSION • 38th PARLIAMENT

EVIDENCE

Thursday, November 4, 2004

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Chair

Mr. Leon Benoit

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• (1105)

[English]

The Chair (Mr. Leon Benoit (Vegreville—Wainwright, CPC)): Good morning, everyone. We're here today to examine Bill C-17, which of course is the bill dealing with what is commonly called the whistle-blower legislation.

We have as witnesses today members of the Public Service Commission of Canada, including the president, Maria Barrados.

A voice: Bill C-11.

The Chair: Bill C-11. Did I say something different?

Mr. Joe Preston (Elgin—Middlesex—London, CPC): Yes, C-14.

The Chair: It's Bill C-11. I don't know where the C-14 came from. My apologies.

An hon. member: I had studied for that one.

The Chair: Actually, Madam Barrados, I'll just have you introduce the two people who are with you and explain a little bit about them and then go ahead and make your opening statement. I understand it's about seven minutes. That sounds just right.

Ms. Maria Barrados (President, Public Service Commission of Canada): Thank you, Mr. Chairman. Thank you for this opportunity to appear before your committee on Bill C-11, the Public Servants Disclosure Protection Act.

With me today from the Public Service Commission are Mr. Gaston Arseneault, who is general counsel; and Mr. Greg Gauld, who is vice-president of the merit policy and accountability branch of the Public Service Commission.

I see from the debates in the House and the committee that there has been considerable discussion as to where to place the responsibility for handling disclosures. I believe there are a number of criteria in making this decision, including an existing infrastructure, an independent organization, professionals knowledgeable in human resource management and experienced in quasi-judicial processes such as investigations.

The Public Service Commission meets these criteria, but clearly the decision rests with Parliament. The Public Service Commission is an independent agency accountable to Parliament. Mr. Chairman, in the interest of time, I would like to table with the committee a detailed description of the commission's status.

[Translation]

The Commission was created in 1908 and charged with ensuring that appointments to Canada's Public Service are based on merit and are independent of the government of the day.

The PSC is also charged with maintaining the political impartiality of the Public Service by granting leave to be a candidate.

The PSC—and not Ministers—was given the exclusive authority to appoint public servants based on their qualifications to do the work, not because of their relationship with the governing party, or the person doing the hiring. We do not report to a Minister except for the purposes of the Financial Administration Act and for transmittal of our Annual Report to Parliament.

The passage of the Public Service Modernization Act, including changes to the Public Service Employment Act in November 2003, has set the Commission on a new course—with the same mission by a clear direction on changing how it is to be carried out.

The changes already in place include: my appointment as President by both Houses of Parliament this spring (removal from office must also be done by both Houses); appointment of new part-time Commissioners from outside the Public Service this May; a new organizational structure for the Commission, including building up the audit capacity—you may have seen our two most recent audit reports, and establishing the vision for separating out our service delivery functions.

[English]

Changes still to come include: transforming our investigation branch from one that deals with over 1,100 appeals and 300 investigations in staffing a year, to investigations in the areas of external staffing and political partisanship; creating a separate and independent service unit by April 2005; fully delegating all staffing by December 2005, in other words, moving from running the system to overseeing the system; and provisions for direct reporting to Parliament by December 2005. A five-year review is built into the legislation. At that time, all changes will be in place. It would be an appropriate time to assess whether services should be located in another part of the government, or whether the delegated model had the desired effect.

I should also mention that Australia, the United Kingdom, and the United States place a range of disclosure protection functions in their equivalent public service commissions.

[*Translation*]

There are areas where the committee may wish to consider strengthening the legislation.

Firstly, consideration should be given to strengthening the Preamble by adding clauses describing the PSC as an independent agency accountable to parliament. Another clause could highlight the importance of providing every public servant a working environment in which to serve the public with integrity.

Secondly, the bill specifies that the President of the PSC must table an annual report through a minister. To further reinforce the PSC's independence, consideration could be given to having the President report directly to Parliament.

Thirdly, the bill calls upon the minister to initiate a five-year review of the legislation. Consideration could be given to allowing a parliamentary committee to conduct this review.

Fourthly, under the bill, public servants may disclose a wrongdoing directly to the President of the PSC if they believe on reasonable grounds it would not be appropriate to do so inside their organization. While still encouraging initial disclosures within organizations, consideration could be given to lowering the threshold on what constitutes reasonable grounds by allowing public servants to disclose directly to the President, if they believe that under the circumstances, it would be more appropriate.

• (1110)

[*English*]

Fifth, the bill assumes correction of wrongdoings will take place following recommendations by the president of the PSC to chief executives. As a means to strengthen the implementation of these recommendations, consideration could be given to allowing the president to request an in camera meeting with parliamentarians, for the purpose of presenting in greater detail any matter contained in a special or annual report under the act.

Sixth, under the bill complaints of reprisals can go either to the PSC or the Public Service Staff Relations Board, or for the broader public service to the Canada Industrial Relations Board. Moreover, the boards can order corrective measures and are not subject to the same confidentiality rules as the PSC. To avoid duplication between their respective roles, consideration could be given to allowing the PSC to bring a complaint of reprisal and appear before the board on behalf of a public servant, with his or her consent.

Seventh, the bill only applies to disclosures made by public servants and not to those from the public. Consideration could be given to allowing the PSC president the discretion to deal with the disclosure brought forward by a source other than a public servant.

Eighth, to ensure adequate funding for the PSC's disclosure protection activities, consideration could be given to allowing the PSC president to make a special report to the House of Commons, in the event that the amounts provided in the estimates for his or her

office are inadequate to fulfil the responsibilities assigned in the bill. There is a precedent in the Auditor General Act.

We would be pleased to provide the committee with draft legislative amendments to support the above changes.

[*Translation*]

In closing, Mr. Chairman, my staff and I have reviewed the bill and believe we could effectively carry out this mandate. It is, in many ways, consistent with the future direction of the new Public Service Commission. It builds upon the role we already play in holding the executive branch of government to account.

[*English*]

The Public Service Commission is made up of dedicated professionals, with established expertise in staffing. We have a mature corporate structure, with a range of services—administration, information technology, communications, and legal services—that can support the new responsibilities.

We would be pleased to respond to the committee's questions.

The Chair: Thank you very much for your presentation, Madame Barrados. I think there are some interesting suggestions made in your presentation. I'm sure the committee has questions to ask on that and other issues.

Just before we do that, I'd like to remind all members of the committee that we will break for an in camera session at 12:30, so we don't have the normal time here.

Starting questioning with seven minutes, Mr. Lauzon.

[*Translation*]

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

Welcome, Ms. Barrados.

[*English*]

Ms. Barrados, first of all, thank you for your remarks.

Just to review, we've met a couple of times to discuss this legislation in my office, and particularly to discuss the appropriateness of placing the role of handling disclosures in your office.

Immediately prior to our last meeting, I had met with several senior representatives of PSAC. They're the largest union, of course, of the public service employees of Canada. They represent the greatest portion of them. They told me very plainly that they were happy with the position I have taken regarding the independence of the commissioner, which calls for the creation of a fully independent external body which would be dedicated exclusively to the task of handling the disclosures of wrongdoing. They agreed that your office is in fact part of the senior management structure and is regarded as such by the overwhelming majority of public servants.

At the time of our last meeting, you had not had an opportunity to meet with the PSAC representatives, but I understand you had planned to do so. Have you now met with PSAC officials? If so, what did they tell you about perceptions of your office with respect to its independence from management?

• (1115)

Ms. Maria Barrados: I would just preface my answer to your question by saying we are not part of the senior management structure, but that is fundamental to the changes that have occurred. In the past, my predecessors were deputy ministers who were frequently in that position on rotation. As you know, that is not the case with my appointment. I am appointed by Parliament, and I consider myself more like an officer of Parliament.

With respect to the specific question on meeting with PSAC, yes, I did meet with PSAC. I met with Madame Turmel and her legal counsel, and we did have a very good discussion, I thought.

As for where the union stood, in all fairness, it would be up to this committee to ask them directly, because that's the best way to represent their views. But in the discussions I had with Madame Turmel, I have to describe it best by saying that I didn't get a clear yes and I didn't get a clear no. There were a couple of arguments and discussions that we had. One is the desire to very clearly have a piece of legislation for both PSAC and the other unions I have spoken to. That is very important.

It is correct that they are concerned about the independence of the Public Service Commission, and we had a good discussion on how things have changed. They appreciate how things have changed, and a consistent piece of advice that I'm getting is that we at the Public Service Commission have to do a better job of explaining how things have changed, because things are not the same as they have been, and she recognizes that.

We ended up having quite a bit of further discussion on how to strengthen the legislation. They had some very good suggestions about shoring up the independence of the Public Service Commission, consistent with the kinds of things we have suggested here. They also had some very interesting suggestions for an increased role for unions in assisting with people who might come forward with a concern around this.

Mr. Guy Lauzon: Getting back to my original concern, as you know, I impressed on you several times in our meetings that it was my understanding that for the working public servant—and please don't take this personally, of course—if the position was related to the Public Service Commission, the president of the Public Service Commission would not have credibility with the rank-and-file members. Did you ask Ms. Turmel that specifically?

It's fine to discuss the legislation, but as I mentioned to you in my office, if we're drafting this legislation for the public servants, it's imperative that they believe in it and will use it. As I mentioned to you, the information I'm gathering from many public servants is that, no, they will not use it, because in their minds it is not independent.

Did you ask Mrs. Turmel if she was representing what her position was or what the public servants' position was regarding your perceived independence?

Ms. Maria Barrados: Mr. Lauzon, we did have some discussion about that. As I said, she did raise the question about whether or not we were viewed as sufficiently independent, but did recognize that there had been enormous changes in the Public Service Commission.

Mr. Guy Lauzon: So she did not have any concerns about that?

Ms. Maria Barrados: No, that's not what I said. I think you have to ask her directly. She did raise questions about the independence. I did explain all the changes, and the advice I am consistently getting is that we at the Public Service Commission have to do a better job in terms of explaining our new role.

But I have to add something else. We are going through enormous change. I have a lot of contact with public servants. Many come to see me. Many write to me. Some of them are not very happy with the Public Service Commission, but part of that is because we are charged with protecting merit. We are charged with protecting a process. We are charged with making sure that people get fairly appointed, which means we sometimes have to say no to people. Part of discharging that job means we sometimes say yes, but we often have to say no. I think that is unfortunately part of the reaction, Mr. Lauzon.

• (1120)

Mr. Guy Lauzon: But my greatest concern, as I said and keep repeating, is if we're drafting legislation that isn't going to be used, it will be worthless. As I mentioned earlier, if we authorize a piece of flawed legislation, we're actually doing the public servants a disservice.

Can you imagine if we bring this bill forward and it doesn't have credibility and is not used? This is probably our one chance to restore confidence to our public servants. Everybody from all sides says our employees are our most valued asset. Well, let's give them the best piece of legislation.

As I mentioned to you in my office, maybe ten years from now it would be okay to put it back with the public service, but we can't do that now in the hope that it's going to get better.

The Chair: A very short answer, if you'd like to respond to that.

Ms. Maria Barrados: I think Mr. Lauzon and I don't see things quite the same way.

Currently, the Public Service Commission is in fact used by many employees. As I said in my opening statements, we've had 1,100 appeals come to us. We've had 300 investigations come to us. We have done these audits. One of these audits comes directly from complaints by public service members. Their unions came to us and we carried out an audit to look at that. So I'm seeing a somewhat different world.

The Chair: Thank you.

Clearly this has been already and will continue to be one of the most important issues to deal with in the legislation. You have some suggestions. We will have some of the unions before the committee later on, but if you can think of anything else concrete that could be done to have the members of the public service and your office have a frank discussion about whether or not it's possible that they could view your agency as the appropriate agency—as it is—to handle this, if you can think of some way of doing that, I'd appreciate your bringing that to the committee through a letter or something like that.

Ms. Maria Barrados: Yes, Mr. Chairman, we'll think about that.

I have to be frank with the committee in terms of where our efforts on communications have now been going. We have been holding large consultation sessions on changing the legislation and the kinds of processes that have to be gone through to get the delegations in place.

We have regular meetings of about 300 people in the public service. Those are very well attended and very well received. So our communication efforts have been going there to move the system along, rather than explaining what our new role is.

I certainly understand from conversations I've had with members here and with other people that we haven't done enough of that.

The Chair: Thank you.

Madame Thibault, for seven minutes.

[Translation]

Ms. Louise Thibault (Rimouski-Neigette—Témiscouata—Les Basques, BQ): Thank you very much, Mr. Chairman. If I don't use all of my time, it can be credited to my colleague.

I want to thank you and your associates for being here.

Turning to page 5 of your opening statement, you propose the following change to the bill, and I quote:

Disclosure to the President of the PSC: Under the Bill, public servants may disclose a wrongdoing directly to the President of the PSC if they believe on reasonable grounds it would not be appropriate to do so inside their organization. While still encouraging initial disclosures within organizations...

As I see it, Madam, based on the wording used, you seem to want to put the responsibility on the shoulders of the potential whistleblower. I thought we had the opposite goal in mind.

I'd like to tie this provision in with paragraph 24(1)(a) of the bill. We discussed this in conjunction with previous testimony, but I think it's important to revisit the issue. Paragraph 24(1)(a) of the bill reads as follows:

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

(a) the public servant has failed to exhaust other procedures otherwise reasonably available;

Some colleagues have raised this issue as well. Paragraph 24(1)(d) reads as follows: (d) there is a valid reason for not dealing with the disclosure.

I'd like to hear your views on the subject, Madam, because I think the credibility of the whole process is likely at issue here.

So then, that's my first question. I do have a second question for you concerning the so-called transitional measures. I've discussed these measures with some people.

• (1125)

Ms. Maria Barrados: Thank you.

In our opinion, it's very important that people have a choice, either to go to the PSC or to deal with matters internally. The choice must rest with the public servant. The debate over the wording is becoming somewhat obsessive. In my estimation, it is not as serious

as that. Perhaps Mr. Arseneault could explain the repercussions of the bill's wording to you in greater detail.

Mr. Gaston Arseneault (General Counsel, Legal Services Branch, Public Service Commission of Canada): First of all, a recommendation has been put forward to delete from the bill certain words that establish an objective test that a person must meet, whereas we are of the opinion, you and I, that the decision must rest with the individual.

Consider for a moment paragraph 13(1)(a) of the bill:

13.(1) A public servant may disclose a wrongdoing to the President of the Public Service Commission if

(a) the public servant believes on reasonable grounds...

Who determines that which constitutes reasonable grounds? That must be an objective, realistic determination. We're merely suggesting that the words "believes on reasonable grounds" be replaced by "believes".

Ms. Louise Thibault: You're giving the public servant the benefit of the doubt, as it should be. If the person believes, then we trust that person's instincts.

Mr. Gaston Arseneault: Correct.

Ms. Louise Thibault: Secondly, with respect to the so-called transitional measures, although the bill is drafted in such a way as to ensure total anonymity and confidentiality, isn't it possible, Madam Chair, that cases could arise where because of the work unit or nature of the disclosure, if an investigation is done, it wouldn't take very long to learn the name of the public servant involved in the disclosure. We must protect that person's integrity and actively arrange to offer some transitional measures that he or she would obviously accept—I'm not talking about any mandatory measures—so that he or she may continue to perform equivalent duties within the public service and to receive the same remuneration. Even if we're only talking about exceptional cases, shouldn't some provision be made for this kind of transitional measures?

Ms. Maria Barrados: You've raised a very valid point.

We have not discussed this matter at any length. However, the aim of the proposed legislation is to protect public servants. Perhaps Mr. Arseneault has something further to add. In any event, you've made a very good suggestion, one with which I have no problem.

Mr. Gaston Arseneault: In my opinion, people should look at the impact this kind of measure would have on all those involved. For example, when a person is transferred to another unit, everyone notices and wonders what that person may have done. It's certainly an interesting suggestion, but it needs to be examined in light of the confidentiality provisions and in terms of its potential implications for the legislation as a whole.

• (1130)

Ms. Louise Thibault: I understand what you're saying, Mr. Arseneault, but I'm talking about one situation in particular. When a wrongdoing is disclosed, the name of the persons making the disclosure is more or less an open secret and these individuals need to be protected. These kinds of situations are going to arise.

Thirdly, does your submission contain a reference to the budget? Point 8 on page 5 reads “to ensure adequate funding for the PSC’s disclosure activities”. Do you have a fairly accurate idea of the kind of funding needed? As President of the PSC, do you have some idea of the funding required, not only by your agency, but by the various departments as well, to carry out these activities? Do you have a figure in mind for the PSC, and for other departments, in terms of overall budgetary requirements?

Ms. Maria Barrados: I can’t answer for the government, in so far as budgetary requirements are concerned. That is their bailiwick. As far as the PSC is concerned, during our preliminary discussions, we agreed to take Mr. Keyserlingk’s current budget and to allocate additional funds for expanded duties. Everyone understands that these are merely estimates. There is no way of knowing what the workload will be, or how many public servants will use the system. I know that an inquiry like the one carried out by the AG’s office into the sponsorship program can be an extremely costly undertaking. In my opening statement, I did voice some concerns. Because of budget restrictions, we may be limited as to how much work we can do. The advantage of having a large organization such as the PSC conduct this type of activity is that it is easier for us to reassign persons. A smaller organization would be facing a very serious situation.

[English]

The Chair: Thank you. Time is up.

Mr. Szabo, seven minutes.

Mr. Paul Szabo (Mississauga South, Lib.): Thank you, Mr. Chairman.

Ms. Barrados, when we did Bill C-25 on the modernization of the public service, one of the key issues of discussion was on the duality of PSC, management, as well as employee representatives, and that this was a matter that was probably going to be addressed in the next wave of the public service renewal. So you can understand why some people are somewhat cautious about now having the PSC, in fact, totally responsible for this, and I tend to agree.

How many employees work for you in the PSC?

Ms. Maria Barrados: We have about 900 employees. These are full-time equivalents.

Mr. Paul Szabo: Yes. Is there a possibility that there could be a wrongdoing within the PSC?

Ms. Maria Barrados: Yes, that’s always possible.

Mr. Paul Szabo: Okay. Would anybody who wanted to report a wrongdoing then have to report to you or to your designate?

Ms. Maria Barrados: No. The situation that I have as the head of an organization is the same as any other head of an organization. I would have to have a process in place where somebody can go.

Mr. Paul Szabo: The point is, though, that a wrongdoing could occur even in the PSC, which would be basically responsible for all of this anyway.

Ms. Maria Barrados: Mr. Chairman, if I may, there is a provision in the legislation where somebody can go outside the PSC, and the provision in the legislation—

Mr. Paul Szabo: Sure, I understand that. But your independence isn’t absolutely the same for all areas, other than for the 900

employees. The point is that you’re really part of the situation as well.

You went through explaining, in the other handout, all of the things that you do. You’re protecting merit and, with 900 employees, you do a lot of other things. This is a significant new responsibility, and all of a sudden whether there is going to be a conflict of objectives may also be a concern.

Do you have any idea how many departments, agencies, crown corporations, and other bodies would fall under this legislation? What is the total number of discrete bodies?

• (1135)

Ms. Maria Barrados: I can’t give you a number right now, Mr. Szabo.

Mr. Paul Szabo: Okay.

Ms. Maria Barrados: Could I answer some of the comments that you’re making?

Mr. Paul Szabo: Well, I only have seven minutes. We’ll get to those, and you can answer them.

Ms. Maria Barrados: Okay. I sure want to make some comments.

Mr. Paul Szabo: Sure, yes, I understand that.

You’ve made representation here that you can handle it, but you don’t know what you’re going to handle. You also said that you have no idea what the volume of the load is. So how could you possibly determine how many people would have to be involved?

Let’s assume there are 100 departments, agencies, boards, crown corporations, or whatever. Each one of them, under the chief executive, who could be a deputy, is one person involved. They have to designate another senior official and that’s another person involved. If you look at the legislation clearly, it says that the public service may disclose a wrongdoing. So they may disclose it to a supervisor. If it’s not the supervisor, then they can go up the line. Can you possibly fathom how many people would be involved in this process throughout all of these bodies? It’s in the hundreds.

Now, if it’s a reasonable estimate that hundreds of people would be involved in administering this act and representing the employees, how could that possibly be better than establishing a truly independent agency, similar to what Keyserlingk has? He has about 25 employees.

Do you know what? People from the CBC, Canada Post, Telefilm, the Library, every agency and every group that would possibly be covered under this legislation—which is well over 100, I’m sure—would have absolutely no problem, because the place that is responsible for this overall bill dealing with whistle-blowers has no other responsibilities or potential conflicts of interest.

I don’t understand why you haven’t come to this concern. You basically said that you have the ability to do it, but you have no idea what the magnitude is. I don’t know how you could reach that conclusion.

Okay, I’ll let you answer some of that.

Ms. Maria Barrados: Mr. Chairman, you have to let me respond to some of those things.

Sure, I can give you some numbers on the size, but I'm very careful with parliamentary committees in terms of wanting to make sure I have the exact number. The number of departments is over 80; the number of crowns, big crowns, is 20 to 25; and the number of small crowns is a big number. Yes, sure, I have an idea of the number.

In terms of the number of complaints, Mr. Szabo, nobody knows what the number of complaints would be. I sat down with all the people who could best estimate this, and our best estimate—

Mr. Paul Szabo: I'm talking about wrongdoings.

Ms. Maria Barrados: Complaints of wrongdoings.

Mr. Paul Szabo: As defined, and that's serious.

Ms. Maria Barrados: I'm talking about the same thing.

The apparatus in the way it is set up in the legislation, that whole system of people and departments, people who have a role in this who would not be part of the Public Service Commission, that is part of government. As part of those departments, there is no design here in this piece of legislation—unless this is something you are contemplating—that the officers, the integrity officers of the departments, be part of the Public Service Commission at all. That's not the model.

The model is that the departments have a responsibility to manage wrongdoing and to the protection of the people who make disclosures. Those are all people who are part of those organizations, not part of the Public Service Commission. There's no design here that this is the intention.

There are a couple of other points I want to make. In answer to your suggestion about wrongdoing in the Public Service Commission, when I said that we potentially could have wrongdoing in our organization, I think it would be naive for me to say that it isn't possible, but so can—

Mr. Paul Szabo: Okay. I only have one moment left. Could I ask you one more question?

• (1140)

Ms. Maria Barrados: I feel I have to answer this, Mr. Szabo.

Mr. Paul Szabo: Well, you could use your time. If I get the question, then you can keep going, and the chair will have to cut you off instead of me.

The word “may”, an employee “may” report, I think is a very important aspect of this bill. It could, in fact, give protection to someone who actually knows and is in collusion with someone who is part of a wrongdoing, as well.

You spent all these years in the Auditor General's office. I mean, proper internal control, etc., and the rules say—for instance, there's that guy at the Canadian Institute of Chartered Accountants—that you must report it. If you don't, and it's subsequently found out that you knew, but you didn't report it, you would be equally culpable.

I think everybody has a role to play. I think the employees are entitled to proper protection of their identity and all of the rights they

are entitled to, but they also have to be part of the solution—and that means, play ball.

The Chair: Thank you, Mr. Szabo. Time is up.

Would you like to respond, Ms. Barrados?

Ms. Maria Barrados: With respect to the last comment, about the role of the employees, that is envisioned in this piece of legislation, but, again, there's no intention.... That is the role of the Public Service Commission.

In the way the legislation is designed, there is a responsibility with government to set out the codes and the responsibilities. You can talk to them more about what it is they're to do.

The idea behind the role of the Public Service Commission is to have someplace where employees can go, if they feel that those internal mechanisms don't work for them, to then have the power to do the investigations, make the recommendations, and follow through to make sure that something is done.

I have to respond to two other things.

The Chair: Very quickly.

Ms. Maria Barrados: I'll try to be as fast as I can, but they're very serious comments.

On the issue of the Public Service Commission being part of this system in terms of potentially having people who commit wrongdoing, I cannot say that would not possibly exist, but that's certainly true for other officers of Parliament as well. Look at the Privacy Commissioner. I mean, that's exactly what that was an example of. So I don't accept that this makes us part of the system.

With respect to our dual role, it was characterized as part of management and being an employee representative. We're neither. We are not part of management. We are not representing the employees. We have responsibilities to discharge with appointments and non-partisanship. We have a responsibility to discharge with audit, which we are doing, on the appointment frameworks and other issues related to human resource management, and we have done that. I don't see us either as part of management, because of the way I am appointed and the way we operate, and I don't see us as representing employees except for those obligations and responsibilities that we are given through legislation.

The Chair: Thank you.

Mr. Martin, seven minutes.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Mr. Chair, and thank you, Madam Barrados. Welcome.

Madam Barrados, it seems to me that about the only person in Canada who really feels strongly that the new whistle-blower function should be housed in the Public Service Commission is the President of the Treasury Board himself.

I'll ask you very quick and brief questions. Did you ask for this extra duty to be resident in the Office of the Public Service Commissioner?

Ms. Maria Barrados: No, Mr. Martin, I did not. I had made an intervention on Bill C-25 to the committee because I was concerned there was a potential overlap, since so many of the complaints that employees come forward with relate to human resource management. I had asked for clarification in that bill about the responsibilities, so there wouldn't be that confusion.

Mr. Pat Martin: Good point.

What was your initial reaction—and please be as frank and open as you can—when the President of the Treasury Board asked you to house this new function?

Ms. Maria Barrados: My first reaction was “I'll have to think about it”. I thought about it and I said yes, but I said to make it clear to everyone that I'm not really advocating for it. Of course, today I sound much more of an advocate, because after I had said yes and we had worked on it and I had talked to my staff, talked to my commissioners, talked about where we were going, I felt it was a possible fit.

Mr. Pat Martin: You're obviously aware, because of the line of questioning and other interventions or representations made to you, that there's a serious question about whether public servants will have faith that the independence is adequate, that they'll feel comfortable. I agree with Mr. Szabo and my colleagues of the Conservative Party, that that's all that matters. Whether you're able to house this agency and whether you're able to be truly independent doesn't really matter if people aren't comfortable.

I notice in one of the things you've circulated today that you're making an extra effort to emphasize the independence. You've used the word “independent” on this one piece of paper about six times. I mean, is it not true that some executive functions of your department do require you to report to a minister?

Ms. Maria Barrados: We are an organization in transition. We are clearly an organization that is changing in a major way because of the new legislation, and that was the direction from Parliament. My own nomination, given where I've come from and what my track record is, to me reinforces that that's what I'm supposed to do. So we're doing that.

• (1145)

Mr. Pat Martin: Currently, status quo, are there executive functions that you perform that have you giving a report to a minister rather than a department?

Ms. Maria Barrados: They're two different questions, actually.

On reporting to Parliament, the legislation now, today, has us tabling our report through the Minister of Canadian Heritage. I do not report to a minister, so I have no relationship with a minister in terms of how I run the Public Service Commission. I do not take directions from ministers on policies that are in the purview of the Public Service Commission. That's on the reporting side.

With the new legislation, there is an additional clause that gives us direct reporting to Parliament. For example, on what we went through with the audit reports, I did not feel it was appropriate for our audit reports to be tabled by the Minister of Canadian Heritage. I released them, but I came to Parliament first. That's our intention.

But your question is on the executive powers. This is a problem for all public service commissions, because what the decision has

been is a longstanding one. You don't give appointment powers to anyone too close to politics. You don't want the appointment powers in the hands of ministers and you don't want them directed to ministers. You always want those appointment powers held by somebody who is independent, to keep the politics out of it.

The decision was that in the modernization legislation the appointment power would stay with the Public Service Commission, but that we would delegate it. While we haven't delegated yet, we are in fact exercising it. If you're coming to apply to the Public Service of Canada from outside, you have to come to the Public Service Commission. By 2005, that will not be the case. That will all be delegated, so we will not have that role for running things in the system that we do have now. But right this moment, we are in that transition.

Mr. Pat Martin: I understand.

Do I have a moment left, Mr. Chair?

The Chair: Yes, you do. You have roughly two minutes.

Mr. Pat Martin: Moving on to the actual content of the bill, one of the points is that there's no real protection. One of the points I wanted dealt with is that false information or wrong information shouldn't be grounds for deeming it to be in bad faith or vexatious. In other words, you can come forward to the whistle-blower officer and be wrong about the information you bring forward and not be subject to some kind of punishment, which is quite specific. You can be fired for making a bad-faith complaint. How would you protect those? How do you make this judgment call between a bad-faith complaint and a mistaken complaint?

Ms. Maria Barrados: I'll get Mr. Arseneault to talk about the legal wording, the legal interpretation requirements. From my experience in the audit office, though, you have to make that judgment about whether somebody made an honest mistake or whether it was vexatious or mischievous.

Mr. Pat Martin: It's risky, though, isn't it? If you don't know how that information is going to be dealt with, you'd be less likely to come forward if you thought there was even an outside chance you might be wrong or there might be repercussions if you were wrong.

Ms. Maria Barrados: The bar has to be fairly high on “vexatious”. I don't think that should be someplace where you go very quickly; otherwise, as an individual, why would you come if you run that kind of risk? I agree with you.

Is there a legal aspect to this?

Mr. Gaston Arseneault: There is a definition of “protected disclosure”, and this is when a public servant may come forward with a protected disclosure. It would not be a protected disclosure if it were frivolous. The definition says “means a disclosure that is not frivolous, vexatious or made in bad faith”. The standard would be on someone to establish—

Mr. Pat Martin: The initial adjudication is going to be critical.

Mr. Gaston Arseneault: —that the person coming forward is doing so in bad faith, as opposed to simply being wrong.

Mr. Pat Martin: Who would make that judgment call? That would never get right to the president of the Public Service Commission, for instance.

Mr. Gaston Arseneault: The call on that would be if there were reprisals taken against the person.

• (1150)

Mr. Pat Martin: Do you think that would wind up right on your desk, Madame Barrados?

Ms. Maria Barrados: The way this piece of legislation is written, everything winds up on my desk.

I'll be frank. I had some discussions about that. The view of why that was the way to go is that I'm the one who is appointed by Parliament. I obviously would have to have an organization working on it, but I would be responsible for it all. And in those cases where there was lack of clarity, you bet I'd be involved.

The Chair: Thank you.

Mr. Preston, for seven minutes.

Mr. Joe Preston: Thank you, Mr. Chair.

Thank you, Madam Barrados, for coming before us today and bringing the guests you've brought with you.

Not only must the organization handling these disclosures be independent; I think the real gist of what we're saying today is that they have to be perceived as being independent also. Members of PSAC indicate that you are not independent, or at least you seem not to them, and if the largest representatives feel this way, how can this legislation work?

You stated you're not part of management and you're not part of the employee group, and yet you're perceived, I think, as both. Can you give us another indication how, while the largest section of employees who will be protected by this legislation perceive you that way, you are not?

Ms. Maria Barrados: I'll try my best.

I described the conversation I had with Madame Turmel from PSAC. I didn't get a clear no, and I didn't get a clear yes, so—

Mr. Joe Preston: Isn't that in itself an indication?

Ms. Maria Barrados: To me it's an indication of what is going on. We're an organization under transition. We're moving from an organization that had become too close to management and was running a system that was too complicated. We have a new piece of legislation, we have a new head of the organization, and we're changing it and changing it fast.

The discussions I had with PSAC were very interesting discussions, and I would suggest the committee have those. Their employees are protected, and their concern is that they have a potential role in the whole process.

From my point of view, those are very constructive suggestions, because if there is anything we can do to make it easier for employees to come forward and raise their concerns and get the level of protection they want... If having unions involved would help, I think it's a very positive move.

Remember, in the system we were operating, we often have had to say no to people, and you don't win popularity contests by saying no to some people. When we do the investigations, we have to draw

conclusions. There are investigations where we say there was fraud and abuse, and we take away people's jobs. They don't like us.

Mr. Joe Preston: Yes, I understand that. I thank you for making my point. If you have the job of saying yes or no to people, and in fact of making judgments on other things they've brought forward, I think you'd be described by most people as management. Those are the people who make the yes or no decisions in people's lives, so I think you've made my point there.

You've also said twice today that you're an organization in transition, and I recognize that the Public Service Modernization Act won't be complete for another year, or at least a long period of time. Are we rushing forward in making the statement that we're an independent body, long before the act and the perceptions catch up?

I'm not saying that in the future we won't get to where you're saying you are now; that under the Public Service Modernization Act and following it the behaviours you show would not catch up. I'm just saying that under today's reality, the perception is we're not there yet. Under the Public Service Modernization Act we haven't even gone that way yet, and perception would take a while to follow that. Are we not saying that perhaps an independent body is a better way to go in the interim?

I applaud the direction we're headed in here. I just think the perception of the average public servant isn't where you are yet.

Ms. Maria Barrados: With respect to decisions, we are a body that is empowered by Parliament to make the decisions Parliament asks us to make. In the case of whistle-blowing legislation, we're not going to make everybody happy here. That's the nature of what we have to do. We have to follow due process; we have to be fair; we have to discharge the responsibility. But we're not going to make everybody happy.

In terms of the implementation of the legislation, we're well on the way. We're going to have our service organization in place by April—that's not long from now. We have the delegation agreements drafted. We have the policies drafted. We're having the discussions. We'll be done by the end of next year.

Any new organization you set up, if I may say so, is not going to be ready that fast.

• (1155)

Mr. Joe Preston: As I said, I applaud the speed, but the organization is set up by rules in place by April and everything in place by the end of next year. That doesn't change that lumbering perception out there that it's "as fast as the date when it's all done". It will certainly take a period of time after that before the members of our public service will accept that you have arrived at those ends.

Ms. Maria Barrados: With all due respect, I think it's who you ask, frankly. If you ask any of the deputy ministers involved in human resource management, they will see we are moving along at the rate expected. If you ask all levels of the human resource management community—and I mean all levels, both the senior people and the junior people—they are part of the training, they're part of consultations, and they will all agree we're on track and it's moving fast.

I have accepted the comments from members at this table that we really haven't done much of a job in terms of explaining to the larger public service the new PSC and how we're operating. But, frankly, I have to admit as well that I felt it was inappropriate for me to do so at this time when members of Parliament were debating this piece of legislation. If there's one thing I've learned at the AG's office, it's that you never get out in front of members of Parliament.

Mr. Joe Preston: I thank you for that.

Again, in your own argument you stated deputy ministers and senior levels of management agree with this, and rightfully so. They probably do. But the rank and file members of the public service who may become the bulk of the people coming forward as whistle-blowers—or to blow whistles, if you will—may not be at that same thought process yet.

Ms. Maria Barrados: If I could just reiterate what I said, it's the rank and file in the whole human resource management area. They're very much engaged in what we're doing and how we're trying to do it.

The Chair: Thank you, Mr. Preston. Your time's up.

Madam Marleau—and if she gets finished her questioning, it will be Mr. Scarpaleggia.

Hon. Diane Marleau (Sudbury, Lib.): Is there a reason we should place this body with you rather than set it up as an independent organization in the beginning, or with another group in the beginning? What has been the experience in other jurisdictions? I gather other jurisdictions have the kind of integrity or whistle-blowing type of protection within their public service commissions.

The other big concern I have is on the protection of the identity of anyone who blows the whistle. I think the biggest challenge any office has, wherever the office is, is to make sure that when people know something or think they know something, they can feel confident that, if they go to this office, people will not know who it is that has gone there. I understand some offices are very small and it's very hard to protect them, but that is possibly the biggest challenge we're going to have.

If we look at some of the things going on now, we all know about Mr. Cutler. How would that have protected Mr. Cutler? Would you have been able to protect Mr. Cutler when he first went forward to complain of what they later called “some irregularities”? Mr. Cutler decided to give up because he wasn't going anywhere and nobody was listening to him. While he's retired now, I'm sure he was red-circled. Basically, he never moved from that point.

Perhaps you could take us through those.

Ms. Maria Barrados: I'll get my colleague to talk about the international experience, since he's looked at that a little bit more closely.

On the issue of why at the Public Service Commission, my experience has been that setting up new small bodies is very risky. They frequently can't cope with all that's required to operate in a government environment. We saw it with the Privacy Commissioner, when you had somebody from outside come in, and we saw it with the Military Police Complaints Commission, with the audit we did. We saw how troubled these organizations were. And I have a list of other ones we're going to be looking at. So I would strongly advise

that we be very careful about doing that, because it hasn't proven to be very successful.

Now, I suggested why it could come into the Public Service Commission, and you could look at other options if the consensus is that this is not the way you want to go, but from all my experience, I think it's a risky route to go to a small organization. It takes time to set those things up, and there's enormous infrastructure required. In that respect, I think we have some advantage, but there could be others as well. The issue of protecting the identity of individuals is a really important one. Frankly, I worry about that, about how you can do that in very small organizations.

You asked specifically about Mr. Cutler. I don't want to talk about an individual case, but I think it's easier to protect an individual who is not in the management ranks in a large organization than it is to protect an individual in a small organization. That would be whether I'm the Public Service Commission or whoever; everybody is going to have that problem.

The other problem I have—and this is the whole debate on sponsorship and some of the other things I worked on at the Auditor General's—is what if there's a problem that isn't just at a working level but goes way up? That was why the suggestion was made that there was a way to come to Parliament and to have the discussion with Parliament in camera. You have to protect the individuals, but what if your problem is way up in the organization? I've seen a number of cases like that in my career. How do you deal with that? If you have the system work for you so that the person is dealt with, it's all right. But if the system doesn't want to work to correct it, then I would think you'd have to have a recourse like coming to Parliament and laying it out for parliamentarians, because that's where there's enormous risk.

Greg, perhaps you can speak to the international aspect.

• (1200)

Mr. Greg Gauld (Vice-President, Merit Policy and Accountability Branch, Public Service Commission of Canada): I can speak to the example of the United States and the two Westminster systems, Australia and the United Kingdom.

In the United States there are two organizations that share a role in protecting whistle-blower rights. One of them is the Office of Special Counsel, an independent organization that acts kind of as a prosecutor, taking on the case against the agency in question on behalf of the whistle-blower. As well, the Merit Systems Protection Board, which has functions that are similar to some of ours, acts as the appellate organization. Where there's an appeal and they're not satisfied, they can go to the Merit Systems Protection Board.

In Australia it's handled through the Australian Public Service Commissioner and the Merit Protection Commission. Again, the first line of whistle-blowing is in the relevant departments and agencies, but public servants in Australia have recourse in certain conditions, if they're not satisfied with what's happened, to go directly to the Australian Public Service Commission.

Hon. Diane Marleau: Perhaps I can interrupt you for a second. Are you saying that in Australia they have to go through the departmental process first?

Mr. Greg Gauld: My knowledge of this is that the first line is through there, but there are grounds in which they would not have to go through the agencies first. Subsequently they could go to the Australian Public Service Commission or Merit Protection Commissioner.

Ms. Maria Barrados: Just to clarify, the Merit Protection Commissioner in Australia is a member of, part of, the Public Service Commission.

Mr. Greg Gauld: Yes.

In the United Kingdom it's the Office of the Civil Service Commissioners that acts as the appeal body for disclosures. Where satisfaction has not been gained, they could appeal to the Office of the Civil Service Commissioners.

Hon. Diane Marleau: Do you think the proposal here mirrors somewhat some of these others?

Mr. Greg Gauld: I would not like to get into a point-by-point comparison. We actually studied not the details of all the whistle-blowing regimes in these other jurisdictions but rather the role of our analogue organizations in these, which is somewhat similar to what's proposed here.

Ms. Maria Barrados: My understanding from the officials who worked on drafting this piece of legislation is that they had looked at the other international experiences. You'd have to ask them to what extent they drew different pieces from it.

• (1205)

Hon. Diane Marleau: I was just interested in finding out how successful they've been at protecting the identity of whistle-blowers.

Ms. Maria Barrados: I can't offer anything on that.

Mr. Greg Gauld: I don't think the people who developed the—

The Chair: Your time is up.

Mr. Scarpaleggia, we will get to you in the next round.

Right now we have Mr. Poilievre.

Mr. Pierre Poilievre (Nepean—Carleton, CPC): Thank you for being with us today.

The Chair: You have five minutes, by the way.

Mr. Pierre Poilievre: I met with Dr. Keyserlingk, the public service integrity officer. His office has been involved in receiving disclosures and complaints but has been effectively powerless because of the mandate with which he's been provided, the limited funding that has been made available to him, and his inability to make binding decisions.

That being said, his office is specifically in place to ensure the integrity of the public service, and it seems to me his office might be more appropriate as an instrument to enact this legislation.

Could you perhaps explain to us why you feel your office is better suited than his?

Ms. Maria Barrados: I think it would be important for the committee to speak to Mr. Keyserlingk. Currently his office is a part of the Treasury Board. They do not have any independent status, and he does not have legislation such as this piece of legislation. So he feels he doesn't have the tools he needs to exercise his responsibilities.

I have met with Dr. Keyserlingk and have had discussions with him about his views on the Public Service Commission. He has advocated for an independent organization, but he feels that it is a reasonable option to have it go to the Public Service Commission.

I have spoken to him about what he felt were some conditions that were important to having it come under the Public Service Commission, and he told me a couple of things. One was, he said it was extremely important that it be an independent branch of the Public Service Commission that had a fair bit of autonomy from other parts of the operation. I agree with that entirely; that's exactly the kind of thing we would do.

The other thing he advised me was that it was extremely important that I get out there and do more public speaking—tell people more about what it was we are doing. I told him that once Parliament had decided I would definitely do that.

Mr. Pierre Poilievre: Okay.

Ms. Maria Barrados: I have also asked him—

Mr. Pierre Poilievre: All right. I think that goes beyond the scope of my question, so I'll just move on to the next question.

What is your opinion on mechanisms of compensation for those public servants who save public funds through their disclosures?

In the United States, for example, the system is so overt in rewarding public servants who speak out that it even provides a commission of 10% to those public servants who save substantial sums of money through their disclosures. I personally wouldn't advocate something that comprehensive, but what are your thoughts on a very modest sum of compensation being provided to public servants who save significant dollars through their disclosures?

• (1210)

Ms. Maria Barrados: I must honestly say I haven't given that enough thought to give you a meaningful opinion.

I was part of a panel where this was discussed, and it quickly got to how you would do this and how you would operate it. I don't think I have anything more insightful that I could offer to the committee.

Mr. Pierre Poilievre: Any whistle-blower legislation that is successful must contain a clear and unambiguous protection for public servants. Principally, this means an independent body.

Last week, the President of the Treasury Board acknowledged that the Public Service Commission could be viewed as having two masters, both the employee and the employer, under the bill. That contradicts what you've said here today, that you have no master. Further, the PSC president would not have sufficient independent reporting mechanisms as this bill currently stands, because you are expected to report through the minister, not directly to Parliament.

Ms. Maria Barrados: Thank you for that.

With all due respect, I don't want to say I have no master. I have Parliament as my master. Parliament appoints me, and Parliament can dismiss me. I made a lot of commitments when I went through my confirmation hearings that if I ran into any problems I'd be right up here lickety-split.

I agree with you entirely. One of the recommendations we are making here, in fact, is that the bill be amended to have reporting directly to Parliament. I'm also suggesting that things be put in place that oblige me to have in camera discussions with Parliament if I find I've got myself something that isn't moved on sufficiently. That way, it will still protect the players involved.

I worry about some of the things where you have a complaint that comes in from down in the organization, but by the time you pull out all the threads it's much more than a single complaint in the organization; it's something that is much larger—and it's the capacity to deal with those.

The Chair: Thank you.

Just a very short question.

Mr. Pierre Poilievre: Does it not trouble you, as it troubles me, that in the clause of the bill that deals with amending the schedule it says “The Governor in Council may, by order, amend the schedule by adding or deleting the name of any Crown corporation or other public body”?

Ms. Maria Barrados: I believe that's a technical thing to keep the list tidy, but if members are concerned about that, it's something for them to fix. For any officer of Parliament, or anybody who acts for Parliament, we have to get the directions from Parliament, and we do what that direction gives us to do.

The Chair: Thank you.

Mr. Sauvageau.

[*Translation*]

Mr. Benoît Sauvageau (Repentigny, BQ): I'd like to welcome you and your associates to this committee, Ms. Barrados. Thank you very much for suggesting these changes. In my opinion, they largely address the concerns raised when Mr. Alcock testified before us and when my colleagues spoke to this issue in the House of Commons.

Regarding the perception of a person's independence, you've answered my colleagues questions. I would, however, like to ask you and the researchers to draw up a kind of comparative chart for us. I'm curious as to the reason for the perception or belief that the Auditor General, the Commissioner of the Environment and the Commissioner of Official Languages, Dyane Adam, are all independent, whereas you are not.

I know that Ms. Adam and Mrs. Fraser are appointed to seven-year terms. In one of these cases, the term of office is not renewable. Is their independence assured by the fact that they table a report? I'd like to see a comparative table showing what exactly it is that makes an officer of the House independent. Then we could ask some pertinent questions on the subject.

[*English*]

The Chair: Mr. Sauvageau, our researchers actually did a chart like that with Bill C-25, the previous legislation. So that's available and we'll make sure it gets out to all members. Thanks very much.

[*Translation*]

Mr. Benoît Sauvageau: Let me put my question to you again. Can this document be made available to the committee? It should contain a reference to the new legislation. In my view, some

corrections are warranted to reflect the new direction that the PSC is taking.

[*English*]

Ms. Maria Barrados: Mr. Chairman, maybe we should be sure it reflects the changes in the Public Service Commission, because in the past the changes haven't been put in place.

The Chair: Thank you.

[*Translation*]

Mr. Benoît Sauvageau: Some thought could be given to strengthening the preamble, as per your first recommendation. In your opinion, would it suffice to stipulate this in the preamble? Should it not be included in the legislation?

Furthermore, the following is noted in clause 2:

However, subject to sections 52 and 53, “public sector” does not include the Canadian Forces, the Canadian Security Intelligence Service, the Communications Security Establishment or the Royal Canadian Mounted Police...

These four agencies will have to put in place independent, autonomous mechanisms. In your opinion should the legislation apply to them as well? Why are they excluded? I can appreciate that these agencies are in charge of national security. However, disclosures of wrongdoings involving DND could, in my opinion, eventually be made.

I'd like some additional clarification regarding clause 12, if possible. I believe Mr. Szabo referred earlier to clauses 12 and 13. Clause 12 states that if a wrongdoing has been committed, a public servant “may disclose”; clause 13(1) states that a public servant “may disclose a wrongdoing”. How would things be different if the word “shall” was used, instead of “may”?

A person who realizes that a wrongdoing has been committed but who says nothing becomes an accomplice to that wrongdoing, in my opinion. But I may be wrong about that.

• (1215)

Ms. Maria Barrados: Regarding your last question, in my opinion, when we refer to values and to ethical questions, it's important to state what has to be done. I prefer to see it remain a matter of choice for people.

As for including in the preamble or in the legislation a clause on the independence of the PSC, I would prefer having the strongest possible mechanism. We recommend inclusion in the preamble. We have had discussions about certain aspects of other acts. That could be a first step, and we could proceed to make other changes later. Obviously, I would be happy to see the legislation strengthened.

Another question concerned the fact that agencies were excluded. I feel that this should be left to the committee's discretion. Of course, some administrative aspects can be included, but certain security components must be excluded.

[*English*]

The Chair: You have a minute in order to make up for my interruption.

[Translation]

Mr. Benoît Sauvageau: How do you feel about agencies such as Canada Post and VIA Rail which have parallel committees in place to oversee the establishment of a wrongdoing disclosure system when all the while other committees are working on a system that would include these agencies? Are we not seeing an overlap of some kind?

Ms. Maria Barrados: The aim of the legislation is to see that each agency has its own mechanisms in place. I don't have the details about these two agencies, but I did get the impression that they intend to manage complaints on their own. However, employees must always have the option of going outside the organization when they have complaints.

Mr. Benoît Sauvageau: Thank you.

[English]

The Chair: Thank you very much.

Mr. Scarpaleggia, for five minutes.

Mr. Francis Scarpaleggia (Lac-Saint-Louis, Lib.): Thank you, Mr. Chair.

I must say I have a problem with the “perception is reality” argument. I think it's a never-ending slippery slope where you run into never-ending demands.

In terms of whether we should have a separate structure or not, I'm fairly agnostic at this point. What concerns me the most, like it does my other colleagues, obviously, is that the individual whistle-blower be absolutely protected. I think that's the absolute for me on this issue.

The other comment I'd like to make is that, whether we're talking about an independent structure or using the Public Service Commission, I think credibility in these cases is something that's created and built over time.

I have two questions for Ms. Barrados. First of all, given that you're so independent of the minister, what are the mechanics of setting your budget? I think that's something everyone would like to know.

Secondly, in terms of the current regime for handling complaints about personal harassment within departments, how does that system work? You've probably touched on it before, but where does the buck stop in that system? Does it stop with you? And how is the effectiveness of that system perceived?

• (1220)

Ms. Maria Barrados: Thank you for those questions.

On the issue of how our budget is set and whether it is sufficiently independent, I have the same concern as the other officers of Parliament. Sheila Fraser has spoken on this. John Reid was just speaking on this. We all have to follow the same process. We all have our budget set through Treasury Board, and we all have a concern about that.

The minister recognizes that, and is proposing a mechanism whereby there is a more independent review. But we're all in the same situation. It's true for the Public Service Commission, but it's also true for the other officers of Parliament.

With respect to the regime on personal harassment, that is not under the responsibility of the Public Service Commission, and I'm not really well placed to give you an assessment of how well that is working.

Mr. Greg Gauld: There is a Treasury Board policy on personal harassment. I think it might be with the Public Service Human Resources Management Agency now. You could ask them.

The Chair: Thank you, Mr. Scarpaleggia. Do you have more questions?

Mr. Francis Scarpaleggia: No thank you, Mr. Chair.

The Chair: Then we'll go to Mr. Boshcoff for the remaining time.

Mr. Ken Boshcoff (Thunder Bay—Rainy River, Lib.): Thank you, Mr. Chair.

You mentioned before the support of encouraging the public service. I'm asking about the degree of buy-in and the input they have had so that there is some sense of ownership or propriety in this.

We all want to know if this will really, in your view, inspire and motivate, get a stronger commitment in a dutiful way from the existing public service.

I'll ask that question quickly.

Ms. Maria Barrados: I'll try to answer it quickly.

As a piece of legislation, this is not a proposal that the Public Service Commission put together, so the question of the amount of consultation that went on about the legislation itself is really more appropriately put to government officials.

In terms of getting the commitment and buy-in, I think that's essential to make this work, and if it comes to the Public Service Commission, I'm certainly committed to doing everything I can to make it work. I would also make the commitment that in my reports to Parliament I would honestly report on where we are.

Mr. Ken Boshcoff: Do you have a grand vision of this, that it could actually create a new era or a new atmosphere where people would feel they had a new code they could live by or operate under, that bad things would stop happening or people would stop doing bad practices, that this could actually be a ticket to a more inspired degree of commitment?

Ms. Maria Barrados: My grand vision is one where I believe public servants have to be given more protection and they have to have a better understanding of what is right and wrong.

The public service tends to operate often in many shades of grey. I know from my days of auditing public servants that they often didn't know there was something they were doing that was really wrong. I think much more has to be done in terms of the training, giving support to public servants so they know what is right and wrong.

What we're trying to catch are those who don't really know what is right and wrong, and when something wrong occurs you really want to catch it before it gets too serious.

Mr. Ken Boshcoff: As proposed, then, could that happen without the considerations you've suggested as changes for the legislation? Would it happen without it, or would it be vastly embellished and enhanced with these changes that are being considered?

Ms. Maria Barrados: When I was approached about this, I said I thought it was workable. I listened to the comments I heard, and I've had a number of discussions with some of the members around the table. It was pretty obvious that there had to be a reinforcement of the independence of the Public Service Commission. Hence, this is why we're making those kinds of suggestions, to reinforce that.

It was also pretty obvious that we had to be careful not to give the wrong message to public servants themselves. Yes, we have to protect them, but we also have to make it easier for them, to encourage them to come forward.

The suggestions we didn't make—which I thought were good suggestions—were the ones coming from the unions in terms of the unions having a role in assisting their members coming and making a complaint. I think those are other good suggestions that would just make it work better for public servants.

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

The Chair: Thank you, Mr. Boshcoff.

For the last questioner today, Mr. Lauzon.

• (1225)

Mr. Guy Lauzon: Since I'm last, I'll try to get in a two-part question.

One of your colleagues answered a question about the Australian and the American experiences. The information I've been able to garner is that both, especially in the Australian model, but even in some of the larger private corporations in the United States, have adopted whistle-blowing policies and have had less than favourable experiences, because they were too close to management.

As a matter of fact, you mentioned Australia, and I understand that Australia's findings are the same, that because there is not an independent person, it's not meeting with resounding success with the public servants or with the people it's supposed to serve.

On the second part of my question, the Public Service Commission will be very closely associated with Treasury Board, cabinet, and deputy ministers on issues that will have huge impact on the careers of public servants. And by the way, the largest union, the PSAC, agrees with this—at least the perception will be there, for sure.

Do you think the close working relationships between your office, senior management, and politicians on files other than disclosures will continue to create the perception that the Public Service Commission is not truly independent?

If you're on the same bench, it's going to be really hard to distance yourself from them, isn't it?

Ms. Maria Barrados: I'll give it a try.

I have not had the opportunity to have discussions with the Australians, but I have had opportunities to have discussions with the U.K. They're not having problems with their independence, and they do, too, have somewhat mixed roles in some of the appointments they make.

I just need more information. I can't say that definitively, Mr. Lauzon, because just with the one contact—

Mr. Guy Lauzon: You say the U.K. is doing well with their—

Ms. Maria Barrados: I've had discussions with the head of the public service commission there, and—

Mr. Guy Lauzon: But have you read reports?

Ms. Maria Barrados: I've had discussions with the head of the public service commission there.

Mr. Guy Lauzon: Okay, but you haven't talked to the employees who have used the whistle-blowing—

Ms. Maria Barrados: No, I haven't had that opportunity.

In relation to working closely with cabinet and the Treasury Board, it's just not true. I don't work closely with cabinet. I don't have any relationship with cabinet, except like every other officer of Parliament, where I have to get my money through the Treasury Board, which is a committee of cabinet. But that's every other officer of Parliament. That's not just me; that's the Auditor General, the Privacy Commissioner, everybody.

Now, as part of the transition we have to implement the Public Service Modernization Act together, and under this phase I am spending more time talking to them to get out from everything, because if I just walk, that's irresponsible.

So I now have more contact with the others, and I believe this committee is having us come before you and you can see and we'll describe exactly what it is. But it's just not true that I have that kind of close working relationship that you are describing.

The Chair: Thank you, Ms. Barrados.

I believe Mr. Poilievre is going to use the rest of the five minutes.

Mr. Pierre Poilievre: I just want to reiterate a question I began with, because I don't believe it was directly answered.

I would like you to explain to us very clearly why you think your office is better positioned to carry out this role than the Public Service Integrity Office.

Ms. Maria Barrados: I think everyone would agree that the public service integrity officer is not the model, because the public service integrity officer is under policy, the public service integrity officer is part of the Treasury Board, and the head of the Public Service Integrity Office, Mr. Keyserlingk, has been very clear that he feels that it is not sufficiently independent and he does not want to be part of government the way he is.

Mr. Pierre Poilievre: Right.

What if he were given commissioner status, made independent, and given the resources that he needs, which is what he has in fact proposed? Under those circumstances, why would your office be better positioned than his?

Ms. Maria Barrados: I've had conversations with Mr. Keyserlingk, and he is of the view that putting it in the Public Service Commission is a reasonable option.

Mr. Pierre Poilievre: That's not my question, though. If he were given commissioner status, if he were made completely independent of the Treasury Board, why do you believe your office would still be better equipped than his to deal with this issue?

Ms. Maria Barrados: I believe that for a number of reasons that I have just stated.

Many of the complaints have to do with human resource management. We have that kind of expertise. We have an existing infrastructure. I have seen a lot of difficulties with small organizations without that existing infrastructure.

• (1230)

Mr. Pierre Poilievre: Actually, more of the complaints, if you look at the bill, deal with issues of ethics, and he is a noted ethicist. His office would always be occupied by an ethicist. So perhaps his mandate would be better suited to this bill.

Ms. Maria Barrados: I'm sorry, I—

Mr. Pierre Poilievre: Well, you said—

Ms. Maria Barrados: I'm going by his comments in terms of the kinds of complaints he's had. I'm telling you what is in their reports and the comments I have on their complaints.

Obviously there has to be expert staff put in place. I spoke with Dr. Keyserlingk. If it comes to the Public Service Commission, he will help with the transition and he will help get that senior official that I need to put into the position reporting to me. He has no interest in staying on.

The Chair: Thank you very much. The time is up.

I appreciate very much the three of you coming today. Your testimony has been helpful, and I'm sure we'll hear from you in the future.

Mr. Szabo, do you have a point of order or a comment?

Mr. Paul Szabo: The president of the Public Service Commission offered to provide draft legislation amendments. I think there are some interesting points there. I think we should confirm that we would like to receive them, please.

The Chair: Okay.

Mr. Paul Szabo: Secondly, I would like to specifically request that the president of the Public Service Commission come back before us after we have heard some of the other stakeholders in this. I think there are some very significant matters that have to be followed up on.

Ms. Maria Barrados: I would be happy to come back to this committee at any time.

The Chair: Thank you very much.

The meeting is suspended. We'll take three minutes and then come back to an in camera meeting to deal with the future business of the committee.

[Proceedings continue in camera]

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

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