HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

44th PARLIAMENT, 1st SESSION

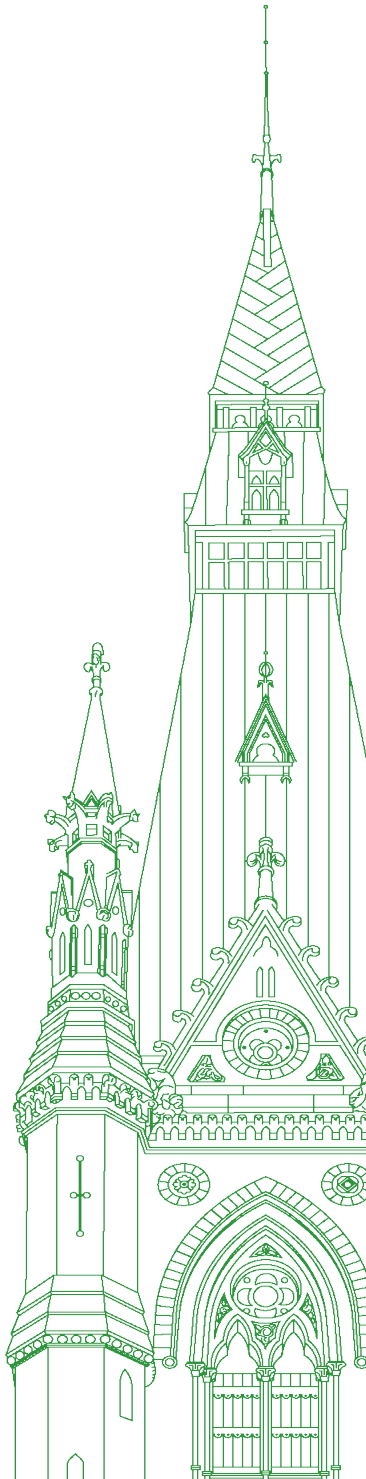
Standing Committee on Government Operations and Estimates

EVIDENCE

NUMBER 064

PUBLIC PART ONLY - PARTIE PUBLIQUE SEULEMENT

Monday, May 1, 2023



Chair: Mr. Kelly McCauley

Standing Committee on Government Operations and Estimates

Monday, May 1, 2023

● (1535)

[*English*]

The Chair (Mr. Kelly McCauley (Edmonton West, CPC)): I call this meeting to order.

Welcome to meeting number 64 of the House of Commons Standing Committee on Government Operations and Estimates. Pursuant to the order of reference adopted by the House of Commons on Wednesday, February 15, 2023, the committee is meeting on the study of Bill C-290, an act to amend the Public Servants Disclosure Protection Act.

Colleagues, we'll be going to about 4:30 p.m. Then we will go in camera to finish off the Governor General study.

We have one witness online and several in person. We have some opening statements. I will just confirm that for our witness online, we have done the proper sound check for our interpreters.

Mr. Bruyea, we'll start with you, after which we'll go to Mr. Devine and then Ms. Brill-Edwards.

Mr. Bruyea, go ahead, please.

Mr. Sean Bruyea (Retired Captain, As an Individual): Thank you, Chair.

I really want to sincerely thank all of you for inviting me here today. After 17 years of not a single substantive change to the Public Servants Disclosure Protection Act, a highly discriminatory act designed to fail, Bill C-290 is a long-overdue, vital and desperately welcome first-step initiative. I would not remove anything from this bill. However, like those who have come before and will come after me, I recommend some essential additions. You will find them in the four-page brief I have submitted to the committee.

First, please allow my story to underscore and add to your fine work.

As an air force intelligence officer, I served in the first Persian Gulf War. I would return early, broken physically and mentally, lost in a military culture that heavily stigmatizes any injury as a moral weakness. I hid much of my suffering, and therefore received little help. Veterans Affairs Canada, after a litany of bureaucratic deterrents, would recognize my disabilities and provide treatment and care.

As I regained my strength, I could not ignore that this system was abandoning or destroying so many of those it should be helping. I would be the first to speak out against the 2005 money-saving initiative to replace lifelong veterans disability pensions with one-time lump sums.

My calls for due process caught the eye and the ire of senior bureaucrats. The Government of Canada, which I lost much of my well-being and health protecting, sought revenge. My benefits and treatment were threatened or taken away. Allies who sat in Parliament refused to speak with me. Even the Prime Minister's Office told me that I should seek treatment, as if these reprisals were merely a manifestation of combat-related post-traumatic stress disorder.

I fought blindly to defend my family. My wife, an immigrant, was not yet a Canadian citizen. Senior bureaucrats with no medical training planned an ambush, calling me in for a “friendly chat” wherein they would issue an ultimatum that I be placed into the Veterans Affairs clinic for psychiatric care. Should I refuse—senior bureaucrats informed the minister of the outcome of the medical assessment before it had occurred—VAC would refuse to support my mental health providers, knowing full well that removal would likely result in my taking my life.

It took me five years to prove this. By 2010, over 14,000 pages were generated on every aspect of my personal life available to Veterans Affairs Canada, then distorted and placed into briefing notes provided to over 250 senior bureaucrats, my member of Parliament, the parliamentary secretary of the veterans affairs committee and two ministers, and briefings to the Prime Minister's Office. Meanwhile, another lengthy battle with VAC had them finally admit to having over 2.1 million pages resulting from a request I made about the department monitoring my newspaper columns and media appearances.

The evidence is overwhelming. Senior bureaucrats took the gloves off and pursued a two-part plan to remove my benefits and treatment while simultaneously discrediting me and my advocacy work. I would receive one of only two official federal government apologies at the time given to an individual not related to wrongful conviction. The other recipient of the apology was Maher Arar.

I put my life back together yet again and completed a master's in public ethics. Shortly after, in 2017, the government would table other deceptively crafted legislation that claimed to be reinstating lifelong pensions. I spoke out. Minister Seamus O'Regan accused me in a newspaper column of stating “mistruths”. The day after the article's publication, Veterans Affairs, without warning or consultation, terminated care for my son, who was then six years old—except Veterans Affairs had learned much since the 2010 privacy breaches and apology. Officials never put on record the reasons for cancelling the care, or they merely refused to release this information.

Four years of working with the privacy and information commissioners have been disheartening. Meanwhile, my health has spiralled again. My PTSD and depression have the unwelcome bedfellow now of severe anxiety disorder, as my mind and body broke once more, with panic attacks lasting not hours but months. Telephone calls from the case manager who signed the letter ceasing my son's care sent me to the ER on multiple occasions with heart arrhythmia. There were ambulances to our house as my son looked on, and monthly ER visits and hospitalization for household accidents as my mind and body disconnected.

After 30 years of suffering constant prostatitis caused by the Persian Gulf War, I developed stage 3 cancer. I sit here today recovering from that surgery.

A system with dozens of the most senior public service officials attempted to humiliate, disempower and discredit me, and then attacked my son's care when I was already dealing with life-threatening chronic illnesses from my military service, yet I was the one accused of being unreasonable, unstable and untruthful.

It is a wonder that anyone who serves in any capacity for our federal government would risk their job, their health, their reputation and their family to speak out. Still, they selflessly do. I, like them, believe that the corruption and mismanagement that appear in the country we love so dearly.... Such unscrupulous or dangerous behaviour must be called out lest others, or our nation, be harmed.

I strongly support expanding the act to former public servants and contractors. Serving military members and CSE have their deeply flawed internal complaint mechanisms. That leaves military veterans as the only federally employed or formerly employed demographic without protection, yet veterans are deeply vulnerable to the whims of a vengeful bureaucracy.

Over 100,000 veterans and almost 40,000 family members are partially or wholly dependant on Veterans Affairs for their financial security. There are no big box stores for veterans' benefits. There's only Veterans Affairs. This places veterans and their families in a particularly vulnerable situation, especially considering that almost 40,000 veterans are suffering a mental health injury.

Veterans are also uniquely positioned to not just see but experience any potential wrongdoing, not only in the $200 million in contracts awarded annually by Veterans Affairs Canada, but also in the new $0.5-billion contract for rehabilitation. We must, as a nation, take good governance and accountability as seriously as the rest of the developed world.

We must see whistle-blowing not merely as an inherent right to be protected, as we protect freedom of expression and our Charter of Rights and Freedoms. We must see whistle-blowing as the voice of reason, independence and accountability in a system where senior civil servants hold all the cards in consistently avoiding accountability.

Ultimately, we must protect those, especially—

● (1540)

The Chair: I need to interrupt you, Mr. Bruyea.

Mr. Sean Bruyea: You bet. This is the final line, Mr. Chair. Thank you.

Ultimately, we must protect those, especially the vulnerable, who step forward to protect and defend the best interests of Canada and Canadians.

Thank you.

The Chair: Thank you, sir.

Mr. Devine, welcome to Canada. Welcome to OGGO. It's wonderful to have you with us. You are truly a legend in the world of whistle-blowing protection. We appreciate your participation.

You have five minutes for an opening statement.

Mr. Tom Devine (Legal Director, Government Accountability Project): Thank you for inviting me, and for your schedule flexibility.

The Government Accountability Project, where I work, is a non-profit, non-partisan support organization for whistle-blowers, those who use free speech rights to challenge abuses of power that betray the public trust.

Since I came in 1979, I've worked with over 8,000 whistle-blowers and have been on the front lines for 38 different whistle-blower laws. We're in the middle of a global legal revolution.

When I first came, the United States was the only country in the world where the whistle-blower law had passed—in the previous year, 1978—and now there are 49 nations with national whistle-blower laws and 123 with partial sectoral whistle-blower laws. The reason is that they make a difference. My written testimony has examples of that.

Not all rights are alike, though. The whistle-blower laws are free speech shields against retaliation, because fighting abuses of power means war. If you go into battle with a metal shield, it's dangerous, but you have a fighting chance of living. If you go in with a cardboard shield, no matter how beautifully it's decorated or how heavily it's advertised, you're going to die, and too many whistle-blower laws are the latter.

GAP and the International Bar Association did a global study based on 20 consensus global best practices for what it takes for an effective right. These best practices, I want to emphasize, have been adopted in all four continents. The principles get customized for the legal structures of any given country, but the principles themselves are universal.

In using that study, the results for Canada were that it was complying with one out of 20 consensus best practices. That tied Canada for the weakest whistle-blower law in the world with Lebanon. To me, it's not a cardboard shield here, it's a paper-tissue shield, a law that rubber-stamps retaliation and that any whistle-blower support organization has a duty to warn whistle-blowers against relying on.

Bill C-290 would go a long way towards changing that. I want to give credit where's it's due.

It takes away the motives test for protection, which has put the whistle-blower's reasons on trial instead of the misconduct that's being exposed.

It provides protection from abuse of authority. That's the cornerstone of whistle-blower rights globally, and its absence from Canada's law has been conspicuous. It's well defined as arbitrary and capricious actions that result in favouritism or discrimination.

Bill C-290 protects the whole team that's responsible for an effective whistle-blowing disclosure, rather than just the final messenger. It takes solidarity to survive as a whistle-blower, and the fatal word is isolation. Bill C-290 enables solidarity.

It provides reliable identity protection because the whistle-blower has to approve exposing his or her identity.

It removes the Achilles heel of current law, which is the Public Sector Integrity Commissioner's veto power over access to the tribunal and judicial review.

It improves the dysfunctional 60-day statute of limitation to a functional one year to act on your rights.

With respect to disciplinary accountability, it's setting a new standard for best practices, because it allows the whistle-blower to counterattack against the person who's bullying him or her when they defend themselves.

While these improvements are badly needed and welcome, the law will still not provide credible protection against retaliation; they're an outstanding beachhead, necessary but not sufficient.

My written testimony has about a dozen recommendations for you to consider. I think the highest-priority ones are to make sure the rights can't be cancelled through non-disclosure agreements that are prerequisites for employment, or through agency regulations that can cancel public freedom of expression rights in the law, as in the current statute.

Second is burdens of proof, meaning the rules of the game for how much evidence it takes to win. The European Union and the U.S. both have analogous burdens of proof that should be considered.

● (1545)

Third is temporary relief, so that whistle-blowers can survive during multi-year litigation, and there's an incentive for agencies to settle instead of dragging things out.

Fourth, have no-risk counselling and training, so people understand their rights and can change the culture.

Finally, restore remedies that have been cancelled due to the PSDPA's existence. Some of those remedies were superior.

Mr. Chairman, this is an outstanding beachhead to build on, but it's not sufficient. Bill C-290 would change Canada's rights from a tissue-paper shield to a plastic shield. I urge you to make further amendments so that this will be a metal shield.

The Chair: Thank you, Mr. Devine.

Dr. Brill-Edwards, go ahead please, and then we'll go to Ms. Myers.

Dr. Michèle Brill-Edwards (As an Individual): Thank you, Mr. Chair.

I'm Dr. Michèle Brill-Edwards, a pediatrician and clinical pharmacologist. I recently retired from clinical practice and from teaching in pediatric emergency medicine at CHEO and the faculty of medicine at the University of Ottawa.

The Chair: I'm sorry, would you be able to speak a bit closer to your microphone?

Dr. Michèle Brill-Edwards: Yes.

As a former senior public servant turned truth-teller on two occasions, one internal and one external, I'm here to offer my perspective on improving whistle-blower protections.

I joined Health Canada's drug regulation unit in 1980 and led the unit from 1988 to 1992 as Canada's senior physician responsible for prescription drug regulation. That is the authorization allowing clinical trials and market approvals for prescription medicines in Canada.

I enjoyed the worthwhile challenges of that work in that senior role, but I gradually began to realize that Health Canada's senior ranks at times put Canadian lives at risk needlessly to favour perceived political and industry advantage, contrary to the Food and Drugs Act, which is, of course, the citizen's bill of safety rights.

During one such event in 1991, I helped win a Federal Court case to remove a senior Health Canada officer who was overruling serious safety decisions on life-threatening drugs. Within six months, the same director was reinstated by the department by a new process, and my senior position was deleted from the org chart.

I prepared, then, to leave Health Canada, having won an international competition for a post at the World Health Organization. Such posts require our government's concurrence. Health Canada's deputy minister was happy to agree to my departure, but only in return for my silence in any future legal proceedings. I declined that gag order on safety, and forfeited a career-saving dream job.

Eventually, in 1996, when Health Canada failed to remove a dangerous cardiac drug from the market, I resigned and blew the whistle in a major CBC documentary revealing Health Canada's reliance on biased expert opinion from doctors with strong ties to the drug industry. That documentary prompted landmark work, showing unequivocally that ties to industry wrongly bias doctors' interpretation of pharmaceutical research. As a result, guidelines to manage medical conflict of interest were upgraded internationally, including at the FDA, but not at Health Canada.

In the aftermath of my resignation, I was blacklisted and didn't work for nearly four years. Instead, I used my voice, along with allies, to serve the public interest to ensure that citizens understood the extreme danger of a health department that, under the policy guise of deregulation, had turned off the alarm systems essential for the preservation of lives.

By 1998, those efforts bore fruit. Alarm bells were ringing across the country, with the exposure of multiple Health Canada mishaps, I suppose, but scandals, truly. It came at great personal cost to our family, with the death of my mother in 1999 due to all the turmoil and stress that our family was subjected to.

I'd like to spend a moment speaking briefly to the need for legislative change to the current legal practice.

Certainly, both cultural and legislative change are required parts of the solution we seek, but to me, legislative change is the essential key. To achieve respect for and protection of truth-tellers requires, first and foremost, legislative change in the form of sanctions on retaliation against whistle-blowers, as Tom has said just now.

● (1550)

Why do I say this? In my experience, we are dealing in Canada's public service with a pervasive long-standing adherence to the loyalty principle. By that I mean the deeply ingrained standard operating procedures of cover-up and deception, which automatically deploy, reflexively, to protect the image of the minister and the government at all costs. Do whatever it takes to cover up—up to and including lying, sadly—even if that puts Canadian lives at risk. Seek and destroy the truth-teller who jeopardizes the facade—

The Chair: I'm sorry, Dr. Brill-Edwards. I have to ask you to wrap up, please.

Dr. Michèle Brill-Edwards: Yes, I am just about to do that.

The deeply ingrained principle operates even at the very highest levels, so what must we do? Only legislated sanctions applied overtly on high officials will do the two essential things, and here I stop: First, create a safe space for truth-tellers, free of retaliation, and second, signal to all public servants an authentic new era of transparency, not just more blah, blah, blah.

Thank you.

● (1555)

The Chair: Thanks very much.

We'll go over to you for five minutes, please, Ms. Myers.

Ms. Anna Myers (Executive Director, Whistleblowing International Network): Thank you. I'm very pleased to be here today. As a fellow Canadian who hasn't worked in the field of whistleblowing directly in Canada, except through some work with the Centre for Free Expression at Toronto Metropolitan University, I'm very pleased you're reviewing this law.

I have worked in the field for 23 years. I was called to the Ontario bar, but switched allegiances to the Law Society of England and Wales. I was the deputy director of Public Concern at Work—which is now called Protect—so I answered the phone to whistle-blowers across the U.K. The whistle-blowing law in the U.K. has been in place since 1993. It covers public sector workers, private sector workers and charitable workers.

What I was astonished by, even though Canada put a law in place in the 2000s—obviously in a period in which others were taking those steps—was that the law itself didn't follow some of the best practices that make sense. I think you have already heard about some of this. I will go through it very briefly.

I want to point out that this isn't new. The ancient Greeks had a term for this: *parrhēsia*, or "fearless speech". Under the Hellenic monarchs, for example, the king's adviser was required to use it to help the king make decisions, but also as a means of tempering his power.

I would note that what Canada seems to have done is implement a law that quite adequately deals with helping the government make decisions. It improves some of the flow of information through to the government. However, it has not implemented a law that effectively tempers power and those who are negligent or abusing their power.

The act of whistle-blowing, of course, has lost none of its importance during the 23 years I have worked in the field, from the Chinese doctor who first warned us of COVID-19—and died of it—to hundreds of medical and care staff across the globe who called out supply shortages and mismanagement. We knew more about how to protect ourselves and what the pandemic meant because of these truth-tellers, but, unfortunately, two attempts were made to silence these voices. Dr. Li was initially ordered by the police to stop making "false" comments, and doctors, nurses and government employees across the world lost their jobs for speaking out.

We know whistle-blowers are typically those in the workplace, whether in the public, private or charitable sectors. They are the first to see something go wrong, so they often have a preventive role. As a Canadian, I think this makes perfect sense. People speak up about wrongdoing. If it's not dealt with as something that could harm others, and they lose their job or suffer retaliation, the law ought to step in and protect them.

Whistle-blowers are also now seen as essential for credible law enforcement against corruption. Of course, they can threaten organizational leaders who are, perhaps, themselves abusing power or don't like to be questioned. They often respond with an almost instinctive drive to destroy the threat. We need to start with the view that "whistle-blower", as a definition, does not equal "martyr". We need laws that, as Tom Devine pointed out, give whistle-blowers a fighting chance to survive. The laws need teeth.

One thing to think about when we talk about this revolution in whistle-blowing law.... We have had a number of laws through time. I thought I would mention a few that have put in practice, from the beginning, some of the elements we're talking about.

For instance, one of your witnesses today talked about working for the military or potentially working with official secrets information. Ireland has had a law since 2014. Within that law, it has a special system for protecting those working with official secrets information.

In Serbia, the Law on the Protection of Whistleblowers since 2014 also includes a duty on judges to be certified—to be trained—before they are able to hear any whistle-blowing claims. The only other laws in which they have to be certified are child protection laws. The correlation between judicial training and the strongest implementation of interim injunctive relief yet seen in any jurisdiction is quite clear. This is starting to be rolled out more and discussed in Europe.

What Tom Devine also mentioned is the EU directive. I have also put in my notes to you the EU whistleblowing monitor. You can see we have been tracking the laws across the EU. With the EU directive—which is obviously making 27 European countries put in laws now—we're witnessing what I think is this important shift, one the Canadian law needs to take aboard: This is as much about accountability as it is about protecting the individual. In that law, there are now duties of care on employers, organizations and regulating authorities in terms of how they run their systems and arrangements for protecting whistle-blowers.

● (1600)

I think there are five essential elements, and Mr. Devine has given you quite a lot of detail around what needs to be put in place, but I wanted to emphasize five. It has to be a broad and—

The Chair: I'm sorry, Ms. Myers; we're past five minutes already. Can I ask you to be very, very brief?

Ms. Anna Myers: Yes. It has to be a broad and workable definition of information. There has to be a range of protected channels to ensure that there are alternatives where any are blocked. The reverse burden of proof absolutely has to happen, because that is the only element that really ensures that you are levelling the playing field. Another element is access to independent due process, and the Canadian law is the only one I'm aware of in the world that has ever had this gatekeeping rule. The last element is protection against a range of retaliation measures, not just the ones we see in a dismissal.

I would just like to point out that the EU directive is shifting that, and 27 member states are going to have to follow this and are implementing laws now. Canada has an opportunity now to make a real difference, not only bringing itself back up to speed with what's happening internationally, but perhaps taking it forward.

Thank you very much.

The Chair: Thank you, Ms. Myers.

Colleagues, if you'll bear with me, it's a bit unorthodox, but we have Ms. Gaultieri back with us. She has a short statement of two minutes and 20 seconds, I understand. I think it's important enough that we allow a bit of leeway.

Go ahead, please, for two minutes and 20 seconds.

Ms. Joanna Gualtieri (Retired Lawyer, Department of Foreign Affairs, Trade and Development, As an Individual): Thank you, Mr. Chair. I've already condensed it, so hopefully we'll be under two minutes.

With Tom's absence last week, I return to provide testimony that Tom and I had collaborated on.

At FAIR, the whistle-blowing charity I founded and where Mr. Hutton came to volunteer, I wrote standards for a good law, adopting Tom's work. Mr. Hutton shared some with you, but never did I foresee the vengeance that would be marshalled against Canadian whistle-blowers, rendering these standards problematic.

In Canada, free speech and due process, fundamental to any whistle-blower, are handicapped. Former Chief Justice Beverley McLachlin put it this way: “[W]e in Canada are more tolerant of state limitation on free expression than are Americans. Similar points can be made about other constitutional rights.” She continued by saying, “[T]he Canadian approach is more nuanced than that of the United States in relation to due process” and, “We are comfortable with ambiguity.”

The nail in the coffin was eloquently warned about by our current Chief Justice Wagner, quoting Balzac: “Laws are spider webs through which the big flies pass and the little ones get caught.” Foundational to culture, these authoritative statements are ominous, especially since the whistle-blower is always the small fly.

You have repeatedly asked what this committee should do. First, take ownership of the crisis. For too long, ordinary Canadians have been doing Parliament's job.

Second, commit to signing an unambiguous public statement affirming full free speech rights for whistle-blowers, and incorporate it in Bill C-290.

Third, identify and bulldoze the due process nuances currently weaponized by our government, courts and tribunals to suppress whistle-blowers' human rights.

Committee has referenced the role of good faith. Please employ your own. Pass C-290, not as an end but as the beginning of a wholesome culture of truth-telling.

Thank you very much.

The Chair: Thanks very much.

We'll start with Ms. Kusie for six minutes, please.

Mrs. Stephanie Kusie (Calgary Midnapore, CPC): Thank you, Chair, and thank you very much to our witnesses for being here today and for sharing your stories.

Mr. Bruyea, in your first sentence, you refer to the legislation here in Canada as discriminatory. Can you expand upon that, please?

Mr. Sean Bruyea: I will answer that question with an anecdote that I told my son this weekend. He asked me what lie I was speaking about this weekend, and I said, “Imagine that you went to a group of people, and you said to them: 'We're worried about some of you committing a crime, so we would like you to write the law. We would like you to assign the chief of police. We would like you to populate the police that will enforce that law. We will give you control over every aspect of evidence. We will give you unlimited legal resources, and we will give you unlimited financial resources to defend yourself, and, should anyone accuse you of committing a crime, then you have the right to persecute that person.'”

My son said to me, “That doesn't sound like a very smart law, and it sounds like the criminals would like it.” I think that's what we have in front of us, a law that basically does not help the whistle-blower, even though in name it's supposed to. We would never build, for instance, a public building for all Canadians that didn't have wheelchair-accessible ramps or wheelchair-accessible bathrooms—specifically supposed to be designed to help people who are truly vulnerable, disabled, fighting the government—and put in a whole bunch of ladders and a whole bunch of walls that they have to climb over when they're not capable of doing so. Bill C-290 starts to take away some of those obstacles.

● (1605)

Mrs. Stephanie Kusie: Thank you for that response.

Is your son here today?

Mr. Sean Bruyea: He is. He's over there.

Mrs. Stephanie Kusie: That's very nice.

Mr. Sean Bruyea: Thank you.

Mrs. Stephanie Kusie: I thought that might be him, and I think it's lovely that he's here supporting you today, considering everything he's had to see you go through.

Madam Brill-Edwards, I just want to share a small anecdote with you. Ms. Gualtieri will know that I do this. I spent the summer of 2000 at Merck Pharmaceuticals in Whitehouse Station—the summer between the two years of my MBA—and that was when Vioxx was all the rage. I remember seeing the marketing department. Everyone was completely on fire for this drug. Lo and behold, that fall would begin the downfall as that evidence became public and as America and the world became aware of the fallout of that.

Ms. Gualtieri, I know you mentioned that, so I'm just saying that I've seen what you're describing.

Madam Myers, I'm always very big on comparative studies. You gave the example of the European Union. If I was conducting a comparative study on which we could base our new whistle-blower protection, could you provide me with the top international resources on that? You mentioned the European Union, but if you could provide a short, comprehensive list, please....

Ms. Anna Myers: Do you want me to provide that later, or do you mean right now?

Mrs. Stephanie Kusie: Well, you could do it verbally, to begin, right now, and then more comprehensively later.

Ms. Anna Myers: Sure.

Many of the principles that Tom Devine has put in and that I was discussing—the five I mentioned—are in the EU directive. This will mean that 27 member states will have to transpose the directive into their national systems. There will be the ability to raise issues internally. If you work within the government, that's, obviously, within the government or to a ministerial body, but you also are able to be protected even if you go public under certain circumstances. The range of protected disclosures is going to be in all of these laws. The laws that already have it are the U.K.'s Public Interest Disclosure Act and Ireland's Protected Disclosures Act. Serbia, which isn't even part of the EU, has it, and France now has one of the most advanced laws.

Many years ago, many of us were told that whistle-blowing was very Anglo-Saxon, that it really fit within the common law, that it would never be part of the French system, but now France has one of the most extensive laws. It actually protects those who facilitate whistle-blowers in making their disclosures, and that can be a legal person. Like organizations that Tom Devine works for, many within the Whistleblowing International Network that I run would be protected if they supported the whistle-blower and they, too, found themselves under attack. That can be through criminal law and civil law for defamation, or through other forms of attack using the legal systems.

These are quite comprehensive laws. I am very happy to put together a list of some of those issues, where they've already existed, and what the EU directive will change.

Mrs. Stephanie Kusie: Thank you.

Mr. Devine, you gave—in the last third of your speech, I believe it was—four recommendations. Could you provide those again, please, and expand on them with the minute we have left?

Mr. Tom Devine: Yes, Madam.

I think the highest priority is to make sure that the rights can't be cancelled at will by the institutions that may be abusing power. It's a very common tactic to make waiving your rights a prerequisite for a job—as another witness described it in a different context—and to cancel...to have agency regulations that cancel the rights. That's in Canada's current law for public freedom of expression.

Burdens of proof can't be emphasized enough, because otherwise we're vulnerable to arbitrary decisions.

What I'd like to really emphasize in answering your question is the importance of training. Training and education make all the difference in the world. The first step for changing cultural bias is passing a law. That's step one. However, the rights have to take root from that law. That means educating people that they have the rights, educating employers of their responsibilities with respect to those rights, and educating those who enforce them that they're credible, significant and important for society. In Serbia, where they've required—

● (1610)

The Chair: I'm afraid that's our time, Mr. Devine.

Mr. Tom Devine: —certification, the success rate is 80% compared to 20% globally for whistle-blower cases.

The Chair: That's perfect. Thank you.

Mr. Fergus, go ahead, please.

[*Translation*]

Hon. Greg Fergus (Hull—Aylmer, Lib.): Thank you very much, Mr. Chair.

I'd like to thank the witnesses who are with us today.

Unfortunately, given the time we have, I will only be able to ask a few questions. I'd like to start with Ms. Myers.

[*English*]

Ms. Myers, you indicated that the European model would probably be the best one going forward in terms of protection of public servant whistle-blowers. I think that would be a place where we would like to take a very close look.

Before I ask my question, I should quickly give a bit of an overview. We understand that Bill C-290, of course, is a private member's bill. There is only so far that it can go in terms of being able to do what Mr. Devine indicated with respect to changing the culture. There are other aspects that would have to come from a government bill to be able to do that. I know the government is considering and working towards updating the PSDPA.

Ms. Myers, Bill C-290, which is before us here, includes an opportunity to remove the references to “good faith” and “reasonable grounds” from the screening sections of the act. I asked one of our witnesses here last week the same question that I'd like to ask you. If you were to remove that aspect, and if there is no sense of requiring that the whistle-blower reasonably believes that what they're reporting is true, is there a possibility therefore that it could lead to some frivolous or perhaps intentionally malicious disclosures? Have you seen that in other jurisdictions?

Ms. Anna Myers: No, and I'd like to explain.

In the U.K. context, it was removed. The “good faith” test was taken out of the Public Interest Disclosure Act. It's a very real example.

What ended up happening was that it became a bar to even getting past the first hurdle in a legal case. It became the case that the individual's motives were what was on trial. Lots of times they were asking if the whistle-blower behaved reasonably, without asking.... Basically, what happens in the U.K. environment is that you show that you raised a public interest concern, and you show what the misconduct was. The burden then moves...the misconduct, the retaliation, is against them. Because you've shown a prima facie case, it switches to the employer to disprove.... What they have to show is that any retaliation that happened was actually fair—independently fair—and had nothing to do with the whistle-blowing.

Having it as a bar to having the discussion.... There is enough in people's workplaces. Most people want to raise things internally. If you think of yourself, you don't immediately think that in your job you would have gone directly to the chief executive or to a non-executive director, or immediately called a regulator. The law is trying to protect the individual who has suffered for raising concern. Removing “good faith” doesn't suddenly give the green light to everybody to speak up and do it with motives that are not good.

I think we've shown time and again that when you have “good faith” in there, it tends to focus all the efforts of the courts, and the minds of the other side can actually impugn the motives of the whistle-blower before we even get to the next point.

Hon. Greg Fergus: Ms. Myers, I'm sorry, but I didn't mean to give the impression.... I agree with you that it's important to remove “good faith” and “reasonable grounds”. I was wondering if there was a reasonable mid-sentence, whether there is some initial cut-off on that front, so you don't have those frivolous cases.

Perhaps I'll ask that of Mr. Devine, given his experience as well.

● (1615)

Mr. Tom Devine: Yes, sir, the “good faith” test has been very dangerous, but the “reasonable belief” test is actually a universally accepted, legitimate merits test for whether a whistle-blowing disclosure deserves to be protected. The elements for it have generally been that you genuinely believe the issues you're raising, and that peers who have similar knowledge and experience could agree with you—not that they have to. Basically, your views would have legitimacy within the community of professionals or colleagues you work with.

Hon. Greg Fergus: I'm glad you talked about this. It's that reasonable belief that I think is the right ground for that.

What does that avoid, in your view?

Mr. Tom Devine: It avoids subjective judgments about whether speech should be protected. When you put the whistle-blower's motives on trial, it becomes a personal judgment of the person. The reasonable belief test means that we're going to be focusing on the credibility of the evidence that the whistle-blower is presenting. That's really the point of whistle-blower protection laws.

Hon. Greg Fergus: Thank you very much.

The Chair: Thank you.

Ms. Vignola, go ahead for six minutes, please.

[*Translation*]

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

Ms. Brill-Edwards, Mr. Bruyea, Ms. Gualtieri and Mr. Devine, thank you for being with us today.

Ms. Brill-Edwards, I'm sorry to hear that some career options became inaccessible due to your honesty. That should never happen.

Mr. Bruyea, you went through hell, and I think Satan himself would not want to go through what you went through. I am sorry. Once again, that should never happen.

Mr. Devine, you said the highest priority is to reverse the burden of proof. Why is that so important?

[*English*]

Mr. Tom Devine: To avoid arbitrary decisions, you have to have rules of the game for how much evidence it takes to win and to prove your charges.

Right now, Canada's law is one of the few in the world that don't have any standards for what it takes to prove retaliation. Those standards have been very well developed over the decades. The European Union directive and the United States standards are pretty much equivalent to each other. I think the EU burdens of proof are a little more cleanly written. The U.S. ones have some idiosyncrasies for our legal system.

Without burdens of proof, a whistle-blower is at the mercy of the whims of any decision-maker. That means the rights are totally dependent on subjective factors, rather than objective, credible factors grounded in the public interest.

[*Translation*]

Mrs. Julie Vignola: How would reversing the burden of proof apply to Canada, within the framework of the Public Servants Disclosure Protection Act?

[*English*]

Mr. Tom Devine: The EU directive burdens of proof have been very flexible for countries with a variety of national legal systems, because they are kind of core principles.

It doesn't matter so much from country to country how much evidence it takes to prove your point. There might be different points you have to prove. There might be different procedures or structures for how you do it.

In terms of the quantum of what proof is necessary to prove that your rights are violated, that has been pretty global. The standards are very consistent universally.

[*Translation*]

Mrs. Julie Vignola: Thank you.

Mr. Bruyea, you think veterans are especially vulnerable to reprisals. Can you explain to the committee how that vulnerability should also be included in extending the scope of the bill to amend the Public Servants Disclosure Protection Act?

● (1620)

Mr. Sean Bruyea: Thank you very much for the question.

[*English*]

I came up with a standard where I was thinking.... Not being in deep with the law, what occurred to me is that public servants up this point have been seen as the only ones who can be whistleblowers. The reason is that they meet two criteria: They have insight within their job, and they have a vulnerability to lose that job and suffer other repercussions in the job space.

Bill C-290 does an excellent job of addressing those two concepts and expanding them to contractors who have both insight and vulnerability, as well as former public servants, former RCMP and temporary workers.

In that sense, if we're going to use the criteria of vulnerability, veterans are the most vulnerable of any federally serviced individuals, in that they are often wholly dependant on the Department of Veterans Affairs. Should any one at any level decide to take revenge, then they jeopardize their complete financial security, their complete medical care and often the stability of the family and the home.

[*Translation*]

Mrs. Julie Vignola: Thank you.

Ms. Gualtieri, the principle of loyalty was mentioned several times.

Just one question comes to mind on the subject. To whom is it absolutely essential that officials give their loyalty? Is it to their bosses, meaning the people at a higher level of the hierarchy? Is it to the citizenry, for whom services are intended? Any other answer is also possible.

Ms. Myers and Mr. Devine are welcome to answer the question as well.

[*English*]

Ms. Joanna Gualtieri: I think that's an excellent question, because it's one that has been debated for a long time. Public servants will tell you that their loyalty is to the people of Canada, but this does not conflict...in other words, it is not at odds with loyalty to a boss if the boss is a good boss. Ultimately, they are one.

If you had to choose, it would be because a boss is in some way not reflecting the values of this nation, our constitutional values or our human values. Ultimately, most public servants—all public servants, I believe—will go to work feeling that they are serving the people. In so doing, they will hope that they are serving the bosses as well.

If they have to make a choice, they are put in a terrible dilemma. That is why we are seeking to protect them. It is so that when they make that choice, they won't be slaughtered for continuing to serve the people.

[*Translation*]

Mrs. Julie Vignola: Thank you.

[*English*]

The Chair: Thanks very much.

Mr. Johns, it's good to see you. You have six minutes, please.

Mr. Gord Johns (Courtenay—Alberni, NDP): Thank you.

Thank you all for your testimony.

First, I want to thank Mr. Bruyea and Ms. Brill-Edwards for their service to Canada and for sharing their heartbreaking stories. It's painful to hear them. I'm very sorry to hear what you've been through. I want to highlight that and thank you for your courage.

All of you who are here today are testifying to pursue justice, not just for what your experience has been, but for those who are in the public service and for the future of our country. I thank you.

Mr. Bruyea, could you explain why you recommend that serving CAF members collecting VAC benefits should be covered under this act? Elaborate a bit on what you started in your testimony.

Mr. Sean Bruyea: Certainly. Thank you, Mr. Johns.

Serving CAF members are also entitled to collect Veterans Affairs benefits. The issue is that the internal review process that CAF has in place has a chief of review services. They report incidents of wrongdoing up the chain of command. It's a very hierarchical structure, more so than the public service.

The problem would be that if the CAF member wants to report something to deal with Veterans Affairs, there's no authority for CAF to deal with issues concerning Veterans Affairs. They would also not be treated very sincerely, given the stigma with which disability is viewed within the Canadian Forces.

I think it's important that serving members be able to separate their personal lives, where they suffer disabilities, from their professional lives, where they may witness wrongdoing within the operations of CAF.

I hope that answers the question.

● (1625)

Mr. Gord Johns: It sure does. That's great.

Also, in your opening remarks, you stated that the PSDPA is a highly discriminatory act that is designed to fail. Can you explain a bit more why you say this?

Mr. Sean Bruyea: Yes. I provided an anecdote previously.

One of the things is the PSDPA doesn't seem to understand the whole nature of culture within an organization. I would put this to members of the various parties in this committee: How willing would you be to step outside the party to criticize something that is occurring within the party?

Loyalty within the public service, I would say, is even more so than that, in that public servants, for the most part, really take to heart what their job is, yet the PSDPA uses words such as “good faith” and the definitions of many other words that I call “weasel” words. These are words that are open to interpretation, and the interpretation is controlled by the government.

In a sense, it is a really disabling feature that so much of the interpretation of the legislation is not in the power of the courts. It's definitely not in the power of the whistle-blower. It is an adversarial system that does not view them in good faith. I think, in that sense, we have a cultural misunderstanding about how difficult it is to be a whistle-blower.

To consider removing “good faith” from the clause and replacing it with another burden of proof.... I would say that enough has been levelled against the whistle-blowers. I think we should just remove the term “good faith” and not try to replace it with anything else.

Mr. Gord Johns: What other additions to the act would you like to see?

Also, did you have any other comments that you haven't had a chance to share with the committee?

Mr. Sean Bruyea: What I see with the act is that it's really important to see this as a stepping stone for going forward. It's not perfect, but you know what? Nothing passed in Parliament is ever perfect. We work on a system of evolutionary change. There's hardly ever a revolution in Canada in the way things happen, so you know what? It has to start somewhere.

When we're dealing with the culture within a closed system—and the public service is a very closed system; I would juxtapose it against the military's very closed system—that culture has been almost impossible to change with respect to discrimination and sexual harassment, but that has never stopped Parliament from stepping in and saying, “Hey, we're going to start with holding people accountable first and wait for cultural change later.” This is what Bill C-290 does, and I'd like to see that pursued.

Mr. Gord Johns: That's excellent.

Ms. Brill-Edwards and Ms. Myers, you both talked about the importance of sanctioning retaliation on whistle-blowers.

I really appreciate hearing you talk about international examples, Ms. Myers. Do you want to suggest some amendments that you would like to see in Bill C-290 that would help strengthen this, as you've seen in other jurisdictions?

Ms. Anna Myers: Yes. I will send some examples to the committee, but in the EU directive there are sanctions against breaches of confidentiality, for example. If someone raises a concern and does it in confidence, then those guarantees are now...there are actual sanctions.

There have been cases that have happened in the U.K., for instance, and this is because the private sector is also covered, but I think these examples go across sectors. An individual had tried to find out an identity and had been individually sanctioned within an organization. The organization was sanctioned and the individual—this was at a bank—who tried to find out who it was who had raised a concern, even though it had all been dealt with properly by the whistle-blowing system, undermined the whole system in so doing. They then found themselves with their regulator, who was saying, “You can't do that, because it undermines your system, and it works, you know, until you wanting to know who it was undoes it.” That's one of the key things that has come through.

As well, in Australia, I think there is now a duty of care that they're putting on some of the organizations, so that you have to show that it's not just that you failed an individual whistle-blower. It's that you're failing by a system that clearly won't be taking these into account properly, or there isn't the training or there isn't another aspect.

There are some good examples. Again, Canada has this opportunity to actually put some teeth into its law, and I think that is so important. It isn't just about information flowing. It's about making sure it can flow.

● (1630)

The Chair: Thank you very much. That is our time.

Mrs. Block, you have five minutes, please.

Mrs. Kelly Block (Carlton Trail—Eagle Creek, CPC): Thank you very much, Mr. Chair.

I join my colleagues in welcoming all of you here today. It has been extremely eye-opening and beneficial to hear from such esteemed experts, but also from whistle-blowers themselves, and while the testimony has been somewhat disturbing, it has also been very compelling.

I want to start, Mr. Bruyea, by thanking you on behalf of my colleagues for your service to our country and for appearing here today.

One of the areas of concern that has been raised in terms of improving protections for whistle-blowers, and it is perhaps an area that is key to addressing the issue, is the Office of the Public Sector Integrity Commissioner. We have heard some testimony that this office has seemingly been compromised by conflicts of interest, often because individuals who are recruited into that office and into that position are from the bureaucracy themselves.

I am wondering, Mr. Bruyea, if you have ever availed yourself of the services of the Public Sector Integrity Commissioner and, if you have, if you could share your experience with us.

Mr. Sean Bruyea: Certainly. I did in 2010, when the news broke, not only about my story but of course also about the fact that Ms. Ouimet—the controversial first Public Sector Integrity Commissioner—hadn't even considered my file to any degree whatsoever. It took the media appearance of me and others. It became sort of a partial *cause célèbre* to say, look, it's so obvious there was wrongdoing in my case. Why didn't you do something?

Later on I met with Monsieur Dion and some of the members of his staff. I remember sitting alone in a room with a legal adviser. She'd taken me away. I was so prone to recording comments because things had gotten so out of hand over the previous five years that I would record any of my interactions with any public servants. I had forgotten my recorder. That day, she got me in the office—because she was so friendly—and she closed the door. She turned from Jekyll to Hyde, and she said to me, "Why do you want to get anything else? Haven't you got enough? You got enough media coverage. Why do you want any more from our office?" I was absolutely floored that she genuinely saw my reporting wrongdoing as a personal attention-getting mechanism, when it wasn't at all about me but merely to help those who would come after me or others who would be treated in the same manner.

I availed myself of the legal representation, of the $3,000. It took almost $1,000 to draw up the justification for the bill, so my lawyer ended up getting about $2,000 out of that deal. It was completely inadequate. I know that's beyond the committee and the private member's bill.

I would further add that David Hutton and I sat on the advisory committee of Mr. Dion. He was less than remarkable in that position. Why would he be anything more than remarkable, since he was just waiting for his next job? He chose to speak out when it was probably going to be his last job. That's the problem when you appoint bureaucrats, because they rely upon PCO and the goodwill of government to get their next appointment. Hopefully on the agenda in the future will be an appointments process that takes individuals who are neutral and non-partisan and who are not chosen by PCO or PMO.

Thank you.

Mrs. Kelly Block: Thank you very much.

I would like to open up the next question to anyone who feels they have an answer. Are there any examples in other jurisdictions with equivalents to this office that could be held up as good examples for us to take a look at?

Mr. Tom Devine: I can help with that question.

The U.S. Office of Special Counsel is the federal whistle-blower protection agency in the United States. It's had a very "roller-coaster" history.

There have been many extended periods in which whistle-blowers have had the same perspective that you folks have had towards the Integrity Commissioner. We would have to warn people against sharing their evidence. It would be turned right over to the agencies that were retaliating against them, like a source of free discovery for the people who were the bullies. They would not take any action against the issues the whistle-blowers had raised.

We fought for the integrity of that office. In the Whistleblower Protection Act, they were stripped of their authority to take any actions that would undermine the interests of those who were seeking help. They might not help everybody, but they couldn't turn on them and make things worse.

We enfranchised whistle-blowers into the participation and review process of acting on their disclosures, because a public integrity commissioner can't do it alone. They can't possibly have the necessary expertise for all the far-flung activities through which power can be abused. They have to team up with a whistle-blower. We institutionalized that in the law.

It's not a panacea, but I would give the Office of Special Counsel in our country a B to a B minus now. That's a lot better than it was.

● (1635)

The Chair: Thank you very much.

Ms. Thompson, we turn it over to you for five minutes. Go ahead, please.

Ms. Joanne Thompson (St. John's East, Lib.): Thank you, Mr. Chair.

Welcome to the witnesses. Thank you so much for coming to committee. I'm sorry there isn't more time today.

I'd certainly like to speak with all of you, but because we are coming to the end and I have only the five minutes, I'd like to focus my questions on you, Mr. Devine. I really appreciate your being here.

I want to focus on support, because you've spoken to this and it's quite important. Bill C-290 includes a requirement for chief executives to provide support for disclosures. However, there's no definition or direction on how this should be implemented. Would this make it difficult to establish an approach to how these supports should be created and maintained, and could this be addressed in an amendment?

Mr. Tom Devine: Absolutely. It can be refined. The bill establishes the principle, but implementing that principle will require some hard work. It could be done through amendments now, or through the national review coming up. It's absolutely essential.

Whistle-blowers are flying blind. They don't know what their rights are oftentimes. They're just acting on their values, and they're doing it in a kind of Machiavellian context and environment, where just acting on your values openly and blithely may end up putting an X on your professional chest.

They need to be trained in what their rights are and how to exercise them strategically, responsibly and effectively. That requires some training. It requires an office that doesn't have a stake in any conflict and that has expertise on how to teach them to use this law properly. Its significance as a priority can't be over-emphasized.

Ms. Joanne Thompson: Staying with support, the bill also wishes to allow an individual to disclose to any supervisor in the organization. Would it not be more beneficial to disclose to a supervisor in the line of authority, to ensure the issues can be properly addressed? If not, what wider range would be a more appropriate avenue?

Mr. Tom Devine: As a matter of fact, most whistle-blowers, the overwhelming majority, make their disclosures to their boss. They're not looking for trouble. They see a problem, and they say, “Boss, we have a problem. We need to deal with this.”

In response to the earlier question on loyalty, the studies have consistently shown 90%-96% of whistle-blowers never break ranks, because they think they're defending the organization and its mission. They just don't realize there's a conflict between the organization and its stated mission.

I agree with Bill C-290's broader scope of supervisors, because it allows the employee to circumvent when there's a conflict of interest. What if they learn, for example, that it's their boss who's the wrongdoer? They don't want to share all their evidence of that. They want to bring it to a party that doesn't have that conflict of interest.

Ms. Joanne Thompson: I'll just become a little more general now.

The bill includes an addition of political interference to the definition of wrongdoing, but unfortunately there is no definition. Will clarifying the definition to include protection for whistle-blowers who disclose violations of the Conflict of Interest Act be appropriate?

● (1640)

Mr. Tom Devine: I don't think there's really any public policy credibility to challenge your suggestion. Conflict of interest is at the core of most abuses of power. Generally, whistle-blowers are challenging the impact from conflicts of interest, so you're getting right to the heart of it.

Ms. Joanne Thompson: I know I'm getting to the end of my time.

Are there additional comments you would like to make in the time remaining?

Mr. Tom Devine: I prepared an extensive written testimony, but it was too late to be translated for this forum. I'd recommend studying that. I put a lot of effort into it. The Whistleblowing International Network and the work I did with Anna Myers regarding the criteria for the European Union whistle-blower directive will give you a bit of an introductory course on that precedent, which we've all been endorsing.

Ms. Joanne Thompson: Allow me just very quickly to thank the witnesses. Thank you for your courage in keeping this very important bill active and moving it forward. Certainly, the work you've done is tremendous. I'm hopeful that others will benefit from the absolutely horrible experiences you've had. I believe we can do better, and I think this is an important step forward.

Thank you very much.

The Chair: Thanks, Ms. Thompson.

Mrs. Vignola, you have two and a half minutes, please.

[*Translation*]

Mrs. Julie Vignola: Thank you very much, Mr. Chair.

I invite each witness to answer my next question very briefly.

Are you able to assess the level of good faith I have in supporting Bill C-290?

In other words, am I doing it for personal glory or vengeance? After all, I'm a nasty separatist!

Why do you think it's important for me to support the bill? Are you able to assess the value of my motives?

[*English*]

Mr. Tom Devine: Well, if we each get a chance, I would take the first crack.

It means that you have to read their mind. That's why it's an inherent wild card. It's very vulnerable to subjective judgments. You need to have objective standards for these rights. Good faith leaves it all up to non-objective considerations.

Frankly, whistle-blowers are exposing the truth about abuses of power that betray the public. Does it really matter why they are exposing the truth? They're witnesses for the public interest.

In the United States, some of the most significant witnesses in history were mafia hit men. They weren't testifying and exposing crimes because of their values. They were doing it for self-interest, but we needed their testimony, so we guarded their lives whether or not we thought they were good-faith human beings.

Ms. Joanna Gualtieri: I just want to add, as somebody who dealt with the system as a whistle-blower and, obviously, as a lawyer: Our common law system proceeds on objective evaluation of things. The introduction of “good faith”, which has served only as a weapon against whistle-blowers, is really at odds with the way the law functions, which is to evaluate things from an objective standard. It has no place in this law.

Mr. Sean Bruyea: I completely agree.

It would be one of those obstacles that I was talking about that makes this act discriminatory. Removing “good faith” would be very important, because there's already enough focus on questioning the whistle-blower. The whistle-blower already goes through enough self-questioning about their loyalty to the organization.

Please, let's not question the whistle-blower anymore. Let's get on with identifying the wrongdoing.

The Chair: Thanks.

I'm afraid we don't have any more time. Perhaps Dr. Brill-Edwards and Ms. Myers could provide it in writing to us.

● (1645)

Dr. Michèle Brill-Edwards: It's the wrong question.

The real question is, does the disclosure serve the public interest? Is the information valuable in the public interest?

Thank you.

The Chair: Thanks.

Mr. Johns, you have two and a half minutes, please.

Mr. Gord Johns: Well, I'm going to let Dr. Brill-Edwards finish what she was going to say.

Dr. Michèle Brill-Edwards: That's it.

Mr. Gord Johns: Okay. That's great.

I'm going to you, Dr. Brill-Edwards, because we know the legislative changes are critical in Bill C-290.

Can you speak about the importance of the culture in the public service? That needs to change. Do you have some suggestions on that?

Dr. Michèle Brill-Edwards: Yes.

The main thrust of my concerns is exactly that the committee understand the nature of the public service and the many constraints under which public servants work on a daily basis.

What is really required is to realize that unless there are legislative sanctions on retaliation against speaking up, then whistle-blowers are in jeopardy in a system that, in a broad sense, requires loyalty and adherence to the overall thrust and overall quest of the public service to serve the government. That's a part of our democracy.

Things go off the rails when individuals within that system are undertaking actions or decisions that do not serve the public interest. Joanna has mentioned that. If we have a scenario in which everyone feels compelled to get along and go along with the decisions that are being made and if one speaks up against decisions that are either wrong or very questionable and put lives at risk—for example, in the case of medicines—and if there is that kind of pressure against speaking up, knowing there's going to be retaliation, then we cannot expect people to do the right thing and speak up.

Mr. Gord Johns: Thank you.

Ms. Gualtieri, did you want to add anything?

Ms. Joanna Gualtieri: I do.

The Chair: You'll have to be very brief. I'm sorry.

Ms. Joanna Gualtieri: Yes. It's a bit off-point, but one thing that has not been adequately discussed in committee is the role of the media. Whistle-blowers in the States taught....

This issue should really go back to Tom.

The media is an essential ally. It's not a friend of the whistle-blower, but it is an ally in the public interest. It is the conduit that is essential to bringing wrongdoing to the public, which then demands change through our electoral process. I have always been an advocate that ultimately whistle-blowing to the media has to be one of the avenues.

Maybe Tom can comment on that.

The Chair: I'm afraid we don't have time. We're way past your two and a half.

We'll finish up with two more five-minute interventions. It's to Ms. Kusie for five, please.

Mrs. Stephanie Kusie: Thank you, Chair.

I want to hear from each of our witnesses what the greatest thing is that you have learned in the journey that brought you before this committee today. Would you change anything from the journey you've gone on, and what would that be? That's from each of the witnesses, please.

Mr. Tom Devine: From my perspective, I've learned that nothing is more powerful than the truth, if you have a fair chance to share it. It's more powerful than money, than conventional authority. Over and over again, in my experience, David has beat Goliath because he had the truth in his slingshot.

As far as what I'd like to change is concerned, it's the glacial pace of the evolution of whistle-blower rights. Far too many laws.... Canada's not alone. Most laws that are pioneer laws in establishing a right establish a principle, but they don't have all the infrastructure necessary to effectively implement it, because it was so hard just to establish the principle. They haven't had the experience of lessons learned.

That's why I'm so grateful to this committee for its persistence in monitoring the track record of the PSDPA and for acting on those lessons learned. The one out of 20 criteria that Canada passed was review. That was a criterion on paper. Your committee has made it in reality.

● (1650)

Mrs. Stephanie Kusie: Thank you.

Ms. Anna Myers: If I could just jump in quickly, I was just going to say that what Tom and I have been arguing internationally and what he said so eloquently is that whistle-blowing is really about institutional accountability. It isn't really about the whistle-blower. I think that is what gets missed when these laws are passed: We focus so much on how the individual delivers the message, and whether they did it in the appropriate way. If you think about the purpose of the law being ensuring the free flow of information for institutional accountability, that's absolutely essential. That's what's kept me going.

The other thing I would say is all the witnesses.... It is a citizen's charter, really, and it does depend on that. I set up and helped to work with the Whistleblowing International Network because civil society engagement means that it keeps everyone—including charities, and I run a charity—on their toes for their decision-making. It is so important that you're listening to the whistle-blowers and you're listening to those who have been working in the field of non-profits. They're the ones, with journalists as well, trying to hold power to account in a way that works for us all. It's not about the blame game. It's about making it work.

Mr. Sean Bruyea: To go back and have 20/20 hindsight about what I learned is difficult, because I couldn't have done it any other way. The military so deeply indoctrinates us, just like the public service does to a similar degree, to be loyal, to never question authority. To go to the media is absolutely anathema to being in the military, because we're taught in the military that the media wants only to criticize the military.

I had to learn along the way to find myself, to separate myself from these powerful messages of indoctrination, and I beat myself up endlessly, wasting endless resources and my family, trying to convince the people in Veterans Affairs that something was going wrong. That was stupid, in hindsight, but I couldn't have done it any other way.

Perhaps the best thing I can learn to do is to forgive myself, because I didn't have a choice.

Mrs. Stephanie Kusie: It sounds like life.

Ms. Joanna Gualtieri: I just want to make this point: When betrayed or abandoned by my government, I learned that I was embraced by our people. I have spoken to churches, to universities, to professional associations. What I learned was that they universally cared. The people cared about whistle-blowers and about the opportunity for truth to come forward.

I say to you as politicians, know that you are supported by the people in your quest to get this done right.

Dr. Michèle Brill-Edwards: I think I've learned overall that integrity matters, that it's important for each of us to speak up lest others be harmed. When I was in the midst of the difficulties at Health Canada, with senior people who were quite willing to let other people die, I really felt that it was probably time for me to leave. I said to my mother, who had had a number of strokes because of all this stress, that I would leave, not wanting to lose her in order to fight these battles. Her answer to me still rings in my ears. She said, “Michèle, if for one moment I thought that on my account you would fail to do the thing that you know to be the right thing to do, that surely would kill me.”

Those were my marching orders. That's the lesson that stays with me throughout all of this. I keep encouraging friends and neighbours and anyone who will listen to speak up and not accept what you feel is not right.

Mrs. Stephanie Kusie: Thank you.

The Chair: Thank you very much.

We'll now go to Mr. Bains to finish things off.

Mr. Parm Bains (Steveston—Richmond East, Lib.): Thank you, Mr. Chair, and thank you to all of our witnesses for joining us today.

Dr. Brill-Edwards and Mr. Bruyea, thank you for your service, for your courage and for your continued advocacy on this issue.

I want to go back to something that Mr. Johns raised about culture. When I think of that word in this sense, I think of terms like “old stock”, “good old boys”, “this is the way things are done” and “we protect our own”.

Can you speak to how we can foster a healthier culture? This seems to have been going on for a long, long time.

● (1655)

Mr. Tom Devine: I'll take the first crack at that.

It's through application. All the studies on the impact of whistleblowing have shown that it's extremely beneficial for the organization. It may be a problem for the individuals who are engaging in illegality and corruption or abusing their power, but for the organization it's very advantageous.

Organizations in the private sector, for example, that have internal corporate whistle-blower policies have fewer government enforcement actions against them for less severe penalties. They have fewer lawsuits and litigation filed against them, and these are resolved with more modest results.

The truth is to the benefit of these organizations, and that's why most whistle-blowers don't break ranks. They're doing it on behalf of their institution.

Mr. Parm Bains: I'd also like to hear from Mr. Bruyea about this.

Thank you.

Mr. Sean Bruyea: What I'd first like to emphasize is what you're doing here right now, which is holding the organizations accountable for those who violate the good intentions of all the employees who work for them. The Canadians who work in the public service, such as those who work in Parliament, really believe they're doing something good.

Now that also goes to the other thing of culture. What are they loyal to? The boss, the organization, the country. We have to look at the filters that are in place that put the incentives and disincentives there for individuals to carry out their work.

For instance, I spend a lot of time analyzing rhetoric from people at Veterans Affairs. They say they really care about veterans. There's no doubt that they believe they care, but there are so many filters. First, they have to meet budgetary requirements. Then they have to meet treasury board requirements for reporting on whatever goes on within the department. Then they have the hierarchy of the structure, of the people who are not taking the initiative to care for those veterans. They may care, but they're putting all those other filters first. By the time it gets to the veteran, they are not caring anymore.

What we have to do in whatever culture is to put front and centre a loyalty to a cause, a cause where everything that's written follows that principle. Treasury Board principles should not be written toward satisfying some unique Treasury Board demand; they should be written toward satisfying the demands of the country, the demands of the people, the demands of the people who brought you here. We have to start looking at those filters and editing them for when they don't meet the principles we put in place and value.

Does that answer...?

Mr. Parm Bains: I have time for one more. I'd like to go back to Mr. Devine on the issue of contractors. Mr. Bruyea mentioned it.

The bill seeks to add contractors to the definition of public servant under the act. Does this create a constitutional division of power? Most contractors are covered by provincial labour legislation.

I know I asked that before. My understanding is that you might be able to address it.

Mr. Tom Devine: The U.S. contractor laws are tied to federal funding, but they're the most significant aspect of public policy benefits from whistle-blower protection.

I'll give the example of fraud. In 1986 we deputized whistle-blowers to file lawsuits against fraud in government contracts. Before that, the justice department in our country, acting alone, would average about $10 million a year in civil fraud recoveries. Since then, the average has gone up to $1.5 billion. In the last five years, it's been over $3 billion here. One case brought in $5 billion.

Fraud in government contracts is the magnet for corruption globally, and it's the most significant of benefits from a whistle-blower law.

I don't have the expertise to answer the distinction between federal contractors and provincial contractors, but a beachhead with federal contractors will get very significant benefits.

Mr. Parm Bains: Thank you very much.

The Chair: That brings us to the end.

Witnesses, we thank you very much, sincerely, for joining us today.

Mr. Devine, thank you for coming all the way from Washington, D.C. It is greatly appreciated.

With that, colleagues, we will suspend and go in camera.

[*Proceedings continue in camera*]