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Chair: Mr. Kelly McCauley



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• (1625)

[English]

The Chair (Mr. Kelly McCauley (Edmonton West, CPC)): Welcome to meeting number 71 of the House of Commons Standing Committee on Government Operations and Estimates, also known as the mighty OGGO or the only committee that matters.

Pursuant to the order of reference adopted by the House on Wednesday, February 15, 2023, the committee is meeting for clause-by-clause consideration of Bill C-290, an act to amend the Public Servants Disclosure Protection Act.

We have with us, back from the Treasury Board, Ms. Laroche and Ms. Stevens. I ask that if you have questions for them, direct your questions directly to them, please.

Of course, we welcome our legislative clerks.

Really quickly, colleagues, on July 19, it appears we'll have the departments back in for the McKinsey documents. Like before, I'm seeking unanimous consent to limit their speaking time to two and a half minutes for the introductions.

Mr. Irek Kusmierczyk (Windsor—Tecumseh, Lib.): What was the date?

The Chair: It was the 19th.

Mr. Irek Kusmierczyk: You said July.

The Chair: I'm sorry. I meant June 19.

Mr. Irek Kusmierczyk: I was ready to crumple something.

The Chair: The meeting will still be going on. There will be a filibuster.

Is June 19 fine, colleagues? On June 19, we'll have the departments back in for the McKinsey documents, seeing as there are eight of them.

We're just looking for unanimous consent that we will provide them with two and a half minutes each instead of the five, so that you'll have time to meet with them.

Wonderful.

Ms. Vignola, you have your hand up.

Mrs. Julie Vignola (Beauport—Limoilou, BQ): If I understand well, June 19 will not be used for Bill C-290. Is that right?

The Chair: That is correct.

Mrs. Julie Vignola: June 19 will not be used for Bill C-290.

[Translation]

I'm convinced that we're all acting in very good faith and that we want to pass Bill C-290 as quickly as possible. Nevertheless, I'd like to introduce a motion, which I have sent to the clerk. I will read it to you, in both official languages as needed. It won't take long; I have to open it.

I move that, pursuant to Standing Order 97.1, the committee request an extension of 30 sitting days to consider Bill C-290, An Act to amend the Public Servants Disclosure Protection Act, referred to the committee on Wednesday, February 15, 2023—

[English]

The Chair: I'm sorry, Ms. Vignola. We have to wait for translation.

[Translation]

Mrs. Julie Vignola: Pardon me?

[English]

The Chair: There we go. The translation was not working.

Can you start again?

[Translation]

Mrs. Julie Vignola: Okay.

I move that, pursuant to Standing Order 97.1, the committee request an extension of 30 sitting days to consider Bill C-290, An Act to amend the Public Servants Disclosure Protection Act, referred to the committee on Wednesday, February 15, 2023, to give the bill the attention it deserves, and that the Chair submit this request to the House.

[English]

The Chair: Thanks.

Mr. Fergus, did you want to chime in on this?

[Translation]

Hon. Greg Fergus (Hull—Aylmer, Lib.): Yes, Mr. Chair.

We support this request. We hope that we will finish all of our business today and that this extension will not be necessary, but it's a good insurance policy.

[English]

The Chair: That was going to be my line, Mr. Fergus.

Do we have consent for that, colleagues? Basically, it gives us an opportunity if we're not able to finish it this month.

Some hon. members: Agreed.

The Chair: Wonderful. So be it. Thanks, everyone.

(On clause 12)

The Chair: We are going to get right into the clause-by-clause. We're resuming consideration of amendment G-7, which has already been moved by Mr. Fergus to clause 12. G-7 is on page 26 of the package.

Shall G-7 carry?

Mr. Gord Johns (Courtenay—Alberni, NDP): No.

The Chair: Go ahead, Mr. Johns.

Mr. Gord Johns: It limits the options available to the whistle-blower. It provides only one recourse method at the time. It cancels Bill C-290's repeal of subsections 19.3(2) and 19.3(3), which prevent the commissioner from dealing with a complaint if any other measure has already been taken, for example, the collective agreement.

We heard from the experts that circumstances may require that more than one method of recourse be taken and that certain methods of recourse often take years, so it isn't reasonable to require the whistle-blower to wait years before beginning another method.

• (1630)

The Chair: Next is Mr. Fergus.

Hon. Greg Fergus: I respectfully disagree with my colleague Mr. Johns, clearly because that's the reason why I want to bring this forward.

This amendment—and actually there are going to be a number of them—is going to prevent any overlaps with other recourse mechanisms for reprisal, because if we don't do that, then what we're going to have is multiple processes being conducted on the same issues by different administrative bodies, with differing mandates and objectives. That would be a waste of resources, one, and I think the greatest concern is that it could come out with inconsistent determinations that would be offering different remedies. I think that's the principal reason why there is this change.

The Chair: I have Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: I'll be brief, Mr. Chair.

When union resources have been used, grievances can take years to be resolved. That's why people need to be able to use more than one resource.

That being said, I have a feeling that we won't agree on the purpose of amendment G-7, whether we adopt it or not. I would ask for a recorded division on amendment G-7.

[*English*]

The Chair: Colleagues, can we vote, then?

Mr. Gord Johns: Yes. Let's vote on it.

(Amendment agreed to: yeas 8; nays 2)

The Chair: Shall clause 12 carry as amended, on division, colleagues?

(Clause 12 as amended agreed to on division)

The Chair: We have new clause 12.1, which is amendment G-7.1 on page 26.1 of the package.

Mr. Fergus, are you addressing that?

Hon. Greg Fergus: Yes. Thank you.

The sponsor had raised concerns about the 2017 Therrien case, where a complainant who was refused by the commissioner was ultimately left without means to address the matter. This is a way of making sure that we address this matter: that complaints are referred to the correct course or recourse mechanism.

Practically speaking, from now on, if complaints come to the commissioner that are assessed and refused, then the commissioner must inform the whistle-blower of the most appropriate mechanism for dealing with the complaint. This is to make sure to not leave anyone hanging without options.

The Chair: Ms. Vignola.

• (1635)

Mrs. Julie Vignola: We don't have any arguments.

(Amendment agreed to on division)

(On clause 13)

The Chair: We have government amendment G-8, which is on page 27 of the package.

Maybe we'll go to Mr. Fergus for this one.

Hon. Greg Fergus: Thank you, Mr. McCauley.

Also, thank you for getting my name correct. That's a joke between us. The day is young.

This goes back to a debate that we had earlier with the agreement of all parties that we would replace the term “good faith” with the notion of “on the basis of reasonable belief.” This is the international standard, and this is the one we all agreed to earlier on. This is basically carrying through implementing that in different parts of the bill.

The Chair: Shall G-8 carry?

Mr. Gord Johns: We can have a recorded vote on that.

(Amendment agreed to: yeas 8; nays 2 [*See Minutes of Proceedings*])

(Clause 13 as amended agreed to on division)

The Chair: Colleagues, there are no amendments to clauses 14 to 16. If we have unanimous consent, we can batch them.

Go ahead, Mr. Fergus.

Hon. Greg Fergus: Chair, thank you very much for that.

We do have a number of changes we'd like to suggest. They affect clauses 14, 15, 16, 18, 19, 20 and 23. This is all related to the note that I shared with all members of the committee regarding what we are trying to do here.

All these clauses allow folks, if they take a case to the PSIC, and they're refused.... This opens up the the door allowing them to go directly to the tribunal.

Here's the situation. The commissioner has a lower threshold for accepting or approving cases. It doesn't stand to logic to then, with the lower threshold, if it doesn't work there, to send it to a place at the same time where there's a higher threshold. If you go straight to the tribunal, then, first of all, I don't think it would work out. Second, what will happen is that a lot of work will go to the tribunal. The tribunal will then be hearing a lot of the same cases. This will increase dramatically the work of the tribunal. Frankly, I think, to be fair, it would lead to the Speaker ruling that there's a royal recommendation implication on this.

I know this is a situation where we have a—

The Chair: Can I interrupt? Do you have a copy of the amendment you're proposing for clause 14?

Hon. Greg Fergus: I'm looking to negate these clauses. They're all related. In a sense, if we accept one, we should accept them all, but it would probably lead to a big use of resources.

Would you like me to repeat the clauses?

• (1640)

The Chair: Which clause are you referring to? Is it clause 14?

Hon. Greg Fergus: It's clause 14. The changes are being proposed by, I think it's Mr. Johns. I might be wrong in who proposed them. I'm sorry; this was proposed by Mr. Garon. It's clauses 14, 15, 16, 18, 19, 20 and 23.

The Chair: I'm going to allow our legislative clerk to weigh in on whether we'll actually have to address these one by one.

Ms. Dancella Boyi (Legislative Clerk): Thank you, Mr. Chair.

Mr. Fergus, to confirm, you are referring to clause 14, clause 15, clause 16, clause 17 and clause 18.

Hon. Greg Fergus: It's clauses 14, 15, 16, 18, 19, 20 and 23.

Ms. Dancella Boyi: Thank you, Mr. Fergus.

On one last point of clarification, you mentioned these are amendments that have been proposed. We currently don't have an amendment to clause 14.

Hon. Greg Fergus: I apologize. I didn't mean "amendment". I should have said "negate".

Ms. Dancella Boyi: Negate, okay. It's to negate clause 14, for example.

The procedure we're asked to follow according to the rules is that an amendment to delete a clause is not admissible. It would be necessary to vote down the clause. When the chair puts the question on a particular clause and one is in disagreement, the correct process would be to negative it, to vote it down instead of amending to delete it.

Hon. Greg Fergus: That's fair enough. Thank you for that information. I will abide by that rule.

The Chair: Colleagues, are we prepared to vote?

An hon. member: Yes.

The Chair: Great.

I'm sorry. Go ahead, Mr. Fergus.

Hon. Greg Fergus: I might have confused my colleagues by what I suggested.

I just want to let you know that I'm going to come back to the same point over and over again. I'll make it once so we can save time.

Again, we're asking to vote down these clauses one by one. The reason is that a PSIC decision would already have a judicial review in the Federal Court. Removing the screening role of the commissioner and going straight to a tribunal frankly doesn't make much sense, because it's using a higher legal standard, as opposed to the lower legal standard of the commissioner.

If we allow this to stand, what we're actually going to do is cause a surge in cases to the tribunal, which will cause a surge in costs to the tribunal. It may need a royal recommendation.

The Chair: We'll go to a vote.

Shall clause 14 carry?

Mrs. Stephanie Kusie (Calgary Midnapore, CPC): Mr. Chair, I'm sorry. Can we clarify? It's not clear. Are we having a vote to delete the clause or negate the clause? Just to be clear, is it to negate the clause?

The Chair: That's correct.

We'll vote on it.

Mrs. Stephanie Kusie: Are we doing all the clauses he mentioned in one swoop?

The Chair: There are clauses 14, 15, 16, 18, 19, 20 and 23. We will get to them individually, one at a time.

Mrs. Stephanie Kusie: When were these amendments put forward?

Hon. Greg Fergus: We sent you a note on the—

Mrs. Stephanie Kusie: When was the...? Okay, there wasn't. We're just informed now that they want to delete these clauses—negate these clauses, excuse me. That's the proper terminology. I apologize.

The Chair: Mr. Fergus, are you addressing that question?

Hon. Greg Fergus: To answer that question, there was an email that, I believe, was sent regarding a brief on the tribunal. It was sent from our officials. On page 2 of that note, it talks about the clauses that would need to be negated.

• (1645)

The Chair: Go ahead, Mr. Kusmierczyk.

Mr. Irek Kusmierczyk: Mr. Chair, could I ask the officials to comment on how these changes to Bill C-290 would impact the work of the tribunal?

The Chair: We've already moved to a vote on this, Mr. Kusmierczyk. Maybe on the next one....

Mr. Irek Kusmierczyk: I just think that maybe it would provide us with a bit of a foundation before we get to the vote.

The Chair: I think the next one. We have said that we'll move to a vote on it.

Shall clause 14 carry?

[*Translation*]

Mrs. Julie Vignola: Mr. Chair, I want to make sure I understood correctly. Are we voting to remove this clause or to keep it?

[*English*]

The Chair: We're voting on clause 14, and this will be the vote. I assume that some people will vote to negate, that some will vote no, and that some will vote yes.

[*Translation*]

Mrs. Julie Vignola: Thank you.

[*English*]

Mr. Irek Kusmierczyk: Wait, Mr. Chair. I do apologize. I was clear until that last second. Can you just clarify for me, please, what this vote is? I think there's a bit of confusion.

The Chair: We're voting on whether clause 14 will carry.

Mr. Irek Kusmierczyk: So, voting "yes" will carry it, and voting "no" will negate it.

The Chair: Yes or negate.... That's a good point, Mr. Kusmierczyk.

We have a tie.

Thank you for making things difficult, but I have an easy answer here. Page 786 of the big green book suggests that the chair vote yes.

(Clause 14 agreed to: yeas 6; nays 5)

(On clause 15)

The Chair: Mr. Kusmierczyk, do you want to weigh in now?

Mr. Irek Kusmierczyk: Mr. Chair, I would just ask the officials to comment on what impacts the changes of Bill C-290 that we've been discussing here would have on the work of the tribunal.

Ms. Mireille Laroche (Assistant Deputy Minister, People and Culture, Office of the Chief Human Resources Officer, Treasury Board Secretariat): I will talk about it very broadly, and ask Mary Anne to supplement my answer.

I think Mr. Fergus explained it well.

Right now, when there is a reprisal, it's only the PSIC who can actually hear or receive those complaints. The PSIC will determine whether or not the matter needs to be referred to the tribunal, based on reasonable grounds. The amendments that we're proposing now would mean that, depending on which amendments—again, I'm talking very broadly—if ever the PSIC says that there is no ground, the individual could bypass that decision and go directly to the tribunal, and the case would have to be heard. As Mr. Fergus said, the legal threshold that the person would have to meet is higher. There

are other amendments that are being proposed, as well, where the PSIC would not even be involved, depending.... That is also being considered.

In terms of the mechanics, we believe, from a TBS perspective, that this is actually lessening the role of the PSIC in terms of really determining whether or not there is reprisal, and that naturally, given that we're going to the tribunal, there's potentially a higher cost that will be associated because it's a much more labour-intensive approach with a higher standard that needs to be attained in order to prove.... There would be, potentially, additional costs and time that would be taken for these cases to be heard.

I will turn to Mary Anne to correct me if I said anything wrong or to add anything.

• (1650)

Ms. Mary Anne Stevens (Senior Director, People and Culture, Office of the Chief Human Resources Officer, Treasury Board Secretariat): Thank you very much.

Perhaps everyone already understands this, but just to be absolutely clear, clause 19 in the bill is the one that provides that where the PSIC has dismissed the complaint of reprisal, the individual can take the complaint themselves to the tribunal. All of the other sections listed by Mr. Fergus are consequential to that amendment, so they're all tied together in one package.

If you approve clause 19, it would mean that the complaint of reprisal would still have to go to the commissioner. The commissioner would investigate, would determine whether or not there were reasonable grounds for believing that a reprisal had taken place, as my colleague mentioned, and then would decide whether or not to refer the complaint to the tribunal.

However, with what the bill is proposing, even if the commissioner dismissed the complaint on any grounds—it could be that there was no protected disclosure or it was found that there was no reprisal—the complainant could still basically set aside what the commissioner found and go directly to the tribunal with their complaint of reprisal.

At the tribunal, as was mentioned, instead of reasonable grounds for believing that a reprisal had taken place, they would be facing the standard of a balance of probabilities. It may not mean a lot to you or me, but in the legal world, it's a higher standard than what the commissioner applies.

The commissioner, if you've had a chance to read his submission to your committee, has also said that it would basically be setting aside his role and therefore his investigation. Everything done by his office on that complaint would be wasted.

Ms. Mireille Laroche: I would just add and confirm that in the case where the commissioner dismisses it as no reprisal, the individual can refer that to the Federal Court for judicial review. It's not like it's the last step and there's nothing to be done. There's already, within the act, a mechanism to have a judicial review of that decision.

The Chair: Mr. Kusmierczyk.

Mr. Irek Kusmierczyk: That was my exact question, whether there exists an avenue for redress for someone who wants to appeal the decision of PSIC. It does appear that an avenue or mechanism, already does exist to get a judicial review.

Thank you very much for that clarification.

The Chair: Mrs. Kusie.

Mrs. Stephanie Kusie: I would also like to ask this of the experts. If someone failed at PSIC with a lower threshold, why would they go to the tribunal, which has a higher standard?

Ms. Mary Anne Stevens: I'm sorry, I didn't hear the beginning of your...

Mrs. Stephanie Kusie: If someone failed at PSIC with a lower threshold, why would they go to the tribunal, which has a higher standard?

Ms. Mireille Laroche: They may not know that there is a higher standard. This is an avenue that the act would provide to them, which could render a cost for them and a new trial for them. It's unclear why they would, but that doesn't mean that they won't.

Mrs. Stephanie Kusie: Okay. If it's a higher standard, then they would fail, regardless.

Anyway, is that the most likely...?

Ms. Mireille Laroche: Yes.

Mrs. Stephanie Kusie: All right. Thank you.

The Chair: Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: We were aware that certain clauses had to be amended so that a royal recommendation would not be necessary. All the clauses and amendments we have made have been studied very carefully by the legislative clerk.

Now you're telling us that, if a public servant decides to go before the Public Servants Disclosure Protection Tribunal, that results in additional costs, so the royal recommendation is necessary. However, the legislative clerk didn't raise the issue at any time. We've asked him that question many times.

I don't think it's up to the legislative authority to take away Canadians' right to go to the tribunal to assert their rights. Basically, that's what's being proposed. If we were to reject clause 15 and the others related to it, it would be as if we were telling people that, in the end, they don't have the right to go to the tribunal, because their case has already been studied and rejected. It would be a violation of people's right to justice and their own desire to use this tribunal. I don't understand how we could allow that.

• (1655)

[*English*]

The Chair: We'll go to Ms. Laroche and then Mr. Johns.

[*Translation*]

Ms. Mireille Laroche: Thank you for that.

I would say two things.

I cannot comment on the legislative clerk's analysis, since that's not our responsibility. For our part, as officials and analysts, we see that there could be costs associated.

As far as removing rights is concerned, in my opinion, that is not the case. Under the current act, if the commissioner rejects a complaint, the person can submit an application for judicial review to the Federal Court of Canada.

Mrs. Julie Vignola: Of course, at \$100,000 a case, everyone can afford it.

Ms. Mireille Laroche: Judicial review is usually done in writing. However, going before the tribunal could also result in costs for the individual.

That was my comment.

[*English*]

The Chair: Go ahead, Mr. Johns.

Mr. Gord Johns: I also have a comment.

This should have been brought forward as an amendment before, like for everybody else and every other party. We put forward our amendments in advance.

Mr. Fergus, to be fair, a government briefing on page 2 that raises concerns about the bill doesn't equate to putting forward amendments ahead of time. We were given notice on when we had to provide amendments. To have this dropped on us today, I don't think it's good faith.

The Chair: Go ahead, Mr. Fergus.

Hon. Greg Fergus: On the matter of good faith, we shared the note with members early last week.

Also, you don't need to bring forward amendments if you're seeking to negate a clause.

The Chair: Shall clause 15 carry?

We have a tie. I'll vote yes.

(Clause 15 agreed to: yeas 6; nays 5)

(On clause 16)

The Chair: We're on clause 16, colleagues.

Hon. Greg Fergus: It's the same argument. I'm hoping that people will see the light.

The Chair: Shall clause 16 carry?

We have a tie. I'll vote yes again.

(Clause 16 agreed to: yeas 6; nays 5)

(On clause 17)

The Chair: We have an amendment. It's NDP-10. It is on page 28 of the package.

• (1700)

Mr. Gord Johns: Mr. Chair, I will withdraw NDP-10, if I could, at the will of the committee.

The Chair: You don't have to withdraw it if you haven't moved it. We'll just skip right over that and go straight to clause 17.

Mr. Fergus.

Hon. Greg Fergus: I'd like to thank my colleague for withdrawing NPD-10.

For the clause overall, Mr. Chair, it's not clear how this is useful.

[*Translation*]

I would like Mrs. Vignola to explain to us why she thinks that would be useful.

The public interest should always be taken into account, especially when we assume that senior management has not co-operated to help whistleblowers. I believe the Commissioner already takes that into consideration when they determine whether or not the case should be referred to the tribunal. The proposed section would remove the obligation to consider the public interest and would prevent us from seeing whether senior management took all of this into consideration.

I'd now like the expert witnesses who are here to tell us what they think of this clause of the bill.

[*English*]

Ms. Mary Anne Stevens: Thank you for the question.

That section of the bill would remove two criteria that the PSIC is supposed to consider before referring to the tribunal, one being the public interest and the other being whether or not either the chief executive or public servants have co-operated in the investigation. I would draw your attention to the submission from the Public Sector Integrity Commissioner, who has said that if you remove the provision that says he can consider whether or not a chief executive or public servants have co-operated, it would allow departments to simply postpone and postpone. He would never be able to get the complaint to the tribunal.

We think that is an important factor to consider.

The Chair: Do you have something to add, Ms. Vignola?

[*Translation*]

Mrs. Julie Vignola: Just give me a second, I'm trying to digest what was said.

• (1705)

[*English*]

The Chair: Go ahead.

[*Translation*]

Mrs. Julie Vignola: Just like all the other sections, we drafted this one with the public servant in mind. Just because an entity co-operates with an investigation doesn't mean it's completely without blame. We see this with couples too: The man or woman co-operates with the investigation, but at the end of the day, they have serious mistakes on their hands.

I understand that if we remove this clause, the objective is to protect the machine, that is to say the government. However, by leaving it in, we're ensuring that the public servant is protected, and that's the most important thing. At the end of the day, when we protect whistleblowers, we protect the entire machine, because we point out issues encountered in the machinery of government and we organize ourselves to improve things. That's the goal. I don't see how any government, regardless of its political stripes, could be against that. When we find a problem and solve it, it's to the government's advantage and, quite simply, it's to the taxpayer's advantage.

I'm opposed to eliminating this part, which is important to us, because it's about protecting the public servant.

If it's the will of the committee, we can go to a vote. I can't make any clearer arguments than those I've just made.

[*English*]

The Chair: Shall clause 17 carry?

We have a tie. I'll vote yes.

(Clause 17 agreed to: yeas 6; nays 5)

(On clause 18)

The Chair: Go ahead, Mr. Fergus.

Hon. Greg Fergus: Again, I will try to make the last argument before we get to the consequential clause, but I really do think that we are complicating a situation that will not end up being.... In the short term, it certainly wouldn't be helpful to the complainant, and, in the long term, it won't be helpful to either the complainant or to the purposes of this bill.

The Chair: Shall clause 18 carry?

We have a tie. I'll vote yes.

(Clause 18 agreed to: yeas 6; nays 5)

(On clause 19)

The Chair: We have an amendment to this clause, NDP-11.

Mr. Johns, go ahead.

Mr. Gord Johns: I'd like to move this. It doesn't require any additional funds. It allows the whistle-blowers direct access to the tribunal without any prior determination by the commissioner. Before approaching the tribunal, the whistle-blower is required to wait for an indefinite period until the commissioner investigates the complaint of a reprisal and renders a decision while the whistle-blower continues to suffer reprisal. With this amendment, the whistle-blower could immediately approach the tribunal upon experiencing reprisals, which would reduce the delay before justice is done and reduce the harm done in the meantime.

The Chair: Thanks, Mr. Johns.

Ms. Vignola, is there a translation issue?

[*Translation*]

Mrs. Julie Vignola: There was no interpretation because the sound wasn't good enough.

• (1710)

[English]

The Chair: I'm not getting translation now. There we go.

[Translation]

Mrs. Julie Vignola: There was no interpretation during Mr. Johns' speech, because the sound wasn't good enough.

[English]

The Chair: Thanks.

Mr. Johns, we could not get interpretation. I guess you were breaking up. Could you please repeat that, maybe just a tiny bit slower?

Mr. Gord Johns: I will do that. Maybe I had the mike too low.

Basically, on NDP-11, there are no additional funds required. It allows whistle-blowers direct access to the tribunal without any prior determination by the commissioner.

Before approaching the tribunal, the whistle-blower is required to wait for an indefinite period, while continuing to suffer reprisals, until the commissioner investigates the complaint of reprisal and renders a decision. With this amendment, the whistle-blower could immediately approach the tribunal upon experiencing reprisals.

This would reduce the delay before justice is done and reduce the harm done in the meantime. I just want to point out that throughout the expert testimony this was a best practice, and it has not resulted in sudden jumps in the number of cases in any jurisdictions where it's been adopted.

The Chair: Thanks, Mr. Johns.

I have Mr. Fergus.

Hon. Greg Fergus: I think that for the exact same reasons Mr. Johns has pointed out, they're reasons why I would not recommend the passage. This is really the key clause, the key article here. What this will do—Mr. Johns made it very clear—is that they're not going to wait for even the PSIC determination, which has a lower standard and which is more accessible to the complainant, and will go straight to the tribunal, which has a higher standard. It requires a higher cost not only for the complainant, but also for those who are being accused of doing the wrongdoing and would benefit from support to defend themselves, which of course would mean higher costs.

Anyhow, that's my view on this. Again, I would love to ask our officials if they could please comment on the implications of carrying clause 19.

[Translation]

Ms. Mireille Laroche: Thank you very much for the question.

As was mentioned earlier, this is really the clause that binds all the others together. Basically, it ends up changing the role of the Commissioner, in the sense that individuals will no longer have to go through this process and will be able to appeal directly to the tribunal. As a result, when there are reprisals, the Commissioner's role won't be as strong. They will not be able to make a decision in those circumstances.

That's the main consideration, in addition to the ones mentioned by Mr. Fergus, that the legal criteria are higher for the tribunal than for the Commissioner.

I don't know if Ms. Stevens wants to add anything.

[English]

The Chair: Mr. Johns, do you wish to address this?

We'll go to Mr. Johns and then Mr. Kusmierczyk.

Mr. Gord Johns: Maybe the experts could give us some feedback. Would this amendment not make the tribunal more accessible to the complainant?

Ms. Mireille Laroche: Thank you for the question.

Yes, it would make it more accessible, because they would have direct access and then it wouldn't be stated...the decision would not be from the commissioner anymore, but what it does is that then the commissioner has no role and so fundamentally you're changing the role of the commissioner in terms of assessing those reprisals, because the person can go directly....

Again, as stated, the legal threshold is different from one to the other. It is lower based on reasonable grounds in terms of the commissioner when he actually looks at the cases, and when it goes to the tribunal it's more, as Mary Anne said, a balance of probabilities.

I'll turn to Mary Anne to see if she wants to add anything.

• (1715)

Ms. Mary Anne Stevens: Thank you.

This represents a fundamental change to the structure of the legislation, which in itself I leave it to you to decide if that's a good thing or a bad thing. The rest of the law hasn't been designed around this approach.

The way the tribunal has been designed, and the way it's been set up, is for receiving complaints by the commissioner. The commissioner serves as the triage for complaints to go to the tribunal. This would mean there would be absolutely no filters before someone goes to the tribunal, which is equivalent to a court. It's a highly judicialized process. They also would not have the support of the PSIC, because he wouldn't be there explaining how he found that there was a reprisal and why he's come to the tribunal. They would be left on their own.

Just consider that if this change is going to be made, there may be other changes that would be required in the legislation in order to make this work properly.

The Chair: Mr. Kusmierczyk.

Mr. Irek Kusmierczyk: Thank you, Mr. Chair.

As I understand it, the cases that make it through PSIC to the tribunal are serious cases. There is evidence and there are grounds to proceed to the tribunal. Obviously, one can reasonably conclude that without the filtering screening process of PSIC, you're going to increase the workload of the tribunal.

Do you think this potentially could have.... What's the likelihood that removing the PSIC screening process would actually delay justice for people, for public servants, for example, who have serious cases with serious grounds to proceed to the tribunal? Could this delay their ability to get justice? Again, as you've indicated, the tribunal is overloaded and flooded with cases.

Ms. Mireille Laroche: If the tribunal has the same amount of resources and there are more cases, I would assume it would take a bit more time to filter them and to go through them.

Mr. Irek Kusmierczyk: The short answer is that justice would be delayed.

Ms. Mireille Laroche: Potentially, yes.

The Chair: Ms. Vignola.

[*Translation*]

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

First of all, my question remains, who are we to decide for the whistleblower what's best for them? If they are really fed up with being reprimanded, reprisals and seeing things that make no sense, to the point where they decide to go to the tribunal, who are we to tell him that they don't have the right to do so? That's my first thought.

Second, I hear my colleagues saying that so many whistleblowers will turn to the tribunal that it will end up with a backlog. Are things really that bad in our public service? Is the situation that serious? If that's the case, it's high time to implement tougher legislation.

What I interpret when I hear people raise the concern that the tribunal will be swamped with requests is that people have reasons to complain but they prefer to keep quiet right now. A stronger law would protect them enough so that they could finally complain, and the machinery of government could work better.

We can certainly agree to disagree on that, so we can go to a vote.

[*English*]

The Chair: Mr. Fergus.

[*Translation*]

Hon. Greg Fergus: I'd like to respond to my colleague's concern that things are really dysfunctional in the public service. That's not the case.

What I'm trying to say is that the proposed section is not going to make things easier for whistleblowers. On the contrary, it will call for higher-level legal criteria, which will complicate matters if they are subject to reprisals. We do not want to make it harder for them; we want them to have a solution available as quickly as possible, using lower-level legal criteria. That's why we have a commissioner.

We all agree on the need to ensure that the Commissioner does their job, that we change the nature of their work and that they get some support. That's one reason why we agreed with a number of the proposals in this bill. For example, it will now be possible to designate more than one person who can receive complaints. In addition, we have reduced certain thresholds.

• (1720)

[*English*]

Instead of saying has probable reasonable grounds, we tended to say, on the basis of.... I forget the wording that we had, but we changed it, placing it in good faith, a reasonable understanding.... If somebody can make a reasonable case, they could bring it forward. We brought that threshold down.

We want to see changes, but what we're doing now is opening the door to more cases going to a higher threshold that will take longer to resolve, and I don't think that's helping out the whistleblower.

The Chair: Colleagues, shall NDP-11 carry?

We have a tie. I'll vote yes.

(Amendment agreed to: yeas 6; nays 5 [*See Minutes of Proceedings*])

The Chair: Shall clause 19 as amended carry?

Mr. Fergus.

Hon. Greg Fergus: I would say no, Mr. Chair.

The Chair: Mr. Fergus, did you wish to speak to that?

[*Translation*]

Hon. Greg Fergus: Can we have a recorded division?

[*English*]

The Chair: We will have a recorded vote, Clerk.

We have a tie. I will vote yes.

(Clause 19 as amended agreed to: yeas 6; nays 5)

(On clause 20)

The Chair: Shall Clause 20 carry?

Mr. Fergus.

Hon. Greg Fergus: Once again, I do believe we should be voting to negate this clause precisely because PSIC uses a lower threshold that is reasonable grounds. The tribunal uses a higher threshold of balance of probabilities.

Again, I'm not certain why we would want to refer people in a vulnerable situation to a higher legal standard than what should be available to them by having a lower legal standard. That's the reason I would vote to negate this clause.

• (1725)

The Chair: Shall clause 20 carry?

Is this on division, colleagues, or would you like a recorded vote?

We shall have a recorded vote.

Mr. Turnbull, we don't have you subbed in yet to vote. I'll delay for a few moments until we get the paperwork set.

We'll go ahead with the vote, and we'll get back to Mr. Turnbull.

We have a tie. I'll vote yes.

(Clause 20 agreed to: yeas 6; nays 5)

(On clause 21)

The Chair: Mr. Johns, now is your opportunity with NDP-12, which is on page 30 of the package.

Mr. Gord Johns: Thank you, Mr. Chair.

NDP-12 requires no additional funds. It extends the reverse onus of proof to all applicants to the tribunal. Whistle-blowers who apply to the tribunal currently do not have the benefit of reverse onus and, therefore, have almost zero chance of success.

Every expert this committee asked listed reverse onus as one of the very top amendments that we need to make to this bill. Reverse onus is absolutely critical to any hope a whistle-blower has to successfully prove reprisal.

The Chair: Thank you, Mr. Johns.

Does anyone else wish to address this amendment?

Go ahead, Mr. Fergus.

Hon. Greg Fergus: The least I can say is that it's consistent with NDP-11, which was passed here on division. The reverse onus part of it is not the part that I disagree with, but I do think, and I'm being quite frank here, that the existing provisions of the clause are better than the amendment being proposed by NDP-12, so I'm going to vote against it to allow for the existing amendments to stand as they are.

• (1730)

The Chair: Does anyone else wish to address it?

Ms. Vignola.

[*Translation*]

Mrs. Julie Vignola: I have a question for the legislative clerk.

Can you assure us that if we pass this amendment, it won't involve new spending and that the bill will not require a royal recommendation as a result?

Ms. Dancella Boyi: We have verified and analyzed the amendments submitted that are currently in the bundle, and this issue has not been raised by our team.

Mrs. Julie Vignola: Thank you.

Hon. Greg Fergus: We're not going to ask for a royal recommendation for this clause.

[*English*]

The Chair: Thanks, Mr. Fergus.

Shall NDP-12 carry?

I will assume that going forward we'll do a recorded vote on all of them.

(Amendment negatived: nays 7; yeas 3 [*See Minutes of Proceedings*])

(Clause 21 agreed to: yeas 10; nays 0)

(On clause 22)

The Chair: We have amendment G-9, which is on page 31 of the package.

I'm going to take a wild guess here and go to Mr. Fergus.

Hon. Greg Fergus: Yes, I clearly support this amendment.

This will require a tribunal to add reprisers, if they are affected by its determination. I think this is a good change.

The Chair: Go ahead, Ms. Vignola.

[*Translation*]

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

As I understand it, at the end of the day, the victim won't necessarily decide whether or not they will face the accused person at the tribunal. In my humble opinion, the victim should be making that decision.

I want to make sure I understand correctly.

[*English*]

The Chair: Yes, Mr. Fergus.

[*Translation*]

Hon. Greg Fergus: That question would have to be put to the expert witnesses.

[*English*]

How can reprisers be affected by the decision of the tribunal?

Ms. Mary Anne Stevens: The clause in the bill would automatically add the repriser as a party before the tribunal, so they would always be present.

What the amendment in G-9 is doing is saying that they would only be present at the tribunal if the tribunal thought they would be affected, usually through discipline, by the outcome of the tribunal. If the repriser would not be affected by the outcome, they would not be a party before the tribunal.

Is that clearer?

• (1735)

The Chair: Please go ahead, Mr. Fergus.

[*Translation*]

Hon. Greg Fergus: Actually, Bill C-290 proposes that these individuals always be present. Now, what we're saying is the victim doesn't have to appear before the person accused of reprisals, unless the tribunal feels they would be affected by the outcome. So rather than requiring that the accused person always be present, they would be present in a smaller number of cases.

Mrs. Julie Vignola: If I understand correctly, the accused person would only be there if the tribunal determined that they did in fact retaliate, so that they could be forced to face what happened. Otherwise, the victim wouldn't be able to tell them what they went through because of what they did to them. The tribunal may well impose little or no penalties on the accused person, but it's important that the victim be able to tell the person who retaliated what consequences their actions had on their life. That can't happen if the person who has retaliated isn't present at the tribunal.

I would go to a vote on this, because we may not agree again.

Hon. Greg Fergus: I just want to point out that that's the opposite of what you said the first time.

[*English*]

The Chair: Shall amendment G-9 carry?

(Amendment agreed to: yeas 8; nays 2)

The Chair: Shall clause 22 as amended carry?

I'll let Mr. Fergus speak first, Mr. Jowhari.

Go ahead, Mr. Fergus.

Hon. Greg Fergus: For the last time, I am going to make a request that we negate this clause, because we will be making this—

The Chair: I'm sorry. If you don't mind my interrupting, it was originally clause 23 that was on your list to negate. We're on clause 22.

Hon. Greg Fergus: I'm sorry. I apologize.

Mr. Majid Jowhari (Richmond Hill, Lib.): Yes, and you said no.

Hon. Greg Fergus: I sincerely apologize.

The Chair: We'll go to the vote.

(Clause 22 as amended agreed to: yeas 8; nays 2)

(On clause 23)

The Chair: Mr. Fergus, would you like to start again?

Hon. Greg Fergus: I won't waste the committee's time. You could apply what I just said earlier.

The Chair: Colleagues, we'll go to a vote.

(Clause 23 agreed to: yeas 6; nays 5)

(On clause 24)

The Chair: Shall clause 24 carry?

Colleagues, are there any changes to clauses 24 and 25?

Mr. Fergus, could we perhaps have you combine the two of them?

• (1740)

Hon. Greg Fergus: On clause 24 I would agree, Mr. Chair, but I would like to propose negating clause 25. So I can't do that this time. I'm sorry.

The Chair: That's fine. I thought I'd ask.

We'll go straight to a vote.

(Clause 24 agreed to: yeas 10; nays 0)

Hon. Greg Fergus: I'm a little confused. What was the vote we took before clause 24?

The Chair: It was clause 23. We did clause 22 and then we did clause 23.

Mr. Majid Jowhari: We did amendment G-9 [*Inaudible—Editor*] and we had to do the clause.

The Chair: We did clause 23.

Hon. Greg Fergus: My apologies, then. I will let the record show that I misvoted on clause 23. I would have voted, again, to negate it.

I thought that was the vote we had.

The Chair: We did that.

Hon. Greg Fergus: Then on clause 24—

The Chair: We just voted on clause 24.

Hon. Greg Fergus: Okay. I'm sorry.

For some reason, I think I had an extra vote in there.

The Chair: I understand where the confusion is probably coming from. It looked like we were just going to carry clause 24 on division, but we say for every single one that we're going to do a recorded vote.

Clause 24 is carried, Madam Clerk.

The Clerk of the Committee (Ms. Aimée Belmore): Yes, sir.

(On clause 25)

The Chair: Mr. Fergus, did you want to address clause 25?

Hon. Greg Fergus: Yes.

I recommend that we overlap this so that we can avoid duplication. It prevents overlap with the recourse mechanisms for reprisals. That's why I think we should be negating this clause. As I said earlier, what will happen if we don't is that we will have different bodies producing different results with different answers in terms of what will happen if people decide to pursue two or three different recourse mechanisms.

That's the reason we'd vote against it.

The Chair: Does anyone else wish to address the clause?

Shall clause 25 carry?

We'll have a recorded vote, ma'am.

(Clause 25 negated: nays 8; yeas 2)

(On clause 26)

The Chair: We're at amendment G-10, which is on page 32 of the handout.

Mr. Fergus.

• (1745)

[*Translation*]

Hon. Greg Fergus: To make this more consistent with previous decisions, we want to add the following concept:

[English]

“on the basis of reasonable belief”.

[Translation]

Once again, this will reduce the burden.

[English]

The Chair: Thanks, Mr. Fergus.

It looks like we're ready to go to a vote.

Shall G-10 carry?

(Amendment agreed to: yeas 10; nays 0 [See *Minutes of Proceedings*])

The Chair: We now go to amendment LIB-9, which is on page 32.1.

Mr. Jowhari, you're on.

Mr. Majid Jowhari: Thank you, Mr. Chair.

This is an amendment to clause 26. We are suggesting that we add, after line 24 on page 8, the following:

(4) If the Commissioner refuses to deal with a disclosure or to commence an investigation, he or she must provide the person who made the disclosure with information on the most appropriate procedures for dealing with the disclosure.

Many times we heard in the past there was no guidance provided as a next step. We think this is a good amendment.

The Chair: Ms. Vignola.

[Translation]

Mrs. Julie Vignola: I think LIB-9 is similar to LIB-8. Since we passed LIB-8, does LIB-9 become null and void? It depends how you understand it.

[English]

Mr. Majid Jowhari: Thank you.

We actually replaced LIB-8 with G-7.1.

The Chair: LIB-8 was withdrawn.

Mr. Majid Jowhari: Yes, it was withdrawn and it was replaced by LIB-7.1.

[Translation]

Mrs. Julie Vignola: It was therefore replaced by LIB-7.1. Okay.

[English]

Mr. Majid Jowhari: Yes.

The Chair: Are you ready to vote on LIB-9, colleagues?

(Amendment agreed to: yeas 10; nays 0 [See *Minutes of Proceedings*])

(Clause 26 as amended agreed to: yeas 10; nays 0)

(On clause 27)

The Chair: Mr. Fergus, do you wish to address it?

Hon. Greg Fergus: Once again, consistent with clause 25, we want to just make sure there is not overlap, duplication and wasting

resources by having multiple avenues available. This is the reason we would recommend negating this clause.

• (1750)

The Chair: Do you wish to address that, Ms. Vignola?

[Translation]

Mrs. Julie Vignola: This clause simply repeals a paragraph of the act. I don't see how this is an issue, since we have already allowed public servants to use other resources. This clause simply repeals paragraph 25(1)(j) of the act, which talks about “the power in section 34 to refer a matter to another authority”. It would be left up to the whistleblower to decide with whom they are going to file their complaint, to whom they are going to tell their story and who they are going to ask to protect them.

Personally, I would keep this clause as is.

[English]

The Chair: Mr. Fergus.

Hon. Greg Fergus: Could I ask Madam Laroche or Ms. Stevens to comment on this particular clause?

The Chair: Ms. Stevens.

Ms. Mary Anne Stevens: Clause 27 is basically consequential to clause 30 of the bill, even though it comes before clause 30, because it's a reference to section 34 in the PSDPA, which clause 30 removes.

This amendment to paragraph 25(1)(j) makes a reference to section 34, so I presume that's why the bill is removing that paragraph.

The Chair: Ms. Laroche, did you have something to add?

Was there anything else, Ms. Stevens?

Ms. Mary Anne Stevens: Should I explain section 34?

The Chair: I'm not asking or directing you one way or the other. You just looked like you wanted to speak to clause 27 further.

Ms. Mary Anne Stevens: The implication would be that if clause 30 were to be defeated, you would want to keep this sub-clause that's referred to in clause 27 of the bill because section 34 of the PSDPA is a provision that prevents the commissioner from going outside of the public sector. There are concerns that if section 34 is removed from the PSDPA, it would open not just the private sector but also the excluded organizations to investigations by the PSIC.

The Chair: Shall clause 27 carry?

(Clause 27 agreed to: yeas 6; nays 5 [See *Minutes of Proceedings*])

The Chair: Mr. Barrett.

Mr. Michael Barrett (Leeds—Grenville—Thousand Islands and Rideau Lakes, CPC): Mr. Chair, on NDP-12, the vote recorded me as having said “yea”, but my intention and my voice said “nay”. I'm looking for unanimous consent to have it recorded as “nay”.

The Chair: Colleagues, does Mr. Barrett have unanimous consent? It does not change the vote.

An hon. member: No.

The Chair: Your amendment was defeated, Mr. Barrett.

(On clause 28)

The Chair: Mr. Fergus.

• (1755)

Hon. Greg Fergus: Again, I'd like to thank my colleague, Mr. Johns, for proposing this. Frankly, the implications of this are that the Information Commissioner will be setting policy piecemeal throughout the government. We think it's better for the Treasury Board Secretariat to set a standard.

I'm sorry. Did I misunderstand NDP-13?

The Chair: Yes, Mr. Fergus. I'm sorry to interrupt you.

We're on clause 28.

Hon. Greg Fergus: I apologize.

The Chair: We're going to go to clause 28, and then we have to go to clause 28.1.

Mr. Majid Jowhari: We are on clause 28. NDP-13 is on clause 28.1.

Hon. Greg Fergus: My apologies.

The Chair: We're on clause 28, and then we'll get to you, Mr. Johns, for clause 28.1.

Did you wish to address anything on clause 28?

Hon. Greg Fergus: If I remember correctly, this is the one about the legal aid.

The Chair: Colleagues, I'm going to suspend for a couple of minutes. I'm going to let you work that out, and then I have something to address.

• (1755)

(Pause)

• (1800)

The Chair: Colleagues, we are back.

Shall clause 28 carry?

This will be a recorded vote.

(Clause 28 agreed to: yeas 10; nays 0)

The Chair: Thank you.

We have amendment NDP-13, new clause 28.1, which is on page 33 of the package.

Mr. Johns, I see your hand is up.

Mr. Gord Johns: Yes. There are no additional funds required. This defines standards for investigations, addresses training and qualifications of investigators and the independence of investigative operations in line with best practices.

There is considerable evidence of superficial, incompetent, biased and even maligned investigations by PSIC. It's their standard

practice to completely exclude whistle-blowers from the process, keeping them uninformed or misinformed about progress, failing to interview them or process the information that they have, failing to interview other key witnesses they suggest and denying them sight of the final report so that they are unable to refute false information.

In one case investigated by FAIR, PSIC effectively sabotaged an important investigation that was making good progress by quietly allowing the investigator's contract to lapse. They then closed the case abruptly without following the lines of inquiry already established.

With this amendment, the investigations would be conducted competently and independently, thus ensuring proper due process for all parties. Without opportunity to pressure or bias investigations, wrongdoers would more reliably be exposed. The public interest would be better protected. Wrongdoers would be denied the opportunity to expand their powers and conduct more serious wrongdoing examples like Phoenix and Lac Mégantic.

In PSIC's primary mandate, the words "investigate" or "investigation" appear more than 100 times in the PSDPA. This is a responsibility that should already be budgeted for.

The Chair: Thanks, Mr. Johns.

Go ahead, Mr. Fergus.

Hon. Greg Fergus: I believe what we should do for the purpose of setting standards for internal investigations is allow TBS to play that role. That's the role Treasury Board Secretariat does play in terms of establishing government-wide standards. It would be one that would apply throughout the entire government organization as opposed to what is being proposed here, which is for the Public Service Integrity Commissioner to determine what the standards are.

• (1805)

The Chair: Did you want to address that, Mr. Johns, or are we ready to vote?

Mr. Gord Johns: Let's vote.

Mr. Michael Barrett: Let's have a recorded vote on that.

(Amendment negated: nays 8; yeas 2)

The Chair: NDP-13 is defeated; therefore, there is no new clause 28.1.

LIB-10 has been withdrawn.

(On clause 29)

The Chair: Go ahead, Mr. Fergus.

Hon. Greg Fergus: I'm going to make sure we're consistent here, and consistent with clause 25. I believe that for clause 29, this is a consequential aspect. To be consistent with our vote, we should vote to negate this, as we did on clause 25.

The Chair: Shall clause 29 carry?

We have a tie. I will vote yes.

(Clause 29 agreed to: yeas 6; nays 5)

(On clause 30)

The Chair: Next, we have G-10.01, which is on page 33.2 of the package.

Mr. Fergus.

Hon. Greg Fergus: This one is just making sure that the law would apply, except when it comes to the Canadian Armed Forces, the Communications Security Establishment, as well as the Canadian Security Intelligence Service, where these kinds of investigations would be referred to NSIRA, the National Security and Intelligence Review Agency.

The Chair: Do you have anything to add, Ms. Vignola?

[Translation]

Mrs. Julie Vignola: I just didn't understand what my colleague said. I think there was a reference to CSIS, the RCMP and the military, but the sentence was incomplete and had no verbs in it.

[English]

The Chair: Mr. Fergus, would you mind repeating it?

[Translation]

Hon. Greg Fergus: What I was saying is that these investigations will probably involve information that falls under national security. In the case of the Canadian Armed Forces, the—

• (1810)

Mrs. Julie Vignola: You're talking about amendment G-10.01, right?

Hon. Greg Fergus: Yes, that's right.

Mrs. Julie Vignola: Okay. It's clearer now that I have the context.

Thank you.

Hon. Greg Fergus: Okay.

[English]

The Chair: Shall G-10.01 carry?

(Amendment agreed to: yeas 10; nays 0 [See *Minutes of Proceedings*])

(Clause 30 as amended agreed to: yeas 10; nays 0)

The Chair: Shall clause 31 carry? This is not clause 31.1, which is NDP-14.

Hon. Greg Fergus: I'm sorry. When you say "clause 31", it's as is...?

The Chair: Yes. NDP-14 would create a new clause 31.1.

Hon. Greg Fergus: Do you want to do NDP-14 and then ask for 31 as amended?

The Chair: No. It's just clause 31.

NDP-14, if it passes, will create its own clause. Clause 31 would be a stand-alone clause.

Do you wish to address it, Mr. Fergus?

Hon. Greg Fergus: No. I'm in favour of clause 31 as a stand-alone clause.

The Chair: Okay. Shall clause 31 carry?

(Clause 31 agreed to: yeas 10; nays 0)

The Chair: We're now on to amendment NDP-14. If it does pass, it will create new clause 31.1.

We have Mr. Johns on NDP-14. It's on page 34, if you're following along at home.

Mr. Gord Johns: This extends the current provisions for interim relief to all parties. Interim relief, or injunctive relief, was a top priority for every expert we heard from when they were asked about what amendments are most critically needed.

The whistle-blower must absolutely be protected as soon as they make disclosures. Instead of waiting for reprisals to happen and spending time and resources trying to address them after the fact, reprisals should be prevented as soon as a disclosure is made. Currently, interim relief can be provided to those accused of reprisals but not to the whistle-blower.

Sections 19.5 and 19.6 demonstrate a central theme of the PSD-PA. The protection of those accused, with a disregard for the whistle-blower's fate, is absolutely absurd. With this amendment, interim relief would be automatically provided to all parties. This would ensure that due process is completed before any disciplinary or detrimental actions can be taken against any of the parties.

• (1815)

The Chair: Thank you, Mr. Johns.

We have Mr. Fergus and then Ms. Vignola.

Hon. Greg Fergus: I'm a little confused as to the explanation offered by Mr. Johns. I'd love to hear from Mr. Johns again.

I'm wondering if our officials can give us a sense as to what would be the import of passing NDP-14.

[Translation]

Ms. Mireille Laroche: Basically, NDP-14 proposes a definition of reprisals that could be taken against the whistleblower or another person. However, this definition is already included in the definitions set out in the act. Therefore, we see this as redundant.

[English]

Do you want to add anything?

Ms. Mary Anne Stevens: I would just say that Mr. Johns has spoken of "injunctive relief", but I don't see that in NDP-14.

I'm sorry. I'm confused. I'm not sure how to clarify this.

The Chair: Mr. Johns, I have Ms. Vignola, and then I'll come back to you for that.

[Translation]

Mrs. Julie Vignola: I'm reading and re-reading NDP-14, and it's not a list of reprisals. The wording says that, during the investigation, if the Commissioner determines that there have been reprisals, it's prohibited to impose sanctions, disciplinary or otherwise, on the public servant who was the victim of those reprisals. This protects the public servant from the outset, during the investigation. That's what I read in NDP-14:

31.1 The Act is amended by adding the following after section 35:

35.1 If, during the course of an investigation, the Commissioner finds that a wrongdoing has been committed, none of the following measures shall be taken against the public servant who made the disclosure...

That is followed by a list of five measures that may not be taken against a public servant who has already suffered reprisals.

So it's not a repeated list. It simply says that the public servant is protected during the investigation.

[*English*]

The Chair: Next is Mr. Johns and then Mr. Fergus.

Mr. Gord Johns: I very much appreciate what Ms. Vignola just added to it. Also, if it's redundant, then it should be no problem passing it.

The Chair: Mr. Fergus.

Hon. Greg Fergus: I think our officials would like to comment.

The Chair: Go ahead, please.

Ms. Mary Anne Stevens: Under the act the way it is currently written, the protection starts from when you make the disclosure. You don't need to have an investigation. The protection is from the time when you make the disclosure. This is after that, so you would already be protected from everything that is listed in this amendment.

The Chair: Shall NDP-14 carry?

(Amendment negatived: nays 8; yeas 2 [*See Minutes of Proceedings*])

The Chair: We're now on to the vote on clause 32.

(Clause 32 agreed to: yeas 10; nays 0)

The Chair: Colleagues, we only have four minutes left. I'm not going to get into NDP-15.

By the looks of it, we have about an hour and a bit left to get through the bill.

On the 14th, we have the PBO here. Depending on the length of questioning, we might have an opportunity to get to a short amount of Bill C-290 on the 14th.

On the 19th, we have the departments on the McKinsey documents. The 19th is the cut-off that we pretty much have, or the 20th, to get this back to the House.

Once in a while, there are some dates floating out there for a couple of hours here or there for meetings. If colleagues are in agreement, leave it with me. I will try to nab the first spot of any available resources so that we can finish this off.

Are you willing to leave that with me and the clerk?

Some hon. members: Agreed.

The Chair: That's wonderful.

If there's nothing else, we will adjourn and we will see you on the 14th.

I understand there are a lot of votes, even though we're starting at 4:30. Hopefully, we can get to it on time.

Thanks, colleagues.

We will adjourn.

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