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Chair

Mr. Tom Lukiwski

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•(0845)

[English]

The Chair (Mr. Tom Lukiwski (Moose Jaw—Lake Centre—Lanigan, CPC)): Colleagues, thank you. I thank our witnesses for being here.

There's just a little bit of housekeeping before we introduce our witnesses and proceed with the meeting. I will be taking approximately 15 minutes at the end of the meeting for committee business to briefly discuss future witnesses appearing before the committee on this act. I think we should be able to dispose of that in about 15 minutes.

With that, I would like to welcome Mr. Trottier and Madam Stevens, who are with us today. This is the 68th meeting of the Standing Committee on Government Operations and Estimates, and we are dealing with a study of the Public Servants Disclosure Protection Act.

Mr. Trottier, Madam Stevens, thank you for being here.

Mr. Trottier, I understand you have a brief opening statement.

Mr. Carl Trottier (Assistant Deputy Minister, Governance, Planning and Policy Sector, Treasury Board Secretariat): I do. Thank you very much, Mr. Chairman.

[Translation]

Members of the committee, thank you for the invitation to appear to discuss the Public Servants Disclosure Protection Act, which came into force on April 15, 2007, replacing the Treasury Board's Policy on the Internal Disclosure of Information Concerning Wrongdoing in the Workplace.

[English]

The intent of the act is to promote an ethical climate in the public sector, which in turn maintains and enhances public confidence in the integrity of public servants and institutions. By providing public servants with a safe way to speak up when they see something wrong, the act leads to enhanced workplace well-being in the public sector.

The public sector is held to the highest standards of accountability by Canadians, and we take pride in ensuring sound stewardship of the public service assets and excellence in the delivery of programs and services to our citizens.

The Public Servants Disclosure Protection Act is an important part of our integrity framework. Of particular importance, the act sets out measures to promote an ethical climate. It does this through its

values and ethics code for the public sector, as well as organizational codes of conduct to articulate our shared values and expected behaviour in the public sector.

The act encourages employees in the public sector to come forward if they have reasons to believe serious wrongdoing may have taken place, and when they do, it provides them protection from reprisals so they can feel safe in coming forward.

•(0850)

[Translation]

The act established multiple avenues to disclose wrongdoing, internal to departments and external.

The Public Sector Integrity Commissioner is an independent agent of Parliament who is responsible for investigating the disclosures of wrongdoing that are made to his office and all complaints of reprisal.

The act also established the Public Servants Disclosure Protection Tribunal to address cases of reprisal and provide either remedial or disciplinary measures if reprisal is found.

[English]

Specifically, the act allows employees to make disclosures to their supervisors, to the senior officer of disclosure designated for their organization, or to the Public Sector Integrity Commissioner. It also allows for disclosures to be made to the Auditor General when they concern the Office of the Public Sector Integrity Commissioner itself. In fact, the act allows public servants to provide the Public Sector Integrity Commissioner with information about possible wrongdoing in the public sector.

The act also provides reprisal protection for public servants who disclose information in the course of parliamentary proceedings or in the course of a procedure established under another act of Parliament, or when lawfully required to do so. This means that the act's protection against reprisals serves as a support to many government mechanisms.

[Translation]

Through these provisions, the Public Servants Disclosure Protection Act enhances the ability of organizations to identify and resolve incidents of wrongdoing, while supporting employees who disclose wrongdoing and protecting them from reprisal.

[English]

Those are the broad strokes of the act. Now let us discuss some of the more specific areas of the act, beginning with who the act covers.

The act applies to all employees in federal departments and agencies, most crown corporations, and the RCMP. For security reasons, it does not include the Canadian Forces, the Canadian Security Intelligence Service, and the Communications Security Establishment, each of which were required to establish similar regimes for the disclosure of wrongdoing, including the protection of persons who disclose wrongdoing.

The act also provides protection for people outside the public sector, such as external contractors, when they provide information about wrongdoing in or related to the federal public sector.

Let me turn to the matter of what constitutes wrongdoing under the Public Servants Disclosure Protection Act. It includes the violation of any act of Parliament or act of the legislatures of Canada's provinces and territories, which includes violating any regulations made under these acts; the misuse of public funds or public assets; gross mismanagement; doing something that creates or knowingly fails to prevent a substantial or specific danger to health, safety, or life of persons or to the environment; the serious breach of any code of conduct that applies to the public sector; and knowingly directing or counselling a person to commit wrongdoing as defined in the act.

[*Translation*]

Wrongdoing is not a disagreement with legitimate instructions received in the course of employment or criticism of political decisions.

The act provides employees with a choice of three secure and confidential channels for making a disclosure.

Within their organization, employees may make a disclosure to their immediate supervisor.

They can also speak to their organization's designated senior officer for disclosure. The senior officer for disclosure's role includes providing guidance to employees wishing to make a disclosure, managing the investigation of disclosures, and reporting the results of the investigations to their chief executives.

[*English*]

Finally, employees can go to the Public Sector Integrity Commissioner.

For internal disclosures, the act requires the chief executive to provide public access to information describing any wrongdoing that is found and any corrective action that has been taken. The act also requires the Public Sector Integrity Commissioner to report to Parliament within 60 days of finding a wrongdoing.

A common concern of those considering disclosing wrongdoing is the fear of acts of reprisal. To address this, the Public Servants Disclosure Protection Act requires disclosures of wrongdoing be treated with an appropriate degree of confidentiality.

[*Translation*]

Organizations must protect any information they collect about disclosures, including the identities of those making disclosures and of other parties involved, subject to other acts of Parliament and the principles of natural justice and procedural fairness. In this way, the act provides protection to those who disclose wrongdoing, balanced

with a fair and objective process for those against whom allegations are made.

• (0855)

[*English*]

In addition, if those who disclose wrongdoers are the subject of reprisal, they can complain to the Public Sector Integrity Commissioner within 60 days of the realization of the reprisal that was taken against them. If the complaint is founded, doing so may lead to corrective action being ordered by the Public Servants Disclosure Protection Tribunal, such as compensation or disciplinary measures against the guilty parties.

[*Translation*]

To be clear, acts of reprisal include any disciplinary measures, demotion, termination of employment, and any other action or threat that adversely affects employment or working conditions.

[*English*]

Finally, the act requires that the Public Sector Integrity Commissioner prepare an annual report to Parliament on the activities of his office. The act also requires that the chief human resources officer prepare an annual report for the President of the Treasury Board to table in Parliament.

[*Translation*]

The report of the chief human resources officer must provide information on activities related to the disclosures made in public sector organizations that are subject to the act.

Additionally, the Office of the Chief Human Resources Officer supports public sector organizations in their administration of the act through learning events, meetings, and ongoing guidance, as well as by making tools and information available on our website.

[*English*]

We believe in promoting a positive and respectful public sector culture that is grounded in values and ethics. We believe that an effective disclosure regime is beneficial to the organization and to the workforce, and we believe that the Public Servants Disclosure Protection Act is an important part of our integrity framework.

With that, I welcome all of your questions.

The Chair: Thank you very much, Mr. Trottier.

We'll start with a round of seven-minute questions now.

Monsieur Drouin, I have you up first.

Mr. Francis Drouin (Glengarry—Prescott—Russell, Lib.): Thank you, Mr. Chair.

Thanks to the witnesses for appearing today. I really appreciate it.

I would like to understand. Can you walk me through the procedure an employee might have to go through when filing something through the Public Servants Disclosure Protection Act? What is the exact procedure? If I find that somebody has committed something, what do I have to do?

Mr. Carl Trotter: First of all, I have already mentioned that there are three areas in which the wrongdoing can be disclosed. They are the supervisor, the senior officer, or the commissioner's office. This can be done either in writing or in person. I'll turn to Mary Anne soon for the finer details of your question, because you're asking about the exact procedure. At that point, a review of the submission is done. An investigation is done to verify whether there was wrongdoing. Then there is confirmation as to whether wrongdoing was done.

I'll turn to Mary Anne for the exact specifics of your question, if that was in fact your question.

Mr. Francis Drouin: I'm also interested in understanding how you protect the employee in that.

As the saying goes, Ottawa is a small town. If there is a specific wrongdoing in a specific department that has to do with a specific issue, I'm curious to find out how the act really protects the employee and provides confidence to the employee that—

Mr. Carl Trotter: Yes, and that is the main concern.

First and foremost, we don't have any data that says there are issues with protection of the information.

The second thing is that the small organizations, where it would be easy for someone's identity to be found, are exempt from being covered by the creation of senior officers and the creation of a process internally, because it's too delicate, so there is a certain protection that exists at that level.

As well, they're covered by the Privacy Act, which ensures that the information is not to be divulged in any way, shape, or form. That is one of the main tenets of the act, that the information is not to be shared.

Mr. Francis Drouin: Okay.

I'm looking at your annual report and I'm trying to understand it. What would you qualify as the difference between wrongdoing and corrective measures in departments? Help me understand the numbers. You have general inquiries at 198 and, of that, you found seven wrongdoings and you've corrected 31 measures.

● (0900)

Mr. Carl Trotter: Just to be clear, these are as found by the PSI Commissioner.

Mr. Francis Drouin: They're in the appendix.

Mr. Carl Trotter: Oh, I'm sorry, these are the internal reviews of departments.

May I ask you to clarify your question as to what you're...?

Mr. Francis Drouin: There have been 198 general inquiries, but of that only 31 corrective measures.

It just leads me to believe—

Mr. Carl Trotter: In some cases, they're unfounded. They look at them and ask whether they are founded. Does this meet the definition of wrongdoing in any shape or form? In many instances, it doesn't.

In other instances, what often happens is that it's sent, but in reality it should have been sent through another means, another grievance process that currently exists. You have to understand, as you already know, that this act catches only what isn't caught by other—

Mr. Francis Drouin: Yes.

Mr. Carl Trotter: So a lot of what comes here is then redirected to other means.

Mr. Francis Drouin: What does your office do to provide the proper information for employees to understand that? It seems high that for 198, only 19% have provided corrective measures on that wrongdoing.

It leads me to believe that people are filing complaints but they're unfounded, so either the employee does not know how the act works... Can you help me to understand how you provide that information to employees?

Ms. Mary Anne Stevens (Senior Director, Workplace Policies, Programs, Engagement and Ethics, Governance, Planning and Policy Sector, Treasury Board Secretariat): Certainly, but first could I clarify some of the data for you?

Mr. Francis Drouin: Sure.

Ms. Mary Anne Stevens: The general inquiries aren't disclosures; they're inquiries. An individual comes and says, "I think I might want to make a disclosure. Tell me about the process." That's an inquiry, as opposed to coming in and saying, "I think there is something wrong happening over here", which would be a disclosure.

When you're looking at the number of inquiries, you have 198, but the number of disclosures was 281.

Mr. Francis Drouin: Which would bring the percentage even lower.

Ms. Mary Anne Stevens: Correct.

Mr. Francis Drouin: Okay.

Ms. Mary Anne Stevens: You can have corrective measures without necessarily having a finding of wrongdoing.

In situations where, because of the disclosure, the department looks at whatever the process is and determines there is something they can do so that the problem doesn't happen again, that would be a corrective measure.

Mr. Francis Drouin: Since the act was created, have you seen a jump in reported disclosures, or is it steady year over year?

Ms. Mary Anne Stevens: Well, you have all of the data there since the act came into force, and—

Mr. Francis Drouin: Sorry, I thought that was 2015-16.

Mr. Carl Trotter: In 2007, there were 234.

Mr. Francis Drouin: Okay, so it's fairly steady.

Mr. Carl Trottier: It's fairly stable. It goes up and down slightly, but not a lot.

Mr. Francis Drouin: Thank you very much.

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

Mr. Kelly McCauley (Edmonton West, CPC): Thanks for joining us this morning.

This follows up a tiny bit on Mr. Drouin's comments. Do you have the metrics, or have you polled the public service to gain an understanding of the level of confidence that they have in the act? The reason I ask is that we have the act, which, on paper, should be protecting public servants. I'm going to refer to the Phoenix issues. We've seen it again and again, repeatedly, and we hear the same story, "We're afraid to come forward."

I read in this morning's news about the pay fiasco involving overpayment. One public servant said he had \$40,000 extra in the bank. "He spoke to CBC News on a condition of anonymity, because he [was] worried about his job."

We've been dealing with Phoenix for a long time. We've heard this repeatedly. We've seen it repeatedly in the media. It strikes me as quite concerning that so many people are afraid to come forward for their own paycheques, much less serious wrongdoing.

I'm trying to gauge the level of confidence that our public servants have in the ability to be protected by the act and in the ability to come forward without reprisals.

• (0905)

Mr. Carl Trottier: I can't speak to Phoenix today, obviously, but in terms of—

Mr. Kelly McCauley: No, I'm not asking about Phoenix. I'm saying that if the public servants are so afraid to even come forward about their paycheques, I'm not getting a strong level of confidence that they feel comfortable coming forward to report wrongdoing. That's what I'm getting at. How are you measuring, or are we measuring, some kind of confidence? Do you believe public servants have confidence in the act? Are they confident that they're going to be protected if they come forward?

Mr. Carl Trottier: In terms of the fear of reprisal, there's anecdotal...that it is out there, but it's very hard to assess. It's hard to assess who has withheld the desire to disclose a wrongdoing. That's something difficult that we should all be thinking about: how to better assess that.

The data that we do have, though, indicates a very constant number of disclosures of wrongdoing, which isn't an unhealthy thing. It's actually quite a healthy thing in terms of having anywhere from 234 to 291 wrongdoings being brought forward per year. There is a sense that there is a willingness to show. Now if it were 17, 18, or 19, we'd be saying that we have a problem here and that there's obviously something that's not working.

It's hard to grapple with people's intentions and their not wanting to follow through with their intentions.

Mr. Kelly McCauley: Should we be doing more in that regard? I recognize that it's anecdotal, but again, if you follow the news, every other day there's another Phoenix disaster. CBC, the Post, the Ottawa Citizen, it's always the same line: staff are afraid to come forward.

They've come to the media. Is there a much bigger problem? I realize again that, unless it's reported, you don't know, but it strikes me as quite concerning that so many people see complaining to the media as their only outlet, as opposed to coming forward on other issues.

Mr. Carl Trottier: In the absence of being able to know what an individual has thought but decided not to share with us, we primarily promote the protection aspect of the act and how an employee can trust in the act. We work with the senior officers in departments to train them, create meetings with them, and allow them to share that information with employees in their departments. From that perspective, we want to reassure employees that they, in fact, will be protected should they come forward. Hopefully, that's going to encourage them to move forward.

Mr. Kelly McCauley: I realize this is oversimplifying it, but is there any mechanism to reach out to our public servants saying, "Is there a reason you're not coming forward, or are there issues that are preventing you from coming forward?"

Mr. Carl Trottier: Yes, we do that—

Mr. Kelly McCauley: This could be employee opinion surveys asking, "Are you comfortable with that? Why not?," etc.

Mr. Carl Trottier: We do that with the public service employee survey. Every three years we go out, and 2014 was the last time that we went out. I don't have the results of it here, but it is the means by which we measure a certain degree of comfort and reassurance they have with that. That is the main tool we use.

Mr. Kelly McCauley: I just want to move on.

Recently with the Super Hornet jet procurement project there were over 120 public service employees, DND employees, who have been banned for life from talking about the procurement process with the non-disclosure papers they signed off on. How are we protecting those 120 people who have been banned for life from discussing a \$7-billion probable procurement fiasco that's coming up? How do we protect those people?

Mr. Carl Trottier: They don't form a part of this.

Mr. Kelly McCauley: How do they report wrongdoing?

Mr. Carl Trottier: Are these members of the Canadian Forces?

Mr. Kelly McCauley: No, these are National Defence, Public Works—

The Chair: They've taken them from all communities. There are a number of employees, as reported in the media, who have signed non-disclosure agreements. For various reasons—I won't get into that because I don't know—those non-disclosure agreements prevent employees from speaking on any aspect of the project on which they're working, which Mr. McCauley points out might prevent them from coming forward with an issue or a case of wrongdoing.

How do you protect those people who are forced to sign a non-disclosure agreement?

• (0910)

Mr. Carl Trottier: They still have access to the internal process. I'm not privy to the agreement that was signed, but my guess would be that you don't disclose it externally. The process exists internally. Your immediate supervisor, or the commissioner, or the senior officer—

Mr. Kelly McCauley: Is it your belief that they can still access this?

Mr. Carl Trottier: Without being privy to what the agreement is, if it is to not disclose externally, they still have access to an internal process. Their supervisor is aware of this information already. They just want to share with their supervisor, saying that they're aware of a wrongdoing.

Mr. Kelly McCauley: How would we best follow up then? Is that something we could ask you to double-check on if this is under your...?

Mr. Carl Trottier: I would need access to a contract.

Mr. Kelly McCauley: But you do understand our concern on a \$7-billion—

Mr. Carl Trottier: I absolutely do. My response is that they do have access to an internal process.

The Chair: Thank you very much.

We have Mr. Weir for seven minutes, please.

Mr. Erin Weir (Regina—Lewvan, NDP): Thanks very much for coming to kick off our review of the Public Servants Disclosure Protection Act. The act of course specifies an independent review every five years, so I wonder why this review has been delayed until now.

Mr. Carl Trottier: The only piece of information I have is that the review was requested in 2016 by the President of the Treasury Board. Unfortunately, I don't have reasons as to why it was delayed until 2016 for the request.

Mr. Erin Weir: Okay, you have no sense of the rationale for the President of the Treasury Board not having requested this review years ago?

Mr. Carl Trottier: Unfortunately, I don't have that information.

Mr. Erin Weir: Okay.

I also wanted to ask about the cost of the offices created by the act, specifically the Integrity Commissioner and the tribunal.

Mr. Carl Trottier: I believe you will be hearing from the Integrity Commissioner. I think that would be an appropriate question for him, because I'm not aware of the costs associated with his office.

Mr. Erin Weir: Would it be fair to say it would be in the range of several million dollars?

Mr. Carl Trottier: What would be fair is to ask the commissioner because I am not in a good position to be able to.... We offer support at the office of the chief human resources officer. I know how much our offices cost to run and support the act, but I'm not aware—

Mr. Erin Weir: What would that number be then?

Mr. Carl Trottier: We have a small team that looks at that. It's probably in the range of \$125,000 per year.

Mr. Erin Weir: Okay.

Mr. Carl Trottier: About two or three people, on an ongoing basis, support the senior officers, and we deal with the office of the integrity officer on an ongoing basis. That's the extent of our expenses.

Mr. Erin Weir: Thanks.

You described the scope of who's covered by the act. Could you give an approximate number of public servants who are subject to the legislation?

Mr. Carl Trottier: I'm told that it's about 400,000.

Mr. Erin Weir: Yes, that sounds about right, given that it includes all the crown corporations as well.

If you assume that a significant or at least a non-trivial proportion of those people might witness wrongdoing in a given year, one might expect tens of thousands of cases to be coming forward under the act. Yet that's clearly not the case, based on the numbers Mr. Drouin discussed. If you look at the tribunal process, only a handful of people have gone through it in the whole decade this system has been in place. I wonder how you would explain why so few federal public servants have actually availed themselves of this process.

Mr. Carl Trottier: I have no data to indicate that there should be tens of thousands, so I'll just make that point right now.

I've mentioned before that this catches what other processes don't catch. The harassment grievance process, the harassment policy, the labour relations disciplinary policy, and all of those other redress mechanisms would catch the tens of thousands that you're talking about, and they do so on a yearly basis.

This in fact catches what those systems don't, and sometimes sends it back to them because it's been identified that this is a harassment case and shouldn't be dealt with through this process. It has a very fine line to it, and it catches those elements of wrongdoing that are not caught in any of the other processes. That explains why the numbers whittle down to what they are.

• (0915)

Mr. Erin Weir: In terms of the harassment process that you mentioned, I believe Treasury Board does a periodic survey of employees about workplace harassment. Is there a sense of how much of the harassment might be whistle-blowers, might be reprisals for whistle-blowing?

Mr. Carl Trottier: Again, we get this information through the public service employee survey. Harassment is defined in there, and it is not defined as whistle-blowing in any shape or form. It is how you're treated with regard to either your manager or your colleagues. That's the essence or texture that harassment is given in the survey.

Mr. Erin Weir: Could you tell us about the measures Treasury Board has taken to reduce workplace harassment?

Mr. Carl Trottier: Obviously it's outside of the purview of what we are doing here today, but TBS has in fact been quite active from the senior level to the very bottoms of the organizations, proactively reaching out to employees and proactively ensuring workplace wellness initiatives are put in place. A mental health initiative was one of them, which is binding when it comes to treating employees right and treating them with respect. There are in fact a multitude of examples of initiatives that are under way.

Mr. Erin Weir: The reason I think it's relevant is that one of the reasons people are reluctant to come forward as whistle-blowers is that they're afraid they will face workplace harassment. Of course that's more likely if harassment is more prevalent and more tolerated in the workplace generally. It does seem to me that an across-the-board anti-harassment policy is very important in order to create a climate in which people are willing to come forward as whistle-blowers.

We're essentially out of time, but if you have any other thoughts on how your work relates to the broader anti-harassment policy, that would certainly be of interest.

Mr. Carl Trottier: You're referring to reprisal in the form of harassment, I assume. Again, the act protects the individual who is doing the disclosure, which is an essential part of this act. This committee should reinforce the fact that the privacy of the information is paramount in terms of protecting the employee and encouraging them. They need to know that they can come forward and that their information will be kept confidential.

[Translation]

The Chair: Mr. Ayoub, you have seven minutes.

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

I'd like to thank both of you for being here to answer our questions.

I will touch on a slightly more technical side. I would like to talk about the number of disclosures. I am always a little concerned when I hear politicians casting doubt on mechanisms that are specifically designed to reassure public servants, the public service, the government and, ultimately, the public. The doubts expressed always concern the effectiveness of the system, which was implemented a few years ago. It is always perfectible. Indeed, we can always improve on things; it's normal. The important thing for me is knowing whether it works well, whether the corrective measures respond to the problems raised. Confidentiality is very important. You just mentioned it. It is perhaps the rule that, above all else, will allow people to feel comfortable becoming whistleblowers.

The 2015-16 annual report indicates that 385 disclosures were processed during that period. Some figures decrease from year to year, while others increase. In total, 31 processed disclosures resulted in corrective action, an increase of 82% over 2014-15.

Seen in this light, I think the numbers are pretty encouraging. There is no evidence to suggest that, by correlation, the 400,000 employees should result in thousands of disclosures. On the contrary, there should be very few. In theory, these disclosure figures can make people panic, but it should be the opposite.

Could you tell us whether any particular trends or problems emerged from those 31 disclosures that were processed and that led to action?

• (0920)

Mr. Carl Trottier: Are you talking about the corrective action we took?

Mr. Ramez Ayoub: Yes.

Mr. Carl Trottier: In some cases, we saw that there was preferential treatment when hiring. Often, corrective or disciplinary measures are imposed on employees or people who have engaged in wrongdoing.

Mr. Ramez Ayoub: Are you talking about discrimination in hiring or on promotion?

Mr. Carl Trottier: The example given is for a manager who favoured an employee during hiring. The commissioner must deal with this issue. That's the example I'm giving you. In this case, disciplinary measures can be imposed on the manager who committed the act.

It may also involve a misuse of funds. Disciplinary measures may then be imposed. If corrective action is taken, it is possible, for instance, to withdraw the person's ability to manage those funds. Thousands of corrective measures can be applied. It's really managed on a case-by-case basis, depending on the circumstances.

Mr. Ramez Ayoub: Is one particular sector of the public service affected, or is it distributed unevenly?

Mr. Carl Trottier: It's really uneven.

Mr. Ramez Ayoub: Some disclosures were dismissed. Could you explain why disclosures are dismissed, not considered, not received?

Mr. Carl Trottier: That's a good question. As I mentioned earlier, these are cases that can be addressed through other remedies, whether they are grievances or part of a collective agreement. If a process exists in a collective agreement, the problem must be addressed in that context. This is not part of the measures that must be addressed here.

Mr. Ramez Ayoub: Does that mean that there is confusion between the different types of complaints or disclosures that need to be made? Collective agreements manage the administrative side of the work, but the Public Servants Disclosure Protection Act addresses the illegal nature of large-scale acts, including mismanagement and fraud.

Mr. Carl Trottier: Sometimes it isn't clear. It's the commissioner's role to determine what is clear. It isn't easy for an employee to know whether it should be a grievance or a disclosure. So the employee will do his or her best to get to the bottom of all this.

Collective agreements have a grievance process. The employee faces—

Mr. Ramez Ayoub: The big difference between grievances and disclosures is confidentiality. A grievance isn't confidential, meaning that it is a process involving the boss, superiors.

Mr. Carl Trottier: I also mentioned earlier what wrongdoing is. It must fall within the definition of wrongdoing.

Mr. Ramez Ayoub: Absolutely. We have a list.

Mr. Carl Trottier: If the action doesn't fall within the definition, we determine whether it can be addressed through other means.

Mr. Ramez Ayoub: I would just like to know what measures are in place to ensure that the number of disclosures processed isn't contaminated, if I can call it that, by the number of disclosures that are received but not processed because they were submitted to the wrong place. Those disclosures are received but are sent elsewhere directly. Ultimately, you shouldn't have received them to begin with. So perhaps they shouldn't even be counted in the overall statistics.

• (0925)

[English]

The Chair: You're going to have to wait for that answer, perhaps in another round of questions.

We will go now to Mr. Clarke.

[Translation]

You have the floor for five minutes.

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

Good morning. Thank you for being here.

First of all, I would like to try to better understand how it works. Is there an office as such that deals with disclosures and complaints? Is it the Office of the Chief Human Resources Officer?

Mr. Carl Trottier: For the disclosure of complaints?

Mr. Alupa Clarke: Is there an office as such where there are employees whose sole task is to focus on applying this act and receiving complaints?

Mr. Carl Trottier: The Office of the Public Sector Integrity Commissioner of Canada is responsible for that.

Mr. Alupa Clarke: Perfect.

What is the role of the Office of the Chief Human Resources Officer compared to that of the Office of the Public Sector Integrity Commissioner of Canada?

Mr. Carl Trottier: Our role is to help the departments and chief executives to designate senior officers within their organization who will follow a process enabling employees to disclose information confidentially either to their manager or to the officers I mentioned. We are creating a leadership group in the departments to help to ensure that the policy is understood. We also interpret the act to help them to understand their roles and responsibilities. We also support them in terms of training. We provide them with tools to better manage their cases. We also liaise with the commissioner's office.

Mr. Alupa Clarke: You and Ms. Stevens report to the Office of the Chief Human Resources Officer, right?

Mr. Carl Trottier: Yes.

Mr. Alupa Clarke: Some departments, or some divisions at least, were said not to be subject to the act, including the Canadian Armed Forces. However, is the civilian portion of the Department of National Defence subject to the act?

Mr. Carl Trottier: Yes, it is.

Mr. Alupa Clarke: Perfect.

On page 4 of your presentation, you list what constitutes wrongdoing under the act, and you give some examples.

Could you speak more to the third example, gross mismanagement? Could you refer to some recent cases that constituted examples of gross mismanagement?

Mr. Carl Trottier: Actually, we have some examples on our website. Had I anticipated your question, I would have printed that information. Unfortunately, nothing comes to mind at the moment. It is managed mainly by the commissioner. He's the one who would be able to give you examples like that.

Mr. Alupa Clarke: Very well.

Let me digress for a moment. On page 7, I like the thinking behind the text. You are referring to the principle of natural justice. I am surprised to read that. How do you define natural justice for the purposes of interpreting the act? It's wonderful to read the words, by the way, but it's still unbelievable. You are saying that the act is interpreted according to other acts of Parliament and the principle of natural justice, which differs from person to person.

Mr. Carl Trottier: The core principle is confidentiality. It is also important to meet the natural justice requirements in handling information and cases. That's basically what we are referring to.

Mr. Alupa Clarke: Okay.

A little further on, you say that those who disclose wrongdoing can complain to the Public Sector Integrity Commissioner within 60 days of realizing that a reprisal was taken against them.

Since 2010, roughly how many complaints of that kind have there been?

Mr. Carl Trottier: Are you talking about complaints made to the Commissioner?

• (0930)

Mr. Alupa Clarke: Yes.

Perhaps I can be more specific. I am talking about complaints that have led to compensation. How many complaints have led to compensation? In fact, what is compensation under this act?

Mr. Carl Trottier: That would be determined by the tribunal.

That's another very good question that you could ask the Commissioner.

Mr. Alupa Clarke: Could it be monetary compensation?

Mr. Carl Trottier: Yes.

Mr. Alupa Clarke: Okay.

Are there cases—

[English]

The Chair: I think we're out of time, but the tribunal will be appearing before us in a future meeting. Perhaps it's a question you could ask them.

[Translation]

Mr. Alupa Clarke: Thank you.

[English]

The Chair: Now we have Ms. Shanahan....

Could we go to Mr. Peterson, then, for five minutes?

Mr. Kyle Peterson (Newmarket—Aurora, Lib.): Thank you, Mr. Chair.

I'm going to ask a couple of questions about the code of conduct that is required under the act, and about the process.

How are employees informed about the code and its application to the act?

Mr. Carl Trotter: How are employees...?

Mr. Kyle Peterson: How are they advised, informed, or made aware of the code, its provisions, and how it might affect their rights under the act we're discussing today?

Mr. Carl Trotter: The codes are written into the letters of offer right from the beginning, and they are required to read the code upon being hired as an employee. It's right from the start.

Mr. Kyle Peterson: Okay.

It seems to me that the purpose of this act is twofold. First of all, I think it wants to create an environment where employees are not afraid or nervous about coming forward should they encounter wrongdoing. On the other side of the equation is that in so empowering those employees, wrongdoing would be routed out and the powers that be would be made aware of wrongdoing, therefore strengthening the public service as a whole.

Is it fair to characterize it in that manner?

Mr. Carl Trotter: I would add protection of the employee against reprisal, yes.

Mr. Kyle Peterson: Yes. In my mind that's inherent in not being afraid to come forward because of any retribution.

Mr. Carl Trotter: Yes.

Mr. Kyle Peterson: I want to touch on some of the procedure. From reading the act, it seems to me there are many approaches an employee who feels they witnessed wrongdoing can take to avail themselves of the provisions of the act. The data here, of course, is aggregated over 10 years. I want to delve into some of it.

What procedure is used most often? Take, for instance, an employee who sees what he or she thinks is wrongdoing—of course, it's a judgment call—and alerts their supervisor, either orally or in writing. What is the next step, and how often does someone go directly to the commissioner as opposed to taking this sort of—

Mr. Carl Trotter: Okay. I'm glad you asked that question because it was touched upon earlier, and I didn't think I did it justice. I'm going to ask Mary Anne to walk us right through the steps, in detail.

Ms. Mary Anne Stevens: Thank you.

You have the data on general inquiries.

Mr. Kyle Peterson: Right.

Ms. Mary Anne Stevens: That would be the first step that we would hope an employee would follow, so if they thought there might be something wrong, they would first talk to their supervisor and say, "I'm concerned about something". In many cases it can be dealt with there and then. It could be miscommunication or that they're not aware of all of the information around something that's going on, and it can be taken care of then.

If it's not, then they could say, "I think there really is a problem here", and it could be a formal disclosure to their supervisor, or their supervisor could tell them then that they have the option to go to the senior officer in the department, or to the commissioner if they prefer. It's completely the choice of the employee.

They would be asked to specify what their concern was clearly enough so that the senior officer could investigate and ask questions within the organization about the concern they had.

Mr. Kyle Peterson: For those who aren't necessarily familiar with the term "natural justice", it's obviously referring in this sense to the procedural fairness. It's a concept we inherited from the Romans, and it's obviously meant to make sure both parties have a fair hearing and a chance to present their case where their interests are affected.

On the other side of the coin, does the procedure in place, in your opinion, adequately protect the alleged wrongdoer?

• (0935)

Ms. Mary Anne Stevens: You're right. The concept of natural justice is that if it's a circumstance in which the disclosure is about another individual, then that individual has to have the opportunity to also provide evidence and explain what went on. Sometimes all it takes is an explanation and clarification.

There are perhaps some concerns that the act isn't specific enough about protections for the alleged wrongdoer. The act wasn't really designed that way, for one person to make a statement about another person. It was seen as a more general approach to things.

Mr. Kyle Peterson: I think that's what I'm getting at. Perhaps it was intentionally omitted from the act and it wasn't meant to protect the alleged wrongdoer, but there are still ways to make sure there is fairness in the process. That's what I'm trying to get at. In your opinion, is that fairness there in the process? We don't really understand any of the process, based on these numbers.

The Chair: Thank you very much, Mr. Peterson.

We'll go to Mr. McCauley for five minutes.

Mr. Kelly McCauley: Before I get to my question, I just want to introduce a notice of motion that the Standing Committee on Government Operations and Estimates immediately undertake a study on the government's proposed acquisition of 18 F-18 Super Hornet jets, and that the Committee report its findings to the House of Commons no later than April 13, 2017.

The Chair: Colleagues, as you know, a notice of motion, which Mr. McCauley has just been speaking to, can be given at any time. Mr. McCauley is introducing it today. It will require 48 hours before that motion can be put to the committee. Once the motion is put to the committee, of course we will have an opportunity to debate it, and then subsequently vote upon it.

Mr. McCauley, would you care to give that to the clerk?

With respect to this study, Mr. McCauley, we'll continue with you for five minutes.

Mr. Kelly McCauley: Great.

Very quickly, there are two big things. Is there a mechanism set up for all ranks of the public service to give feedback on how we can improve the act? We are reviewing it for the first time in several years. I'm sure you must have a lot of experience in terms of what we need to do, but is there anything set up through which you could collect ideas on how the act can be improved?

Mr. Carl Trottier: No, we don't have a process in place to review the act. This is where the act gets reviewed, right here and now. We are given the act in the form in which the government of the day gave it to us. Our responsibility and the commissioner's responsibility is to implement the act as it has been given.

We have experiences with the act in terms of, as Mary Anne was mentioning before, whether there is an appropriate protection for the wrongdoer and so on. We have those experiences, but we don't have a process to review the act.

Mr. Kelly McCauley: Okay.

In your personal opinion, is it robust enough as it is?

Mr. Carl Trottier: I'd rather bring you some facts than my personal opinion. I'm just Carl here. I'd be interested in your personal opinions, to tell you the truth.

Mr. Kelly McCauley: In your collected facts, how best do we go about getting feedback from the 400,000 or so people who are affected by this? We get one kick at the can to make improvements over a five- or six-year period, so I'd hate for us to sit here and chat for five or six weeks saying....

Mr. Carl Trottier: Again, this isn't my opinion, but you are going to meet a lot of interesting people in this committee, and a lot of interesting witnesses who have a lot to say about the act itself. We're only the first ones here. I can see that this committee is very hungry for information we don't have. Hopefully your appetite will be satisfied when the commissioner and the tribunal come, as well as any other stakeholders who come and have information to share about the act.

Our sense is that the act is working well the way it is.

Mr. Kelly McCauley: We're looking at about 300 or 400 people a year making investigations, out of about 400,000. Have we benchmarked that against the U.S., Britain, Australia, or other like-minded countries? I think it's fantastic if there are only 400 examples of whistle-blowing, but to me, it seems like a very small total. I think Mr. Drouin and Mr. Weir were getting at that as well.

• (0940)

Mr. Carl Trottier: I'll expand your question just a bit, because it might be of interest also.

We've also compared the structure of the act with those of the U.K., Australia, the United States, and—

Mr. Kelly McCauley: Our provinces as well?

Mr. Carl Trottier: —some of the provinces. We've compared the structure and they're very similar. They're very much constructed in the same way, so we feel confident that there's a certain degree of similarity that exists among them.

More specific to your question, a few years back we did a comparison with other countries, and we came out very similar with the other countries in terms of numbers of complaints.

Mr. Kelly McCauley: Just quickly, are any of the provinces doing anything very good that we should look at copying federally?

Mr. Carl Trottier: I asked that yesterday, and the answer was no. We are quite on the cutting edge of what needs to be done with regard to this. I was hoping to get a pearl of wisdom out of that, but obviously some good work went into the creation of this act at the front end.

Mr. Kelly McCauley: So if any of the provinces are watching CPAC, we should be telling them, "Up your game to the feds".

Mr. Carl Trottier: Up your games.

Mr. Kelly McCauley: Thank you, Mr. Trottier.

The Chair: Thank you very much, Mr. McCauley.

Go ahead, Madam Shanahan.

Mrs. Brenda Shanahan (Châteauguay—Lacolle, Lib.): Thank you very much, Mr. Chair.

I'm sorry that I stepped out earlier for just a few minutes, so if I'm asking a repetitive question, just keep it short.

I'm concerned about that new employee. It could be a young employee, maybe somebody transferred in from somewhere else, who is just getting an idea of how the department works. How is orientation plotted out for new employees, so that they have an understanding of where they need to go if they see something that concerns them?

Mr. Carl Trottier: Every employee now has mandatory training at the Canada School of Public Service from the get-go, which will give them the orientation they need. They have the code of values and ethics that comes with their letter of offer, which they are compelled to read also so that they have an understanding of what the behaviours expected in the public service are with regard to employees who are arriving.

Beyond that, it is left up to the deputy heads to go bigger and give more orientation, but that is the basis of what all employees are receiving right now.

Mrs. Brenda Shanahan: Do you think there could be some improvements based on the results you've seen to date, comments you've had, feedback you've had from employees who have made disclosures? Do you think there could be some improvements made to that process?

Mr. Carl Trottier: We're always evergreen, always willing to improve, but I believe that the mandatory training is something that is quite robust right now with regard to, "You don't have a choice; you have to go. Here is the orientation, and this is what you need to know." No employee goes without that right now, so that's actually quite a robust approach to take.

It's also quite robust to be able to put one of these little booklets in their hands and say, "This is your code. You need to abide by this, so when you sign this letter you agree that you're going to abide by this." That's pretty robust too, so I'm feeling pretty confident.

Mrs. Brenda Shanahan: That is very helpful, but here's just one word to the wise. Examples are very helpful to people, too, to sort of put that code of conduct into concrete scenarios that people can understand.

I'll just switch out a bit. Now I'm thinking about non-employees, outside contractors, because the act does apply to them. Can you give us any examples of outside contractors who have made disclosures or inquiries and how that was treated? We don't see that in the numbers.

Mr. Carl Trottier: That would be an excellent question for the commissioner. The disclosures would have gone to the commissioner, and he will be in a position to give you examples. Obviously, he won't be sharing names, but he'll be sharing examples. They don't come to us, so I just don't have the information to share with you.

Mrs. Brenda Shanahan: Okay. Your point is well taken.

Just as a final thing, some of the recommendations that have been made in the past to improve the act would be to make the list of wrongdoings an open list and to make the list of forbidden reprisals an open list. Do you have any comments on that?

Mr. Carl Trottier: With the list of wrongdoings as an open list, we're going to run into a problem where other means of redress also address items on those open lists, certain items that would now fall into that, and you would have conflicts in legislation, so it is important to try to capture only the elements that are not already caught by other redress mechanisms.

That would be my response to that, but we do welcome the committee's views on that and we do welcome the recommendations that the committee might have.

• (0945)

Mrs. Brenda Shanahan: Thank you very much.

Could you comment on the reprisals, then? That's where I think there are things that we haven't conceptualized that could happen to people, for example, if somebody suffers a reprisal and was not the whistle-blower to begin with, but was actually just caught in the crossfire.

Mr. Carl Trottier: Okay, that's a bit of a different question. Your second question as I understood it was, can you open the definition of reprisal? It's currently very broad. It captures just about anything that's done to it.

Your third question, which I understand is, what happens when someone isn't the wrongdoer, but has been—

Mrs. Brenda Shanahan: The whistle-blower.

Mr. Carl Trottier: Sorry, the person isn't the discloser, but reprisal is happening.

Ms. Mary Anne Stevens: You're right. Currently the act does not protect someone who is not either the discloser or a witness in the process, so if someone mistakenly believes you're the discloser and takes a reprisal against you, you have no protection through the act.

Mr. Carl Trottier: Again, we'd welcome the views of the committee on that also.

The Chair: Thank you very much.

Mr. Weir, you have three minutes, please.

Mr. Erin Weir: Mr. Trottier, you mentioned the Treasury Board had undertaken a comparison of Canada's whistle-blower regime with other countries. I'm wondering if that's a document you could submit to this committee.

Mr. Carl Trottier: We have that, and we can share it with the committee.

Mr. Erin Weir: Yes, we would really welcome that.

Mr. Carl Trottier: I'm told it's two or three years old.

Mr. Erin Weir: Okay.

We've had a fair bit of discussion about the act protecting whistle-blowers from reprisal, and in practice it can be very difficult for a whistle-blower to prove that a disciplinary measure or the lack of a promotion was a reprisal for the whistle-blower. I wonder if you think it would make sense at some point in the process to reverse the onus and require the government as the employer to prove that the action was not a reprisal.

Ms. Mary Anne Stevens: We know this was a recommendation from the Gomery commission and that some other stakeholders hold that recommendation. We're interested in the views of the committee on that issue.

Mr. Erin Weir: It seems it has proven effective in other jurisdictions.

Mr. Carl Trottier: Again, we haven't had the experience of applying it, so as I mentioned, we have applied it the way the act was given to us. We would welcome direction on that from the committee, should the committee want to consider those changes.

Mr. Erin Weir: Do you think it's feasible, and it's definitely something worth considering?

Mr. Carl Trottier: I take your word that other jurisdictions are doing this, and in that sense the feasibility would have to be measured on how successful it is with them.

Mr. Erin Weir: That's fair enough. Could you explain the rationale for not having brought in the reverse onus, even though, as you say, the Gomery commission did recommend it?

Mr. Carl Trottier: Remember we don't bring in; Parliament brings in. If there were a rationale as to why it wasn't at that time—

Ms. Mary Anne Stevens: This is the first review of the legislation since it came in, in 2007.

Mr. Erin Weir: That was my original question to you. Why has it taken so long for this review to happen? I'm glad we're undertaking it now.

The Chair: Thank you very much.

Colleagues, we do have some time left before I want to suspend and go into committee business. We'll go for another complete seven-minute round, and we'll take a look at where we stand after that. We'll start with Mr. Whalen for seven minutes.

Mr. Nick Whalen (St. John's East, Lib.): Thank you, Mr. Chair.

Thank you both for coming. I want to get back for a second to this idea of open and closed definitions for reprisal and wrongdoing.

You're saying that you think that the definition of reprisal is broad enough, but when I look at it, it does seem to be pretty much an enumerated risk of threats. Have there been examples of people who have come to you who have thought that some reprisal had been brought against them, but you formed a view that even though it was a negative action against them, it didn't meet any of the definitions of reprisal and so you didn't pursue?

• (0950)

Mr. Carl Trottier: That is an excellent question, but they never do come to us. As the office of the chief human resources officer, we do not receive complaints, so we're not in a position to be able to answer that. I would ask that you reserve that question either for senior officers, if they come, as the employees come to them, or for the commissioner himself.

Mr. Nick Whalen: Okay, so you wouldn't be in a position as the sort of aggregator of all the information from all the various departments....

Mr. Carl Trottier: We aggregate results. However, at the front end when it comes in, it comes to the direct supervisor, to the senior manager in the department, or to the commissioner's office. At that point, they would view what you just asked and say whether it falls within this or not. Unfortunately, we don't see that early element.

Mr. Nick Whalen: When we look at the information that's being provided in the annual reports from the Integrity Commissioner, the numbers don't seem very high. However, if you consider each of the individual chief executive officers of the departments and that they have their own internal process as required by the act, is your department aggregating all of that information so we can have a better sense of how much wrongdoing is being alleged within the federal civil service? We are only seeing it at the very egregious level, where people are fearful of going to their own internal process so they go to the Integrity Commissioner.

What about all of the internal processes and internal allegations of wrongdoing that happen in the normal course, in the way we hope that they would, in the departments themselves? Are Treasury Board and the human resources office collecting all of that information from each of the individual executives appointed?

Mr. Carl Trottier: Yes.

The information that we've been referring to throughout this committee hearing, and that I was pointing to before, in fact is information that comes from all the departments and all the senior officers. This captures the whole environment of what happens in wrongdoing.

Mr. Nick Whalen: Okay, then going back to my question before, are you measuring the number of reprisals and allegations of reprisal?

You said you didn't have that information, but now you're saying you have all of the information. How many allegations of reprisal are being made internally, within organizations, and not to the Integrity Commissioner? What are those numbers, and how often is someone falling through the cracks because the definition of "reprisal" is too narrow?

Mr. Carl Trottier: When it comes to reprisal, the reprisals only go to the commissioner.

Again, we have the wrongdoings, but the reprisals only go to the commissioner. That is going to be an excellent question for the commissioner, and I'm sure that the commissioner will be in a better position to respond.

Mr. Nick Whalen: Okay, so on the definition of "wrongdoing", then, do you have numbers for when someone thinks it's wrongdoing but it's not really wrongdoing, internally at the lower level?

Mr. Carl Trottier: We have to extrapolate a bit from the numbers that we have here with regard to the total number of disclosures handled or the total number received. Then, as you can see, the numbers drop significantly. The delta usually is what I've referred to before, which is that it wasn't wrongdoing and it's been sent to another process, or, as Mary Anne indicated, a clarification has been provided and they say, "Okay, I now understand that this wasn't wrongdoing."

A lot of that happens as well, and that's how the process should work. It allows the employee to sleep well at night. They know they haven't witnessed something that is a wrongdoing and they're okay with that now. That is an important part of what this act does.

Mr. Nick Whalen: Within this process, at what point do we see an opportunity for the person against whom wrongdoing is alleged to defend themselves? Where does the procedural fairness come into play when allegations of wrongdoing have been made against them?

Mr. Carl Trottier: I'll ask Mary Anne to speak to the process.

Ms. Mary Anne Stevens: During the investigation, they would be asked to provide information. At the end of the investigation, a report is written that summarizes the information. They would be given an opportunity to see the report and comment as to whether it is accurate from their perspective.

Mr. Nick Whalen: In order to get protection under the act, if someone has false allegations made against them, do they then need to make some sort of a complaint about that false allegation in order to avoid having reprisals as a result of the false allegation? Do they have to become a discloser? Do they have to become a complainant under the act to get the benefits of fear of reprisal as a result of wrongful disclosure, or wrongful accusation, I should say?

• (0955)

Mr. Carl Trottier: Sorry, you may have lost us halfway through your question.

Mr. Nick Whalen: Let's say party A makes a disclosure against party B, saying that there's wrongdoing. There was not, but they created a cloud now within the organization about party B. In order to prevent reprisal—and it could be two people at the same level within the organization—does party B then need to make a disclosure on the inaccurate disclosure in order to avoid reprisals as a result of that?

Mr. Carl Trottier: It's unlikely that party B would say wrongdoing has been done because it likely wouldn't fall within the definition of wrongdoing here. In all likelihood, the confidentially associated with this program protects the people involved when it is found that party B has not been a wrongdoer. There's obviously some massaging that needs to be done internally in the organization, and that's fine, but it wouldn't revert to another disclosure of wrongdoing to an employee that has mistakenly identified.... Mistakes happen, and we have to recognize that.

Mr. Nick Whalen: We'll take the other example, then, where there's an allegation of wrongdoing and a reprisal is brought against the wrong person. Maybe Ms. Stevens can walk us through how we might be able to protect employees who, through no fault of their own, are victims of improper reprisal.

The Chair: She might not be able to walk us through because you passed your seven minutes.

We will now go to Mr. Clarke.

[Translation]

Mr. Clarke, you have seven minutes.

Mr. Alupa Clarke: Thank you, Mr. Chair.

Do you have the 2015-2016 report? On the second page, there's a table showing disclosure activities. I honestly don't understand it at all. So I would really like you to explain a number of things.

[English]

Walk me through this.

[Translation]

I would like you to help me understand the following four points.

First, there's the total number of disclosures handled—

Mr. Carl Trottier: I'm sorry to interrupt you, but I'm not sure which report you are referring to. I'm not sure whether I have a copy.

Mr. Alupa Clarke: I'm talking about the annual report on the Public Servants Disclosure Protection Act. I can show you the page if you wish. I added question marks to the four points that I don't understand.

Mr. Carl Trottier: It's the Secretariat's report, fine.

In response to your first question about the total number of disclosures handled, it's the total number of disclosures received and handled, whether they are founded or not. They are simply received and handled. That does not show whether or not they were acted upon. In 2015, there were 385.

Under that figure, there is—

Mr. Alupa Clarke: One moment, please. In that respect, we see that the figure almost always varies between 300 and 400, or it's just under 300. Why is the number similar from one year to the next?

Mr. Carl Trottier: It shows a certain consistency. That's what I was trying to explain earlier. It is one of our indicators. If that number was always going up or down, it would mean that something's wrong.

Mr. Alupa Clarke: I understand.

Mr. Carl Trottier: The system is so broad that there should be consistency in the numbers. We are reassured when we see that the pattern is constant. It varies between 287 and 385.

You also wanted explanations about the disclosures received that were not acted upon. That includes the cases that we determined were not consistent with the definition, as well as the cases in which employees were basically satisfied with the explanations provided.

• (1000)

Mr. Alupa Clarke: For instance, for 2015-2016, the 124 disclosures received that were not acted upon are included in the 385 disclosures handled, correct?

Mr. Carl Trottier: Yes, it is a subset of the figure.

As for the disclosures received that led to a finding of wrongdoing, they are cases in which the department rendered a decision that was supported.

Mr. Alupa Clarke: If we go all the way back to 2011, we can see that there are about 100 cases in which the department identified a wrongdoing.

Mr. Carl Trottier: That's the total for all the years.

Mr. Alupa Clarke: In those 100 cases, seven are currently being reviewed by the tribunal. Is that right?

Last week, I was told that seven cases were reviewed by the tribunal. I know it's the same number, but there is no relationship between the two, is there?

Mr. Carl Trottier: It is indeed a coincidence that the number is seven in both circumstances.

Mr. Alupa Clarke: I know, but—

Mr. Carl Trottier: These are the seven cases in which wrongdoing was found.

Mr. Alupa Clarke: Okay.

However, is it accurate to say that the seven cases before the tribunal right now are part of those 100 reported cases in the past five years?

Mr. Carl Trottier: Yes, they are part of the total number.

Mr. Alupa Clarke: Okay, great. That's what I wanted to know.

Mr. Carl Trottier: Actually, that's not always the case. There could be cases submitted directly to the Commissioner.

Mr. Alupa Clarke: Oh, really? Okay.

Mr. Carl Trottier: So they might not be included in that number.

Mr. Alupa Clarke: So why does the table not have a category with the number of cases that made it to the tribunal?

Mr. Carl Trottier: It's our report. The Commissioner also has his own report. It is important to analyze both reports to see the big picture of what is happening.

Mr. Alupa Clarke: Okay. I understand.

Mr. Carl Trottier: You also wanted some clarifications about the number of organizations that have not disclosed information within 60 days of finding a wrongdoing.

Mr. Alupa Clarke: I actually wanted to know why. Basically, this means that they didn't follow the letter of the law. Is that what it means?

Mr. Carl Trottier: It means that they did not meet the 60-day period set out in the act.

Mr. Alupa Clarke: What happens then?

Mr. Carl Trottier: Actually, the act states that the organizations must promptly and effectively disclose the information. The act does not specify a 60-day period. We have set the general objective at 60 days. It is our measure of determining what constitutes an appropriate deadline.

Mr. Alupa Clarke: I understand.

I have one last question.

Let's go back to the disclosures that have led to a finding of wrongdoing, which are around 100. Is it possible to know who those 100 individuals are?

Mr. Carl Trottier: Could you repeat the question, please? I'm looking for the information.

Mr. Alupa Clarke: The information is in the table, under "Number of disclosures received that led to a finding of wrongdoing". About 100 whistleblowers have disclosed information that led to a finding of wrongdoing. Can we know who those 100 whistleblowers are?

I know they are protected, but as members of the committee, could we know who they are so that we can ask them about their experience and whether the process was properly carried out in their case?

Mr. Carl Trottier: Unfortunately, the act also protects them.

Mr. Alupa Clarke: So you are saying that a parliamentary committee would not have the right to ask to meet those whistleblowers. Is that right?

I'm asking in good faith.

Mr. Carl Trottier: I'm also answering in good faith.

The act does not make an exception for a parliamentary committee. The act truly ensures full confidentiality.

However, I don't mind coming back before this committee five or 10 times to answer all your questions.

Mr. Alupa Clarke: I understand.

Mr. Carl Trottier: That said, I'm a bit concerned about it.

Mr. Alupa Clarke: Thank you.

[English]

The Chair: Unfortunately, we're out of time.

Mr. Weir.

Mr. Erin Weir: I'd like to return to the goal of the act—to encourage public servants who've witnessed wrongdoing to feel comfortable coming forward. I think something that all parties on this committee are struggling with is that so few people seem to have come forward through the processes laid out by the act. It seems like we might have, at most, a few hundred who have tried to avail themselves of the process in any way, and only a handful have gone through the tribunal process. It makes us wonder whether the process really is open and encouraging to potential whistle-blowers.

I think, Mr. Trottier, your answer to this was that there were many other processes that whistle-blowers or people who perceive wrongdoing might go through before the Public Sector Integrity Commissioner or the tribunal. I wonder if you could give us any numbers or any sense of how many public servants are going through these other processes.

• (1005)

Mr. Carl Trottier: I'm sorry, I don't have that information. I think it would be very difficult to obtain, because they reside in the various departments and they're going through their own internal processes within the departments. Unfortunately, I don't have that information. As much as I'd want to share that information with this committee, I

think it would be something that would be extremely difficult to obtain. It's an ongoing process where grievances are lodged daily on a number of issues, and there's an internal process in each department.

Mr. Erin Weir: Yes, it would be very interesting to have some overall sense of how many people are actually coming forward, and whether there's still this chill where people aren't willing to come forward, or whether, as you suggest, they're actually coming forward through these alternative avenues.

It strikes me that one way the Treasury Board could get some more information about this would be by including in its workplace harassment survey some questions about whistle-blowing, about whether harassment might be a reprisal for public disclosure.

Mr. Carl Trottier: We do have questions on harassment, on discrimination, in the public service employee survey right now, and we're now going ahead with an annual survey that launched recently. It's going to look at mental health, harassment, and discrimination. It's going to look at a whole bunch of workplace wellness questions also. We get a good sense from employees on that.

To come back to your previous question—

Mr. Erin Weir: Sorry, does the survey provide a sense of whether the harassment was or was perceived to be motivated by whistle-blowing?

Mr. Carl Trottier: No, it doesn't. You have to understand, as I'm sure you do, that a survey is a bit of a broad shot.

Mr. Erin Weir: Sure.

Mr. Carl Trottier: It has multiple questions. One of them is "Do you feel that you have been harassed?" Don't quote me on the question, but it's something like, "Have you been subjected to...?" It might go to, "From whom? Was it a supervisor, peer, or somebody else?" We come away with that type of information, but we don't do the correlation with wrongdoing.

To your previous point, however, there could be a whole multitude of grievances that absolutely have nothing to do, from near or far, with wrongdoing. They have to do with pay. They have to do with travel claims. They have to do with anything of any nature that has absolutely nothing to do with wrongdoing. I would say that the majority of claims are in that category, so it wouldn't be an indication of how much wrongdoing is not being declared. I'd caution against that.

Mr. Erin Weir: I certainly wasn't trying to suggest that the whole grievance process was about wrongdoing, but I guess that's why I'm asking whether there is any way of measuring this, because it would be really interesting to know how many claims have to do with wrongdoing and whether, as you suggest, there's some alternative process to resolve this issue that is keeping people out of the more formal channels set up under the act.

Mr. Carl Trottier: I have one last response to that. Just listen to the words that I'm going to say: the violation of any act of Parliament or any act, legislated in Canada or the provinces and territories. That's not a small thing. That is a big thing, so hopefully there are not too many people in the public service who are violating these acts.

The misuse of public funds and public assets is also a big thing. You can see that this act is catching very big things. It shouldn't happen too frequently in the public service that we have gross mismanagement, doing something that will specifically endanger health, safety, or life. These are big things that are very serious in consequence, but that likely should not happen too often in the public service.

The breach of the code of conduct and knowingly directing or counselling someone to commit wrongdoing, that's what the act captures in terms of wrongdoing, and I would be shocked if we had tens of thousands of those because I don't think this would be appropriate.

So if the numbers are in the realm of 200 to 300 in total and I'm looking at 400,000 people, in respect of the significant nature of what a wrongdoing is, I think I can reconcile that.

Mr. Erin Weir: That's fair enough, and it is a difficult point. In an ideal world, the number would be zero. There wouldn't be any wrongdoing. There wouldn't be any need for the process at all.

Mr. Carl Trottier: Absolutely.

•(1010)

Mr. Erin Weir: I think all of us suspect, though, that out of some 400,000 public servants, there likely are more than a few hundred who would have encountered some wrongdoing and might want some process to blow the whistle. I think that's where members of this committee are coming from.

Mr. Carl Trottier: Yes.

The Chair: Madam Ratansi.

Ms. Yasmin Ratansi (Don Valley East, Lib.): I'm sharing my time with Mr. Whalen.

Thank you for being here. I have a quick question for you. From a governance perspective, are you satisfied that the processes for reporting and moving forward to grievances are working?

Mr. Carl Trottier: For reporting and...?

Ms. Yasmin Ratansi: Grievance. The process for reporting and then forwarding it over to grievance, is it working or would you like to see some enhancements?

Mr. Carl Trottier: I'm going to take a stab at that, and then I'll hand it over to Mary Anne because there are some issues.

In the finding of wrongdoing where disciplinary action is required, there is the requirement to start over a whole new labour relations grievance process to be able to address that issue. That's a bit of a wobbly situation, and I don't have a solution in terms of how to amend that. It would be a good idea if the committee could take a look at that and have a sense of whether it's working or not.

Currently, we make it work. Once it's completed, then we start a new process where the information is then passed on to the new process. Then you start over. I'm not sure it's the most efficient one, but with the construct that we have, it's the way that we are compelled to do it right now.

Ms. Yasmin Ratansi: Would you like to have it streamlined? If I come and complain, you take my complaint. Then I'm finished with

this, and it takes the next step and goes to grievance. I'd have to repeat my story. It's a duplication of effort, right?

Mr. Carl Trottier: Yes.

Ms. Yasmin Ratansi: Do you have anything to add?

Mr. Carl Trottier: No.

Ms. Yasmin Ratansi: As I was looking at the appendix, I was a little concerned. If you go to the complaints for 2015-16.... I think you have this appendix with you—

Mr. Carl Trottier: Yes.

Ms. Yasmin Ratansi: Canada Border Services Agency has 93 complaints received, out of which only seven were acted upon and 70 were not acted upon. Less than 10% were acted upon.

Now when they submit that to you and you are the governance area, do you feel comfortable that things are going well, or do you feel that there has to be some better mechanism or better review process?

Mr. Carl Trottier: Just to begin, we do not have access to the document that you have.

Ms. Yasmin Ratansi: You don't? It's a Treasury Board one.

Mr. Carl Trottier: All I have is this....

Ms. Yasmin Ratansi: I'll give you mine.

Mr. Carl Trottier: I think the question can be responded to nonetheless. You're saying there's a large number of cases put forward, but only a few cases are acted upon. Again, cases are put forward, and after they're put forward, they can be redirected. Therefore, it brings the numbers down. In some instances, there is no corrective action that can undo the situation.

Ms. Yasmin Ratansi: For example...?

•(1015)

Mr. Carl Trottier: Let's say the employee or the manager is gone. The situation has self-corrected. They're no longer working with this consultant, and therefore the relationship has been breached. There are possibilities of that.

In other instances, clarifications have been provided that have resolved the situation itself. There are a lot of examples, and you're going to ask me for examples and I don't have one. There are a lot of examples of discussions that take place between managers and employees where conflict is resolved through discussions that don't end up in reports of corrective action.

Ms. Yasmin Ratansi: Okay. I'll hand it over to Mr. Whalen.

Mr. Nick Whalen: Ms. Stevens, can you walk us through, again, the question I asked you before? I'll try to rephrase it. We talked about how we could correct the act so that people who are falsely the victims of reprisal, even though they had no participation in the disclosure.... How could we protect them, or could we protect them in some other way? How could we protect them under the act?

Ms. Mary Anne Stevens: Right now, the protection is for anyone who has made a protective disclosure or participated as a witness in an investigation. Potentially that could be expanded to anyone who—I'm not giving you the actual wording in the legislation—is mistakenly believed to have been a discloser.

Mr. Nick Whalen: Okay, so change the definition of reprisal to include that class of people. That's what you—

Ms. Mary Anne Stevens: Yes.

Mr. Nick Whalen: I'm not sure if the clerk can remember. I don't think that was the question I asked, unfortunately. I should have written it down.

In your opening remarks, Mr. Trottier, you mentioned that most crown corporations are covered. Which ones aren't? Do you believe they should be?

Mr. Carl Trottier: We don't have the list here, but we can provide the ones that are to this committee at a later date, if that's appropriate.

Mr. Nick Whalen: I guess we're more interested in knowing which ones aren't—

Mr. Carl Trottier: We can do that. We'll provide you a list of those that aren't.

Mr. Nick Whalen: —and whether or not the department has any views on whether or not they should be covered.

Mr. Carl Trottier: Okay.

Mr. Nick Whalen: That would be a change.

I'll go back to Ms. Ratansi's questions about the 93 for Canada Border Services, the disclosures. A third of the disclosures were related to Canada Border Services, and 60% of the “not acted upon” in this chart that we were referring to for the 2015-16 report were also from Canada Border Services. Is there something particular there that the committee or a committee of Parliament needs to look into regarding the situation in 2015-16? It's just such an outlier.

Mr. Carl Trottier: We're not sure what drove those numbers. It would be wise to ask CBSA what's driving their numbers. Those are their internal numbers.

Mr. Nick Whalen: Okay, but these reports are collected by you. This is such a massive outlier. It represents a third of all the activity. Did you not make any investigations into why this represents a third of all the activity across government under the Public Servants Disclosure Protection Act?

Mr. Carl Trottier: No, we have not looked at that. There are variations in the numbers, and this is a variation. I would strongly encourage you to ask the questions to the organizations that have created these numbers.

Mr. Nick Whalen: When your department—

The Chair: Before I excuse the witnesses, I will invoke the privilege of the chair to ask a question. I use that privilege very sparingly. I don't ask very many questions. It's a bit of a follow-up to what Mr. Whalen was saying originally.

I'm curious, and this may be a very extreme situation. I don't anticipate it happens often. In the case that employee A lodges a complaint against employee B, an investigation ensues and employee B is completely cleared; however, employee B feels that the accusation was deliberate and malicious and in fact was a form of harassment. Does employee B have any recourse whatsoever?

Mr. Carl Trottier: If the employee believes that it's harassment, there is a process where the employee can grieve through the normal grievance process and all elements will be taken into consideration when dealing with this, the circumstances that led to the initial disclosure, and a determination will be made at the departmental level.

The Chair: Thank you very much.

Mr. Trottier, Madam Stevens, thank you very much for your appearance here today. You've been helpful and instructive. Particularly, I appreciate the fact that some of the questions that were posed of you would be better answered by perhaps the Integrity Commissioner or the tribunal. I thank you for pointing that out to members of this committee because they will be appearing before us at a future date. You are excused.

We'll suspend the committee for just a couple minutes and then we'll go in camera for committee business.

[Proceedings continue in camera]

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