



House of Commons  
CANADA

## Legislative Committee on Bill C-2

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CC2 • NUMBER 027 • 1st SESSION • 39th PARLIAMENT

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EVIDENCE

Wednesday, June 14, 2006

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**Chair**

Mr. David Tilson

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Wednesday, June 14, 2006

•(1530)

[English]

**The Chair (Mr. David Tilson (Dufferin—Caledon, CPC)):** Order, please.

Ladies and gentlemen, this is the Legislative Committee on Bill C-2, meeting number 27. Our orders of the day: Bill C-2, An Act providing for conflict of interest rules, restrictions on election financing and measures respecting administrative transparency, oversight and accountability. This is clause-by-clause consideration.

At the last meeting, we voted on G-28.

We will now proceed to clause 212. Seeing no request for debate, shall clause 212 carry?

(Clauses 212 to 215 inclusive agreed to)

(On clause 220)

**The Chair:** We will now proceed to clause 220. There is a government-proposed amendment on page 158, G-49.

Mr. Poilievre, could you move that, please?

**Mr. Pierre Poilievre (Nepean—Carleton, CPC):** I so move.

**The Chair:** It's inadmissible.

G-49 proposes to delete clause 220. *House of Commons Procedure and Practice* states on page 656 that "An amendment is out of order if it simply attempts to delete a clause, since in that case all that needs to be done is to vote against the adoption of the clause in question."

Therefore G-49 is inadmissible.

Monsieur Sauvageau, on a point of order.

[Translation]

**Mr. Benoît Sauvageau (Repentigny, BQ):** I would like to talk about the \$1,000 reward. I think that you could get the unanimous consent of the House of Commons to remove this provision. Perhaps we could ask our experts if there are other ways to go about doing this. After having heard from the witnesses, I think that all of the political parties and all members of this committee would be in agreement for removing this provision.

Thank you. I have just been told how we can do it.

My apologies.

[English]

(Clause 220 negated)

(Clause 221 agreed to)

(Clause 227 agreed to)

•(1535)

**The Chair:** On new clause 227.1, there is a Liberal amendment on page 167.

**Mr. Stephen Owen (Vancouver Quadra, Lib.):** Thank you, Mr. Chair.

I'll propose that amendment.

**The Chair:** Just a second, I'm going to rule it out of order. But I have to get my script.

**Hon. Stephen Owen:** I thought you'd know it by heart—for us, anyway.

**The Chair:** Amendment L-25 proposes that special reports of the commission will be submitted to the Speaker of the Senate and the House for tabling in each House. It is amending subsection 23(3) of the Public Service Employment Act.

*House of Commons Procedure and Practice* states on page 654 that "an amendment is inadmissible if it amends a statute that is not before the committee or a section of the parent Act unless it is being specifically amended by a clause of the bill."

Since section 23 of the Public Service Employment Act is not being amended by Bill C-2, it is inadmissible to propose such an amendment. Therefore, L-25 is inadmissible.

**Hon. Stephen Owen:** I imagine you'd like me to propose L-26 as well?

**The Chair:** I'm not going to do that to you this time. We are going to go to some amendments on clause 228.

(On clause 228)

**The Chair:** One is on page 168 of the amendments. There is a Liberal Party amendment. It is L-26, although I will say there is a line conflict with BQ-32, NDP-22, and NDP-22A.

Mr. Owen.

**Hon. Stephen Owen:** Thank you, Chair.

I propose amendment L-26, and perhaps I should hasten on to give some explanation for it.

The reason for this proposal is to obviate the need to create a new appointments commission by making use of the Public Service Commission and appointing the president and commissioners as officers of Parliament. The previous motion, which was ruled out of order, would have provided for that commission to report to Parliament, as do most parliamentary officers.

The reason for this is simply to introduce the merit-based, transparent, and competitive process for Governor in Council appointments that I think we all seek, but to do so without the need to create another independent office of Parliament.

**The Chair:** Mr. Poilievre.

**Mr. Pierre Poilievre:** We're speaking to amendment L-26? I think Mr. Owen has some worthy objectives here and I commend him for them.

My own view is that there are some later amendments that would better serve to depoliticize the appointment process, and I understand there are line conflicts between them. I'm more inclined to be favourable to some that are coming up from some of the other opposition parties.

By and large, the problem I have with the amendment proposed by Mr. Owen is that it extends powers to the Public Service Commission that were never meant for that commission and would not be appropriate for it. I'd like to expand upon that point by hearing some expert testimony from our panel on how they view the existing Public Service Commission and why in the past it has not been chosen as a vehicle for appointments. I will follow up those answers with some final comments.

• (1540)

**The Chair:** Mr. Wild, or Mr. O'Sullivan.

**Mr. Joe Wild (Senior Counsel, Legal Services, Treasury Board Portfolio, Department of Justice):** Mr. O'Sullivan.

**Marc O'Sullivan (Acting Assistant Secretary to the Cabinet, As an Individual):** Essentially it's a question of the mandates, the Public Service Commission, of course, having the mandate for overseeing the appointment process for public servants. The question is, does it make policy sense to give the commission a mandate also over Governor in Council appointments?

Traditionally there's been a clear divide between the two types of appointment. Governor in Council appointments are oftentimes characterized as political appointments in everyday parlance, and to give the Public Service Commission an oversight role over both public servants on one hand and on the other hand for Governor in Council appointments can be seen as confusing two very different spheres of appointment activity; therefore, it would not be an appropriate mix to have the Public Service Commission do this. That's the concern, and that's the counter-argument to this proposal.

**The Chair:** Mr.—

**Mr. Pierre Poilievre:** Mr. Chair, I actually haven't ceded the floor yet—

**The Chair:** Oh, I'm sorry, Mr. Poilievre, you did say that. I apologize.

**Mr. Pierre Poilievre:** I won't take much longer.

I'll conclude by saying I think Mr. Owen has worthy intentions and has obviously carefully considered his amendment, but our view is that there are some later amendments that might better address the issue of appointments.

One of the things I believe are necessary is to have a codified process of appointments that's actually written in law. One of the later amendments seeks to do that. As opposed to just having these codes that can be changed arbitrarily for appointments, you would have statutory law guiding how those appointments would be made. It would be my preference to see something more of that nature, rather than broadening the scope of an organization that was never meant to play this role in the first place.

I would finally conclude that, as I understand it, due to the line conflicts this amendment would preclude two following amendments, and as such, those of us who believe there are some better amendments coming along should oppose it, especially on the grounds that it would preclude some better alternatives that may be forthcoming.

**The Chair:** Ms. Jennings, and then Mr. Owen.

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Just before I begin to speak about amendment L-26, I'd like to hear from Mr. Poilievre, through the chair, who may wish to identify exactly which other opposition motion, which has a line conflict, he's stating that his government members would be prepared to support.

**The Chair:** I don't know if that's a fair question.

Mr. Poilievre.

**Mr. Pierre Poilievre:** There are two amendments forthcoming. One comes from the Bloc and one comes from the NDP. I'm interested in hearing some arguments on both of them before I state a firm position. Perhaps Ms. Jennings will have some arguments to share with me that might be of some persuasiveness, but the existing amendment, the one that is before us, I'm afraid, is not supportable.

**Hon. Marlene Jennings:** So if I understand the member correctly, in fact he has not made his decision, nor have his colleagues, as to which amendment, if any, they will be supporting, and they're waiting to hear arguments on amendment L-26. Should it carry, the question is moot; should it not carry, they haven't a preconceived decision.

So I will continue on amendment L-26, as I know the chair was going to urge me to do, in his wisdom.

**The Chair:** I'm just trying to keep order, Ms. Jennings.

**Hon. Marlene Jennings:** On L-26, obviously the objective is to implement the Conservative Party's, which then became the government's, commitment to put into place an independent process for political appointments—what's commonly called political appointments, and what we refer to as GIC appointments.

The amendment L-26, which was put forward by my colleague the Honourable Stephen Owen, would implement this very commitment, if carried. At the same time, given that there is already expertise in auditing the elaboration of criteria for selection—the selection processes that have been put into place—through the Public Service Employment Commission, commonly called the Public Service Commission.

While I take note of the points you've raised, Mr. O'Sullivan, I do think not only that this is something the Public Service Commission is qualified to do, but it would be appropriate for the Public Service Commission to do this, precisely because it is seen as being non-partisan, competent in establishing selection criteria for hiring, promotions, etc., and is also seen as competent in the auditing processes that were put in place by independent government organizations or agencies. Therefore, I do not believe there is another body or process within our Canadian federation and parliamentary system with that kind of expertise.

I don't believe that by transferring the audit function—it's purely the audit function—in any way impedes the constitutional autonomy of this Parliament to look into the process, the work of any public appointments commission, should either the Liberal or the NDP amendment carry, because in both the objective is to put a public appointments commission in place.

I believe that the NDP motion fails, or is weak, precisely because it does not put in place an independent, non-partisan process of audit and verification, whereas the Liberal amendment would do so.

I do believe that one of the points we wish to do is ensure that partisanship is taken out of the process of selection and GIC appointments. A commission would do this, but the audit function, if left solely to Parliament, would be a partisan activity. Our experience has shown that no matter how good-faithed and good-willed we are, at times we fall into partisanship—and I'm as guilty as every single other MP around this table. Therefore, I believe that having not only a parliamentary audit but also an independent audit through the Public Service Commission—which is non-partisan, completely independent, and an expert in auditing these kinds of processes—would be fair, reasonable, and I believe would be welcomed by most ordinary Canadians.

• (1545)

**The Chair:** Thank you, Ms. Jennings.

Mr. Owen, and then Mr. Tonks.

**Hon. Stephen Owen:** Thank you, Chair. I'll speak very briefly because Ms. Jennings has said much of what I would have said.

Let me say that I do think that the Bloc, NDP, and Liberal amendments go to the same objective, which has also been stated by the government, and that is to have an objective, competitive, merit-based process.

Thank you to Mr. O'Sullivan for his remarks, which certainly stated the history properly.

I would only add that if this is passed, the present would represent an elimination of the distinction between political appointments and public service appointments, for the very objective that we all pursue, and that is to make them objective. The amendment is meant to bring the GIC process under their expertise and independence.

I have read the other amendments, and should this fail, as Ms. Jennings said, we will be supporting the objectives and the other amendments.

• (1550)

**The Chair:** Thank you.

Mr. Tonks, and then Mr. Lukiwski.

**Mr. Alan Tonks (York South—Weston, Lib.):** Mr. Chairman, first of all, I think the amendments that have been put forward are fundamental to the whole objective of the Accountability Act. So it's very important that we understand the philosophical divergence of the two approaches that are being suggested in the amendments.

You have the Bloc perspective, which I certainly support and I think most of the committee would, looking at the entrenching of accountability in the committee structure for appointments, and that those appointments obviously would be according to a merit system that would be according to federal employment standards. But that's generally the perspective and direction those amendments are taking.

The other route is in the amendments suggesting a public service construct in the fashion of federal experience, either through the Public Service Commission model or through the Industrial Relations Board. So you have two conduits to the same objective.

It would be my feeling on the experience we had at committee that in selecting the committee oversight route there's almost the reverse onus concept, that the committee has to find reasons why a name that is being put forward is not acceptable. I find that a little like putting the cart before the horse. I'm worried that, partisan politics being what they are, that does a disservice to the whole process of merit-based citizens whose names are being put forward, and they get caught up in the groundswell of the politics of that moment, as compared to the professionalization through a public service entity that has and must mirror the experience that has already been obtained through time-worn processes.

So it would be my feeling, and the government side may not go this route, that this is more in keeping with the checks and balances that are the measure of accountability that the government is seeking out, and I'm much more comfortable with treating Canadians through a professional regime that has experience behind it.

If necessary, if at the end of the day there is a question raised with respect to the merits of an individual, that can still be brought before the committee if present practices are followed. That's your safety net.

I can cite two or three appointments that were brought during the last session that, granted, the previous government didn't accept, the sober second thought that was applied by the committee in saying, no, we do not think this individual is appropriate. But at least that is there and can be tested.

To me, it smacks of the kind of natural justice that I think Canadians would want, a fair hearing and merit-based decisions that will be made in a regime that reflects that kind of due consideration. So I would hope that we would support the amendment being put forward either by the Liberals or by the New Democrats, with great respect to the Bloc.

Thank you.

**The Chair:** Thank you, sir.

Mr. Lukiwski.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Thank you, Mr. Chair.

I thank Mr. Tonks. He has captured some of the feelings I have.

I have a couple of questions. I'd like to get Mr. O'Sullivan's comments on one.

I'm not really sure if this appropriate. I think what we're doing here is trying to compare the three similarly intended motions before us. The spirit of all three, I believe, is equal, in trying to make sure we have a merit-based appointments body that deals with this.

Looking at what we have here, I'm leaning towards the NDP amendment.

• (1555)

**The Chair:** Mr. Lukiwski, just to point out so you're aware, there's a fourth one. You're not looking at three, you're looking at four. There's also amendment NDP-22A.

**Mr. Tom Lukiwski:** All right. I was looking at amendment NDP-22 when I was leaning in that direction. I'll give you the reasons why, and then I just want a comment from Mr. O'Sullivan, if I could.

I agree with my colleague here. I do not believe that with the Liberal amendment, the Public Service Employment Act is the right way to go. I'm sensing that an independent commission should be struck to deal with that.

The major problem I have with the Bloc amendment, even though the spirit is similar, is the fact that it would go to a standing committee of the House that would, frankly, review some 3,000 appointments a year, including the judiciary.

There is, number one, great potential to become politicized in a hurry in that process. As well, there are just some logistical concerns I would have. What happens if they hire some folks and then have to fire them? Would you go back to the committee to deal with that? It just seems to be a little untenable to me.

However, on the audit function—and that's my primary question—Ms. Jennings was saying that where the Liberal amendment is perhaps more suited than the other two amendments is that they have this audit function in there.

I notice that the NDP motion also has an audit function built into it. However, the Bloc's does not. I would just like to hear Mr. O'Sullivan's interpretation on the audit function itself and the importance it could have to this type of process.

**Mr. Marc O'Sullivan:** In the design of the Public Appointments Commission and in the order in council that created it, the notion was to have a body that would be involved in overseeing the selection process proposed by agencies, boards, commissions, and departments for filling those positions, to ensure that the process is open, fair, and transparent, and that a clear statement of qualifications is made and the people applying for the positions are evaluated on the basis of those qualifications.

The thought was that the best way to proceed would be that the body that is involved in overseeing the selection process and ensuring they're adequate would also be the body that would perform an audit function or an oversight function to ensure that the selection processes are in fact being followed, and they're being followed according to not only the letter of how they're drafted but also the intent.

To give that audit function to a body that's completely separate from the Governor in Council appointment process then raises the issue that, although the Public Service Commission is expert in this field, it does so for public servants and not for Governor in Council appointments. It was felt that it made more sense to have a body that is constantly overseeing this process, from start to end, be the one that performed the audit function, rather than give the audit function to a separate body that's not at all involved in the Governor in Council appointment process, simply because the Public Appointments Commission would be aware of the incredible variety of requirements for positions.

There are, as you mentioned, a couple of thousand Governor in Council positions. The enabling legislation for those positions put in all sorts of requirements in terms of the type of training that's required, in terms of consultations that have to be undertaken, and so on. It is a very specialized field, and the thought was that a body that was devoted exclusively to overseeing that function would be best placed to exercise an audit function, as opposed to giving that function to the Public Service Commission. The same argument would hold true for giving that oversight function to parliamentary committees.

We also looked at models from other jurisdictions, notably British Columbia, notably the United Kingdom, and in those instances, they have given these responsibilities to a single body that performs that function, including the audit function.

So that was the thinking behind this model.

• (1600)

**Mr. Tom Lukiwski:** Just to conclude, then, thank you for that. It explained—if I'm hearing you correctly, and I believe I did—that the audit function would perhaps be better served not with the Public Service Commission but with a body that was set up specifically to deal with these appointments.

So thank you for your comments. You've helped a great deal.

**The Chair:** Monsieur Sauvageau.

[*Translation*]

**Mr. Benoît Sauvageau:** If I wanted to indulge in political point-scoring, I would ask whether this amendment is still relevant in light of the fact that Gwyn Morgan is not available. However, I would not say such a thing.

Mr. Lukiwski said earlier that the three amendments shared a virtually identical objective. I was going to speak about amendment BQ-32 later, and that is why I was late in putting my name on the speakers' list.

Our amendment is entirely different from L-26 and NDP-22 in that it proposes scrapping the idea of creating a Public Appointments Commission. In a responsible government, decisions are made by the governor in council and the Prime Minister, who assume responsibility for their decisions. It should be for the appropriate committees of the House of Commons to study the appointments that they see fit to review.

Mr. Lukiwski argued that there would be 3,000 appointments to review. Were we to apply that logic to the Auditor General, she would have to audit 21 departments and 3,000 programs each year. However, as far as I know, the Auditor General chooses which programs and departments she will audit. Similarly, I think that the appropriate committees of the House of Commons would know what was required of them and which appointments should be studied. For example, I do not think that the Standing Committee on Foreign Affairs and International Trade would study the appointment of each and every ambassador. However, if something seemed not quite right about a given appointment, the committee could summon the ambassador in question to appear before the committee to answer questions.

I want it to be clear that amendment BQ-32 is antithetical to the two other amendments. We shall therefore not be supporting amendments L-26 and NDP-22.

Thank you very much.

[English]

**The Chair:** I call the question on amendment L-26.

(Amendment negated [See *Minutes of Proceedings*])

[Translation]

**Mr. Benoît Sauvageau:** Mr. Chairman, I would like to move amendment BQ-32. I have already explained the rationale behind this amendment and I will not go over it again, unless somebody would like clarification.

[English]

(Amendment negated)

**The Chair:** We will now proceed to the Bloc Québécois amendment, BQ-32, on page 170.

Monsieur Sauvageau.

**The Chair:** I call amendment NDP-22.

Mr. Martin, we're just questioning your two amendments. Is one a replacement of the other, or are they two separate amendments?

**Mr. Pat Martin (Winnipeg Centre, NDP):** No, I would like to withdraw, if I could, amendment NDP-22, if that's where you are, sir.

**The Chair:** Thank you, sir.

We will proceed with amendment NDP-22A, which is on page 173.01.

Mr. Martin, you may move that.

•(1605)

**Mr. Pat Martin:** Thank you, Mr. Chair.

I'm happy to move amendment NDP-22A, found on page 173.01, which puts forward the NDP's vision of a public appointments commission.

We see this as one of the key pillars of the whole federal accountability exercise. We are very committed to the idea that the end to patronage is one of the things Canadians expect of us as we go through this exercise and have given a great deal of thought as to how it might best be put in place and into effect.

**Mr. Pat Martin:** I won't read it word for word, Mr. Chairman, but if I could take two or three minutes. Let me explain the ways in which I believe we've satisfied all of the concerns—and they're legitimate concerns—raised by each of the other parties as we looked through the first two attempts at this appointments process.

Our vision of it in amendment NDP-22A would have the Governor in Council create a Public Appointments Commission consisting of a chairperson and not more than four other members, and their task, their mandate would be:

to oversee, monitor, review and report on the selection process for appointments and reappointments by the Governor in Council to agencies, boards, commissions and Crown corporations, and to ensure that every such process is widely made public and conducted in a fair, open and transparent manner and that the appointments are based on merit;

This is where I believe our model promotes independence as a concept to a greater extent than the other attempts do. I'm not satisfied that the Public Service Commission in and of itself is widely accepted to be absolutely and completely independent. In fact, some of the public sector unions believe the Public Service Commission performs executive functions and can't ever be considered truly independent.

Secondly, it would:

evaluate and approve the selection processes proposed by ministers to fill those vacancies and determine reappointments within their portfolios, monitor and review those processes, and ensure that they are implemented as approved, giving special attention to any instances in which ministers make appointments that are inconsistent with the recommendations

Thirdly, in proposed paragraph 1.1(1)(c), this commission would be the one to develop and establish the code of practice. The code of practice wouldn't be put forward by government. It would be this independent commission, who would design their own code of practice for the appointments by Governor in Council and ministers, that sets out that it has to be fair, open, and transparent, including requirements regarding criteria to be made fully public.

This is exactly in keeping with the points our former leader Ed Broadbent was making at the ethics committee when he was seeking to have this appointments process addressed; that it's really the duty of the government to set out what the criteria should be for the job they seek to fill. The burden of proof and the onus is on them to say, within the direction of the commission: we seek to fill this position; these are the qualifications necessary; here's why this applicant has those qualifications, in our view; do you agree that this will be in keeping with the rules as set out by this new commission?

That is the transparency we're seeking to achieve, and that's what I think we've articulated in the cleanest way possible.

Also, the audit function was raised quite legitimately by all the other parties except the Bloc, who didn't see the need for an audit function here. The audit of appointment policies and practices doesn't have to preclude the Public Service Commission. That might be a legitimate role for the Public Service Commission. It would be an option: that the newly appointed appointments commission might want to draw from the expertise of the existing Public Service Commission's president, or might want to make her one of the members of the commission. We don't know. Our language doesn't preclude the possibility of some involvement.

A public reporting mechanism on compliance with the code of practice is critical, “in particular by providing an annual report to the Prime Minister to be transmitted to the Speaker of each House of Parliament for tabling and referral to the appropriate committee”, thus ultimately reporting to Parliament, where Parliament, with all of its authority and powers, can look at the compliance with these newly established guidelines of the practice.

As a further function that we think would be useful and have included—I think it's a very thoughtful addition that was brought forward to us by somebody outside the party, actually—we would call upon this newly created appointments commission to provide a public education and training component for public servants involved in the appointment and reappointment processes regarding the code of practice to ensure compliance, to make this part of the culture, and to strip away and hopefully drive a stake through the heart of the current culture of patronage that drove appointments processes for not just the last 13 years, with all due respect to other parties here, but from time immemorial in Ottawa.

• (1610)

The patronage process was integral to how Ottawa worked—rewarding the political hacks from your political party with patronage appointments. It became such a norm that some people joined and served political parties with the expectation that they would get their reward later on in the form of an inexplicable patronage appointment, for which they might not have been qualified at all. The Immigration and Refugee Board—Mr. Chairman, as a Canadian I'm embarrassed to raise it and have it televised here—has been a dumping ground for washed-up political hacks for so long that it does a disservice to the poor people who have to appear before these panels, because they're not—

**Hon. Stephen Owen:** On a point of order, Mr. Chair, I think Mr. Martin has gone on long enough with his speech. He's put forward the principles of his amendment. We've had all three other parties accept the principles. I suggest we call the question and end the unnecessary insults and speeches.

**The Chair:** Mr. Owen, that's not a point of order. As long as he's relevant, Mr. Martin can proceed, and the chair rules that he is relevant.

Mr. Martin.

**Mr. Pat Martin:** I don't intend to take much longer, because I'm hoping to get the cooperation of my colleagues.

Honestly, we listened to the last Liberal amendment get debated at length by four different Liberal members who made the same points four times in a row.

**The Chair:** Please proceed, Mr. Martin. You are in order.

**Mr. Pat Martin:** I think adding this public education and training of public servants component will help to change the culture in Ottawa. Surely that's one of the key objectives and goals of the Federal Accountability Act—not just to make statutory changes but to send the signal that we're going to do things differently here in Ottawa from now on. That will be delivered through an actual education process. I'm not talking about brainwashing; I'm just talking about changing the way people do things.

Also, I have to take a moment to talk about this:

(2) Before making a recommendation to the Governor in Council that a person be appointed to the Commission, the Prime Minister shall consult with the leader of every recognized party in the House of Commons. An announcement of an appointment shall be transmitted to the Speaker of the House of Commons for tabling in that House.

This, I hope, would preclude some of the false starts that the existing Public Appointments Commission got off to with the appointment of a chair that wasn't suitable to the leaders of the other political parties. A very embarrassing situation ensued at the committee, and we all regret perhaps the way this was handled. This amendment anticipates the possibility of a problem developing and precludes it by consultation.

**The Chair:** You want to be on the list, okay.

Proceed, Mr. Martin, I'm sorry.

**Mr. Pat Martin:** I'm just about finished, Mr. Chairman. The rest of it merely deals with the term. We did feel it to be thorough and complete. We recommend terms of five years, reappointed for further possibility, but removed for cause, if necessary, as well.

**Report to Parliament, proposed subsection 1.1(4) states,** (4) In its report, the Commission shall identify any material failure to comply with its code of practice by any department, Minister or official.

Remuneration and appointment of staff, of course, are all administrative.

What we're trying to get at is that this would change forever the idea that these appointments would be made from a single desk in the PMO, by a single partisan individual, which has been the practice until very recently, when an attempt was made to change this. I have lived through previous attempts to improve the appointments process. I remember in March 2004, when the last President of the Treasury Board announced that the appointments process was going to be different, and before we knew it, Feeney was appointed to the post office. And this was in complete contradiction to the promises they made. Glen Murray was appointed to the National Round Table. Even though the committee reviewed his appointment and turned it down, he was still appointed.

Nothing we've done to date has satisfied this problem of patronage. I lay this before the committee as, I think, a well-crafted attempt to end patronage in Ottawa forever. I think we should be proud, as a committee, if we can do that and make this a key pillar of the Federal Accountability Act.

Thank you.

• (1615)

**The Chair:** Thank you.

Mr. Murphy, Mr. Poilievre, and then Ms. Jennings.

Mr. Sauvageau, I had inadvertently crossed you off. I apologize, sir.

Mr. Sauvageau.

[Translation]

**Mr. Benoît Sauvageau:** You are entirely forgiven, Mr. Chairman. I am sure that Mr. Martin is extremely glad that the rules governing speaking time for committee members differ from those governing speaking time for witnesses. I have two questions. The first...



[English]

**Mr. Pat Martin:** That is inaccurate. You should be accurate.

**The Chair:** Okay, you guys, enough.

Mr. Martin, I'm up here.

Mr. Sauvageau.

**Mr. Pat Martin:** I'm tired of being insulted by this guy, Mr. Chairman. I'm fed up with it. I won't tolerate it anymore.

**The Chair:** He's going to stop, isn't he?

**Mr. Pat Martin:** Yes, he is.

**The Chair:** Okay, Monsieur Sauvageau, you have the floor.

Mr. Martin. Monsieur Sauvageau has the floor.

Please refrain—

[Translation]

**Mr. Benoît Sauvageau:** I do not understand much English, but I get the impression that Mr. Martin is angry.

**Proposed subsection 1.1(1) reads as follows:** The Governor in Council may establish a Public Appointments Commission [...]

It is not a mandatory responsibility.

**Paragraph 1.1(1)(a) reads as follows:** (a) oversee, monitor, review [...] the selection process[...]

**And a little further on, it states:** [...] and report on [...]

**To whom is this report made? If I understand the amendment correctly, the governor in council appoints the Public Appointments Commission and the commission reports to the governor in council. I listened to Mr. Martin's lengthy speech and I do not see how this amendment will guarantee greater transparency, especially since subsection 1.1(4) states:** (4) In its report [...], the Public Appointments Commission shall identify any material non-compliance with its code of practice by any department, [...]

However, the amendment does not provide for any sanctions. It does not provide for any sanctions should somebody fail to respect their obligations.

Mr. Chairman, I believe I am entitled to ask this question, and I ask it with the greatest of respect. Thank you.

[English]

**The Chair:** Monsieur Sauvageau, are you asking a question of Mr. Wild?

[Translation]

**Mr. Benoît Sauvageau:** Yes.

[English]

**The Chair:** Mr. O'Sullivan.

[Translation]

**Mr. Marc O'Sullivan:** Allow me to answer the question. The amendment provides for accountability in terms of how appointments are made. For example, the obligation to report material failure is not an insignificant measure, quite the opposite. Although

the report is submitted to the Prime Minister, because it is ultimately the Prime Minister who is responsible for the appointment process within government, it also has to be tabled both in the House of Commons and in the Senate. We call it the fishbowl theory; in other words, it is the very transparency of the program that ensures that there would be sanctions were the government not to respect the code of practice established by the commission. Any failure to comply with the code would be hung out in the open for all to see.

That is an example of an accountability mechanism. Subsection 1.1(4) provides further clarification by stating that the report shall identify any material non-compliance with the code of practice. It is a measure that would ensure that the government were named and shamed should it fail to comply with the code.

The amendment proposes that the appointments be made by the governor in council, while providing a key role for the Prime Minister in the appointments process. As a result, the Prime Minister, the cabinet and the governor in council have to assume responsibility for their decision. There is an obligation to produce a report in which any material non-compliance must be identified.

As a result, any government that chose to ignore the commission's work would have to justify itself publicly before Parliament.

Thank you.

● (1620)

[English]

**The Chair:** Mr. Murphy.

**Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.):** Thank you, Mr. Chairman.

I was just trying to trace the evolution of this fairly fine resolution, frankly. I'll ask the panel.

Amendment NDP-22, which has been withdrawn, had a couple of sections at the end that, to me, seemed to better elucidate the position of Mr. Martin with respect to accountability in general.

The withdrawn amendment G-51.1, which seems remarkably similar to the resolution we're actually using now for amendment, does not have those sections. It would appear to me that the government resolution being withdrawn and given to the NDP for them to advocate as theirs is only short of their original resolution by a couple of phrases.

If this is appropriate, what does proposed section 1.3 in amendment NDP-22 add?

It would be better if I kept to the resolution before I get ruled out of order, but what has been taken out of this resolution?

**The Chair:** That would be a good idea, Mr. Murphy. We're talking about amendment NDP-22A, and I'd rather stick to that. The other resolution was withdrawn.

**Mr. Brian Murphy:** Sure. I'll do that.

**What would these words add to the resolution before us:** The Public Appointments Commission shall table with the Speaker of the House of Commons a list of key positions in the Government of Canada that are filled by Governor in Council or ministerial appointments.

Is it already there? I see in the amendment that the House, basically, through the Speaker, will be informed of the appointments. That's the resolution before us. Proposed subsection 1.1(2) has that provision. So the House would be readily informed of all GIC appointments. Is that essentially it?

**The Chair:** Mr. O'Sullivan.

**Mr. Marc O'Sullivan:** Proposed subsection 1.1(2) of amendment NDP-22A refers to the appointments to the Public Appointments Commission and not to all Governor in Council appointments.

**Mr. Brian Murphy:** Is there a provision that satisfies the original NDP proposition that makes sure that all ministerial appointments are reported to the House through the Speaker?

**Mr. Marc O'Sullivan:** Standing Order 110 provides for the tabling of all Governor in Council appointment orders in council with the House of Commons.

**Mr. Brian Murphy:** I understand now. Thank you.

**The Chair:** Mr. Poilievre.

**Mr. Pierre Poilievre:** I won't go on at great length. I just want to say that I believe this process that Mr. Martin is proposing strikes the right line. It puts in law a series of processes through which Governor in Council appointments must go before they are adopted, and that is exactly what we need. In the last Parliament, for example, we had a series of guidelines that were put into place temporarily, and then they weren't ultimately followed. Mr. Martin is right in identifying the Gordon Feeney appointment as being one such example.

The reason I'm making this point, the reason I'm being very specific, is that if you do not codify it in law, it ultimately does not need to be followed. If you call it a guideline, or a code, or something else, it doesn't need to be followed.

That, I believe, is the genius of this particular amendment, that it takes a very strict process, with which I gather there is widespread agreement from at least three of the four parties here, and puts it in statutory law, making it an obligation to be followed in the future.

I would just like to commend Mr. Martin for this. On the issue of patronage and appointments, this is the culmination of years of work by this particular member. Mr. Martin has been working on this for many years, and it's with some satisfaction that I see that he is likely to have a fairly major, substantive victory by amending a law that will hopefully be enacted in the very near future.

So I would commend him as a fellow member of Parliament for his good work and for this amendment, which we are proud to support.

•(1625)

**The Chair:** Ms. Jennings, and then Mr. Martin.

**Hon. Marlene Jennings:** I first have a question, and then I wish to propose a friendly subamendment.

We've talked a lot about what is status quo, and I just want to understand. Right now, status quo would be Bill C-2, which is before us—the sections that have been amended, amended; and the sections that we have not dealt with, as they have been presented in Bill C-2. Am I correct in believing that?

**The Chair:** I don't know where you're going. I have a feeling I know where you're going; don't go there.

**Hon. Marlene Jennings:** No, I'm asking a simple question to understand. Is status quo right now Bill C-2 as it is right now? That's all I'm asking.

**The Chair:** You will have to be a little bit clearer as to why you're asking the question. Normally the terminology that we're using is used when we're talking about a vote, but we're not there yet. We're debating amendment NDP-22A, so if you're creating a hypothetical situation as to what's going to happen—

**Hon. Marlene Jennings:** No, it's very clear. I will ask you—

**The Chair:** You asked me a question. I'm trying to answer it.

If you're going down as to what a vote is going to be and what's status quo and what isn't, we're not there yet, and I'm not going to comment on that. If you're asking a question about the bill or the amendment, the appropriate person to ask is not the chair. It is one of the experts.

**Hon. Marlene Jennings:** I'm not asking anything to do with any amendment. I'll give an example so that it might clear up.

On clause 235 on page 165—at this moment in time, is that the status quo? That's all I want to know.

**The Chair:** I don't know where you're going with it. We haven't got there yet.

What is before this committee right now is amendment NDP-22A, and that's all we're going to talk about. We're not talking about some sections down in the future, or how the chair's going to vote in the event of a tie, or how anybody's going to vote.

Well, I suppose you can talk about how you're going to vote, but you can't go down that path.

**Hon. Marlene Jennings:** Chair, I never talked about any vote, I never talked about any amendment, and I never talked about how the chair might, in a hypothetical situation, vote. Please—

**The Chair:** You talked about a clause that we haven't reached, Ms. Jennings, and I'd like you to stay with amendment NDP-22A.

**Hon. Marlene Jennings:** Please, I will put forward my friendly amendment.

[Translation]

My sub-amendment is to subsection 1.1(1). I would like to change the word “may”, of the sentence that reads: 1.1(1) The Governor in Council may establish a Public Appointments Commission [...]

and replace it with “shall”.

I also want to move a second sub-amendment—

[English]

**The Chair:** Is it “shall”?

**Hon. Marlene Jennings:** It is “shall”.

**The Chair:** Thank you.

[Translation]

**Hon. Marlene Jennings:** Do I have to move my second sub-amendment separately, or can I move them both at the same time?

•(1630)

[English]

**The Chair:** It would be one subamendment.

[Translation]

**Hon. Marlene Jennings:** The second change that I would like to propose is to subsection 1.1(4). My amendment would be that, at the fourth line, we replace the period after the word “official” with a comma, and then add some additional wording. I suggest that we add a comma followed by “and the government shall take into consideration any such information.”

[English]

**The Chair:** I think I have it, but could you repeat it, please?

Ms. Jennings, I think we have it, but I'd like you to repeat the second part of your subamendment.

[Translation]

**Hon. Marlene Jennings:** A comma followed by “and the government shall take into consideration any such information.”

[English]

**The Chair:** In English, is that “indications” or “considerations”? I just want to make sure.

[Translation]

**L'hon. Marlene Jennings:** The wording was “shall take into consideration.”

[English]

**The Chair:** Okay, “shall take into consideration”? I'm sorry, Ms. Jennings, I want to make sure I understand what you—

**Hon. Marlene Jennings:** I believe the interpreters might be able to be better place this in English: “the government shall take into consideration any such material failure”.

**The Chair:** “, and the government shall take into consideration any such material failure”.

**Hon. Marlene Jennings:** Or “any such identification”? Because in French, it's much easier. I'm not—

**The Chair:** Mr. Owen.

**Hon. Stephen Owen:** I may be able to help, Chair.

If we say “any such information” in English, that will get us away from any difficulty about whether the identified material failure is actually true or not.

**The Chair:** “, and the government shall take into consideration any such information”. Is that what you're suggesting?

**Hon. Marlene Jennings:** Yes.

**The Chair:** You still have the floor, Ms. Jennings.

**Hon. Marlene Jennings:** First, I think the first part of my subamendment, which is changing the word “may” to the word “shall”, would take care of a lot of the anxiety amongst many politicians, and also amongst many ordinary Canadians: that in fact the government may not, through the Governor in Council, set up the

Public Appointments Commission. I think this would take away that anxiety.

As you can see in NDP-22A, there is no deadline as to when the Governor in Council creates this Public Appointments Commission. So since there is no such deadline, the word “may” creates even more anxiety that it may never actually take place. I think changing the word to “shall” would alleviate some of the anxiety that the government may not go forward, through the Governor in Council.

The second part of the subamendment is simply to ensure that the government is seized with it and, in any decision it may take or not, takes that into consideration—that the government considers any identification of material failure. That's all.

**The Chair:** Well, I have a list.

Mr. Martin, and then Mr. Poilievre.

Is this a point of order, sir? Mr. Martin.

**Mr. Pat Martin:** Thank you, Mr. Chair.

I've only asked for the floor so I could clarify something. Let there be no doubt that I'll answer Mr. Murphy's question. This was drafted by people in my office, from Ed Broadbent to a man named Rarihokwats—who is my adviser and I think is here—to Ian Wayne. We wrote the language of this amendment.

When we submitted it to the clerk, she inadvertently wrote G-53 or something on it, and that's the first time you saw it. We immediately had that fixed and our amendment labelled properly, NDP-22A, so now you have another one. They are identical because they are our amendment. So just in case there was some thought that this amendment was drafted by government and put under the NDP name, it was not. I don't blame you for the misunderstanding, but I wanted to clarify it.

•(1635)

**Hon. Marlene Jennings:** May I respond and thank Mr. Martin for that clarification, because he is right. There was a doubt on the part of at least the Liberal members, but I appreciate the explanation.

**The Chair:** Point of order. I was going to suggest Mr. Martin to proceed, but Mr. Poilievre.

**Mr. Pierre Poilievre:** All right. I find it interesting that Ms. Jennings would propose this amendment moments after she and her party proposed a motion that used the following language: “The Governor in Council may establish a Public Appointments Commission”. That was Liberal amendment 26. I'm not going to comment on the motivations of this new epiphany that it's suddenly necessary to change “may” to “shall”, when moments ago she voted for “may”, and in fact wrote “may” into her original document.

But staying focused on NDP-22A, I'd like to have some more clarification of what—

**The Chair:** Wait a minute. We're on a point of order. I have a list. Mr. Martin has the floor. You can't jump in like that.

Yes, Mr. Martin.

**Mr. Pat Martin:** If I could, I was going to start my remarks with that one point of clarification, and I did understand that, Pierre, yours was a point of order, so I'll just finish my thoughts on this.

I'm actually satisfied, as the mover of this motion. I believe that what we've chosen is very common language. It was drafted by the people in my office, who were very adamant that this get implemented. What it does is lay the foundation. It is the enabling language so the government can, in its authority, create this commission, and we have every confidence that it will after being directed to do so by this bill.

So I'm not going to support the subamendment, but I do urge committee members to support the amendment.

**The Chair:** Thank you, sir.

Mr. Poilievre.

**Mr. Pierre Poilievre:** I think my comments were made earlier. I might add that accidentally I thought I actually had the floor, but that being as it is, I'm happy to go to the question.

**The Chair:** Okay, we're going to go to the subamendment.

(Subamendment negated [See *Minutes of Proceedings*])

(Amendment agreed to [See *Minutes of Proceedings*])

**Some hon. members:** Hear, hear!

(Clause 228 as amended agreed to on division)

(On clause 229—*Order in council*)

•(1640)

**The Chair:** There's a New Democratic Party proposed amendment, NDP-22.01, page 173.1, that there will be a line conflict with L-27.

Mr. Martin.

Mr. Owen, on a point of order.

**Hon. Stephen Owen:** Mr. Chair, I am withdrawing L-27 because it related to amendments that were proposed earlier and ruled out of order.

**The Chair:** Thank you, Mr. Owen.

Mr. Martin.

**Mr. Pat Martin:** As soon as I find that, Mr. Chair, I'm going to move it. You said page 173.1, which doesn't exist in my book.

**The Chair:** Well, give us a moment and we'll try to help you.

**Mr. Pat Martin:** Thank you, my friend.

I will in fact move amendment NDP-22.01, page 173.1, seeking to amend clause 229 on page 164 by replacing lines 10 to 16 with language regarding the order in council, "the Access to Information Act, as enacted", etc.; and secondly, by making reference to the Canada Pension Plan Investment Board. We believe these sections should not apply in respect to the Canada Pension Plan Investment Board for the reasons given when we dealt with the same matter under the Access to Information Act. There are aspects of the investment strategy of the Canada Pension Plan Investment Board that warrant extraordinary exemptions and secrecy and privacy.

**The Chair:** Mr. Poilievre.

**Mr. Pierre Poilievre:** Mr. Chair, I have a subamendment to propose. It's actually a technical subamendment. It has been tabled at your chair. I think there are enough copies to pass around.

The goal here is to match the NDP amendment with some of the changes that were made earlier on in the bill. So this is strictly a technical subamendment.

The expert panel has a copy of the subamendment I've tabled, if they would be willing to offer some commentary.

**The Chair:** Mr. Wild.

**Mr. Joe Wild:** Thank you, Chair.

The subamendment does as the member suggested. It is correcting technically, given that various things happened yesterday with respect to the Access to Information Act and Privacy Act provisions that are in part 3 of the bill.

Just to highlight, in the NDP motion there's a reference to section 142.1. Of course, in the end, that section did not come to pass and does not exist. So the subamendment removes the reference to that and adds in a reference to proposed section 3.01 of the Privacy Act, which is a new section that was created.

Just to highlight what's happening in proposed subsection 229(2), so members of the committee are clear, the Canada Pension Plan Investment Board is an organization that has a joint governance model as enshrined in legislation with the provinces. Under the Canada Pension Plan act, whenever there is a piece of legislation that's going to have a direct or indirect impact on the legislation of the Canada Pension Plan Investment Board, there is a requirement to obtain provincial consent from two-thirds of the provinces, representing two-thirds of the population that participates under the Canada Pension Plan. Therefore, proposed subsection 229(2) is simply reflecting that statutory requirement under the Canada Pension Plan act.

(Subamendment agreed to [See *Minutes of Proceedings*])

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 229 as amended agreed to on division)

(On clause 230)

•(1645)

**The Chair:** We have an amendment on clause 230. That amendment is on page 175.

Mr. Poilievre.

**Mr. Pierre Poilievre:** It's amendment G-52, that Bill C-2 be amended by deleting clause 230.

**The Chair:** It's inadmissible.

**Mr. Pierre Poilievre:** Then the government side will be voting against the clause in total.

**The Chair:** Do you want me to read it, or do you care?

**Mr. Pierre Poilievre:** No, just withdraw the amendment.

**The Chair:** (Clause 230 negated)

(Clauses 231 to 238 inclusive agreed to)

(On clause 239)

**The Chair:** We are now on clause 239, and we have some issues that relate to internal audit. There is a series of clauses that, as in other cases, are related to this particular clause.

Is there a point of order, Mr. Owen?

**Hon. Stephen Owen:** I have a point of order. Could you clarify, Mr. Chair? We seem to have some difficulty. Is clause 230 carried or not?

**The Chair:** It failed. If I said something else, I'll clarify it now: it failed. Thank you. If I was wrong—

**Hon. Stephen Owen:** The interpretation was the opposite, but that's fine.

**The Chair:** Well, that's kind of scary, isn't it?

We're going to deal with the amendments that pertain to the subject matter of clause 239 before we put that question. We'll deal first with the amendments to this clause, to clause 261, and to the schedule. Once that has been completed, we will put the question to clause 239. The results would be applied to all the consequential clauses: clauses 259 to 261 inclusive, clause 270, clause 272, clause 277, clause 299, and the schedule.

(On clause 261)

**The Chair:** We will call the first amendment, which is L-27.1 on page 178.1 of your book. It relates to clause 261.

Before you proceed, Ms. Jennings, we have a line conflict with L-27.1. We have a line conflict with G-53.1. It is also the same as NDP-22.1.

Ms. Jennings, could you move the motion, please?

**Hon. Marlene Jennings:** I move my amendment L-27.1, and if I understand the points you raised about line conflicts, it means that should my amendment carry, those other amendments simply drop.

•(1650)

**The Chair:** That is correct.

**Hon. Marlene Jennings:** My amendment was put through subsequent to Mr. Walsh's presentation before this committee concerning the impact of Bill C-2, as it was then formulated, on the constitutional autonomy of Parliament itself and its members, whether members of Parliament or senators, but his comments were particular. Therefore, I instructed his staff to prepare a whole series of amendments that flow through his actual legal expert opinion, and this is one of them.

So I move the question, unless someone else has put their name on the list—

**The Chair:** Well, Mr. Poilievre....

I just want to make one more clarification. All these amendments conflict, so the chair is going to take the position that all these amendments could be debated at the same time.

Do you want me to elaborate?

**Hon. Marlene Jennings:** Yes, please. May I explain why that creates a bit of confusion?

In any clause-by-clause consideration that I've participated in during my nine years here, when an amendment comes in, and subsequent amendments come in that touch on the same clause, and there are line conflicts, we deal with the first amendment that came in. I've never heard of debating all of them at the same time.

**The Chair:** Well, we'll try to give you an explanation.

**Ms. Susan Baldwin (Procedural Clerk):** It would certainly be correct that the first vote will take place on your amendment, but I think that it's also entirely proper, and probably a good thing, if the chair is willing to group together amendments that are in line conflict or that are very similar. Because most of these are very small variations, it would give the committee the very best opportunity to discuss and decide on precisely which variation it would prefer.

**Hon. Marlene Jennings:** Oh, that's different. In that case, I have no objection whatsoever to the chair's request that we consider all of the amendments at the same time.

**The Chair:** Mr. Poilievre.

**Mr. Pierre Poilievre:** I'd like to get some commentary from the panel on these amendments.

**Mr. Joe Wild:** Thank you, Mr. Chairman.

I think the place to start is with line 7 on page 174, where the amendment proposed by the member would change the statement, which is now, "Within the framework of the appropriate minister's responsibilities and his or her accountability to Parliament", to say, "accountability to the House of Commons".

I think the issue is that this is not a reference to a committee; this is a specific reference to the institution of Parliament, in that ministers have accountabilities that are exercised not just through the House of Commons but also through the Senate. Ministers appear before Senate committees and answer questions before Senate committees. The amendment to go to just the House of Commons suggests a bit of a half measure, although certainly the accountability of a minister is more than half, given the fact that it is the House that holds or determines whether or not a government has confidence and is able to govern.

The simple point I would make in terms of the reason Bill C-2 says "accountability to Parliament" is that Parliament is a recognized institution and is recognized as being both Houses—the Senate and the House—and the framework of minister's responsibilities and accountabilities operate vis-à-vis both of those institutions.

When we get down to the next set of amendments on line 12, we're actually talking about, then, appearing before the appropriate committee of Parliament. Certainly this was the point that I thought Mr. Walsh was making—that Parliament itself doesn't have committees. From a technical perspective, we talk about committees of the House and committees of the Senate. It is for that reason that the government amendment, which comes a little later in this package, would actually have changed that line to speak to the appropriate committees of the Senate and the House of Commons, again recognizing that in this framework we're now talking about an accounting officer—in other words, a deputy of a department—and they certainly appear before both committees of the House and the Senate, and are answering questions with respect to the administration of their department before both.

The amendment proposed by the member would only speak to the appropriate “committee of that House”. Given the reference earlier in the paragraph to the “House of Commons”, I suspect that's going to be interpreted as limiting it to the House of Commons. The government amendment was to change the committee reference to make it clear that we are talking about committees of both the House and the Senate, and the government amendment does not change that first reference about the context of the minister's accountability being one of “to Parliament”.

• (1655)

**Hon. Marlene Jennings:** On a point of order, given Mr. Wild's explanation, I'm prepared to withdraw my amendments, L-27.1 and L-27.2, because both are found within the government amendment, G-53.1.

**The Chair:** Is L-27.3 still there?

**Hon. Marlene Jennings:** No, that is withdrawn too, because the government amendment, G-53.1 deals with line 7 on page 175.

**The Chair:** Mr. Martin, the chairman has a question of you. The Liberal caucus has withdrawn three amendments. They have withdrawn L-27.1. NDP-22.1 is identical to that. They have withdrawn L-27.3. NDP-22.2 is identical to that. The question is whether you're going to proceed with those and leave for debate G-53.1, or whether you are going to proceed with those two amendments.

**Mr. Pat Martin:** It was my intention, Mr. Chairman, to go ahead with NDP-22.1, yes. Is that your question?

**The Chair:** You've answered it. I guess we turn to that one.

**Mr. Pierre Poilievre:** Given that I still have the floor, Mr. Chair...?

**The Chair:** Well, you have the floor for something that's been withdrawn.

**Mr. Pierre Poilievre:** No, we're discussing a whole series of amendments together.

**The Chair:** Yes, you're right. I did say that. You're absolutely right, sir. I'm glad you're awake.

**Mr. Pierre Poilievre:** I wonder if Ms. Jennings withdrew it just to get me to stop talking. You never know. She knew I would.

**The Chair:** Let's stop the chit chat and proceed.

**Mr. Pierre Poilievre:** Since there are two amendments with line conflicts remaining before us, I'd like to get the viewpoint on each of them from our expert panel.

**Mr. Joe Wild:** Thank you, Mr. Chairman.

Amendment NDP-22.1 is obviously the same as the Liberal amendment that was just withdrawn. I'm not sure if the member was present when I made my earlier comments—I don't necessarily want to go through them all again—but it's just to point out that the government amendment G-53.1 addresses certainly the issue with respect to part (b) of NDP-22.1, which is the notion of, instead of saying “committee of Parliament”, saying “committees of the Senate and the House of Commons”. The reason for the government amendment saying that is that accounting officers, as we were talking about them, appear and answer questions before both House committees and Senate committees.

With respect to the first part of the amendment, in terms of saying “accountability to the House of Commons”, that again is in the context of a description of a minister's accountability. The Bill C-2 proposed section talks about that accountability as being “to Parliament” because ministers are accountable to the institution as a whole, in the sense that they're appearing before committees of both the House of Commons and the Senate and they're answering questions before both. And in that case, the use of “Parliament”—at least in the government's perspective—was appropriate.

Certainly my understanding of Mr. Walsh's opinion is that really he was talking about the statement of a committee of Parliament, and that would be inappropriate. It is more appropriate to express it as “committees of the Senate and the House of Commons” when we are speaking of both, which is what the government amendment attempts to do.

• (1700)

**The Chair:** Are you finished, sir?

Mr. Martin.

**Mr. Pat Martin:** Having heard that explanation and now that I've seen G-53, G-53.1, and G-53.2, I'll withdraw my amendments.

**The Chair:** We're back to one amendment, which is a government amendment on page 178.2.1, and it is called G-53.1.

Mr. Poilievre.

**Mr. Pierre Poilievre:** I so move.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 261 as amended agreed to on division)

**The Chair:** Oh, I made a mistake. I shouldn't have done that, folks. Oh well, we passed it, so too bad.

We're going to move to the schedule. Ladies and gentlemen, there's an amendment on the schedule, which is government amendment G-62 on page 199.

Mr. Poilievre.

**Mr. Pierre Poilievre:** I so move.

I invite commentary from the panel.

**Mr. Joe Wild:** The government amendment G-62 is making technical changes to the list of aboriginal self-governments that are listed in that schedule. There were various technical mistakes in reflecting the names of those governments, and this schedule is simply correcting that. It neither adds nor deletes from it.

**The Chair:** Mr. Owen.

**Hon. Stephen Owen:** Thank you, Mr. Wild. Is the amended schedule now complete with respect to those first nations that have self-government agreements?

**Mr. Joe Wild:** The schedule reflects all first nations with self-government agreements that have been ratified by an act of Parliament.

**Hon. Stephen Owen:** Thank you.

**The Chair:** All those in favour of G-62?

Excuse me.

**Mr. Pat Martin:** I was hoping to speak to this.

• (1705)

**The Chair:** Oh, I'm sorry, Mr. Martin. You have the floor, sir.

**Mr. Pat Martin:** We do have a motion dealing with this idea that the Auditor General should be able to assess the books of first nations. We don't agree at all that the role of the Auditor General should be expanded to involve first nations. We feel it doesn't take into consideration the unique relationship between first nations and the government. This implies, or it has its origins in the idea, that first nations are spending the government's money and that we then should have some direction, control, oversight, and scrutiny of how they spend it. That's not true. Once the contribution agreement or the transfer of money takes place, that money is theirs to do with as they see fit. You could call it payment for who knows what, but the idea that the Auditor General should be able to follow the money is absolutely true for any government-funded agency, institution, etc.

You don't have the Auditor General auditing the Government of Mali, for instance. When we have overseas development aid delivered to Mali, that money is delivered to the government there, or to the delivery agency, I suppose. Perhaps if it is CIDA doing the work, there would be some oversight, so maybe that's not the best analogy.

But I strongly object to having first nations listed in any capacity as being within or outside of the oversight of the Auditor General. We shouldn't be raising that question at all.

**The Chair:** Mr. Murphy.

**Mr. Brian Murphy:** Help me, Mr. Wild. The schedule refers to section 42. Is that 42 of Bill C-2 or 42 of the Auditor General Act, or what the—?

**Mr. Joe Wild:** It's section 42 of the Financial Administration Act

**Mr. Brian Murphy:** What page of the act?

**Mr. Joe Wild:** —which is being amended in Bill C-2. You will find it on page 193, and it's clause 315 of Bill C-2. That clause sets out a discretionary authority for the Governor in Council to make regulations with respect to a host of items. The schedule comes in play on page 194, under the definition of "recipient", where we state that it:

does not include

[...]

(c) the government of a foreign state, a provincial government, a municipality or an aboriginal body named in Schedule VII, or any of their agencies;

**Mr. Brian Murphy:** Other first nations. Then we'll get back to that today when we get to clause 315 of this bill. Is that it?

**Mr. Joe Wild:** Yes.

**Mr. Brian Murphy:** Thank you.

**The Chair:** Mr. Owen.

**Hon. Stephen Owen:** I have a question for Mr. Wild, if I could.

We have a couple of amendments coming up with respect to the application of the act.... Actually, I've answered my own question. Thank you.

**The Chair:** Ms. Jennings.

**Hon. Marlene Jennings:** This is for a technical expert. I'd like to know if supporting amendment G-62 would have any impact should this committee adopt the amendment removing the clause in Bill C-2 that gives the Auditor General the authority to audit first nations?

The Auditor General herself said that she does not wish to have that authority; that should the committee in its wisdom decide to force that authority on her, she will never use it, in most likelihood; and that she was supportive of the first nations developing their own auditor general system, and she's been working with them to achieve that goal.

So let's say we adopt G-62. Then should we adopt the amendment—which concerns clause 315, which gives the Auditor General the authority to go in and audit first nations governments—that removes this authority from the Auditor General, does that have any incidence on the fact that some of these first nations have self-government agreements that have been ratified by government? Does that have any legal incidence?

**Mr. Joe Wild:** It could. I don't know, Mr. Chairman, it may not actually be a bad idea for us to take a couple of minutes to discuss with the legislative clerks the interactions that are happening here.

The only thing I would point out is that if the schedule is approved by the committee and then there were an amendment that would attempt to remove the reference from the schedule and the definition of "recipient", I suspect we'd have a bit of a problem.

**The Chair:** So we'll break.

• (1709)

(Pause)

• (1721)

**The Chair:** Ladies and gentlemen, I'd like to call the meeting back to order.

In the break we agreed that perhaps we shouldn't be proceeding with the schedule at this time, so we'll delay that amendment, which was G-62, for the reason that we were starting to get into it and there's no point.

(Amendment allowed to stand)

**The Chair:** We'll proceed to the vote on clause 239. The vote on clause 239 will apply to clauses 259 to 261 inclusive, clause 270, clauses 273 to 277 inclusive, and clause 299.

(Clause 239 agreed to)

(Clauses 259 to 261 inclusive agreed to)

(Clause 270 agreed to)

(Clauses 273 to 277 inclusive agreed to)

(Clause 299 agreed to)

(Clause 240 agreed to on division)

**The Chair:** We have a problem with clause 241. This involves the Canadian Dairy Commission and it's consequential to clauses 242 and 244, so I guess we'll vote on that.

(Clause 241 agreed to on division)

(Clause 242 agreed to on division)

(Clause 244 agreed to on division)

(Clause 243 agreed to on division)

**The Chair:** Monsieur Sauvageau.

[*Translation*]

**Mr. Benoît Sauvageau:** On page 167 of the bill, subclause 5(1) of clause 243 is written in English, even in the French section. Is it a title?

Okay, thank you.

[*English*]

**The Chair:** All right, thank you.

(Clause 245 agreed to)

• (1725)

**The Chair:** Now we're on to clause 246. There are some consequential clauses, so the vote on clause 246 applies to clause 248, clauses 264 to 268, clause 271, and clause 297.

(Clause 246 agreed to on division)

(Clause 248 agreed to on division)

(Clauses 264 to 268 inclusive agreed to on division)

(Clause 271 agreed to on division)

(Clause 297 agreed to on division)

**The Chair:** We'll go to new clause 246.1, and there's a government amendment. That's on page 177 of the amendments and it's G-53.

Mr. Poilievre, perhaps you could move that, please.

**Mr. Pierre Poilievre:** Yes, I so move.

**The Chair:** It's inadmissible.

Amendment G-53 proposes to define the term of office for directors of the Canadian Tourism Commission. *House of Commons Procedure and Practice...*

You're right, I should have this memorized by now.

**An hon. member:** Dispense with it.

**The Chair:** Dispense.

So we go to proposed section 246.2 from the same amendment. It is on the same page. Guess what I'm going to do?

**An hon. member:** Rule it out of order.

**Mr. Pierre Poilievre:** Ouch.

**The Chair:** You've moved it and I've ruled it out of order. Right?

**Mr. Pierre Poilievre:** That's correct.

**The Chair:** It's inadmissible.

(Clause 247 agreed to on division)

**The Chair:** We now go to clause 249. This is the Cape Breton Corporation Act.

The vote on clause 249 applies to 250 to 255.

(Clauses 249 to 255 inclusive agreed to on division)

(Clause 256 agreed to on division)

(Clauses 257 and 258 agreed to)

(Clauses 262 and 263 agreed to)

(Clause 269 agreed to)

(Clause 272 agreed to)

(Clauses 278 to 284 inclusive agreed to)

• (1730)

**The Chair:** Now we have clause 285, which is consequential to clauses 286 to 291.

**Mr. Paul Dewar (Ottawa Centre, NDP):** On clause 285 we have an amendment.

**The Chair:** Yes, I was just about to—

There is a series of other clauses which relate to 285, so we'll deal with the amendments that pertain to that subject matter before we vote on clause 285.

We'll deal first with the amendments to clauses 287 and 288, and then we will vote on clause 285, and its results will apply to those two sections.

We will move to the first amendment, which is NDP-23 on page 179 of your package, which relates to clause 287.

Mr. Dewar.

**Mr. Paul Dewar:** Mr. Chair, I would like to move it and I'd like to propose a subamendment.

**The Chair:** Your subamendment?

**Mr. Paul Dewar:** It would be beneficial if I could have this handed around to the committee.

**The Chair:** We're going to pass this around before we get into this.

Did you have some more comments on something?



**Mr. Paul Dewar:** No.

**The Chair:** Mr. Sauvageau.

[*Translation*]

**Mr. Benoît Sauvageau:** Is accepting a sub-amendment tantamount to declaring an amendment in order? In accepting a sub-amendment, have you just ruled the amendment to be in order?

[*English*]

**The Chair:** Good point. I appreciate all your help, Mr. Sauvageau.

**Mr. Benoît Sauvageau:** It's my pleasure, Mr. Chair.

**The Chair:** I hate to say this after going to all this trouble, Mr. Dewar, but I'm going to rule this inadmissible.

**Mr. Paul Dewar:** Could I have your reason?

**The Chair:** Indeed, you will. NDP-23 proposes a process for the appointment of members to the National Capital Commission. Specifically, proposed subsection (2) creates a committee of the House of Commons.

The *House of Commons Procedure and Practice* states on page 654:

An amendment to a bill that was referred to committee *after* second reading is out of order if it is beyond the scope and principle of the bill.

The creation of a committee of the House is a new concept that is beyond the scope of Bill C-2, and NDP-23 is consequently inadmissible.

Mr. Dewar, I'm sorry, they were letting you go on for that.

Sorry, yes, a point of order.

**Mr. Paul Dewar:** Could I have instruction on steps to challenge the chair on this issue?

**The Chair:** Sure, you can challenge it. There's a majority vote and it's non-debatable. The vote is to sustain the chair.

• (1735)

**Mr. Paul Dewar:** Can I put forward the rationale or not?

**The Chair:** There's no debate. Do we sustain the vote of the chair?

**Some hon. members:** Yes.

**The Chair:** I'm afraid it's gone.

Mr. Dewar, I didn't catch that, and I'm sorry to go for all that. I should have, before you passed all that around.

We therefore go to the vote on an amendment under clause 288, which is a government amendment at page 181.1. It's G-53.2.

Mr. Poilievre.

**Mr. Pierre Poilievre:** I have a problem here. I'm afraid it didn't appear in the briefing book.

**The Chair:** You don't have that?

**Mr. Pierre Poilievre:** I didn't, no.

**Mr. Tom Lukiwski:** Mr. Chair, if you wish, I'll move that, but I'll ask our technical panel to make comment, please.

**Mr. Joe Wild:** Mr. Chairman, it's with some sheepishness that I admit this is simply a drafting error. The reference to the board is being changed to a reference to the commission, which is the appropriate name of the actual governing body of the National Capital Commission.

(Amendment agreed to [See *Minutes of Proceedings*])

**The Chair:** Don't worry about errors, Mr. Wild. You can see we make errors all the time here. We try to do our best. But thank you, sir.

We go back to clause 285. As I indicated, the vote on 285 will apply to clauses 286 to 291.

(Clauses 285 to 291 inclusive agreed to)

**The Chair:** We will go to clause 292, the Pilotage Act. It is consequential to clauses 293 to 296.

(Clauses 292 to 296 inclusive agreed to)

(Clause 298 agreed to)

(Clauses 300 and 301 agreed to)

(On clause 302)

**The Chair:** We have an amendment, which is on page 182. It is a government proposed amendment, G-54.

Would you move that, sir?

**Mr. Pierre Poilievre:** I so move.

**The Chair:** It is inadmissible. G-54 proposes to delete clause 302.

The *House of Commons Procedure and Practice*, on page 656, states: "An amendment is out of order if it simply attempts to delete a clause, since in that case all that needs to be done is to vote against the adoption of the clause in question."

Therefore, G-54 is inadmissible.

**Hon. Stephen Owen:** I wish to speak on the main clause.

• (1740)

**The Chair:** Mr. Owen, debate on clause 302.

**Hon. Stephen Owen:** I would like to hear from the government side as to the reason for wanting to delete it.

**The Chair:** The debate is on clause 302, not on an amendment that was ruled inadmissible.

**Hon. Stephen Owen:** Why, when we're voting on—

**Mr. Tom Lukiwski:** Mr. Chair, I'll take that.

I would first ask the technical panel to make comment on that.

**The Chair:** Mr. Wild.

**Mr. Joe Wild:** Mr. Chairman, the committee has been approving a vast number of amendments to all these various crown corporations. They have been approving amendments that extend the GIC's discretion to make appointments from a maximum of three years to a maximum of four years.

There were two inadvertent inclusions. One is the CBC, under the Broadcasting Act, where people were already at a five-year maximum. We accidentally included them, reducing theirs to four years. So that's why that one was ultimately defeated. We have the exact same situation with Telefilm Canada. It's currently a five-year maximum. They were accidentally included, which would reduce them to four years. This was not the policy intent.

**Mr. Tom Lukiwski:** If I could follow up, that's the rationale, Mr. Chair, as to why we would be voting against clause 302.

(Clause 302 negated)

(Clause 303 agreed to)

(On clause 304)

**The Chair:** Clause 304 relates to procurement in the Auditor General Act. There are a number of other clauses related to this particular clause, so we'll deal with all the amendments pertaining to clause 304 before we put the question. So we'll first deal with the amendments to this clause and to clause 305 and clause 307, and then we will put the vote on clause 304, which is consequential to clauses 305 to 307.

So the first amendment is G-55 on page 184.

Mr. Poilievre.

**Mr. Pierre Poilievre:** I so move.

(Amendment agreed to [See *Minutes of Proceedings*])

(On clause 305)

**The Chair:** The amendment to clause 305 is another government amendment, G-56.

Mr. Poilievre.

**Mr. Pierre Poilievre:** I so move.

(Amendment agreed to [See *Minutes of Proceedings*])

(On clause 307)

**The Chair:** We have amendment G-57 to clause 307.

It is moved by Mr. Poilievre.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clauses 304 and 305 as amended agreed to)

(Clause 306 agreed to)

(Clause 307 as amended agreed to)

(On clause 308)

**The Chair:** We go to clause 308, and there's an amendment, G-58.

Mr. Poilievre.

**Mr. Pierre Poilievre:** I so move.

• (1745)

**The Chair:** Ms. Jennings would like to make some comments.

**Hon. Marlene Jennings:** I'd just like an explanation from our technical advisers on what G-58 does.

**Mr. Joe Wild:** Well, I'm going to be sheepish again. It fixes some gaps in the drafting.

The Auditor General derives powers, duties, and functions from two places. As you'll note, in Bill C-2 the proposed subsection 18.2 (1), the last line—the easiest reference to find—says, “powers, duties or functions under this Act”. That's a reference to the Auditor General Act. The Auditor General also obtains powers, duties, and functions to conduct audits under part 10 of the Financial Administration Act, which pertains to crown corporations; thus the amendment suggests referring to “powers, duties or functions under this or any other Act of Parliament”.

So the amendments proposed in G-58 are simply to bring the bill in line with where she actually derives her sources of authorities from.

**The Chair:** You don't need to be sheepish, sir. You and your staff are doing an outstanding job.

(Amendment agreed to [See *Minutes of Proceedings*])

(Clause 308 as amended agreed to)

(On clause 309)

**The Chair:** We have an amendment to clause 309, a New Democratic Party amendment, NDP-24.

Mr. Dewar.

**Mr. Paul Dewar:** Thank you, Mr. Chair.

It is my pleasure to table NDP-24. In fact, one of the key components of accountability is the fact that we need to keep an eye on the money, so to speak. And we need to make sure the public is going to be able to make it known when there are concerns. When they have information they want to bring forward to the government, they can do so in light of the fact that we now will have a procurement auditor when this is passed. What we intend to do with this amendment is to change the language so that can happen.

We see this in other jurisdictions, where to hold the government to account it should allow all people to be able to do that. So the intent of the amendment is to broaden who can make a complaint to the procurement auditor. If indeed we want to shine a light on accountability and use all tools we have available, I think it's important we not limit who can do that.

When we look at recent events, we've seen there were concerns about how money was spent. We've seen how, for people who might have had information, often the only thing they had available to them was going to the media or making it known to people who didn't have authority. Now we have an office that has authority, in a procurement auditor. We want to make sure that for good governance this would be available to all.

So to change and have the amendment read “to any person,” that's what this amendment would do. That's why I think it's really important. It's a small change, but an important change.

**The Chair:** We have a list. Mr. Sauvageau.

[*Translation*]

**Mr. Benoît Sauvageau:** My question is for Mr. Wild.

If we say “any person may file a complaint”, would that not cause the problem that we have already discussed? Would that include students? Or, to go further, would oversea suppliers or other countries be able to challenge a decision made by the Canadian government?

I am opposed to this for several reasons.

[*English*]

**Mr. Joe Wild:** The amendment as proposed would open up the complaint to any person. Given that there are no consequences or protection really being afforded to the person who is making the complaint, it doesn't necessarily raise the same issues that were raised under the Public Servants Disclosure Protection Act.

It is certainly correct that it would open the door to foreign suppliers making complaints to the procurement auditor. Just on that point, I think it's important for the committee to understand what types of complaints the procurement auditor can address. They're really complaints that are only going to be made by suppliers, because the complaints that a person can make or that the procurement auditor can actually deal with are outlined in proposed section 22.1, paragraphs (3)(b) and (c) on page 190. So we're talking about complaints with respect to compliance with the government contracts regulations, if the value of the contract is under the thresholds that are set out in the Agreement on Internal Trade, because over those thresholds the complaint mechanism would be to the Canadian International Trade Tribunal.

The other is complaints respecting the administration of the contract. If someone's not getting paid in a timely fashion, for

example, they could go to the procurement auditor to attempt to get payment under their contract. For that reason, and given that scope of complaint mechanism that's contemplated, proposed section 22.2 works hand in glove with that in restricting the complaints to Canadian suppliers. The emphasis on Canadian suppliers was meant to, from a policy perspective, prevent foreign suppliers from using the procurement auditor to make complaints instead of going through appropriate trade agreement channels.

(Amendment negated [See *Minutes of Proceedings*])

● (1750)

[*Translation*]

**Mr. Benoît Sauvageau:** Thank you very much.

[*English*]

**The Chair:** We are voting on clause 309, and I might add it is consequential to clause 310, so it will apply to clause 310.

(Clauses 309 and 310 agreed to)

**The Chair:** I know members of the committee think we're close to finishing this. The chair doesn't think we're close, and I'm going to suggest...I'll do whatever the committee wishes. I'm going to suggest we have a break. We're not close.

**Mr. Alan Tonks:** I think we're closer to dinner.

**The Chair:** We're going to adjourn.

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**Published under the authority of the Speaker of the House of Commons**

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

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