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Chair

Mr. Paul Szabo

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•(1005)

[English]

The Chair (Mr. Paul Szabo (Mississauga South, Lib.)): This is the 44th meeting of the Standing Committee on Access to Information, Privacy and Ethics. The order of the day is pursuant to Standing Order 108(3)(h)(vi), a study of the activities of the Conservative Party of Canada during the 2006 election campaign in relation to certain election campaign expenses and the ethical standards of public office holders.

Colleagues, as you know, the committee authorized the chair to arrange to have Elections Canada appear as our first witness. After initial discussions with the Chief Electoral Officer, I wrote to him to outline our discussion and he responded with a draft outline. My letter and the draft outline from the Chief Electoral Officer were duly circulated to all members of the committee. There was some favourable comment back, so I'm sure we are on the right track as a starting point.

There has been some consultation, and I understand there are three sections in Mr. Mayrand's outline. Rather than having questions after each section, he will be presenting all of his report. His presentation to us is going to take about an hour, and then we will go into questions.

Mr. Hiebert raised this point with me in the first instance simply because it's very difficult to separate some of these issues. They seem to flow from one to another very easily. I think our questions will be facilitated by having all of Mr. Mayrand's interventions at the beginning.

I want to specifically thank our researchers from the Library of Parliament for the excellent material they prepared for us. I think you will agree it has been extremely helpful for us to get to where we are today with some of the facts, and I'm sure it was helpful to members in preparing for these meetings.

You will notice that I have put on the notices for both today and tomorrow an item of committee business. It is my intent, before we finish at the end of today, to propose to the committee an outline of how we will approach future witnesses and to have a preliminary indication of proposed meeting dates to deal with them. We will finalize that work at the end of our second day, tomorrow. I'll outline that for the members at the end of the day.

Finally, we have received three motions from Mr. Tilson, which meet the necessary time requirement to be in order. They properly will come before this meeting. It is my intent to deal with them at the

end of the day, at the same time we deal with our preliminary discussions on future witness requirements.

If that's acceptable to members, I would like to welcome our witnesses, Mr. Marc Mayrand, Chief Electoral Officer; and someone who is very well known to me through his 25 years of service to the scrutiny of regulations committee, Mr. François Bernier, director of legal services.

Gentlemen, welcome. We thank you kindly for all of your assistance and cooperation.

Mr. Mayrand, the floor is yours.

Mr. Marc Mayrand (Chief Electoral Officer, Elections Canada): Thank you.

Good morning, Mr. Chair and members of the committee.

I am accompanied today, as the chair indicated, by Mr. François Bernier, the legal services director at Elections Canada.

I was requested by the chair of this committee to assist members in the study of the review and treatment of election financial returns and the key considerations involved in the review of these returns. In discussions prior to my appearance, the chair requested that I provide a detailed explanation of the aspects of the legislative and administrative framework that relate to political financing under the Canada Elections Act and, more specifically, of the treatment of election expenses.

This will be the subject of the first part of the presentation. I hope it will provide the committee with a better understanding of the operating context in which decisions are made regarding reimbursement of electoral expenses. I will then turn to the subject of particular decisions of interest to the committee and explain how they relate to the legislative and administrative framework.

[*Translation*]

The mandate of Elections Canada is to administer the Canada Elections Act in a fair, consistent, transparent and impartial manner. As an officer of Parliament, my first duty is to serve Parliament and Canadians. While the committee is reviewing the activities of public office holders, I trust it will understand that in my capacity as Chief Electoral Officer of Canada, I can only speak to electoral matters. I will not comment on ongoing investigations of the Commissioner of Elections Canada, or the specifics of the case currently before the Federal Court. As well, I will not deal with any individual cases.

Mr. Chairman, with your concurrence, I will now proceed with the first part of my presentation. The committee has already received a presentation that extends to a number of pages—42 pages, I believe. So I won't read each of those pages, but I will simply make the main comments on the essential aspects of the presentation.

The presentation will contain four parts: first, the objective itself, as well as a part dealing with the key principles underlying the legislation and the administration of that legislation, the key aspects of the legislation, and, lastly, the aspects of the administration of that legislation. I will also provide a brief conclusion.

•(1010)

[*English*]

I think it's fair to say that the first hundred years of federal democracy in Canada have been focused almost exclusively on the conduct of elections and on progressively expanding the franchise—the right to vote—to all Canadian citizens. In fact, the right to vote became a fundamental right protected by the Constitution and the Canadian Charter of Rights and Freedoms in 1982.

This focus continues today, as the agenda of the 39th Parliament attests. For example, Bill C-2, the Federal Accountability Act, dealt with the appointment of returning officers, who are now the responsibility of the Chief Electoral Officer. It also dealt, under Bill C-31, with the integrity of voting. It also dealt with the issue of proof of residence, under Bill C-18. And it is considering, currently, Bill C-6, which deals with visual ID; Bill C-16, which deals with advanced polling; and Bill C-20, an important piece of legislation that deals with the appointment of senators. This is all to show that there is still a focus on the electoral process and the conduct of elections.

However, over the last 40 years, growing concerns have been expressed with regard to the influence of money in the electoral process. These concerns have led Parliament to incrementally design a regulatory regime to govern the use of money during electoral campaigns. We are now at the point at which Canada is at the forefront among mature democracies in how it regulates the influence of money in election campaigns. This regulatory regime of political financing was initially built in the seventies, and it has since witnessed repeated legislative reform that continues today. Again, this Parliament passed Bill C-2, which deals with contributions and gifts and which banned contributions from corporations and unions. It is also considering another important aspect of the financial regime, under Bill C-29, with regard to loans.

My purpose today will be to deal with a particular and key aspect of our political financing regime, that of election expenses and their

treatment by Elections Canada under the Canada Elections Act. More specifically, I will touch on the legislative framework, the administrative framework, and the compliance and enforcement program.

There are certain principles underlying the legislative and administrative framework. First, to maintain public trust, are transparency and fairness. These principles are expressed through various provisions in the act that deal with public disclosure, expense limits, public funding, compliance and enforcement, and, something that is often forgotten, the distinctiveness of political entities. Each has its own regime, with distinct rights and obligations.

Transparency is about disclosure. It's about providing information to electors on candidates, parties, and other entities. It involves, with regard to financial matters, reporting revenues and expenses and the sources of those.

Fairness is the key principle of a healthy democracy. In our democracy, fairness is about allowing political parties' candidates to have an opportunity to present their visions, their policies, and their values to electors. What those are and how they are communicated to electors is the exclusive domain of political parties and candidates. However, legislation seeks to ensure that the competition among political parties and candidates to secure the vote of electors be conducted within certain rules designed to create and maintain a level playing field. One area of legislation, again, over the last 40 years, has been the adoption of rules that will foster this level playing field. These rules deal specifically with how money can be raised and how it can be spent in order for them to present ideas and reach out to electors.

The Canada Elections Act passed it to the CEO to administer these complex rules, with a view to ensuring that key principles are maintained at all times. In doing so, Elections Canada must act fairly and impartially and exercise due diligence at all times. When it finds evidence of non-compliance and possible offences, it must exercise the authorities provided by the legislation in accordance with all the requirements of fairness and due process, within the strict limits of the law. To do otherwise would undermine not only Elections Canada as an institution but also the democratic process itself.

•(1015)

Let me turn now to the key aspect of the legislative framework as it relates to the treatment of election expenses and the role these key principles play in the electoral law.

The relevant aspects of the legislative framework involve key definitions, a brief discussion of duties of official agents, the notion and concept of election expense limits, the concept of transfers among political entities, reporting requirements for those political entities, entitlement to reimbursement, and key differences between parties and candidates. Note that some misunderstand the system and tend to view parties and their candidates as a single entity, yet the law makes clear distinctions and establishes distinct responsibilities, benefits, and obligations for parties and candidates. For the most part, these are treated independently of one another. This is particularly true in disclosure and reporting requirements, which are different for parties and candidates. Access to public funding is different. Spending limits are set differently for candidates and parties. To some extent, rules governing the raising of contributions are different for candidates and parties.

Let's first look at key definitions. Under candidate electoral campaign expenses, there are three key definitions that need to be considered: candidate electoral campaign expenses; candidate election expenses; and candidate personal expenses.

Electoral campaign expenses are expenses reasonably incurred in the election and include election expenses themselves and personal expenses. There are electoral campaign expenses that are neither election expenses nor personal expenses. An example is the audit expense in excess of the subsidy. It is an electoral expense, but it is not an election expense. There is also the rent of an office outside the rent period. For example, when a candidate rents an office before the writ is dropped or carries the office after the polling date, these are electoral campaign expenses, but they are not election expenses.

An election expense includes any cost incurred or non-monetary contribution received to the extent that the property or service for which the cost was incurred or non-money contribution received is used to directly promote or oppose a candidate during an election period. The expression "directly promote" does not refer only to expenses incurred to expressly urge voters to vote for or against a particular candidate. It has a much broader meaning that encompasses all expenses that directly assist in getting a candidate elected. For example, it includes the rental of office space, equipment in that office, the computers, the supplies, and the remuneration of campaign workers during the election period. All such expenses directly promote the candidate and are thus election expenses for the purpose of the act.

The third definition has to do with personal expenses. Personal expenses of a candidate are his or her electoral campaign expenses other than election expenses reasonably incurred in relation to his or her campaign. Personal expenses include travel and living expenses, child care, and similar expenses.

It's important to note that there are three categories of expenses, each with its own definition and standards. Election expenses must generally be disclosed. They are subject to a reimbursement, and they are subject to spending limits. Personal expenses must be disclosed, and they are subject to a reimbursement. Residual expenses that are neither personal nor for an election must be disclosed, but they are not subject to a reimbursement. Again, I mentioned previously the subsidy for audit.

- (1020)

Another key concept in looking at election expenses is the notion of transfer. The act allows specific political entities of the same political affiliation to move resources amongst themselves without being subject to the restriction on the source and amounts of contributions set out in the act. A contribution is the amount of money received that is not repayable; otherwise it would be a loan. It is the amount of money received that is not repayable, or the commercial value of a service or a property, or the use of property or money to the extent that it is provided without charge or at less than commercial value.

Again, this is a new, essential concept—commercial value. How is commercial value defined? It's the lowest amount charged for a property or service by the person who is in the business of providing that good or service. Alternatively, it's what another commercial provider charges for the property or service who is not in that business.

At the end of the electoral campaign, candidates must file an electoral campaign return. That return is an account of all financial transactions for an election. It consists of a form that has 15 pages and is divided into four parts. It's a bit longer than even a tax return, so there's a level of complexity attached to filing those returns.

Let me give you an example of how these concepts can come together. Let's assume that a party pools the purchase of lawn signs for its candidates and offers those lawn signs to candidates. They have the option of accepting the package or turning it down. Let's say one candidate agrees to purchase 1,000 signs for his campaign and that those signs have a value of \$10,000; however, the candidate can only afford \$2,000. Provided the signs are used during the campaign to promote the candidate, the return will have to show the transaction as follows. First of all, the election expense will be \$10,000 for the candidate, because he received those 1,000 signs and used them during the campaign. That's the amount shown as the expense. Within that he will show the paid expense as \$2,000. He will show a non-monetary transfer of \$8,000, which is the commercial value of the signs that were transferred from the party to the candidate. The amount shown as the expense will be counted against the spending limit and it will be eligible for reimbursement. The amount shown as non-monetary will count against the spending limit, but it will not be reimbursed since nothing was paid for that amount.

This is a very simple example of how those transactions have to be reflected in the return.

- (1025)

To emphasize the critical role of money and the need to rigorously control inflows and outflows and ensure that financial activities are strictly within the constraints of the legislation, the legislation provides or requires that each candidate appoint an official agent. In fact, a candidate cannot officially run as a candidate without having appointed an official agent. This is a must under the legislation.

An official agent is much more than a bookkeeper. In fact, if we can do an analogy, he or she could be seen as a treasurer or a financial comptroller. You have on slide 9 the key duties of an official agent.

Generally, the official agent is responsible for controlling all electoral campaign expenses; that is, for a candidate's campaign, only the official agent or the candidate or someone authorized in writing can incur an electoral campaign expense. So you will understand that to fulfill his or her duties, the official agent must of course be familiar with all the concepts and the definitions I mentioned earlier and must develop a good understanding of the underlying principles of the legislation.

Let me talk briefly about expense limits. The first point to note is that there are separate limits for parties and candidates and that those limits apply to election expenses, whether paid or unpaid, and include the commercial value of non-monetary contributions or transfers.

Elections Canada calculates those limits for each in accordance with a formula set out in the act. I will not go through the specifics of the formula, except to say that, for candidates, that formula takes account of the number of electors, the population density in the riding, and the geography of the riding, and provides an adjustment for inflation.

Spending limits for parties are a little bit simpler to calculate. It's the number of electors in the ridings for which candidates are presented by the party.

For the 39th election—that's slide 13—the average expense limit for candidates per electoral district was a bit over \$81,000, and for a registered party that endorsed a candidate in all 308 ridings, the limit was set at a bit over \$18 million. What does that mean? One may be tempted to say that in total a party having 308 candidates could spend altogether up to \$18 million for the party and up to \$24 million, almost \$25 million, given the limits of each and every candidate, for a total of \$43 million. However, to look at it in this manner would be mistaken, as the law does not consider the political family as one entity but rather, in this case and this example, as 308 distinct, separate entities with their own rights and obligations.

Let me talk briefly about transfers. The Canada Elections Act recognizes the organic link that exists in the family of political entities, allowing them to move funds, goods, and services among themselves without treating those movements of resources as contributions. The provision of resources from one political party to another, which is not specifically provided for under the act, constitutes a contribution and is subject to the eligibility and limits set out in the act.

Transfer of expenses is not permitted, as this would render the distinct limit of parties and candidates meaningless. As you can see, it is absolutely essential to keep all those definitions and concepts as we look through various returns provided at the end of electoral campaigns.

You will find on slide 15 a table showing the transfers, what is allowed and what is not allowed. Clearly, you will see that transfers between parties and candidates are perfectly allowed by the Canada

Elections Act. It has some standards, but they can move resources freely between entities.

• (1030)

You will note that for candidates, these movements of resources can start only after they've been officially declared candidates, meaning that their candidacy has been registered with the returning officer. You will also note that transfers to candidates after polling day are allowed only to pay for unpaid claims and for nothing else.

You will find again at slide 16 another way of looking at it. There is a triangle on that slide that shows the relationship between the party, the candidates, and the EDAs, and the respective rights and obligations for each. You will see clearly that the transfer of money, goods, and services among all three entities is allowed. You will also note that the transfer of expenses is not allowed, and you will see that Elections Canada is overseeing, through various programs, how the money flows among entities.

I should point out that for the 39th election, Elections Canada dealt with 15 registered parties that had over 1,200 electoral district associations, and with over 1,600 candidates, each with their respective agents.

On page 17 you will find a table of the transfers reported in Canada through returns for the 39th election. You will see that all parties represented in the House have transferred resources with their affiliated entities. These have taken place between candidates and parties, between candidates and EDAs, and between parties and EDAs.

The Chair: Excuse me, Mr. Mayrand. Am I correct in understanding that "EDAs" refers to electoral district associations?

Mr. Marc Mayrand: That's right, they are electoral district associations. I apologize.

The Chair: That means "ridings" in the vernacular. Thank you.

Mr. Marc Mayrand: Now, regarding reporting requirements for candidates, slide 18 indicates that in support of the principle of fairness and transparency, the act sets out a number of standards and requirements touching on disclosure, reporting, and publication of financial affairs of political entities.

The candidate's campaign return is to be filed with Elections Canada within four months of the polling day, but many are filed late. That return must be accompanied by a declaration as to the accuracy and completeness of the return, signed by both the candidate and the official agent.

The campaign must also retain an independent auditor to examine the accounting entries of the candidate's electoral campaign return and to report on the finding of the audit. The auditor must provide an opinion on whether the return presents fairly the information contained in the financial records on which it is based.

I'm often asked, why audit the audit? Well, the independent audit that's provided with the return attests to the reliability of the entries in the books and records of the campaign. However, it does not attest to the compliance of transactions with the requirements of the act, which is the role and responsibility of Elections Canada.

So these requirements are preconditions for candidates or parties to secure public funding. Failure to meet these standards for electoral campaign returns may trigger the operation of penal or administrative sanctions, which I will discuss a little bit later in the presentation.

The expenses reported must be incurred by the official agent, the candidate, or someone authorized in writing. Again, that's a clear requirement of the act. As well, under the act, the candidate's official agent must receive all campaign contributions, deposit them in a designated bank account, and make all disbursements. All expenses must be reported at their commercial value in the return. These are critical, as they often constitute issues that come up during the review by Elections Canada auditors.

In fact, the next slide presents the requirements for parties' returns, which are somewhat different from those for candidates. Parties file their returns on election expenses within six months of polling day, as opposed to four months for candidates. Their returns are also accompanied by an auditor's report. However, there are no vouchers required for political parties' returns. Expenses must be incurred by the chief agent, as is the case for candidates.

I guess the fundamental difference here is that the returns for parties are considered to be accurate, unless there is an obvious error in them. It means that the in-depth review conducted for a candidate does not occur to the same extent for parties, as Elections Canada does not have the information, the tools, or the statutory authority to do so. The act does not provide Elections Canada with audit or inspection powers for parties' books and records, nor the authority to order the production of documents by parties.

Now, on reimbursement, there are formulas set out in the act, but let me simply stress that to be eligible for reimbursement, a candidate must have secured 10% of the valid votes cast in the riding. If the candidate achieves that 10%, the expenses that meet the requirements of the act will be eligible for reimbursement up to 60% of the expense limit.

Again, in order to determine the amount of reimbursement, Elections Canada will verify the returns provided by the candidate and the agent and will ensure that the returns are in compliance with the act. In carrying out that review, we will be reviewing the candidate's documentation and will be looking at payment of reimbursements while identifying potential and actual issues of non-compliance.

●(1035)

I want to stress here that in order to issue final reimbursement of election expenses and auditor subsidies, the CEO must be satisfied that certain provisions of the Canada Elections Act have been complied with. This assurance is achieved through the review and audit of those returns.

Let me turn for a moment to party election expenses. Again, these are set according to a certain formula set out in the act, which allows

parties to receive 50%—not 60%—reimbursement of paid election expenses per candidate. The threshold of votes to have access to that reimbursement is 2% of the national vote, or 5% of the vote in the ridings for which a candidate was endorsed by the party. It's paid in only one instalment.

●(1040)

[*Translation*]

On the next page, page 24, you'll find a table showing the key differences between parties and candidates. These differences concern: the election expense limit, which is different and is established differently for parties and candidates; the reimbursement of expenses that are subject to a different percentage; the fact that expenses must be incurred by the chief agent, in the case of a party, or by the candidate, in the case of the candidate, or by the official agent or person authorized in writing. Once again, with regard to review, you can see that no supporting documentation is required of the parties, whereas supporting documentation is required from candidates.

The level of popular support varies depending whether the entity is a party or a candidate. Lastly, election expenses eligible for reimbursement differ as well, since the party can only be reimbursed for general election expenses, whereas a candidate may be reimbursed for general election and by-election expenses, and, lastly, expense reports vary between parties and candidates.

On pages 26 and 27 of the presentation, you will also find certain statutory offences and penalties that are provided for by the act, for candidates, on page 26, and for parties, on page 27. This, of course, is a summary and overview of possible penalties. As you'll also see, in addition to criminal penalties, there may also be administrative penalties. For example, a candidate who fails to file an election return would forfeit the nomination deposit and, obviously, would lose eligibility for a refund. A candidate elected to the House of Commons could, in certain circumstances, be unable to sit and, lastly, could lose the right to be a candidate in a subsequent election.

Similarly, you have a fairly general presentation of the statutory offences and penalties for parties. Here again, in addition to the criminal penalties provided for by the act, there may also be administrative penalties, which are deregistration of the party and liquidation of its assets, which may be required by the CEO or by a judge.

This type of legislative framework could easily remain a dead letter if no institutions were responsible for ensuring its administration. In fact, if we do a historical review, we can see that this is one of the essential reasons why the Office of the Chief Electoral Officer was established: to ensure the act is administered and complied with in accordance with the requirements set out therein. Moreover, it is for that reason that the Office of the Commissioner of Canada Elections was first created in 1970. The name of that office was changed in 1974.

Elections Canada has thus put an administrative framework in place to ensure the sound administration of the statutory provisions. In that framework, we have two priorities. The first was to recruit qualified staff, to ensure we retain that staff as far as possible and to provide it with continuing training to update its knowledge, which reflects the changes in the environment and in the act. Lastly, we ensure we instill the values of fairness, impartiality and independence in all Elections Canada employees.

On another front, we have put in place a compliance strategy based on three essential pillars. Our first objective is to ensure promotion and prevention. We do that through numerous education, information and technical support activities with the political parties. The legislation obviously gives a mandate to monitor compliance with the act, which we do through a rigorous and impartial review of the election returns of candidates and parties.

● (1045)

Lastly, under the act, we are responsible, through the Office of the Chief Electoral Officer, for ensuring that non-compliance cases are handled in a manner consistent with the act.

[English]

Let me discuss more specifically three primary components of the administrative framework.

[Translation]

First, let's talk about prevention programs. Elections Canada offers political parties all possible information and assistance measures to ensure they are informed and clearly understand the requirements of the act. We hold information sessions for political party representatives across the country on a regular basis. In 2006, before the federal election, we held 40 of these sessions across Canada, involving more than 500 financial agents. In 2008, without knowing the exact date of the next election, we held 26 sessions involving 333 political party representatives across the country.

We also offer the political parties the opportunity to have specific training sessions. At political meetings, a party may occasionally wish to take the opportunity to update the knowledge of financial agents, and, provided we receive the request within a reasonable timeframe, we are eager to respond to it.

Since it is hard to reach all interested persons in this enormous country, we have also developed electronic tools: videos, online reports, telephone support lines, software and electronic presentations enabling all official agents and interested persons to get informed and acquire training in the field of election expenses. Elections Canada's website also provides multimedia kits and relevant information that can be useful to candidates and their agents.

Lastly, during an election period, there is a hot-line service for parties' legal counsel to address issues emerging during a campaign with electoral law expert counsel for Elections Canada.

Apart from these training, information and prevention activities, we also have compliance monitoring functions. It should be noted that, before being satisfied that the candidate and official agent have complied with the statutory requirements, the CEO must conduct a detailed review of reimbursements and election returns.

It should also be recalled here that this review of election returns must be conducted in light of the fact that public funds are involved, since the refunds come from funds paid by taxpayers. We have therefore introduced a review of returns program and have organized qualified staff to ensure that this review of returns is conducted in an impartial, objective and entirely independent manner.

Our audit staff are organized into three audit teams, each consisting of seven to nine auditors, one team leader and ultimately by an overall audit director. The teams are organized on a regional basis, not by party or political family. The regions are East, for Quebec and the Atlantic provinces, Ontario, and Central and Western Canada. This organization enables us to ensure that all returns filed with us are handled fairly and enables us to provide the service based on Canada's time zones and the official language of users.

This review of returns program does not necessarily involve a review of all documents filed. I have brought a return with me, which all members have no doubt seen at one point or another, since they have had to sign it. This return is accompanied by a declaration, the auditor's report and the documents supporting what is written in the report. Sometimes this involves boxes of documents.

● (1050)

So it goes without saying that we won't take a close look at every piece of information submitted to us. We'll proceed on the basis of certain factors, in particular whether or not the candidate is near the limit and certain other factors of that kind. But, generally, the auditors rely on the declarations made by the candidates.

Occasionally, certain questions arise in the review of a return. Auditors will then talk to the candidates or their agents to clarify certain information contained in the returns. Most of the time, that clarification is enough to ensure a return is processed. Occasionally, certain questions remain unanswered or without an adequate answer. In those cases, the auditor will increase the level of scrutiny of the documentation and will have to report to his or her supervisor.

When, upon review, the auditor is satisfied with the return, the review is submitted to the supervisor or the supervisor's supervisor to ensure that the file has in fact been handled in accordance with our program requirements, and, if it has, reimbursement is authorized. In some cases, the auditor may detect non-compliance questions or issues. Those issues are, once again, brought to the attention of the supervisor and of the supervisor's supervisor to ensure that they have indeed been clearly defined and that there is indeed a compliance issue.

If, following that review by the political financing directorate, the directorate considers that there is a non-compliance issue, the matter does not stop there. There will be another review, this time by a senior internal committee at Elections Canada, which will also assess the nature of the non-compliance, if it indeed seems apparent, and determine whether or not a file will be referred to the Commissioner of Elections. So you can see that there is an internal process at Elections Canada that ensures that the assessment of files and the decision to refer a file to the Commissioner is not a capricious or arbitrary decision, but one that is the subject of a rigorous internal process at Elections Canada. In fact, I would like to emphasize to committee members that the Office of the Auditor General found, in a performance audit of Elections Canada in 2005, that Elections Canada staff applied the method consistently in all cases.

As regards the timing of reimbursements, this entire process is designed to ensure that candidates can receive their reimbursements within a reasonable period of time. As you can see on page 36 of the presentation, for 540 of the 884 files that were submitted to us for the 39th election and that were eligible for reimbursement, we were able to process and issue reimbursement cheques within the six months following the filing deadline. If you asked me for the breakdown among the parties, I would tell you that it is entirely fair and shows that all parties and candidates were treated in the same way in this respect.

On page 37, you have a statistical overview of the number of candidates in the 39th general election, a total of 1,636 candidates who were required to file election expense returns. Of that number, you will note that 517 were unable to do so within the four-month deadline and therefore had to request a deadline extension, which was granted either by the Chief Electoral Officer or by the court, as provided by the act. It is therefore not unusual for returns to be filed late.

As you will also note, 540 candidates requested amendments to their returns after filing them with us. Those amendment requests were the result of discussions, which I mentioned a little earlier, between the auditors and candidates' official agents, in which both sides agreed that the best way to present the information would be to amend the return to more accurately reflect the transactions. Those requests were made at the time of the 39th general election in the case of 540 candidates.

•(1055)

In fact, as you will see, 884 candidates were able to receive a refund, and those candidates received a total of \$24 million in reimbursements out of public funds.

Furthermore, a little earlier I outlined the situations of non-compliance. I would like to point out that, in accordance with Canada's Elections Act, the Chief Electoral Officer is responsible for appointing the Commissioner of Canada Elections. This is an independent senior public servant appointed under the Canada Elections Act by the Chief Electoral Officer.

I would also like to note that, even though the Chief Electoral Officer appoints the Commissioner and determines his compensation, he does not have the power, except in very unusual cases, to direct the Commissioner to conduct an investigation. In fact, the only case in which the Chief Electoral Officer may direct the

Commissioner to conduct an investigation is where an allegation has been made that an electoral official, a returning officer or a member of the returning officer's staff has committed an offence. In all other cases, the power of the Chief Electoral Officer is limited to referring a matter to the Commissioner, who must then exercise professional judgment and discretion, and use his or her expertise to assess the file and decide the best way to handle the non-compliance situation. In some cases, he may decide on his own, based on the information forwarded to him, to conduct an investigation in accordance with the appropriate terms and conditions dictated by the circumstances of the matter.

Once again, I draw committee members' attention to the fact that the Office of the Auditor General of Canada also examined the Commissioner's investigation process and found that he had followed it consistently.

As I just briefly noted, when a complaint is received or when a file is referred to the Commissioner by the Chief Electoral Officer, the Commissioner assesses the file to determine whether the facts, as alleged, would constitute an offence under the act. He also determines what measures should be taken. Not all complaints necessarily warrant an investigation. Once again, everything depends on the circumstances, the facts alleged and the nature of the complaint. If he decides that there must be an investigation, he will determine the scope of that investigation and the best way to compile the potential evidence of that offence. If the Commissioner determines, following an investigation, that an offence has been committed and that it is in the public interest to lay charges, he may then make a recommendation to the Director of Public Prosecutions.

However, the decision to proceed cannot be made by a single individual. The Director of Public Prosecutions in turn conducts his own assessment of the circumstances of the facts adduced, determines whether, in his view, the evidence as gathered by the Commissioner would be likely to convince a competent court that an offence had been committed and, if so, proceeds to lay charges. A judge will obviously have to hear the parties, the charges and the evidence, determine whether an offence has in fact been committed and possibly find the accused guilty on the evidence adduced. A fourth, entirely independent party determines whether an offence has been committed and the nature of the penalty to be imposed.

Mr. Chairman, committee members, I would like to emphasize that the mandate of Elections Canada is to apply the legislative framework in as impartial and transparent a manner as possible. The legislative framework regulating election expenses is an important element in maintaining a level playing field for all election participants.

•(1100)

The administrative framework goes together with actual compliance with and enforcement of the act. Compliance and enforcement are essential to maintaining public trust in the electoral process.

[English]

I hope this presentation will help you acquire a better understanding of the key aspects of the framework governing federal elections as they relate to the treatment of electoral expenses.

It is clear that the mandate and the role of Elections Canada and of the Chief Electoral Officer has been incrementally expanded over the last 40 years. It now encompasses much more than the preparation and conduct of an election, which of course remains a central core function of any electoral body. Today, the Chief Electoral Officer is tasked with the responsibility of maintaining trust in our electoral democracy by ensuring that the financial regime that is designed to ensure fairness, transparency, and a level playing field is properly understood, maintained, and complied with, and all this in accordance with the prescription of the law.

In carrying out its responsibilities, Elections Canada is committed to act fairly, consistently, and impartially, and to abide strictly by the principle of the rule of law and of due process. In doing so, Elections Canada focuses the bulk of its efforts on the promotion of compliance; on raising awareness of the duties, obligations, and entitlements of all participants; and on always seeking to assist them in meeting the requirements of the act.

Thank you, Mr. Chair. That will conclude this part of my presentation.

The Chair: Thank you.

Does the committee want to take a five-minute break? Let's move on? Okay. We're going to move now to questions from the members....

Actually, I'm sorry, I thought that was the full presentation, but it is not. You wanted to move on to part two, which is with regard to the regional media specifically, and we will take that now.

Mr. Marc Mayrand: Okay.

Mr. David Tilson (Dufferin—Caledon, CPC): How many parts are there?

Is he going to speak for an hour on each part?

The Chair: There are three parts in the outline that was circulated. Part two is a 15-minute presentation and part three is a 10-minute presentation. That's why I asked whether or not the members wanted to have a little break. Mr. Mayrand has spoken for almost an hour.

Let's carry on. I think we can get through. Before we go to questions, I'll ask the members whether or not they want to have a break.

Mr. David Tilson: No, that wasn't the purpose of my question. I just want to be clear on how long he's going to speak on each part.

The Chair: It's in the outline that was circulated to you last week.

Mr. David Tilson: Yes, well, I've got paper coming out of my ears here, Mr. Chairman.

The Chair: Okay. You can have mine.

Mr. David Tilson: No, just tell me; that's all you need to do. I don't need more paper.

The Chair: Okay. This is approximately a 15-minute presentation; part three is 10 minutes.

Mr. Mayrand, you may proceed with part two.

Mr. Marc Mayrand: Thank you, Mr. Chair.

[*Translation*]

As you requested, I will now make a statement on the decision I made in the spring of last year in relation to transactions reported in the returns of a number of Conservative Party of Canada candidates in the 39th general election.

In doing so, it is important to note that this decision is currently the subject of a judicial review before the Federal Court. As well, the circumstances surrounding the regional media buy program are under investigation by the Commissioner of Canada Elections.

I will not interfere with either of these processes and intend to limit my remarks to circumstances that are in the public domain. I will give the committee a general overview of my decision in relation to the regional media buy program and the factors that led to it.

In 2005, the Conservative Party of Canada initiated what it termed a regional media buy program. Under this program, the party facilitated the purchase of radio and television advertising time from the agency Retail Media. These purchases were described by party officials as involving commitments or contributions from candidates who later claimed an expense in their returns. Sixty-seven campaigns reported advertising expenses in amounts up to \$50,000 related to this regional media buy program. Seventeen returns of participating candidates were processed in accordance with the procedures that I just described to you a little earlier, that is in accordance with the usual verification procedures, and the expenses in question were reimbursed.

However, when we examined other returns, a statement by an official agent led Elections Canada to review the transactions related to the regional media buy program. When asked a routine question about the regional media buy expense reported in his candidate's return, that official agent replied that he thought the candidate had contributed to national television advertising. He added that, as it was impossible for the candidate to spend the limit, the party had asked him if he could contribute. This uncertainty on the part of an official agent about a significant expense—in this case, it represented 40% of the total election expenses of the candidate's campaign—raised a red flag. It prompted a review of all returns that included a regional media buy expense. The information arising from that review raised doubts as to whether the regional media buy expenses were those of the candidates.

In November 2006, my predecessor requested that each of the 11 campaigns whose returns had reached the final review stage provide additional supporting documentation for the regional media buy expense. On January 12, 2007, the same request was made of another three campaigns whose files had also reached the final review stage. These 14 requests were made pursuant to section 451 (2.2) of the Canada Elections Act and sought additional information to establish that the claimed expenses were those of the campaigns that had claimed them. This included a request for a copy of any contract or other written agreement, a copy of the advertisement or script, documentation indicating the date of broadcast and the documents stating the date on which the official agent authorized the expenditure in accordance with his responsibility and obligation under the act. The candidates were invited to communicate with Elections Canada if they had any questions or needed clarification in relation to this request. Of course, the candidates concerned were also free to provide any other information that could serve to remove doubts as to the claimed expense.

From December 2006 to March 2007, there were numerous exchanges, both written and verbal, between officers of the Conservative Party of Canada and Elections Canada officials. The information provided on those occasions failed to dispel the doubts that had arisen. On April 5, 2007, after careful consideration of all of the information available to me at that point in time, I made the decision not to reimburse expenses relating to the regional media buy program. All other eligible expenses were reimbursed at that time. It was also decided to refer the circumstances surrounding the regional media buy issue to the Commissioner of Canada Elections.

On April 11, 2007, a meeting was held at the request of the Conservative Party of Canada. On that occasion, party officials reiterated their position on the regional media buy program. They also indicated that the candidates concerned would not be in a position to provide anything other than the material they had already provided.

●(1105)

In the course of that meeting, party officials were informed of the decision not to reimburse the regional media buy expenses and that the matter had been referred to the Commissioner of Canada Elections.

The committee should know that official agents and candidates who were identified as having participated in this program were also informed that the circumstances surrounding the regional media buy program were under review by the Commissioner of Canada Elections.

I also wrote the official agents and candidates whose expenses had not been reimbursed at that time to advise them of my decision to exclude the amount of claimed expense from the total of election expenses. Official agents and candidates were also informed that the decision to exclude this expense could be reassessed if they provided additional supporting documentation that satisfied me that the claimed expense was incurred by the campaign. No official agent or candidate provided any additional information.

●(1110)

[English]

I wish to return briefly to my decision not to certify the reimbursement of regional media buy expenses.

There was no single deciding factor leading to my decision. In fact, rather, it was an aggregate of factors that precluded me from being satisfied that this expense was an election expense warranting a reimbursement.

In addition to the statement by an official agent to which I have already referred, other statements were made by other official agents or candidates also disclosing a lack of detail and knowledge of the regional media buy expense.

The second factor was the absence of documentary evidence that would assist in establishing the existence of a contractual agreement by any of the participating candidates with the supplier retail media.

The third factor was representations of party officials that all arrangements for the purchase were made by the party and that invoices were sent to the party.

The fourth factor was particulars of the arrangements whereby invoices were provided to candidates by the party rather than by retail media as the supplier and the fact that moneys were transferred by Conservative Fund Canada, which maintained control of the money throughout the process by means of prearranged bank wire transfer instructions.

Finally, the fifth factor was the important and unexplained discrepancies in the amounts charged to various candidates for the same advertising, so the expense claimed by each candidate did not reflect the commercial value—which we discussed before—of the ad placement.

Having considered those factors, I would have decided to exclude those expenses for reimbursement.

I did consider other contextual elements that might have dispelled my doubts with regard to the nature of those expenses. These included the advertising in question and the fact that the party had spent close to the election expense limit in the 39th general election. With regard to the advertisements themselves, they were of no assistance in dispelling the doubts as to whether the regional buy expenses were those of the candidates.

It has been said that transactions of this kind are usual and engaged in by all registered parties and their candidates. I did ask Elections Canada staff to review the returns of all the major registered parties and their candidates in both the 38th and 39th general elections. Elections Canada has not identified any other transaction or group of transactions in which all of the factors I mentioned earlier were at play.

As was mentioned earlier, in order for the final instalment of the reimbursement to be made, I am required to certify to the Receiver General that I am satisfied a candidate and his or her official agent have complied with the requirements set out in the legislation. In a situation where an expense appears not to have been incurred by a candidate or where an expense has not been reported at commercial value, I cannot be satisfied the expense is reported in compliance with the act.

The same factors that led me to refuse reimbursement of the regional media buy expenses as being those of the candidates also led me to the referral of the matter to the Commissioner of Canada Elections. The commissioner's investigation is ongoing at this time, and given the arm's-length relationship that I seek to maintain with the commissioner, I am not in a position to answer questions that are within the scope of his investigation.

Members of this committee are also aware that the decision to exclude the regional media buy from the total election expenses eligible for reimbursement is the subject of a judicial review application brought before the Federal Court, and that was made on May 14, 2007. The position of Elections Canada has been stated in an affidavit filed before the Federal Court. It includes a full explanation of the circumstances and factors that led to the decision that is challenged.

In closing, I trust the earlier review of the political financing regime would have been useful to committee members. Similarly, my purpose in making this statement was to reiterate for the benefit of members of the committee the key factors involved in the regional media buy program.

• (1115)

I still have decisions to make in relation to this file. New information has emerged that is in the public record. In due course I will need to take all available information into consideration in making further decisions required to bring closure to this matter. Until such time, I intend to defer to the process currently under way with the Commissioner of Canada Elections and before the Federal Court.

Thank you, Mr. Chair.

The Chair: Part three, Mr. Mayrand, is basically a recap and deals with the relationship of public office holders. You had indicated you would not be commenting on individual returns. I wonder if we might want to just keep that until maybe tomorrow or later in the meeting.

Do you want to get on to anything else he has to say?

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): I think the committee came to an agreement, and I think we should probably just stick with the agreement.

The Chair: Is that the decision of the committee?

Some hon. members: Agreed.

The Chair: Is there anything further you would like to put on the table that would be helpful for the members before we go to questions?

Mr. Marc Mayrand: I have a small statement on public office holders, but I can hold on to it.

The Chair: Please give the statement then.

[*Translation*]

Mr. Marc Mayrand: Mr. Chairman, in my capacity as Chief Electoral Officer of Canada, I was requested to appear before the committee today in relation to its study of the review and treatment of financial returns and the key considerations at play in the review of returns.

I have provided the committee with a description of the relevant aspects of the legislative and administrative framework that govern political financing. Parliament, through the Canada Elections Act, has set a financial regime that seeks to create a level playing field and that sets separate spending limits for parties and candidates.

As Chief Electoral Officer, I must ensure that candidates and political parties follow the rules as set out in the act. I must also ensure a rigorous approach to the disbursement of public monies. Fair, consistent, transparent and impartial administration of the legislation is critical to maintaining public trust in the electoral process.

[*English*]

Prior to my appearance, Mr. Chair, you provided me with a list of 10 public office holders who claimed a regional media buy expense in their electoral campaign returns for the 39th general election. You requested that I provide the committee with the dates on which the returns of those individuals were filed with Elections Canada. I have provided to the clerk for your information a table with the requested dates.

I wish to remind the committee members that I am not in a position to comment, and therefore I will not comment, on ongoing investigations by the Commissioner of Canada Elections or the specifics of the case currently before the Federal Court, nor will I discuss any individual case.

This concludes my remarks, Mr. Chair.

The Chair: I want to thank you for a comprehensive and very helpful presentation to the committee.

There have been some discussions, and the members have agreed that we will have a 10-minute first round and all subsequent rounds will be five minutes.

I have the list, and we will begin with Mr. LeBlanc, followed by Madame Lavallée, then the NDP, and then the Conservatives.

Mr. LeBlanc, s'il vous plaît.

Hon. Dominic LeBlanc (Beauséjour, Lib.): Thank you, Mr. Chairman.

[*Translation*]

Thank you for your presentation Mr. Mayrand. I also want to thank you and the members of Elections Canada's staff for your work, which we consider remarkable. Over the years, we have all had the experience of cooperating with your office and auditors. For my part, I must tell you that you have shown outstanding professionalism, and I thank you for that.

I have a few quite specific questions, particularly concerning the second part of your presentation. In the discussions concerning the 67 returns that were referred, or that you considered posed a problem, a number of people said that the content of the advertisements was a problem. They said, for example, that the campaigns of the 67 ridings could contain advertising from the leader of the political party.

Am I right in thinking that the content as such had nothing to do with your decision to refer those files to the Commissioner?

Mr. Marc Mayrand: Advertising content is not one of the five factors that led to my decision. Candidates are free to choose the best way to promote their campaigns and to secure the support of electors. Elections Canada does not intervene with regard to advertisement content.

• (1120)

Hon. Dominic LeBlanc: Thank you very much.

A lot of people have alleged that all political parties do the same thing. I found your explanation at the outset concerning transfers very useful because, if I understood correctly, the issue is not the transfers as such. The issue is the ultimate purpose of the transfer. What was done with the money transferred becomes the important question.

Am I right in thinking that the idea—the table that you presented was very well done—of transferring between the party, between riding associations and the candidate, is not what led you to refer the files to the Commissioner?

Mr. Marc Mayrand: No. Indeed, as regards the transfers, as mentioned earlier, the act provides that resources may be transferred or moved between the entities of a single family. What the act does not allow, however, is the transfer of expenses. So you can transfer monies, assets, goods or services, but not an expense. The expense must have been incurred by the person who claims it.

Hon. Dominic LeBlanc: So if I understood your presentation correctly, the concern you had in the 67 cases was that the expenses contained in the returns had not been incurred for the local campaigns, but were instead expenses that should have been attributed to the national party.

Mr. Marc Mayrand: The only decision I made was that I was not convinced that the expenses as filed had been incurred by those who claimed them, that is to say the candidates. I have made no decision to date concerning the allocation of those expenses.

[*English*]

Hon. Dominic LeBlanc: That's a good point. If, in your judgment, the 67 Conservative returns did not satisfy you that those expenses were incurred by the candidates who claimed reimbursement, would you not agree that advertising expenses—because that's what they were in those cases—need to be attributed to someone? In an election period, you cannot advertise for a political purpose and not have that advertising expense be assumed by a candidate, the national party, or a third party, if done according to the law. It can't just hang out there as an expense that we can ignore and not refund.

Mr. Marc Mayrand: As I mentioned in my presentation, there are decisions left to be made on this matter. One of them has to do with the attribution of the expense. I have not made that decision yet.

Hon. Dominic LeBlanc: Thank you, Mr. Mayrand.

With respect to the idea that every political party engaged in these in-and-out transfers, if you decided to refer only 67 Conservative returns, that would presumably be because your audit uncovered nothing to lead you to believe that other political parties in the last general election participated in any of these transfers.

Mr. Marc Mayrand: Again, there were transfers on the part of all parties.

Hon. Dominic LeBlanc: I am referring to the transfers you judged not to have been incurred by the local candidate.

Mr. Marc Mayrand: Please repeat the question.

Hon. Dominic LeBlanc: I agree that there were transfers. We've gone over that, and you're absolutely right, but the 67 Conservative returns contained transfers that raised concerns about whether they were incurred by the candidates claiming reimbursement. This was not the case with the other political party returns that you audited.

Mr. Marc Mayrand: As I mentioned in my presentation, we looked at all the returns for the 38th and 39th general elections. We have not seen any group of transactions that conforms to all the factors I mentioned in my presentation.

Hon. Dominic LeBlanc: This led to the referral.

Mr. Marc Mayrand: Yes.

Hon. Dominic LeBlanc: Thank you, Monsieur Mayrand.

There has also been a lot of confusion about the case the Conservative Party began in the Federal Court—the judicial review application that was brought by the Conservative Party. My understanding is that the decision to deny the reimbursements and to refer those files to the commissioner predated the beginning of the lawsuit in Federal Court. Is that accurate?

• (1125)

Mr. Marc Mayrand: That is correct.

Hon. Dominic LeBlanc: So it is not accurate to say that your decision to refer these Conservative returns to the commissioner for investigation had something to do with a lawsuit the Conservative Party began.

Mr. Marc Mayrand: The referral had taken place before.

This may be seen as a technical point, but with regard to the notion of distinguishing between political entities, the procedure before the Federal Court is on behalf of two official agents. There are two agents seeking a review.

Hon. Dominic LeBlanc: Right. The original statement of claim included many more plaintiffs; in fact, it was amended to only add two. The original group was—

Mr. Marc Mayrand: My point is that the court proceedings had been launched by agents of candidates, not necessarily the party.

Hon. Dominic LeBlanc: That's a valid point.

[Translation]

Mr. Mayrand, we were informed by a number of Conservative Party spokespersons that the rules were changed along the way and that Elections Canada had a document that provided advice to official agents, for example, that was altered in the middle of the campaign, or afterwards. So the interpretation of certain official agents, let's say of the Conservative Party, was made based on that document published by Elections Canada.

[English]

Is it fair to say that somehow Elections Canada, as the Conservatives have alleged, changed the rules in midstream, and therefore the mistake that these 67 official agents may have made occurred somehow because they relied on a document that Elections Canada had distributed? Is that a fair comment?

Mr. Marc Mayrand: I need to point out that Elections Canada doesn't set the rules. It acts as a referee, but the rules are set by the legislation. That's the first point.

As I mentioned in my presentation, we do produce all sorts of documents and manuals to assist candidates and agents in meeting their obligations and responsibilities under the act. We review those manuals regularly, especially after any general election, drawing in essence from what happened from the previous election. It was in January 2007, I believe, that some changes were made to the manual, but again, those changes occurred after the election, and those changes, if they were to have changed any practice substantially, would apply only on a forward basis. Elections Canada would never seek to implement retroactively an interpretation that has been well known and used by participants.

Hon. Dominic LeBlanc: So the idea, therefore, that somehow Conservative Party official agents were caught out because in the middle of the 2005-06 general election an interpretative manual changed is not accurate.

Mr. Marc Mayrand: Again, this is a matter before the Federal Court, and I want to refrain from arguing a case here today. I hope you will understand. These matters have been raised before the Federal Court, and I'm sure counsel for both parties will argue strongly about these points before the judge.

Hon. Dominic LeBlanc: I appreciate that.

I have a very quick last question. I understand my time is running out.

Around the time of the commissioner's decision to apply for a search warrant—and I appreciate that's a decision taken by the commissioner and the court—some people claimed that Elections Canada, the institution that was in fact identified, had somehow given advance warning to a political party or somehow was in cahoots with the media to make sure this particular action would be noticed. I'm sure that after those allegations were made you would have done an internal review or you would have tried to determine if in fact there was a leak from your organization. I'm wondering if in fact you did that, and if in fact you uncovered any efforts from Elections Canada to give a political party some advantage in that proceeding.

Mr. Marc Mayrand: I must say that any allegation of this nature is very troubling for an institution like Elections Canada, which is anchored on the whole notion of impartiality.

I did ask for a review within the organization as to what events took place, who had the information, and whether there was any reason to believe there had been what has been referred to as a tip or a leak. My conclusion is that I have no reason to believe there was any release of information prior to the procedure taking place.

• (1130)

The Chair: Thank you.

Go ahead, Mr. Reid, on a point of order.

Mr. Scott Reid: I believe our witness has just referred to a document, and I would ask that it be tabled before this committee. It is the report he just referred to for his internal investigation.

The Chair: Yes, the commissioner did refer to doing a review of due diligence on the allegation.

Mr. Mayrand, could you be as straightforward and specific as possible as to what actually exists in terms of a report?

Mr. Marc Mayrand: Yes. It's not truly a report, but barely a sheet indicating how we went about it and why we believed there was... There's no reason to believe there was a leak from Elections Canada.

The Chair: There is not a document? You wouldn't require a report?

Mr. Marc Mayrand: You mean a formal report or a written report? No.

The Chair: Okay.

Mr. Reid.

Mr. Scott Reid: But you said "barely a sheet", which means there is some documentation. As you know, our rules require that if something is referred to, it be tabled before the committee. So I'd ask that that document be tabled before the committee.

The Chair: Thank you.

Mr. Mayrand, could you please provide the committee with any material, whether it be a report or a sheet of paper or an internal... which indicates, presumably, the question at issue and the conclusion?

Mr. Marc Mayrand: Yes, I will.

The Chair: Thank you, sir.

We now move to Madame Lavallée.

[Translation]

Madam, go ahead, please.

Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ): Thank you, Mr. Chairman.

Congratulations on the quality of your presentation, Mr. Mayrand. It was really clear. The Elections Act, as you presented it, with the various requirements for candidates and parties, is really clear.

There is something that is a little less clear to me. I want to be quite clear about your criticism of the Conservative Party's financial return. I simply want to be sure that I've correctly understood. You said that the financial transfers between parties, candidates and associations were all right. You also talked about group transactions. I found that quite troubling and disturbing.

When you talk about groups of transactions, I get the impression that the words you're not using could be "a scheme by Conservative Party leaders to spend more money than what is allowed under the Elections Act by exceeding the limit in order to take advantage of an advertising campaign of millions of dollars more."

Do I understand correctly?

Mr. Marc Mayrand: I didn't make any statement to that effect. As I mentioned earlier, I made two decisions with respect to those transactions. Here's the first. Seeing that the information in support of the transactions was inadequate to show that they had actually been incurred by the candidates or agents, I refused to reimburse the expenses claimed. The second decision that I made was to refer the matter to the Commissioner so that he could determine whether there were grounds for an investigation. I did not make any decision regarding the allocation of expenses.

Mrs. Carole Lavallée: I get the impression that you're saying there is an animal here, that it has black fur, whiskers and meows, but that you're not saying it's a cat.

Mr. Marc Mayrand: I am bound by the rigours and requirements of the act. I must be sure, before drawing any conclusion, that I have all the evidence enabling me to draw that conclusion.

Mrs. Carole Lavallée: When you say that the Conservative Party passed on its expenses to certain candidates in certain ridings, and we see in the return that it reported it had reached the limit of \$18 million, that means that all the expenses incurred by the 67 ridings are additional expenses. The party thus freely exceeded its limit. That's what that means.

• (1135)

Mr. Marc Mayrand: At that point, in my mind, that's purely hypothetical for the purposes of my responsibility under the act. I'm not in a position to draw that conclusion. I don't think that Elections Canada has ever stated that it had found that invoices had been offloaded to candidates. Moreover, that's why certain decisions were not made in the matter.

Mrs. Carole Lavallée: You're saying you haven't yet found that expenses were offloaded to candidates? Is that what you said?

Mr. Marc Mayrand: Based on the information I have before me, I can't know to whom to attribute those expenses. I'm talking about the information that was available in April 2007, at the time I made that decision.

Mrs. Carole Lavallée: However, you're convinced that these aren't expenses that come under the regional media buy program.

Mr. Marc Mayrand: I concluded that the expenses claimed had not been incurred by the candidates. For me, the regional, local and national issue is not a consideration in this matter.

Mrs. Carole Lavallée: You're simply considering the fact that the official agent did not sign the contract with the media placement firm.

Mr. Marc Mayrand: That's one of the five reasons I mentioned, that is to say the fact that the commercial value of the transactions was not explained. For example, in a group of candidates, one of those candidates may be required to pay \$3,000, whereas his neighbour may have to pay \$15,000 for the same type of advertising and the same frequency, essentially. That leads me to conclude that the actual commercial value of those expenses is not being stated. I wait for the proof of that commercial value before I can authorize an expense. I wait to have the proof that that expense was incurred. That's what I asked of candidates; I asked to be informed of that.

Mrs. Carole Lavallée: You didn't get that proof. They haven't given it to you to date.

Mr. Marc Mayrand: Indeed, and that's why I chose or I decided to deny the claims as filed.

Mrs. Carole Lavallée: As you explained at the outset, the reason why the Elections Act sets an expense limit is that we want to ensure transparency and fairness among the various parties. Consequently, it is thought within this government that the more they spend, the greater their chances of winning.

Mr. Marc Mayrand: It's not up to me to comment on or judge that.

Mrs. Carole Lavallée: You have a greater chance of winning when you have an advertising campaign worth several millions of dollars more than those of the other parties.

Mr. Marc Mayrand: As I explained at the very start of my presentation, it is up to the political parties to choose the best ways to promote their ideas, their vision and their values. The way they do that is not the responsibility of Elections Canada. However, the act places limits on the manner in which they spend the money and the amounts of money they can devote to that.

Mrs. Carole Lavallée: You said a little earlier that you hadn't looked at the content of the advertisements claimed under the regional program, that it wasn't important for you and that you weren't interested in that, that it was more the fact that the official agents themselves hadn't signed contracts with the agency that concerned you.

I haven't seen those advertisements, but I imagine someone from your office looked at them. It's fine to say that the content isn't important, but, if those advertisements had shown each of the candidates in that region and people had seen them all on television saying their names and saying that they were running in a riding in particular and that they were members of the Conservative Party, it seems to me that would have had an impact.

Mr. Marc Mayrand: It could have had an impact, but no factor is decisive in itself. You have to consider all factors as a whole.

Mrs. Carole Lavallée: You decided not to consider this factor because content isn't the issue.

Mr. Marc Mayrand: No, I mentioned the five factors a little earlier in my presentation. In light of those five factors, I had no basis for believing that the expenses as claimed had been incurred. My next step was to see whether other considerations could lead me to reduce the impact of the five factors that were there. I therefore considered the advertising itself, among other things, but, when I studied it, I wasn't able to rule out the five factors that led to my decision.

• (1140)

Mrs. Carole Lavallée: So that was one factor.

Mr. Marc Mayrand: It didn't constitute a factor that could rule out the five factors I talked about.

Mrs. Carole Lavallée: That's fine.

The Conservative Party claims that Elections Canada amended its interpretation of the Canada Elections Act in a manual on election expenses, if my memory serves me. I know that my colleague, Dominic LeBlanc, asked you that kind of question earlier.

Do you have the manuals the Conservative Party is talking about?

Mr. Marc Mayrand: You're asking me whether I have those manuals in my possession here, today?

Mrs. Carole Lavallée: Perhaps not right now, but do those manuals, which the Conservative Party refers to, really exist?

Mr. Marc Mayrand: Yes, the manuals exist. They are available on the Elections Canada's website.

Mrs. Carole Lavallée: Is the old one available as well, the one the Conservative Party is talking about?

Mr. Marc Mayrand: I can't assure you that it's available on the website, but it can be made available.

Mrs. Carole Lavallée: Can you provide it to us?

Mr. Marc Mayrand: Yes.

Mrs. Carole Lavallée: It's nevertheless disturbing that the Conservative Party says there was an old interpretation at Elections Canada that allowed it to believe that what did was correct. Have you read both manuals? Is there indeed something that could lead it to believe it could act as it did?

Mr. Marc Mayrand: I previously answered your colleague's question on that subject. That matter is before the court. It's part of the debate that will be carried on before the Federal Court as to whether candidates could have been misled by the manuals or information forwarded by Elections Canada. Our position is they could not. The candidates are obviously entitled to their position. That's no doubt what the Federal Court will have to consider.

Mrs. Carole Lavallée: What is the sentence—

The Chair: Ms. Lavallée, I'm sorry.

[English]

Time has expired for your turn, but we will have another round.

We'll go to Mr. Martin, please.

Mr. Pat Martin (Winnipeg Centre, NDP): Thank you, Mr. Chair.

Mr. Mayrand, thank you for your comprehensive briefing. I think it's useful that we all start from the same base level of information. The clarification was very helpful.

Mr. Mayrand, the 2006 election was decided by razor-thin margins. I think over 50 ridings were won or lost by fewer than 1,000 votes. In other words, 50,000 votes could have turned the outcome of the election. That's why it's so important to us. This \$1.3 million in extra advertising by this one party, above and beyond their spending limits, could have decided the outcome of the 39th election. It's really quite a serious matter when put in that context.

Now, you've made it clear that perhaps the "in and out" term is a misnomer. There's really nothing wrong with the transfer of money from the federal party to a riding and back again. That much I think we should put to the side for the context of the rest of our study.

What would be wrong would be if there were a deliberate conspiracy to defraud the Canada Elections Act and put in place a scheme so that they could exceed election spending by millions of dollars. That's where we find the allegations of wrongdoing. Is that accurate? Is that one of the elements, of course, of the allegation being dealt with here?

Mr. Marc Mayrand: Again, it's the matter of the transaction surrounding this program that we referred to the commission.

Mr. Pat Martin: Yes.

Mr. Marc Mayrand: As to the specific offences, there is a whole range, but these remain, in my mind, highly hypothetical. The commissioner's investigation will determine, at the end of the day, if there was an offence.

Mr. Pat Martin: Well, I know you have to be very careful and cautious in the language you use.

Okay. Number one, I think, is that what we see is a fairly obvious and deliberate conspiracy to exceed the spending limits. I'll say it, even if you can't.

The second thing, though, is the possibility of falsification of records. And let me bring it back to the mandate of the ethics committee. The filing of false election returns, of course, is a very serious matter. The official agents and the candidates themselves have to sign off on election returns; the content of these returns is accurate and the information found therein is true, to the best of their knowledge. That means that Maxime Bernier and Stockwell Day and Lawrence Cannon and other public office holders signed off on documents that you believe weren't true. They perhaps contained falsified information regarding the advertising purchase. Is that accurate?

• (1145)

Mr. Marc Mayrand: I made no conclusion on those points. I think that's why the matter is now before the commissioner, who is responsible for investigating whether offences have been committed with respect to the act.

Mr. Pat Martin: In terms of the falsification of documents, the CEO and director of the advertising firm Retail Media is the one who said she didn't recognize invoices. She said the invoices must have been altered or created by someone else. Is that some of the false documentation that concerns you in the returns of people like Lawrence Cannon, Josée Verner, Stockwell Day, and Maxime Bernier?

Mr. Marc Mayrand: Again, I'm not privy to the commissioner's investigation. It is—

Mr. Pat Martin: Wasn't that in the affidavit that was used to justify—

Mr. Marc Mayrand: Well, even at that, I know the statement was made. However, it's for the commissioner to determine in the course of his investigation whether there's an offence—

Mr. Pat Martin: In the course of your original investigation, you or your staff must have spoken to the official agents of the 67 ridings in question.

My question is, it would seem that the Tory party was looking for pledges from various riding associations that had room in their spending limits. Did you interview any other official agents or candidates who were asked to take part in the regional media buy and who chose not to?

Mr. Marc Mayrand: Again, that is part of the investigation of the commissioner. I cannot comment on those points, I'm sorry.

Mr. Pat Martin: I will ask one last question then.

During the 2006 election campaign, the 39th election campaign, did the Conservative Party seek advice from Elections Canada or opinions from it on whether or not their regional media buy scheme would be legal? Is there any evidence of phone calls, faxes, or e-mails of advice or consultation, where they came to you and asked, would this be okay if we structured ourselves in this way?

Mr. Marc Mayrand: We did look into this matter and didn't find any such evidence of any records. We have logs of discussions with agents, counsel, and representatives of the parties. We don't have any record in those logs of that.

Mr. Pat Martin: No one asked directly, would this be legal if we did this?

Mr. Marc Mayrand: Sorry?

Mr. Pat Martin: No one asked you directly, would this scheme be allowed or legal under the elections spending—

Mr. Marc Mayrand: No, sir.

Mr. Pat Martin: Thank you.

I'll pass it over to my colleague.

[*Translation*]

Mr. Thomas Mulcair (Outremont, NDP): Thank you, Mr. Chairman. I want to afford Mr. Mayrand the opportunity to go back to a subject he touched upon that will no doubt be addressed a little further.

On a number of occasions during your presentation, Mr. Mayrand, you said that the rules were consistently applied. You even referred to the Auditor General, who examined the Commissioner's operating method. You understood, as we all did, that that was part of the

backdrop to all these discussions: were the rules properly enforced for everyone?

Let's go back to your very prudent choice of terms. You say there is a set of factors—you enumerate five of them—and you say in your explanation that you examined the returns of the other parties, but that there was no transaction or group transactions that met all the factors. In your oral presentation, you only said that there was no other group of transactions.

Would you be in a position to provide the parliamentary committee with a clear indication as to whether, in the last two elections—that's your frame of reference—there was a transaction in the case of the other political parties? You talked about groups of transactions in your presentation. I simply want to know because you enumerate factors that are not found in the act. That's very subjective; these are things that you've retained.

Mr. Marc Mayrand: You'll allow me to have some reservations. I think those factors are directly related to the definitions and to the concepts that I presented to you earlier this morning. That follows directly from the responsibilities of the official agents, from the definition of what an electoral expense is, from the notion of commercial value, from the notion of transfer and so on. They are all there.

• (1150)

Mr. Thomas Mulcair: I've read them all. You are very prudent in your choice of terms when you say that there is no other group or that there is the whole. So were there any cases among other political parties where three or four of the five factors were met? If so, can you share that information with us?

I'm trying to give you the opportunity to discuss this notion, which is nevertheless fundamental and explains why you are here today. It is a very serious allegation to say that there was negative bias toward one political party. I don't share that perception, but I nevertheless want that to be clear between us.

By the same occasion, I would like it if, in the documents that were requested from you earlier, you could tell us in detail what you did to determine whether anyone at your office had informed the journalists and the Liberal Party because no one informed us. But it's obvious that the journalists were informed that there was a raid on the Conservatives, and it's obvious that the Liberal Party was aware that there was a raid on the Conservatives.

We would like to know in detail what you did, to whom you spoke, what your investigation turned up and what its scope was. As elected members, we are entitled to know.

Mr. Marc Mayrand: I'm going to do that now because I think that's an important question. It is indeed important.

The review consisted in inquiring and seeking to know who was aware of the operation and how it was conducted and what measures had been taken to ensure that it was conducted as discreetly as possible.

I can confirm to the committee that only three persons from Elections Canada knew that there would be a seizure. I was one of those three persons, and I can assure you that I did not transmit that information.

Mr. Thomas Mulcair: I have no doubt on that point, Mr. Mayrand.

Mr. Marc Mayrand: I can also assure you that my two Elections Canada colleagues who were aware did not give that information to anyone at all.

I can also confirm for you that the instructions and procedures that were followed were in all respects consistent with common practice for that type of operation. I can confirm for you that the agents who conducted the search arrived discreetly on the premises around 8:00 a.m. In fact, only two agents from the group appeared on the premises around 7:45 a.m., and they had to wait nearly 20 to 30 minutes before the first employees appeared. It was not until after they had accessed the premises that those two officers asked their colleagues, who were outside the building, to enter it, and it was very discreet since, in particular, they were dressed in plain clothes. They asked their colleagues to join them and they began the document search procedure.

I can inform you that, following our review, we determined that the cameras that were seen on the premises arrived more than two hours after the operation started. I can confirm for you that the search was conducted on public premises, that is to say a commercial building accommodating a number of businesses. I can confirm for you that, when we conducted that operation, a party employee stood at the front door to tell his colleagues not to go up and not to take the elevator.

In light of all that, I have no reason, unless given information to that effect, to believe that there was any information leak whatever from Elections Canada or from the Commissioner.

[English]

The Chair: Merci.

Mr. Poilievre, please.

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

Mr. Mayrand, you haven't presented any new information today with regard to the Conservative Party's transactions in the last election. You have provided, however, some new legal positions for Elections Canada. A couple of them come immediately to mind.

One is that on box 6 of your PowerPoint presentation here, you define a candidate expense as something that is "incurred", a "property or service used directly to promote or oppose a candidate during an election period". That, of course, contradicts the candidate manual that Elections Canada furnished to candidates across Canada in the last election, because in that manual, under "Election advertising"—this is referring to candidate expenses—it says:

Election advertising means the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or a candidate is associated.

You removed "registered party" and therefore applied a new interpretation of the law. That's the first change you've offered today in the legal position of your agency.

The second one is these five factors. I note that in the legal proceedings that are under way, the executive director of political

financing and corporate services, Ms. Janice Vézina, did not enumerate these as the five factors making the expenditures national instead of local. She had something different to say.

I'll quote from the *Ottawa Citizen* on July 5:

Ms Vézina allowed that in certain circumstances a candidate could choose to promote his party leader in his ads and still be allowed to claim the ad as a campaign expense. The key point, she said, was whether the "end result" of the ads was the promotion of a candidate.

"End result" were her words, quoted by the *Ottawa Citizen*.

What is the difference between promoting a candidate and promoting a party?

● (1155)

Mr. Marc Mayrand: If I may, I think both can serve each other. I think the idea here—and I mentioned this in my presentation—is that it's up to the candidate to determine what promotes their candidacy. If it's through their personal promotion, that's their call. If it's through relying on the brand of the party, on the policy of the party, on the leader, that is the decision of the candidate. It's not the decision of Elections Canada.

Mr. Pierre Poilievre: Well, that's good to learn. I would like to give you an example of the accusation.

Just before I move on, I should point out that it is not what Ms. Vézina testified in recent legal proceedings with the Conservative case against Elections Canada. She said it was the end result of the advertisement, which I think is a very curious position. I don't think any government agency can ascertain and rule on the end result of an advertisement, especially considering the fact that you concede there's no distinguishing between the benefits to a party and its candidate.

Let me give you an example of your accusation. I will read you an e-mail from one of our party's bookkeepers. I read it to illustrate the practice you have, through your five factors here, deemed not to be allowed.

It reads:

Hi Phyllis,

We are told by communications folks in BC that there were radio ads with the Candidate's personal tag on the end—therefore a local expense to be reported under the Candidate's expense ceiling, regardless of who pays. For rebate purposes, we were asked to bill each campaign—in the case of VanEast, \$2,612.00.

The good news is that the Federal Party will transfer \$2,600 to the Federal Riding Association as we agreed to pay for the ads.

We hope that you are able to squeeze this under the ceiling.

So \$2,600 was transferred from the party, in and out, to pay for advertising organized by the party, constructed by the party, and for which the party did all the dealings with the advertising agency.

What is wrong with that?

Mr. Marc Mayrand: There are two things.

I think some of the discussion or comments made with regard to Mrs. Vézina's affidavit are better left to the Federal Court. I think counsel for each party—

Mr. Pierre Poilievre: Fair enough.

Mr. Marc Mayrand: —will argue these matters before the judge in due course.

With regard to the specific case, again, I'm not in a position here today to discuss any specific case. I'm not privy to the statement you're reading. I don't have all the supporting documents.

Again, if I had to go through this process, I would run with all the concepts I mentioned earlier: Was it incurred? Was it for value? Was there a transfer? Was it paid? Was it used? Was it used during the campaign? All those circumstances I would have to look through and determine if the transaction was consistent with the requirement of the legislation.

• (1200)

Mr. Pierre Poilievre: The e-mail in question is one from the NDP national party bookkeeper, Lucy Ladouceur. She sent it in an e-mail to a campaign of NDP MP Libby Davies. It meets all the characteristics that you've laid out with respect to the Conservative transactions that your agency has singled out, so we would hope that you would take a second look. That e-mail is in your possession. In fact, it was filed with Elections Canada and we obtained it from your agency.

I'd like to move on to the issue of the leak of the planned visit of Elections Canada to the Conservative Party headquarters. An e-mail exchange obtained through access to information shows that Elections Canada was totally preoccupied with the widespread public belief that the agency had leaked its planned visit to the Conservative headquarters.

Mr. Mayrand, you wrote in an April 18 e-mail to Ms. Vézina:

This may be pure diversion tactic/competitive frustration from a media outlet vis-à-vis another.

Blaming the media aside, the e-mail shows that you referred to the leak seven times. Obviously you took this concern very seriously. I'd like to know who exactly conducted the internal review that you mentioned earlier.

Mr. Marc Mayrand: It was conducted by people responsible for the various programs in the organization.

Mr. Pierre Poilievre: What are their names?

Mr. Marc Mayrand: It was mainly me.

Mr. Pierre Poilievre: You did it.

Mr. Marc Mayrand: Also participating were my director of communications and the commissioner's office.

Mr. Pierre Poilievre: Can you share with us all the notes from that investigation, please?

Mr. Marc Mayrand: Yes.

Mr. Pierre Poilievre: How many people were aware in advance of the planned headquarters visit?

Mr. Marc Mayrand: You mean the search?

Mr. Pierre Poilievre: Yes.

Mr. Marc Mayrand: There were three people at Elections Canada.

Mr. Pierre Poilievre: They were the only three who knew at Elections Canada.

Mr. Marc Mayrand: Outside of the commissioner's office, yes.

Mr. Pierre Poilievre: And who were they?

Mr. Marc Mayrand: It was me, the deputy chief electoral officer, and the director of communications.

Mr. Pierre Poilievre: So you all investigated yourselves in connection with this alleged leak?

Mr. Marc Mayrand: I'm satisfied that I did not.

I don't know, unless there is other information that suggests a link to Elections Canada, which I would very much like to see.... As the e-mails that you have cited show, there was a real concern at Elections Canada about anything of that nature, given the importance we attach to our independence, impartiality, and fairness.

Mr. Pierre Poilievre: Well, you've been very vigorous in investigating our party. You certainly have not and should not let us investigate ourselves. Why would you think it appropriate that you would personally investigate yourself and your communications director would investigate herself—

Mr. Marc Mayrand: I didn't investigate—

Mr. Pierre Poilievre: —with respect to this leak? Why would you consider that to be a reasonable inquiry method?

Mr. Marc Mayrand: When allegations are made, put in written form, and put before the proper authorities, I will welcome an investigation into this matter. At this point, it's allegations made mostly through the media, which we reviewed. We didn't see any cause to take further steps or carry out a formal investigation into the matter.

Mr. Pierre Poilievre: In the series of e-mails that I mentioned earlier, you said that you wished to “kill” or “dispel” the news stories about the leak. Those words were used four times by you and Ms. Vézina. In an April 18 e-mail, Ms. Vézina said:

Perhaps we do it through a joint press release with the RCMP and the commissioner's office and the DPP (if appropriate)?

I understand the DPP to refer to the Director of Public Prosecutions. Has the Director of Public Prosecutions investigated the leak, and if not, why was the Director of Public Prosecutions mentioned in this e-mail?

Mr. Marc Mayrand: He was not involved in this. It was strictly internal to Elections Canada, the review that was done. I did not ask the RCMP to review the matter and I did not ask the DPP. Why is the DPP involved? The DPP is the counsel that presented the motion to obtain the search warrant, so they are familiar with the file.

The Chair: Thank you. That completes the first round of questioning. I think it is a logical breaking point for us.

I'm going to suspend the meeting till 2 p.m., so that members will be able to refresh themselves and to prepare for our next session. I want to remind the members that before the end of the next session we want to deal with the business of future witnesses, the timing of meetings, and Mr. Tilson's motions. I hope the members will give some thought to this during this break.

Thank you. We'll suspend.

• _____ (Pause) _____

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• (1400)

The Chair: We're resuming our meeting of this morning. Welcome back, Mr. Mayrand, Mr. Bernier.

During the break, the media and others have had some questions with regard to the various proceedings that are going on. There is a civil case involving certain people, there is a federal action—I believe it's a judicial review—and there is an investigation ongoing by the Commissioner of Elections Canada. Could you, for clarification, please inform the members of these processes and where they go from here?

There has been a suggestion that maybe the work of the commissioner of investigations may be delayed by these other proceedings going on concurrently, or may not—I'm not sure. I'm not an expert in these matters, but I know that with Mr. Bernier's help maybe you could clarify for all concerned the nature of these proceedings, how they go forward, and ultimately what might happen as we go forward following the investigation and what possibilities there may be.

• (1405)

Mr. Marc Mayrand: Yes, Mr. Chairman.

As I indicated earlier today, I have made two decisions on this matter so far. The first one was to refuse to reimburse the claims presented by a number of candidates. That decision was challenged before the Federal Court under judicial review process. That judicial review process seeks to challenge the reasonableness of my decision. It also seeks an order from the court, a mandamus order, that would be ordering the Chief Electoral Officer to pay the claims as submitted. This is a matter now before the Federal Court. The matter has proceeded for the last year. Evidence has been presented by all parties, there have been examinations of various witnesses before the court, and it's proceeding as we speak.

The other decision I took at the time was to refer the matter to the Commissioner of Canada Elections. The commissioner is tasked with investigating whether offences to the electoral legislation have been committed. The commissioner's investigation is a penal investigation as opposed to a civil process. It takes its own course, and it's subject to various rules and limitations of the penal law. That investigation involves, again, looking at the 67 claims that were presented to Elections Canada. It's a complex investigation that will take time, I assume, to carry out.

At the end of the investigation, the commissioner, if he has determined that there are enough facts, evidence, to support charges being laid, will make a recommendation to the Director of Public Prosecutions, the DPP, who in turn as the prosecutor—the DPP is the

prosecutor—will assess again the facts gathered through the investigation and determine what charge, if any, in his professional judgment, should be or could be laid before a court of law.

The Chair: Okay.

And the civil suit, how does that affect these other matters?

Mr. Marc Mayrand: What is referred to as the civil suit is the Federal Court review of the decision. There are only two processes that I'm aware of at this point in time. There's a process before the Federal Court seeking a review of my decisions and seeking a mandamus. That's one, and the other one is the investigation being carried out by the commissioner. The two processes are completely independent from each other.

The Chair: There is also a civil suit that has been launched by two candidates or their official agents with regard to their own returns?

Mr. Marc Mayrand: This is the same.... No, this is the judicial court review application. It's two candidates out of 67 who have taken those proceedings at this point in time. It could have been 67, and initially it was close to 67. After discussion with counsel, it was agreed that two candidates would remain on the file as applicants.

The Chair: And finally, you gave us an extensive presentation this morning. You also took one round of questions. Is there any answer or information that you gave that you would like to clarify, correct, or amend from what's happened so far?

Mr. Marc Mayrand: Not at this point, Mr. Chair.

The Chair: Okay.

We'll then proceed with questioning. We're now in round two. These are five-minute rounds, and we'll begin with Mr. Dhaliwal, please.

• (1410)

Mr. Sukh Dhaliwal (Newton—North Delta, Lib.): Thank you, Mr. Chair.

Thank you, Mr. Mayrand and Mr. Bernier, for appearing before us, and thank you for your excellent presentation as well.

My question is to Mr. Mayrand. You had mentioned that the public prosecutor—who is the equivalent of the crown prosecutor—was acting for the commissioner of elections when the offices of the Conservative Party were raided; he was involved. Could you please tell us what his involvement is and how far is that involvement? Maybe Mr. Bernier might be able to help you with that.

Mr. Marc Mayrand: I will provide an explanation and Mr. Bernier may want to complete it if needed.

The commissioner, in the course of his investigation, determined that he needed some additional information that was not readily available, so he put a motion together with the information he had gathered that, in his mind, would warrant the issue of a search warrant. That is presented to the Director of Public Prosecutions, who is the prosecutor, who will again assess the request for a search warrant to determine whether it meets the test of law and whether the facts gathered would convince a judge to issue the warrant. The counsel of the crown prosecutor does present the request to a judge to issue the warrant.

Mr. Sukh Dhaliwal: Is that the only involvement the public prosecutor has, or is there further involvement in this particular case?

Mr. Marc Mayrand: At this point, yes.

Mr. Sukh Dhaliwal: You also mentioned this morning that there are some new developments that are already in the public domain. Would you be kind enough to tell us what those new developments are?

Mr. Marc Mayrand: Without getting into the details, I think information has become available as a result of various proceedings before the courts over the last year that I was not necessarily aware of at the time I made the initial decision. Again, at some point in time I will have to make other decisions on these files to bring closure, and of course I will have to consider all the information in making that decision.

Mr. Sukh Dhaliwal: You have also refused to grant the rebates in these 67 cases because you believe they violated the Elections Act. Is that right?

Mr. Marc Mayrand: I'm sorry, I did not understand your question.

Mr. Sukh Dhaliwal: When you refused those 67 claims that the individual candidates had.... You referred it to the Commissioner of Canada Elections. Is it your belief that they did not follow the Elections Act?

Mr. Marc Mayrand: The reason for referral is that there have to be some reasonable grounds to believe that offences may have been committed under the act. It will be up to the commissioner to decide whether the facts that were presented to him do warrant an investigation and to determine if, at the end of the day, in his own professional opinion, offences may have been committed. Again, it will be put to the test of the DPP—the Director of Public Prosecutions—later on, who will have to be satisfied, and ultimately to the test of a judge, who will have to decide if the evidence gathered amounts to the commission of offences.

Mr. Sukh Dhaliwal: So you referred it to the commissioner because you believed the law was broken. That's why you referred it to the commissioner, and then it's up to the judge to decide. But for us to understand.... In your opinion, the Conservative Party broke the law.

Mr. Marc Mayrand: The reference to the commissioner concerns only candidates and agents. I made no reference specifically with regard to the party. I referred the matter of all the transactions around the media buy program to the commissioner to determine whether offences, and what offences, could have been committed.

Mr. Sukh Dhaliwal: You say it doesn't mention the party. On one side we see that you have refused those claims by the 67 candidates,

and if you refused those claims, then it's evident that the Conservative Party has exceeded the spending limit by \$1.3 million. When we look at it from that perspective, do you believe the Conservative Party has also violated the Elections Act?

• (1415)

Mr. Marc Mayrand: Given the facts that were before me at the time I made the decision, I did not draw conclusions in that regard.

The Chair: Mr. Poilievre, please.

Mr. Pierre Poilievre: You indicated that three members of Elections Canada staff knew in advance of the search. Is that correct?

Mr. Marc Mayrand: Yes, they were members of Elections Canada, but I should point out that I did review my information during lunch, and it was five.

Mr. Pierre Poilievre: So there were five?

Mr. Marc Mayrand: Yes.

Mr. Pierre Poilievre: And have all five of them been questioned in your internal review of the potential leak?

Mr. Marc Mayrand: All five of them have been asked.

Mr. Pierre Poilievre: They have been asked.

Mr. Marc Mayrand: Yes.

Mr. Pierre Poilievre: Okay. You indicated you would provide us notes of the interviews conducted with the three. Now that you've discovered that there were five, can you—

Mr. Marc Mayrand: Absolutely.

Mr. Pierre Poilievre: You said that these five were in addition to those who knew in the commissioner's office. Is that correct?

Mr. Marc Mayrand: Yes.

Mr. Pierre Poilievre: Did you question all the members of the commissioner's office who were aware of the search?

Mr. Marc Mayrand: I questioned only the senior director of the commissioner's office.

Mr. Pierre Poilievre: So is that a “no”?

Mr. Marc Mayrand: I questioned only the senior director of the commissioner's office.

Mr. Pierre Poilievre: Were there others in his office who were aware of the search?

Mr. Marc Mayrand: Well, the people who participated in the operation did.

Mr. Pierre Poilievre: And you did not ask them?

Mr. Marc Mayrand: No.

Mr. Pierre Poilievre: Okay, so your investigation is not complete.

Mr. Marc Mayrand: I just want to point out that there was never an investigation.

Mr. Pierre Poilievre: There was a peer review.

Mr. Marc Mayrand: There were some allegations put out in the media about a possible leak. I constructed, as I went through the process that was followed, the sequence of events, and after doing that exercise, I came to the conclusion that there was no reason to believe that there was any leak coming out of Elections Canada.

Mr. Pierre Poilievre: In addition to the fact that your senior personnel investigated themselves, we now know there are some in the election commissioner's office who were aware of the search but who have not been questioned about the leak. You mentioned before our break that you would be willing, if asked, to have an independent investigation or review of this serious allegation. Do you continue to be open to such a demand?

Mr. Marc Mayrand: I would be open if there are specifics around the allegations that would cause me to reconsider the review I conducted at the time.

Mr. Pierre Poilievre: You have made reference to the allegation yourself in various e-mails that have gone back and forth within your office.

Mr. Marc Mayrand: Yes.

Mr. Pierre Poilievre: Why did your communications director have to know about the search in advance?

Mr. Marc Mayrand: In all those operations there's always coordination with the RCMP, who were assisting in the operation, and media officials from both organizations were briefed.

Mr. Pierre Poilievre: So you knew it would be a media-related event from the outset?

Mr. Marc Mayrand: No, that's simply a precaution you take when you carry out these types of operations.

Mr. Pierre Poilievre: I know the media has been a great preoccupation for you in your office. In an April 16 e-mail from Ms. Vézina to you, she indicates that the negative news coverage that the office visit was causing for the Conservative Party was great. I quote her. She said, "Most are going against the party." She's referring to the media. Then she says, "But we seem to be coming out positively on most counts."

There is a whole series of e-mails around it, which are available now through ATI. The e-mails demonstrate that Elections Canada was totally preoccupied with causing negative news coverage for a political party and positive news coverage for itself. Is it the role of a supposedly non-partisan agency to concern itself with generating negative news coverage for one political party?

● (1420)

Mr. Marc Mayrand: I would never want to generate any negative coverage out of actions of Elections Canada for any party, any candidate, or any agent. Any circumstances that question the actions of Elections Canada in that regard compromise its impartiality, its independence, and are always of great concern to the organization.

Mr. Pierre Poilievre: Right. Elections Canada, as you have stated, should be an independent body, yet internal correspondence indicates that, with respect to media, you produce talking points and you fret over negative versus positive media coverage for one of the political parties. Can you understand why some might conclude that Elections Canada's visit was just as much about public relations as it was about enforcing the law?

Mr. Marc Mayrand: I'm misunderstanding your question, sir.

Mr. Pierre Poilievre: The question is very clear. When you indicate in e-mail after e-mail an obsession with—

Hon. Charles Hubbard (Miramichi, Lib.): On a point of order, could we have those e-mails tabled?

The Chair: Just a moment. We have stopped the clock and you'll get to finish your question, sir.

Mr. Hubbard, on a point of order, please.

Hon. Charles Hubbard: Mr. Chair, we're being presented with e-mails that committee members do not have in their possession. I think if the honourable member wants to attack Elections Canada by bringing in e-mails, he should table those with the chair.

The Chair: Mr. Hubbard, regretfully, that is not a point of order. The matter actually has been reported in the public media. There is a story in which both parties are quoted on these matters.

Mr. Poilievre, your final question, sir.

Mr. Pierre Poilievre: The question I was in the middle of was that when Canadians see comments from Ms. Vézina like "Most are going against the party", in her assessment of the media fallout from your search of the Conservative headquarters, can you not understand why some Canadians might look at those comments that you and your colleague exchanged by e-mail and question whether the headquarters search was more about public relations and less about law enforcement?

Mr. Marc Mayrand: There are two things. I think those e-mails reveal a concern about the perception of Elections Canada not being as independent and impartial as it should be. As to whether it displays concerns about law enforcement, again, I think we're simply carrying out the responsibilities that are vested with the commissioner under the legislation.

The Chair: Thank you very much.

[Translation]

Mr. Nadeau, go ahead, please.

Mr. Richard Nadeau (Gatineau, BQ): Thank you, Mr. Chairman.

Good morning, Mr. Bernier and Mr. Mayrand.

Mr. Mayrand, how many political parties ran candidates in the election campaign that began on November 29, 2005 and ended on January 23, 2006?

Mr. Marc Mayrand: There were 15 registered parties.

Mr. Richard Nadeau: To how many political parties in total did the 67 candidates here in question belong, some of whom became members and later perhaps ministers? Under what banner did they run? Were there a number of banners?

Mr. Marc Mayrand: Are you talking about the regional media buy program?

Mr. Richard Nadeau: No, I'm talking about the 67 candidates under review, who did not receive—

Mr. Marc Mayrand: They all belonged to the same party.

Mr. Richard Nadeau: Was that the Conservative Party of Canada?

Mr. Marc Mayrand: Yes.

Mr. Richard Nadeau: All right. So, only one party is concerned. The other aspect I wanted to address, Mr. Mayrand, is the following. The entire matter of electoral expenses is the subject before us today. Can you tell us what a clear electoral expense is, one that passes the test, according to your definition, as compared to an electoral expense that is not clear, that has not passed the test and that is currently under investigation?

Mr. Marc Mayrand: There is definitely a very simple answer to that question. As I said in my presentation this morning, the act provides a series of definitions of election campaign expenses, which include electoral expenses and personal expenses of the candidates.

There is a set of criteria that must be considered in examining an expense to determine whether it ultimately constitutes an electoral expense and whether it grants entitlement to reimbursement. The first question that should be considered is this: was the expense incurred by the person claiming it? Was the expense reasonable? Was it accessory or related to the election campaign? Were the goods or services used as a result of those expenses used by the campaign? Were they used during the election campaign? You also have to consider the manner in which the expense was financed. Was it financed out of contributions or by a non-monetary transfer? If it was by means of a non-monetary transfer, you have to consider whether the non-monetary transfer corresponds to the commercial value of the transaction. Then you obviously have to consider whether the expense was paid.

In fact, perhaps I should have told you that the first question to consider is whether the expense was authorized by the official agent or whether the official agent authorized someone in writing to incur the expense on his behalf. That's generally the kind of question that must be asked in order to come to the conclusion that an expense is an electoral expense, eligible for reimbursement and that counts for the purposes of calculating the limit.

• (1425)

Mr. Richard Nadeau: You gave us that information this morning to clarify matters. There were group purchases. How are the Conservatives, and their controversial cases in the last campaign different from the other 14 political parties, as a result of which they have wound up in this situation?

Mr. Marc Mayrand: I'll remind you of the five factors I considered when I decided to reject these claims. First of all, one agent at the very start and subsequently other agents expressed a lack of awareness, to say the least, of the expense itself.

Furthermore, there was insufficient documentation to justify the expense. There were also submissions to the effect that the party had made arrangements on behalf of candidates. And yet the invoices were sent to the party, and not to the candidates. I remind you the criteria I mentioned earlier. One of the problems was the manner in which invoices were paid, that is to say by means of transfers of

funds, which always remained under the party's control. The funds were never really under the control of the agents or candidates.

Lastly, there was one important point: when you take a close look at the transactions, the candidates taking part in a group purchase—which is possible—were attributed entirely different amounts. It is therefore impossible to establish that there was a commercial value within the meaning of the act, in view of the difference in the amounts that were allocated to the candidates taking part in the same purchases.

[English]

The Chair: Thank you, Mr. Nadeau.

I have to move now to Mr. Poilievre, although you can get on the list again to speak in another round.

[Translation]

Mr. Pierre Poilievre: Regardless of the cause of the incident, Liberal employees arrived at the Conservatives' offices immediately after your investigators arrived. The Liberals arrived with cameras and, according to media reports, intend to use those pictures in election advertising in the next election.

[English]

That would mean your personnel would appear in partisan ads for a political party during an election over which your agency is supposed to preside impartially. Do you worry that you—

The Chair: Excuse me, Mr. Poilievre. I apologize. We have a point of order by Mr. LeBlanc.

Hon. Dominic LeBlanc: Mr. Chairman, I'm just wondering if it's fair to ask the witness to comment on hypothetical Liberal advertising for Mr. Poilievre. It seems to be a little bizarre that he or Mr. Mayrand would be involved in it.

An hon. member: [Inaudible—Editor]

The Chair: Order, please.

Thank you, Mr. LeBlanc. As you know, that is debate; it's not a point of order.

Mr. Poilievre, please continue.

Mr. Pierre Poilievre: Do you worry that your ostensibly impartial personnel would become participants in the next election, rather than referees over that election, if a political party were to use that footage in its advertisements?

• (1430)

Mr. Marc Mayrand: I would point out first that when you say cameras appeared on the premises immediately, it was about two and a half hours after the operation had started. Personally, I wouldn't call that "immediate".

As to what will be done with the images that were taken by those who took them, at this point in time I must say it's highly speculative. I'm not familiar with how these things may or may not be used, whether it would be appropriate or not appropriate, or what sort of remedy would fall depending on whether they are used, how they are used, or for what purpose they are used. I cannot comment any further on this matter.

Mr. Pierre Poilievre: When Canadians see these possible ads, they could conclude that Elections Canada is not the referee of the game but instead has put on a jersey and joined one of the teams.

That would not be true, but could it create the impression of such a bias if indeed the election agency itself were appearing in an advertisement for a given political party?

Mr. Marc Mayrand: We would certainly not willingly participate in any advertisement for any party.

Mr. Pierre Poilievre: So they don't have your permission, in other words?

Mr. Marc Mayrand: No.

Mr. Pierre Poilievre: You stated on page 11 of your statement:

...given the arm's-length relationship I seek to maintain with the commissioner, I am not in a position to answer questions that are within the scope of his investigation.

Can you confirm that you have never interfered with the commissioner's investigation in this regard?

Mr. Marc Mayrand: Absolutely.

Mr. Pierre Poilievre: You've never been involved in any way, shape, or form since referring it to him?

Mr. Marc Mayrand: Could you provide more explanation to your question?

Mr. Pierre Poilievre: The question is very simple. Have you been involved in any way in guiding the investigation?

Mr. Marc Mayrand: I've not been involved in any way in guiding the investigation.

Mr. Pierre Poilievre: Have you written him about the investigation?

Mr. Marc Mayrand: I have not written him about the investigation.

Mr. Pierre Poilievre: Has he spoken to you about it?

Mr. Marc Mayrand: Three days before the operation, I got a debriefing from the commissioner.

Mr. Pierre Poilievre: He indicated to you that this search was going ahead at that time?

Mr. Marc Mayrand: Yes.

Mr. Pierre Poilievre: And did you give him your support for that?

Mr. Marc Mayrand: Not really.

Mr. Pierre Poilievre: So you did not support the search.

Mr. Marc Mayrand: I must say, and I'm pretty sure the commissioner would attest to this, we had a difficult conversation, not regarding the steps being taken but the timing of the investigation and the process.

Mr. Pierre Poilievre: That's interesting.

Mr. Marc Mayrand: I was someone who was rather not very happy about finding out that an operation would be conducted on the eve of the civil case proceeding. I'm responsible for the civil proceeding. He's responsible for the criminal aspect. And I was not too enthused about the approach.

Mr. Pierre Poilievre: Why is that?

Mr. Marc Mayrand: But again, out of this arm's-length relationship, I did not direct him to change anything.

Mr. Pierre Poilievre: Why did you think the timing was bad and inappropriate?

Mr. Marc Mayrand: I didn't think it was very appropriate to do that the day before the cross-examination in the civil case would start.

Mr. Pierre Poilievre: Do you think Canadians would be concerned to find out that not only do we as a Conservative Party think the timing was suspect, but you as the Chief Electoral Officer has said the timing of this search was inappropriate?

Mr. Marc Mayrand: From my point of view?

Mr. Pierre Poilievre: Yes.

Mr. Marc Mayrand: If I had a choice, I would have preferred to have it way before or sometime after, not on the eve of the civil case.

Mr. Pierre Poilievre: But it was a fortuitous coincidence that it was the eve before.

You did find that fortuitous.

Mr. Marc Mayrand: Yes, absolutely. Again, we're running two separate, distinct operations, and we don't share information between the two entities.

The Chair: Thank you, Mr. Poilievre.

Just in regard to that, Mr. Mayrand, who is responsible for determining the date that warrant was executed? Who made the decision?

Mr. Marc Mayrand: It was the commissioner on application to the judge.

The Chair: And he had the full authorization to do that.

● (1435)

Mr. Marc Mayrand: He does not need my authorization. He needs a judge's authorization, which he got.

The Chair: Thank you.

We're now moving to Mr. Martin, please, for five minutes.

Mr. Pat Martin: Thank you, Chair.

I'd like to get us back to the issue at hand, which is the regional media buy, or the plan to, and we believe to circumvent the spending limits of the Elections Act by this regional media buy. What I'd like to focus on is your statement that in assessing the reimbursement of election campaign expenses, you look at the fair market value or the commercial value of what was purchased.

To the Conservative candidate who ran in my riding of Winnipeg Centre, the Conservative Party sent \$10,800, and she returned \$10,800 to purchase advertising. It was roughly 30% of her total campaign, this one regional advertising buy.

But there's another example I'd like you to comment on. In the Toronto riding of Trinity—Spadina, the candidate spent \$50,000 on a regional advertising buy. In the research you did, is that a reasonable commercial price for advertising for one electoral district of Trinity—Spadina or Winnipeg Centre? Did that strike you as unusual in your evaluation of the real commercial value of an advertising buy?

Mr. Marc Mayrand: I am sorry, Mr. Chair, but I cannot comment on the specific cases that are either before the Federal Court or are the subject of the investigation by the commissioner.

Mr. Pat Martin: Well, let's view them as hypothetical. You gave us a hypothetical example about lawn signs—if there had been \$10,000 worth of lawn signs. You must have done similar research as to what advertising costs in order to determine whether that is a reasonable, fair market value or if it seems excessive for a single electoral district. Did that research take place?

Mr. Marc Mayrand: That's what the auditors will consider when they examine the claim: was it reasonably incurred?

Mr. Pat Martin: Without looking at Winnipeg Centre or Trinity—Spadina, do you know what their research told them would be a reasonable amount for a media buy for that one electoral district?

Mr. Marc Mayrand: The short answer is no, at this point in time. I can't provide you with that information.

Mr. Pat Martin: Thank you.

[*Translation*]

Mr. Thomas Mulcair: Mr. Chairman, I want to give Mr. Mayrand an opportunity to repeat in French what he just said in English. First, earlier he was given the opportunity to clear up certain ambiguities regarding the Conservatives' attacks, particularly regarding a leak. He was convinced that, if there was one, it did not come from his office.

Second, apart from the Conservative Party, no other party meets all these factors.

The third point, that is to say time chosen for the search, is very important. If I understand correctly, the Commissioner and you did not agree about the selected time. Since you were responsible for the civil aspect and he for the criminal or penal aspect, you thought that the timing of the search at the Conservatives' offices, the day before the court depositions in the civil case, was a singularly poor choice.

Mr. Marc Mayrand: You can't say there was any disagreement. The Commissioner has some responsibilities and decisions to make. When he informed me that he was preparing—the decision was already made—to take the steps he was contemplating, I was surprised and disappointed to see that that operation would be conducted the day before the Federal Court hearings.

Mr. Thomas Mulcair: Did he try to justify his choice of date?

Mr. Marc Mayrand: No, he simply told me that his investigation had reached that point. He informed me; it was a bit of a heads up, if I may say that.

Mr. Thomas Mulcair: We understand the expression, but did he show some sensitivity? That's entirely a matter of perception. How was it that cameras were there? Is it true that other parties did the same thing? Why conduct the search the day before..? Even though you operate in a different area of jurisdiction, did he seem to understand that could cause a problem of perception of the institution?

Mr. Marc Mayrand: I wouldn't say he was insensitive. However, he had an investigation to conduct. It should not be forgotten that that investigation had already been going on for a year and that, at that point in the investigation, following a number of months of work, he was at the stage of obtaining a search warrant.

● (1440)

Mr. Thomas Mulcair: You often came back to that in your evidence today. You have emphasized that you enforce the act consistently. You understand the extent of the attack on the institution which must be on the alert for all elected members and, ultimately, protect our democracy. You are sensitive to that fact.

Does the Commissioner lack that sensitivity?

Mr. Marc Mayrand: No, because what are the choices? Should we refrain from enforcing the act? Because events can take an unpleasant turn for some, should we say we won't ensure that the legislation is enforced and administered in a consistent, fair, constant and coherent manner?

Mr. Thomas Mulcair: You know, there were never any other searches. Consistency is not an issue in this case.

[*English*]

The Chair: Order.

Thank you. You will get another opportunity, but I do have to move on to another member.

We'll go to Mr. Hubbard, please.

Hon. Charles Hubbard: Thank you, Mr. Chair, and thank you, Mr. Mayrand, for a very good presentation this morning outlining the Elections Act.

First of all, when you assumed your position, your predecessor indicated there might be a problem. You said that this morning.

Mr. Marc Mayrand: That is correct.

Hon. Charles Hubbard: That is correct. And the problem centred around the group Retail Media and expenses that were submitted by 50 to 60 members of the Conservative Party. Is that correct?

Mr. Marc Mayrand: Sixty-seven—

Hon. Charles Hubbard: Sixty-seven members.

Mr. Marc Mayrand:—candidates or agents.

Hon. Charles Hubbard: And with that, Mr. Mayrand, it became evident that when you totalled that amount of money and you looked at the submission from the Conservative Party of Canada, that money was allocated to the national party and would put that party over its spending limit. Is that correct?

If you put that money on top of what they submitted as the national party's amount of spending, it would put that party over the elections limit.

Mr. Marc Mayrand: Correct, according to the last return filed.

Hon. Charles Hubbard: And that would place them in jeopardy, with a semi-criminal offence, where there could be punishment for its agent of up to five years of imprisonment.

Is that correct?

Mr. Marc Mayrand: I believe so, yes.

Hon. Charles Hubbard: Mr. Chair, I'm rather taken aback by the Conservative Party—with the government's position, that is—attacking Elections Canada. Elections Canada, to my understanding, has been around the world advising other countries on behalf of the United Nations and other agencies on how to conduct elections.

Mr. Mayrand, could you tell us what other countries you've participated in, and were there ever complaints from any party in another country, other than the Conservative Party of Canada, saying that you're unfair and prejudiced in what you have done?

Mr. Marc Mayrand: There were a number of missions carried out over the last several years. Afghanistan comes to mind, as do Iraq and Haiti, the two main ones.

We also have extensive collaborative arrangements with many jurisdictions around the world. I was in Mexico last week to discuss some of the challenges that Mexico is facing in the area of political financing and advertising and how they are going about implementing new legislation in that jurisdiction.

Again, throughout the world, we have various missions or exchanges with other electoral bodies.

Hon. Charles Hubbard: With the 67 or 68 official agents and some of the so-called people who won elections, some of whom are privy councillors today, when they signed off within four months of the election on a report of their election expenditures, each of them would have declared, to the best of their information, that what they had submitted to you and your office was correct and under the proper guise of the Elections Act. Is that correct?

Mr. Marc Mayrand: Correct. That declaration is required with the return.

Hon. Charles Hubbard: As members of Parliament, we sign off on these reports, reviewing them and understanding that what we submit is fair, is opaque, is transparent, and is public knowledge, in terms of what our expenses were in getting a person or a candidate elected in a given constituency. Is that correct?

• (1445)

Mr. Marc Mayrand: And I would add, in compliance with the requirements of the act, yes.

Hon. Charles Hubbard: When we talk about the police raid—the Conservative Party, in fact, seems to want to deal entirely with the raid.

I've never seen a raid or participated in one, but I understand that when they come to a building, they cordon it off and somebody will stand at the door and the public who walk by will know that the police are involved and that something is happening within that building or general area. Is that correct?

Mr. Marc Mayrand: Not necessarily; it depends on the operation.

Here the premises were located in a commercial building. So it was only the specific premises in that building, and there was no reason to cordon off the whole building.

Hon. Charles Hubbard: But it is a public building and the public could go there and see a raid taking place. Is that correct?

Mr. Marc Mayrand: Yes.

Hon. Charles Hubbard: From your evidence, you said that two and a half hours after the raid began, suddenly the press arrived. Would it not be normal for some person walking by to say, “Lo and behold, the Conservative Party is being raided this morning and the *Ottawa Citizen* should get a reporter out there to see what's happening”? I mean, that's quite understandable, Mr. Chair, and I think that would be the main point.

I'm very sorry to hear members of the government accuse you and your office of being part of this so-called “making this thing public”. It's certainly a very public building and it's a public place.

Thanks, Mr. Chair.

The Chair: Do you have any comment, Mr. Mayrand?

Mr. Marc Mayrand: No.

The Chair: No comment. Thank you.

We will now move to Mr. Tilson.

Mr. David Tilson: Thank you, Mr. Chairman.

There have been, certainly, well-founded concerns of leaks—alleged leaks—from Elections Canada to the Liberal Party. The Conservative Party, therefore, has good reason to be concerned with the security of proprietary documents that Elections Canada has in its possession.

My question to you is, what security is there at Elections Canada with respect to documents such as this?

Mr. Marc Mayrand: There is permanent controlled access to the room in which the documents are maintained. The documents are maintained under lock within the room. That's accessible only to the people who are dealing with the investigation.

Mr. David Tilson: How many people would that be?

Mr. Marc Mayrand: It varies. I would have to provide more certainty, but I believe it's about five people.

Mr. David Tilson: It's five people.

A real concern is that Elections Canada is now in possession of Conservative election strategy as a result of the documentation you seized. My question to you, sir, is this: has that strategy been shared with the Liberal Party of Canada?

Mr. Marc Mayrand: We are not in possession of documents that reflect the strategy of the party. These documents have been claimed under privilege. They have been sealed ever since the search was carried out, and I believe proceedings are coming up at some point in time before the court to determine if and how those documents could be accessed.

Mr. David Tilson: Do you agree that a registered party can transfer money to a local candidate?

Mr. Marc Mayrand: They can transfer to their local candidate, yes.

Mr. David Tilson: I am told that in the 2006 federal general election, the Liberal Party made monetary transfers to candidates in a total amount of about \$1.7 million, the NDP almost \$900,000, and the Bloc Québécois over \$700,000. Without asking you to confirm these numbers that I've just given you, is it safe to say that this is a routine practice and that Elections Canada has no problem with it?

Mr. Marc Mayrand: It's a common practice. Transfers are allowed between entities of the same affiliation.

Mr. David Tilson: Can a party not make transfers to a candidate up to the candidate's spending limit?

Mr. Marc Mayrand: They can transfer over the spending limit. The limit is on the spending, not on the transfer.

Mr. David Tilson: Of course, but...you didn't listen to my question. Can a party not make transfers to a candidate up to the candidate's spending limit? The candidate has spending limits too.

Mr. Marc Mayrand: Yes, it could transfer, in theory—

Mr. David Tilson: They can do that?

Mr. Marc Mayrand: It could transfer \$100,000, which is \$20,000 over the candidate's—

Mr. David Tilson: Thank you.

Can a party not make such transfers to all of its candidates?

Mr. Marc Mayrand: Yes.

• (1450)

Mr. David Tilson: Can the candidate then spend up to the limit on his election expense?

Mr. Marc Mayrand: Yes.

Mr. David Tilson: Can a party not seek to maximize the spending opportunities of its candidates by transferring the necessary funds to them?

Mr. Marc Mayrand: I think you have to be careful there. Again, as I mentioned earlier today—

Mr. David Tilson: We're always careful, sir. I want to know whether they can do it or not.

Mr. Marc Mayrand: I think the expenses have to be incurred by the candidate.

Mr. David Tilson: Can the candidates not then spend that money on election expenses?

Mr. Marc Mayrand: Yes.

Mr. David Tilson: Your answer was yes?

Mr. Marc Mayrand: Yes.

Mr. David Tilson: Can the transferred money be used to buy election advertisement of whatever form—written, electronic, radio, TV?

Mr. Marc Mayrand: Yes.

Mr. David Tilson: Is it necessary that the election advertisement be created, produced, prepared by the official agent of the candidate?

Mr. Marc Mayrand: I'll ask you to repeat that one; I'm sorry.

Mr. David Tilson: Is it necessary that the election advertisement be created, produced, prepared by the official agent of the candidate?

Mr. Marc Mayrand: I assume that in most cases the candidates don't have the capacity. They will purchase the production of the ads or the material from a supplier.

Mr. David Tilson: Is the answer yes? Is the answer no or yes?

Mr. Marc Mayrand: Again, a candidate can purchase supplies of goods and services from a supplier.

Mr. David Tilson: Can an election advertisement be produced, created, or prepared by a registered party or by specialized firms for the registered party?

Mr. Marc Mayrand: Again, a specialized firm can supply goods and services of commercial value to the candidates.

Mr. David Tilson: In fact, that is a common practice for all major parties, is it not?

Mr. Marc Mayrand: It varies.

Mr. David Tilson: Thank you, Mr. Chairman.

The Chair: You'll carry on, I'm sure, in the next round.

We now move to Madam Redman, please.

Hon. Karen Redman (Kitchener Centre, Lib.): Thank you, Mr. Chair.

Mr. Mayrand, I too have found your presentation very enlightening.

Along the lines that my colleague, Mr. Tilson, was just asking you, I think the real question is what's different with these 67 cases of Conservative candidates that raised red flags with Elections Canada.

As far as Elections Canada is aware, Retail Media did not generate any invoices to the candidates directly. Is that correct?

Mr. Marc Mayrand: I believe the invoices went to the party, and from the party to the candidates.

Hon. Karen Redman: But it didn't go to the local candidates. So from the evidence you've seen, would you say there was no local control?

Mr. Marc Mayrand: I'm sorry, but I'm afraid we're getting into the court case. These are all points that are now being made before the Federal Court.

Hon. Karen Redman: So in your view, it's accurate to state that the media buys took place entirely under the control and direction of the Conservative Party and not by the local candidates?

Mr. Marc Mayrand: Again, I refer you to the statement made before the Federal Court.

Hon. Karen Redman: It's interesting how indignant the Conservative Party has been about bringing the full disclosure of this to Canadians through the committee process. It has been going on for months and months now.

We're in a minority government, and we could be going to the polls at any time. What measures have been put in place to ensure that if an election took place this wouldn't be repeated?

Mr. Marc Mayrand: We just ran a nationwide training session for official agents, and we pointed out the duties and obligations of official agents and the basic rules governing expenditures during an electoral campaign. We recently issued a short pamphlet on “do's and don't's”. We issued a poster for agents—something for them to present to their staff and have in the riding office so that everybody can take note of what is okay and what is not. We've taken various measures of that nature to make sure that all entities are aware of the requirements of the legislation.

Hon. Karen Redman: You mentioned the penalties for failing to submit proper documentation, which every candidate is required to do. Certainly, members sitting in the House have to do that before they take their seats.

In the case of the 17 candidates who have been identified by Elections Canada as participating in this scheme and who currently are sitting members of Parliament, some of them being public office holders, why hasn't this happened as yet? Why are they still being allowed to sit in the House?

•(1455)

Mr. Marc Mayrand: I believe 10 office holders are sitting in the House, not 17.

Hon. Karen Redman: There are 17 MPs, 10 of whom hold public office.

Mr. Marc Mayrand: That sanction applies only if the return has not been filed—in cases of failure to file a return or a conviction for having filed a false return. No such case has arisen for any member of the House.

Hon. Karen Redman: In your presentation you said that the penalties can be quite severe. Obviously, Elections Canada takes all of this very seriously, with extreme sanctions possible as the process goes forward.

Mr. Marc Mayrand: Absolutely. As I indicated today, it's not a decision that lies with any particular individual. It's a decision that is the object of much checking and balancing before proceeding.

Hon. Karen Redman: You've covered this off incidentally in other answers. But from time to time, parties will come to you and ask if a practice is acceptable. So even during elections, it would not be unusual for parties to come and clarify as they go forward.

Mr. Marc Mayrand: That is correct. We have a hotline with counsel at Elections Canada that is available only to parties. If there is anything they need from Elections Canada during the campaign, they can use that line to raise issues.

Hon. Karen Redman: Thank you.

The Chair: Mr. Goodyear.

Mr. Gary Goodyear (Cambridge, CPC): Thank you, Mr. Chair.

Mr. Mayrand, I'd like to continue with some questioning about advertising and its purpose. Must the broadcast time be purchased by the agent of a candidate, or can it be done by someone else, a registered party, for example, for the candidate, or purchased by a party and then resold to the candidate?

Mr. Marc Mayrand: If it's purchased by somebody other than the official agent, it has to be authorized in writing.

Mr. Gary Goodyear: It has to be authorized in writing?

Mr. Marc Mayrand: In writing, by the official agent.

Mr. Gary Goodyear: I'm going to ask you if you could submit to the committee at some point the part of the act that says it has to be in writing. That would be appreciated. We'll get to the handbook later, where it actually says the only thing that's necessary in writing is the payment of petty expenses.

Have other parties done this kind of transfer and media buy, purchasing broadcasting time?

Mr. Marc Mayrand: Again, there are all sorts of transaction practices that vary from party to party.

Mr. Gary Goodyear: So there would be some times when they purchased broadcasting time? Is the answer yes?

Mr. Marc Mayrand: My hesitation is that I'm not personally aware of a case. It doesn't mean it doesn't happen.

Mr. Gary Goodyear: Must the advertising expressly promote the candidate by name, or is it sufficient that the candidate's tag line appear on the ad?

Mr. Marc Mayrand: The tag line is only used to determine the attribution of the advertisement. It indicates that, yes, it's been authorized by the agent, so it's to make it clear to the public who the advertisement should be attributed to. It has nothing to do with whether the expense for that advertising has been incurred.

Mr. Gary Goodyear: But it is possible that the tag line is in fact all that's necessary under the act?

Mr. Marc Mayrand: All that is required when the advertising is put out? Yes, it's to show attribution. It's not to show the expenses.

•(1500)

Mr. Gary Goodyear: Thank you.

Do you think it's necessary for the candidate to view the ad before the expense is incurred?

Mr. Marc Mayrand: Is it a legal requirement? I don't think so. If I were a candidate, I'd be inclined to want to see it, but...

Mr. Gary Goodyear: Therefore, it's not required that the candidate see the ad. That makes sense; of course, it does.

Is it not a fact that in many cases the expense is incurred before the ad is even produced?

Mr. Marc Mayrand: Produced, I'm not sure, but placed, yes.

Mr. Gary Goodyear: Okay. This isn't really that different from other purchases that candidates can make from their parties, like posters and lawn signs and other advertising materials. Parties, as you well know, Monsieur Mayrand, purchase in bulk to save on price. It's always a good thing to do that. Then, of course, they resell that time to the candidates, thereby saving money.

By our estimates, the Liberal Party sold \$1.3 million in goods and services to its candidates in the last election, and the Bloc, \$820,000. I'm not asking you to confirm those numbers, but I'm simply pointing out that it is a routine practice engaged in by all parties and that Elections Canada actually has no problem with that.

Mr. Marc Mayrand: It's possible for a party to be a supplier of goods and services to a candidate. They can transfer them or sell them.

Mr. Gary Goodyear: So the answer is yes?

Mr. Marc Mayrand: Yes.

Mr. Gary Goodyear: Can the transfer be conditional on the money being used for a specific purchase, or for a specific purpose, such as a payment for the ad?

Mr. Marc Mayrand: There could be some conditions attached to the transfer.

Mr. Gary Goodyear: So it's okay to have conditions? If it's okay to have conditions, then, can that specific purpose be payment back to the party for the goods and services provided by the party?

Mr. Marc Mayrand: Yes.

Mr. Gary Goodyear: Thank you. Now this is what's come down to this term that the opposition likes to use, and the term is the "in and out transfer", whereby money is received....

I'm sorry? One minute? Thank you, Mr. Chair.

The result is this in and out transfer, where money is received by the official agent from the party through a transfer and is paid to the party in payment of an invoice for goods or services provided by the party. Is there anything wrong with that?

Mr. Marc Mayrand: I apologize. I missed the question.

Mr. Gary Goodyear: This is a situation where money is transferred in and out, as the opposition rules, whereby money is received by the official agent from the party through a transfer—we've already established that that's completely okay—and is paid back to the party in payment of an invoice for goods or services, such as advertising, that were in fact provided by the party. Is there anything wrong with that?

Mr. Marc Mayrand: Again, it depends on the circumstances. It's doable. You have to make sure that the agent is aware that he's authorized the purchase, that there are some documents that support the transaction, that the transaction is at commercial value, that the expense is reasonable, etc.

Mr. Gary Goodyear: And this is quite routine among the parties?

Mr. Marc Mayrand: Yes.

Mr. Gary Goodyear: Thank you, Mr. Chair.

[Translation]

The Chair: Ms. Lavallée, go ahead, please.

Mrs. Carole Lavallée: Thank you very much, Mr. Chairman.

I'd like to go back to the groups of regional media buy program transactions because it appears from all the documents we've read that it is clearly established what happened. The Conservative Party and its senior officials sent money to 67 candidates, telling them that that money would be accompanied by an invoice. The official agents paid the invoice with the money they had just received from the national party, and that enabled the national party to exceed the expense limit. That's clear in my mind.

You said this morning that you didn't know to whom to attribute the expense. You're sure, you're convinced that expense wasn't

incurred by the official agents. You say the expense isn't a candidate expense, but you don't know to whom to allocate it.

Is that in fact what you said?

Mr. Marc Mayrand: At the time I made that decision, yes.

Mrs. Carole Lavallée: But why the possibilities—

Mr. Marc Mayrand: I wasn't able and I didn't have enough facts to draw a reasonable conclusion as to whom to attribute the expense.

Mrs. Carole Lavallée: But if it isn't attributable to the candidates, what are the remaining possibilities? There remains the party. Who else? To whom do you attribute an election campaign expense?

Mr. Marc Mayrand: I have to be able to attribute it positively. Not simply by—

Mrs. Carole Lavallée: —deduction. But there are no other choices.

Mr. Marc Mayrand: There might be others; that becomes hypothetical. What I can tell you is that, at the time the decision was made, I wasn't able, on the basis of the facts presented to me, to conclude that that expense could reasonably be attributed to the party.

• (1505)

Mrs. Carole Lavallée: Personally, I don't at all see, realistically, to whom else but the national party the expenses could be attributed. Moreover, Mr. Ronald Lamothe, Assistant Chief Investigator at the Office of the Commissioner of Canada Elections, made a large number of statements in the information document to obtain a search warrant. There is one that concerns what we are talking about. It states:

[English]

“AND THAT there are reasonable grounds to believe” that....

[Translation]

—I'm skipping some short passages—

[English]

“...the Conservative Fund Canada did incur election expenses....”

[Translation]

The Conservative Party exceeded its electoral expenses and

[English]

“...the total amount of which exceeded the maximum amount allowed for election expenses of the Conservative Party....”

[Translation]

which resulted in total expenses that exceeded the maximum amount allowed for the Conservative Party's election expenses.

At least there's someone who knows to whom to attribute the expenses that you don't know to whom to attribute. How is it that Mr. Lamothe can do it and that you can't?

Mr. Marc Mayrand: Mr. Lamothe is at the Commissioner's Office. The Commissioner has been conducting an investigation for a little more than a year now. Obviously, if I can rely on this document, the Commissioner gathered information during his investigation that was not available at the time I had to make my decision more than one year ago.

Mrs. Carole Lavallée: That means that he, the Commissioner of Elections, has more information than you.

Mr. Marc Mayrand: After a one-year investigation, yes.

Mrs. Carole Lavallée: Did he meet any other people that your office didn't meet?

Mr. Marc Mayrand: I'm not informed about all the Commissioner's efforts, but I assume he met people.

Mrs. Carole Lavallée: He met other people and obtained other information, and he is able to attribute the expenses to the candidates.

Mr. Marc Mayrand: I think that, if you read the entire affidavit, you'll see that it also refers to another procedure that the Commissioner conducted, which was a production order served on the firm that handled media buying.

Mrs. Carole Lavallée: Retail Media, yes.

Mr. Marc Mayrand: And I think he was able to obtain information—

Mrs. Carole Lavallée: —that you didn't have.

Mr. Marc Mayrand: No, obviously, that's an order. It's information that, once again, was obtained as a result of a court order. It was not available to me at the time I made my decision to deny the claims.

Mrs. Carole Lavallée: Is the referral you made to the Commissioner called a referral?

Mr. Marc Mayrand: Yes.

Mrs. Carole Lavallée: Do you often do that?

Mr. Marc Mayrand: I would tell you quite quickly, that more than 500 referrals were made to the Commissioner respecting the 39th general election.

Mrs. Carole Lavallée: So for each of them, you were satisfied that a referral was required.

Mr. Marc Mayrand: Yes. The financial side was evaluated and there had indeed been offences under the act.

I'll give you a typical example of what unfortunately happens too often and constitutes an offence. I referred very briefly to it. Transferring funds to a candidate before he is officially a candidate is an offence under the act. The act is drafted in such a way that that constitutes an offence. This is the kind of matter that will go to the Commissioner and that he must address.

Mrs. Carole Lavallée: This is my last question. I'm going to go quickly. What kind of cooperation did you get from the Conservative Party as a result of which you were unable to obtain the information you needed and had to send the RCMP to conduct a search?

Mr. Marc Mayrand: Once again, it is the Commissioner who conducts his investigation and who uses the tools at his disposal to conduct his investigation—

Mrs. Carole Lavallée: Did the Conservative Party cooperate in order to give you the information, the documents, you needed?

Mr. Marc Mayrand: I believe there were frequent exchanges, as I said in my presentation a little earlier this morning, with party representatives, agents and candidates concerning all these transactions. Unfortunately, I ultimately didn't find the information sufficient to authorize reimbursement, and that is why there is a dispute before the courts.

Mrs. Carole Lavallée: Thank you.

[English]

The Chair: Thank you, Madame Lavallée.

I believe it's Mr. Hiebert now.

Mr. Russ Hiebert (South Surrey—White Rock—Cloverdale, CPC): Thank you, Mr. Chair.

Thank you, Mr. Mayrand, for being here.

Mr. Mayrand, we respect the work that Elections Canada does both here and around the world, but that doesn't mean we can't necessarily disagree about the interpretation of an act that you might agree is incredibly complex. It's certainly possible that Elections Canada could make a mistake. In fact, we know that Elections Canada has made mistakes in the past, even recently. The Federal Court earlier this year made a ruling that indicated that the interpretation of Elections Canada was mistaken.

Do you admit it's possible that Elections Canada might be mistaken in this case?

● (1510)

Mr. Marc Mayrand: That's why we have a court of law.

Mr. Russ Hiebert: Fair enough.

You've also indicated, when you refer to the five factors you've identified, that there's no single factor that can be looked at as being decisive; you have to look at all five factors collectively. In fact, you also stated that you had officials look at the other political parties to determine whether all the five factors were present in those other parties. Did you not say that?

Mr. Marc Mayrand: Yes.

Mr. Russ Hiebert: When were these five factors first published?

Mr. Marc Mayrand: Those five factors are directly linked to the legislation.

Mr. Russ Hiebert: I understand that, but you're telling us that these five factors are critical. I'm wondering if you—

Mr. Marc Mayrand: It could have been seven factors; it could have been ten. In this case, in these transactions, in these circumstances, based on the definition and the concept principles discussed this morning, these are the factors that came out.

Mr. Russ Hiebert: I'm just wondering when it was that you first made these five factors known publicly, that this was a requirement that parties needed to comply with and that these were considerations they would have to keep in mind.

Have you ever published this information before, or is this the first instance that you've declared it?

Mr. Marc Mayrand: These factors flow directly from the legislation.

Mr. Russ Hiebert: That may be the case, but my question is whether before today you had ever publicly indicated that these five factors were the critical elements to deciding this case and possibly future cases. Was today the first time you've ever publicly declared these five?

Mr. Marc Mayrand: I think they were before the Federal Court, so they are public for that purpose.

Again, when we look at transactions and analyze those transactions based on all the criteria I mentioned this morning, if a series of criteria are not met, then we have an issue of non-compliance from our point of view.

Mr. Russ Hiebert: Fair enough. I was just trying to figure out when these five factors you've enunciated for us first became public and first became required by parties to follow. It sounds like you're saying that today was the first time you've done it, but it has also been indicated by the Federal Court, which is reviewing an action sometime after the last election.

Mr. Marc Mayrand: But that's what we do.

Mr. Russ Hiebert: I have limited time, so I need to focus my questions.

You also mentioned that you had the elections officers look at the other parties to see if they complied with the five factors. I'm wondering how many of the five factors were present with the other parties. For example, with the Liberal Party, obviously the five weren't there, but were there four present? Were there three?

Mr. Marc Mayrand: Each claim is reviewed by the auditor when the return comes in. They apply a program, consistently, that reflects the standards of the legislation. As they come across transactions that beg questions, they will escalate the matter. At the end of the day, we will determine whether this transaction meets or doesn't meet the requirements of the legislation. Why? Because some of the dozens of factors that may exist may vary from transaction to transaction.

Mr. Russ Hiebert: I'm drawing your attention to a particular statement you made this morning when you said, and I quote:

Elections Canada has not identified any other transaction or group of transactions in which all of the factors I mentioned earlier were at play.

You were saying that you had looked at all the major registered parties.

My question to you is this. When you looked at the other major registered parties, and you were looking for these five factors, how many were present with the others?

Mr. Marc Mayrand: None of the transactions we examined presented the same factors.

Mr. Russ Hiebert: Not all five, but certainly some of the other factors would have been present. Certainly there were other parties....

Mr. Marc Mayrand: There are instances when there is no commercial value. That would be referred to the commissioner.

Mr. Russ Hiebert: Fair enough. You're saying that some of the factors were present, but not all of them.

Mr. Mayrand, you've stated that one of the requirements of an official agent is to have detailed knowledge of the expense he or she is authorizing.

Mr. Chair, am I out of time?

• (1515)

The Chair: This is your last question, sir.

Mr. Russ Hiebert: Okay. This might take a little bit of time to unpack, so perhaps I can come back.

The Chair: That would be helpful.

Mr. Russ Hiebert: Okay.

The Chair: We're not in any hurry, but I just want to be fair to all members here.

We'll move on now to Mr. Martin, please.

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

Mr. Mayrand, I'd like to take you back to your PowerPoint presentation and slides 26 and 27, which deal with the penalties for non-compliance. I have a question, first of all, on panel 26. The penalty for candidates for exceeding the election expenses limit can be \$1,000 or three months if they did it by accident and \$5,000 and five years in prison if they did it on purpose. Plus, they cannot sit in the House of Commons, nor can they run as candidates for the next five years. But for filing false or misleading election returns, there is no such corresponding penalty for the MP. Am I accurate in that?

Mr. Marc Mayrand: That's correct.

Mr. Pat Martin: In other words, even if the commissioner recommends charges for filing false and misleading election returns, and even if they're found guilty for doing such a thing, this does not apply to the public office holders we're dealing with today. The penalty of losing your seat or not being allowed to run for five years does not deal with filing false or misleading returns; it deals only with exceeding the election spending limit. That's news to me. Am I reading that correctly?

Mr. Marc Mayrand: You are correct. I think this illustrates some of the imbalance in this situation.

Mr. Pat Martin: What would be the maximum consequence or penalty, then, in the hypothetical situation in which one of the people mentioned in this list of 17 is convicted of filing false or misleading election finance returns?

Mr. Marc Mayrand: For false or misleading returns, according to the table I showed you this morning, it would be a fine of \$5,000 or five years in prison.

Mr. Pat Martin: It actually doesn't say anything for the candidates. That's only for the official agent.

Mr. Marc Mayrand: No, no. The table applies to candidates. Look at the top. The agent is also liable for offences.

Mr. Pat Martin: All right. I understand.

But the only situation in which you would be precluded from taking your seat in the House or barred from running again would be if you exceeded your spending limits. So in the situation we have of false and misleading documents being filed on an election return, the maximum penalty for, let's say, Maxime Bernier or Stockwell Day or Lawrence Cannon, if they were convicted, would be a \$5,000 fine and five years in prison. Is that correct?

Mr. Marc Mayrand: Again, as shown on that table, a false or misleading statement could lead to a fine and imprisonment of up to five years.

Mr. Pat Martin: Thank you.

[Translation]

Mr. Thomas Mulcair: Mr. Chairman, I want to go back to Mr. Mayrand—

[English]

The Chair: Mr. Mulcair, I have allowed you to go forward, but I did not acknowledge you. I haven't done it yet, and I apologize for that.

I now turn the floor over to Mr. Mulcair.

[Translation]

Mr. Thomas Mulcair: Thank you, Mr. Chairman. I want to go back to Mr. Mayrand and to pick up where we left off earlier. In his testimony in English, he very clearly suggested to us that he wasn't satisfied with the timing—for a lack of a better word—or with the moment selected by the Commissioner to conduct the search, that moment being the day before the civil proceeding that is his responsibility as Chief Electoral Officer, whereas the Commissioner is responsible for the criminal aspect.

Earlier I asked Mr. Mayrand whether he found that inappropriate and whether he thought the Commissioner had failed to grasp the importance of maintaining not only Elections Canada's objectivity, but also its image of objectivity. I was somewhat surprised by the answer I got. He told me that what the Commissioner is supposed to do is to enforce the act equally for everyone. Those comments cannot both be true. Mr. Mayrand cannot, on the one hand, tell us in English that he found that inappropriate and, in French, take refuge behind a supposed neutrality, whereas only one search was conducted, against one single political party, which is the Conservative Party of Canada.

I'm asking the question again in French. Since he himself questioned the Commissioner's choice at the moment, can he tell us that he found that choice inappropriate? Can he tell us that he, our federal Chief Electoral Officer, disagreed on the moment chosen by the Commissioner to conduct the search of the Conservative Party's offices?

• (1520)

Mr. Marc Mayrand: I still think that, from my point of view, the timing could have been different. I can entirely understand that, from the Commissioner's viewpoint, he had investigation, logistics and coordination imperatives as a result of which he had to proceed because that's where he was in his investigation. I respect that decision, even though, with respect to timing, it was not a decision I enthusiastically welcomed.

Mr. Thomas Mulcair: At the very start this afternoon, Mr. Chairman, you asked Mr. Mayrand whether he had anything to change or add in the testimony he gave us earlier today.

I am going to take the liberty of asking a somewhat similar question. If you consider the following aspects: the facts as a whole, the concerns with respect to objectivity raised by the Conservatives, the Chief Electoral Officer's insistence that all the political parties were always treated in the same way, the concerns over a possible leak, the fact that it was all the parties, and the moment chosen, would he himself have done things differently in this case, or does he think that everything was done in accordance with the best of possibilities in the circumstances?

Mr. Marc Mayrand: I think very sincerely that things were done in accordance with proper practice. I don't see how things could have been done differently, in view of the system we have to administer.

[English]

The Chair: That's it. I'm sorry.

Monsieur LeBlanc, please.

[Translation]

Hon. Dominic LeBlanc: Thank you, Mr. Chairman, and thank you again for your comments, Mr. Mayrand. You are a patient man, you are very generous with your opinions, and I very much appreciate that.

I would like to ask you a question on three specific aspects. With regard to the matter of the Director of Public Prosecutions, I myself learned today that the Director of Public Prosecutions was in fact mandated to represent or act on behalf of the Commissioner in the search warrant matter.

Did I correctly understand that, at that point, when the Commissioner requested a warrant or referred to the matter of the need for a search warrant, the Director of Public Prosecutions himself conducted an analysis, examined the whole of the evidence and agreed to proceed in court in Ontario? That's another judgment that was applied by the Director of Public Prosecutions in this case.

Mr. Marc Mayrand: That's correct.

[English]

Hon. Dominic LeBlanc: That's interesting. For the first time I've learned that the Director of Public Prosecutions has already made a judgment—albeit an interim one—with respect to the evidence necessary to go and get a search warrant at the court in Ontario.

Mr. Marc Mayrand: Well, he's made an assessment as to whether the evidence or the facts presented to him justified the application for a warrant.

Hon. Dominic LeBlanc: Thank you.

I think a number of times earlier this morning you referred to bringing closure to these files. I appreciate from your comments that you didn't believe that there were sufficient grounds to authorize the reimbursement, or the refund, of this money in these 67 claims, and then you referred it to the commissioner and so on. What I'm trying to understand is if, in your view, they did not constitute appropriate expenses incurred by the candidates claiming them. I asked you earlier if presumably they would be expenses of the national party—advertising expenses that are clearly political in an election have to be assumed by some lawful authority in a campaign—and you said you didn't have enough information or you couldn't make that judgment yet; I forget the exact phrase.

Could you expand on that? Did you request information? For example, what information are you missing to be able to decide if in fact they should be attributed to the national party? Is there information that you've requested that the Conservative Party perhaps hasn't given you, or that the local candidates haven't given you? What's the process to decide where that \$1.2 million ends up—on what column it goes?

Mr. Marc Mayrand: There are a number of decisions that remain to be made on this file. First of all, some participants did receive a reimbursement. The matter was brought to our attention only after 17 candidates had received a reimbursement. There could be an issue there in that maybe we need to claim back the amount.

We also need to deal with the whole of the 67 candidates. If the expense is not approved, then there is a decision to be made about requiring amendments to the returns. Then there is a decision to be made with regard to the attribution of that expense.

These decisions were not made at the time because of the facts that were in front of me when I made the decision. Since then, of course, as we've discussed here today, there has been more information made available. But more importantly, I think it's fair to wait for the decision of the Federal Court before making those next decisions.

If the Federal Court were to reverse my decision—an order to pay—of course those other decisions will not have to be made. If the Federal Court supports my decision and determines that it was reasonably taken in light of the legislation, then those decisions will fall through....

• (1525)

[Translation]

Hon. Dominic LeBlanc: Thank you very much; that's very clear.

I have one final question concerning the falsification of documents. In a number of affidavits that, as you said, surrounded the civil proceeding in the Federal Court, reference was made to invoices that were filed on behalf of Conservative candidates and that had been provided by Retail Media.

[English]

For example, Conservative candidates outside the province of Quebec were invoiced by Retail Media an amount totalling \$591,000 plus GST. Then the Conservative Party submitted to Elections Canada what appears to have been an altered invoice, or simply the Retail Media invoice, and then photocopied but blanked out were all the other candidates on the list. They simply included a particular

riding and handwrote “plus GST”. That became the receipt the candidate's official agent attempted to give to Elections Canada in order to receive the refund, which ultimately you determined was not appropriate.

I am wondering, when you made your decision did you have some concern about the falsification of documents or the lack of clarity in the documents that official agents were submitting to you, the fact that it appeared to be a one-line invoice with handwriting that was the same for all the other candidates, and perhaps, as we saw, comments from Retail Media Group that they didn't recognize some of the invoices? I'm wondering if you could address the issue of the reliability of what the official agents may have sent to Elections Canada.

Mr. Marc Mayrand: I will say only two things. First of all, this is a matter that will be debated, I believe, in the Federal Court, and it will also be a matter for the investigation.

However, I will point out that the reference about alteration of invoices really came out for the first time, to my knowledge, when information became publicly available as a result of the search warrant application. That's all I can say. I'm not privy to the other matters in that regard.

Hon. Dominic LeBlanc: Merci.

The Chair: I have one brief question, Mr. Mayrand, in regard to what transpired there. With regard to the two official agents who have taken this matter to the courts—there are two ridings involved—in your opinion, are they reflective of the general case of the 67? Could they somehow be minor items, or in fact maybe severe items? I don't know how we got just those two and why those two would affect the implications for the balance of the 65.

Mr. Marc Mayrand: I am sorry, Mr. Chair, again this is a matter that may come up before the Federal Court. These applicants were selected from the applicants. I assume it was the counsel for the applicants who determined that these two candidate agents should be the ones to pursue the application before the Federal Court.

The Chair: The only reason I raised it is that your statement to the committee seemed to conclude that the decision in that Federal Court judicial review would, or likely would, apply to all the others. That should probably only be the case if they were fairly reflective of all the others. Would you not agree?

• (1530)

Mr. Marc Mayrand: It would depend on what ruling...and again we're into speculation here. My understanding is that the Federal Court is being asked to review the decision of a public official and will determine which tests apply, because there are various tests, and it will assess whether I applied the law correctly. Again, it depends on that judgment—again it's speculative at this point in time—and I do not know yet if that decision will be helpful in all other cases or whether it will be narrowly limited to the two applicants. I'll have to wait to see the decision on that.

The Chair: Okay. We should not assume that the decision on those two automatically would discharge the other 65.

Mr. Marc Mayrand: No.

The Chair: Mr. Hiebert, please.

Mr. Russ Hiebert: Thank you, Mr. Chair.

I have just one question of clarification before I proceed with my line of questioning. Can you clarify? Did you say that Elections Canada will not proceed with the prosecution until the Federal Court case is finished?

Mr. Marc Mayrand: Not the prosecution. It's two separate processes.

The commissioner is running an investigation, will at some point in time conclude that investigation, will determine if there are reasons to file charges—that he believes there are reasons to file charges—and will refer that to the DPP. They are completely separate processes and the two are not interlinked.

Mr. Russ Hiebert: Mr. Mayrand, in my earlier questions I think we agreed that you had established that these five factors were newly published, or newly mentioned by you, and that some of the factors were present in the other parties but not all five factors were there. In fact, you've stated that all five factors are critical for you to make the decision you have in referring this to the commissioner.

Factor number one that you mentioned was that statements made to Elections Canada disclosed a “lack of detailed knowledge” of the regional media buy. I've reviewed the Elections Act, and I've reviewed the deck you took us through today. When I look at slide 9, the duties of the official agent, I don't sense there's any responsibility by the official agents to have a “detailed knowledge” of what's going on in the campaign. That's normally the responsibility of the campaign manager. The official agent has to agree to sign expenses and pay cheques and receive contributions.

For example, when the campaign buys pizza to feed the volunteers, the official agent does not know what the topping on the pizza is; he just knows the cost of the pizza and who to send the cheque to. He doesn't have the detailed knowledge. Can you tell us where in the act the official agent's detailed knowledge is required?

Mr. Marc Mayrand: These are things that may be argued before the Federal Court.

Mr. Russ Hiebert: But these are critical factors.

Mr. Marc Mayrand: Relating to the presentation today, I will simply say that the person who signs the return is the official agent. The person who incurs liability on the penal side on account of fines and imprisonment is the official agent. If I were an official agent, I would certainly be making sure I knew what I was signing.

Mr. Russ Hiebert: Of course, Mr. Mayrand, but you're telling us that there are these five factors, the first of which is that an official agent has detailed knowledge. But you have yet to tell us where in the act this detailed knowledge is required of the official agent. It sounds to me like it might be reasonable, but if it's not in the act, you can't make it up.

I'm looking at the second of your five factors. You talk about the absence of the documentary evidence of a contract. Well, you've already admitted in your own examples that sometimes parties collectively make purchases—for example, lawn signs. It's common for a party to, let's say, purchase one million lawn signs and then sell 5,000 of those signs to an individual campaign. Like all Canadians, they want to get the best price. They want to purchase in volume, and it makes perfect sense. But in no instance would it be necessary

for the candidate to have a contract with the supplier of the signs. They pay the party who pooled the expenses and bought the signs. The candidate doesn't have a contract for the signs.

So why would there be this second requirement of these five factors that each candidate have a contract? Again, I don't see it in the act and I don't see it in the obligations of the official agents. I'm assuming that you're thinking this is reasonable. But we have to stick to what's in the act. If it's not in the act, you have the opportunity to propose amendments and improvements to the act and the House of Commons can consider them, but you can't retroactively or unilaterally apply them.

So when I look at your factors, I think to myself, well, these might be reasonable, but if they're not necessary and if they've never been published before, it's hard to hold parties to account on them.

If these five factors are all critical and all necessary, and if just the two that I've mentioned aren't present, doesn't this whole house of cards come crumbling down? Isn't the five-legged stool now toppling over on its side?

• (1535)

Mr. Marc Mayrand: I'm very reluctant. I really don't want to get into the case. I will simply point out that, as I stood at the time of the decision and as I stand today, I still find that it's quite unusual that an agent would not know about an expense that represents 40% of the total expenditure in a campaign. And that will be argued before a court of law.

With respect to documentary evidence, again, we were presented different views or stories regarding the existence of documentation. This will, again, be treated before the court.

Mr. Russ Hiebert: But you said that you have decisions yet to make, and you're relying, as you said this morning, on these five factors, which are newly published. We're hearing these for the first time.

I'm telling you that there's ample evidence to suggest that either some of these factors or maybe more than a few can't be substantiated or aren't even necessary because they're not in the act and they're not even reasonable—for example, the detailed knowledge requirement. I'm not sure where that came from. It's not in the act, from what I can tell, and you haven't referred to any section where it's present.

You make these arguments that these five factors are critical—

The Chair: You're at six minutes, sir. I'll let you bring it quickly to an end, and if Mr. Mayrand has a response, we'll accept that response as well.

So please wrap it up.

Mr. Russ Hiebert: I will wrap it up.

Mr. Mayrand, it appears to me that you've identified five factors but you haven't established their presence in law, and some of them, if not all of them, are shaky and surely couldn't substantiate or justify the decisions you've brought forward so far.

Mr. Marc Mayrand: That's your opinion, which I do not share. I think it's a matter that will be argued and decided by the Federal Court in due course.

The Chair: Colleagues, that actually is the end of the third round, and I already have another two rounds of questioning. There's no question, the questioning will be picked up tomorrow morning, starting again at 10 o'clock.

Mr. Mayrand, of course, we'll welcome you back again tomorrow morning. As we did with the last set of hearings we did on the Mulroney-Schreiber matter, I offered and I think the committee will also want to offer to you an opportunity to again make any corrections, additions, or changes in matters, answers to questions, or your testimony. We'll give you a chance over the evening to review what was said, to make absolutely sure that what is on the public record is a fair reflection of your knowledge and belief.

We'll give you that opportunity tomorrow and then carry on with questioning by members. I think we're just getting into full flight.

At this point—

[*Translation*]

Mrs. Carole Lavallée: I have a suggestion to make regarding the committee's business.

[*English*]

The Chair: No, no. Don't pre-empt me here.

Mr. Marc Mayrand: Mr. Chair, I just want to understand, are we dismissed for the day?

The Chair: Yes. I was going to say that you are excused for the day and that we look forward to seeing you again tomorrow morning.

We are going to continue now with the—

Mr. Gary Goodyear: On a point of order, Mr. Chair, I believe the notice I received for today's meeting suggested that it would go till four o'clock. Unless my clock is wrong, we still have 20 minutes for questioning.

I appreciate, Mr. Chair, that it's customary that we go to the end of the meeting and at least to what's on the notice of meeting today. I know you're part of the Liberal Party, but we have questions we want answered here. I think you're not providing any impartiality if you jump up and say let's just quit now.

We have 20 more minutes for questioning. Monsieur Mayrand has probably gone to a lot of trouble to prepare for this, and I think we should offer as much opportunity...if in fact what we're after here is the full truth. If we want half the truth, then let's cut the meeting short, but if we want the full truth, let's keep going.

• (1540)

The Chair: Thank you, Mr. Goodyear.

At the commencement of the meeting I laid out and announced that Mr. Tilson had three motions, I believe, to be dealt with at this meeting. I had indicated that those motions had been given due notice and that Mr. Tilson had the right to have his motions heard at this meeting.

I indicated that we would deal with them before the end of this meeting, you may recall, Mr. Goodyear. As well, I also indicated that as part of committee business—and that's why it's on our agenda for this meeting—

Mr. David Tilson: Mr. Chairman, I have a point of order.

The Chair: Excuse me, just hold it for a second, and I'll deal with your—

Mr. David Tilson: It'll be four o'clock the way we're going here.

The Chair: Excuse me, but I had indicated at the beginning of the meeting that we also needed to address, on a preliminary basis, the committee's wishes with regard to establishing future witnesses—which I insist we do before we break today. I have no problem going past four o'clock today, and we can, but we do have at least four hours tomorrow, if not more, to continue with these questions.

I would like to be sure that we deal with the issue of future witnesses now to see how long this is going to take, because it may take a long time. Okay? Under the circumstances, my preference would be to excuse Mr. Bernier and Mr. Mayrand for today, and we'll pick it up tomorrow with questions.

Now, did you have a point of order, Mr. Tilson?

Mr. David Tilson: Yes. I just want to confirm, Mr. Chairman, that the order of the day says that the meeting is to go to four o'clock, notwithstanding what you say. It was also agreed this morning that the motions would take place at four o'clock. That's when I'm prepared to make them. So we still have 20 minutes in which I believe other members would be interested in asking more questions of Mr. Mayrand.

You can't just unilaterally stop the meeting, sir.

The Chair: No, no, you're absolutely right.

I had indicated at the beginning of the meeting that I thought there was a clear understanding that we would deal with...because our normal meetings are two hours long in totality.

But I sense that the members would like to go for one more five-minute round through the list, which will take another half hour.

Is that acceptable to the committee? No problem?

Hon. Dominic LeBlanc: I just want to understand this. The meeting was supposed to finish at four o'clock. If Mr. Tilson wants to bring his motions at four o'clock, some of us have made commitments for other meetings at the end of this committee thinking we'd finish at four. I'd be happy to finish at four with another round of questions and to deal with Mr. Tilson's motions tomorrow.

An hon. member: Yes, good idea.

Mr. David Tilson: If you were here this morning, you would have heard the chairman say that the questions could go until four o'clock and that the motions would be dealt with, as well as the witness list, at four o'clock. If you were listening this morning, that's what was said.

The Chair: Order, please.

We have tomorrow from 10 a.m. until the committee wants to rise. Contrary to what one honourable member said, that our meetings just go to 4 p.m. because that's what it says here, that is the suggested time. The meeting is only adjourned when the members want the meeting to be adjourned.

So let's be careful here. There is no intent whatsoever to restrict members' questioning. Even if there is only one member here who wants to continue to ask questions, that member will be allowed to continue if no other parties want to ask questions. So we will be having all of the questions of these witnesses that members wish. If we must go over time tomorrow, we will.

The committee is shaking its head no. Could I have a motion that we defer going to the consideration of committee business on witnesses for an additional round? That's moved by Mr. Poilievre.

I think everybody understands. I'd like to put the question.

All those in favour of the Poilievre motion to have another round at this time, hold up your hands, please.

We have six in favour. All those opposed?

An hon. member: Mr. Chairman....

The Chair: I'm in the middle of a vote. If you want to go to the witness discussion....

An hon. member: [*Inaudible—Editor*]

The Chair: I called the question. That's enough. I'm sorry, if members don't pay attention....

An hon. member: [*Inaudible—Editor*]

The Chair: Excuse me, I called the vote. Some people voted and some didn't. It has happened before on this committee. As a matter of fact, when we passed the motion now before us, that was the case and the motion was carried.

So we are having another round, and the next member is Mr. Dhaliwal, please, for five minutes.

• (1545)

Mr. Sukh Dhaliwal: Thank you, Mr. Chair, and thank you again, Mr. Mayrand.

I'm going to carry on where Mr. Hubbard left off, that you have had missions across this globe and Elections Canada is an excellent agency to oversee elections overseas. But there's only one party—that is the Conservative Party of Canada—that is alleging that Elections Canada is not fair.

When we look at the excellent reputation you have across the world...I personally feel that my constituents and Canadians are concerned that just because of the selfish nature of this Conservative Party, the taxpayers are going through a lot of expense.

Could you tell me how much it has cost you up until now to defend the lawsuit you have from the Conservative Party, and how much additional money do you perceive that it will cost taxpayers?

The Chair: Order, please.

Mr. Gary Goodyear: Mr. Chairman, on a point of order, I'm just wondering about the relevance of such a question. We did establish that we would not be talking about the civil case, and the honourable member opposite is focusing directly on that.

The Chair: Thank you. That's debate, not a point of order.

Carry on, Mr. Dhaliwal.

Mr. Sukh Dhaliwal: Mr. Mayrand, could you tell me how much it has cost the taxpayers so far and how much additional money it will cost Canadian taxpayers?

Mr. Marc Mayrand: I believe we've had that question from the media, from time to time, ever since the matter has arisen. As we stand today, I believe the amount is close to \$800,000, \$500,000 of which are costs incurred by the commissioner in carrying out his investigation.

Mr. Sukh Dhaliwal: How much do you foresee it will additionally cost?

Mr. Marc Mayrand: That will depend on how things unfold over the next while. I can't provide a figure on that.

Mr. Sukh Dhaliwal: Thank you, Mr. Mayrand.

I'm going back to this invoicing issue that Mr. LeBlanc was mentioning earlier. As far as Elections Canada is aware, Retail Media did not generate any invoices to the candidates. Is that correct?

• (1550)

Mr. Marc Mayrand: That Retail Media did not provide invoices to candidates? That's correct.

Mr. Sukh Dhaliwal: So in your view, it is an accurate statement then, when I look at this—I have this invoice I would like to table as well, Mr. Chair. One of the invoices that was to the official agents of the Conservative Party of Canada has the list of all the ridings, with a total expense of \$591,411, plus GST. I have a copy of another invoice. It only says “York South—Weston”, and it says “\$37,383.09”, and by hand is written “plus GST in a total amount of \$39,999.91”. If we look at this invoice here, we see it has the other ridings precisely whited out, just leaving that riding. Personally, the way I see it, if it's in the general public I would see that a fraud is committed.

Do you see that this is a fraudulent act, when it comes to the Conservative Party committing an act like this?

Mr. Marc Mayrand: Again, I cannot comment on those matters. These are matters of either the dispute before the Federal Court or matters that are a subject of the investigation by the commissioner. I think it would be highly inappropriate for me to comment at this point in time.

Mr. Sukh Dhaliwal: At one point in time you were aware that the Conservative Party had defeated the spending limit by spending \$1.3 million in excess of what they were allowed to spend. But after this decision is made by the Federal Court, and if—I'm saying the word “if”—the decision is that the Federal Court does not allow those 67 candidates to claim those expenses and the Conservative Party goes over the spending limit by \$1.3 million, so that the Conservative Party will be in violation of the Canada Elections Act, what are the consequences, please?

Mr. Marc Mayrand: It is hypothetical at this point in time. We need to see what the court will rule, what the facts are that will come out, that have come out since my decision, that will continue to come out possibly before the decision is made. Again, I cannot speculate on the outcome of the Federal Court decision nor on the ramifications of that decision.

I provided earlier this morning a table showing what our possible sanctions and penalties are, relative to various offences. I would refer the members to the table that was in the presentation this morning.

The Chair: Thank you. That's six minutes.

Mr. Goodyear, please.

Mr. Gary Goodyear: Thank you, Mr. Chair.

I wonder if I could refer to the March 2007 handbook. Do you have a copy of this handbook, Mr. Mayrand?

Mr. Marc Mayrand: Not with me, no.

Mr. Gary Goodyear: With the chairman's permission, I'd like to offer this to Mr. Mayrand. I'm going to read from it, but I'd rather he....

Thank you very much.

What I'd like you to note about that handbook is whether you would agree it is the version that was in circulation during the January 2006 federal election campaign. Yes?

Mr. Marc Mayrand: I don't know.

Mr. Gary Goodyear: You don't know your own handbook?

Mr. Marc Mayrand: Well, it appears to be, but I haven't looked at it.

Mr. Gary Goodyear: I didn't type it up last night.

I want you to note on the first page that the document is for elections that started before.... It actually says right there on the document that it is to be used for elections that started before January 1, 2007. Is that what it says in that document?

Mr. Marc Mayrand: Yes.

Mr. Gary Goodyear: That would be the handbook that was in circulation at the time we're all discussing today, January 2006.

Does the election handbook represent the Chief Electoral Officer's interpretation of the Canada Elections Act?

Mr. Marc Mayrand: Do you mean as of January 2007?

•(1555)

Mr. Gary Goodyear: I mean January 2006.

Mr. Marc Mayrand: This one does not. This one is on or after January 2007.

Mr. Gary Goodyear: Can you confirm that this is the election handbook that was in circulation at the time of the 2006 election?

Mr. Marc Mayrand: No, it was—

Mr. Gary Goodyear: Good. Thank you.

So that version there is not the one. Let me ask you this: do you have a copy of the one that was in circulation on January 1, 2007?

Mr. Marc Mayrand: No.

Mr. Gary Goodyear: May I, with the chairman's permission, give you the copy? I've recorded the pages—noted the pages—that I want to refer to.

I note there, Mr. Mayrand—

Some hon. members: [*Inaudible—Editor*]

The Chair: Order.

Mr. Goodyear, members are also trying to follow, but without these documents there's some question as well.... As you know, any documents provided should be in both official languages. I'm going to raise that just to caution members. I'm going to allow you to continue—

Mr. Gary Goodyear: Thank you very much.

The Chair: —but I think in the future, if we're going to be providing documents to a witness to discuss, all members should have copies of them in both official languages.

Mr. Gary Goodyear: I appreciate that very much, Mr. Chair.

The Chair: I'll give you that latitude today.

Mr. Gary Goodyear: Thank you. I appreciate that.

One of the documents has disappeared from the web. That's why I could not get it in French and English.

So we have these handbooks. As you can see, one that was in circulation—the one I just handed you—says on it to use this document for elections that started before January 1, 2007.

Do you see that document? It's the second one I handed to you.

Mr. Marc Mayrand: Yes.

Mr. Gary Goodyear: This document was the one in circulation at the time of the January 2006 federal election. Is that correct?

Mr. Marc Mayrand: Yes.

Mr. Gary Goodyear: Okay. Do these handbooks represent the Chief Electoral Officer's interpretation of the Canada Elections Act?

Mr. Marc Mayrand: I would suggest so, yes.

Mr. Gary Goodyear: All right. Would you also suggest, then, that candidates and their agents can rely on the information provided to them in these handbooks that were written by Elections Canada?

Mr. Marc Mayrand: Yes.

Mr. Gary Goodyear: All right. I think you would agree that the Canada Elections Act itself is so complex.... In fact, when my honourable colleague Mr. Hiebert was questioning you, I did hear that a number of the points in the suggested five-point framework are not even in the act.

Let's talk about what is in the act. It's very complicated, of course, and you distribute these handbooks as a tool for candidates to use.

First of all, before I go further into the act itself, I want to come back to the December 12, 2005, version of the elections handbook.

I refer you to the section on election advertising at the bottom of page 30. I've marked that page for you.

Mr. Marc Mayrand: Yes.

Mr. Gary Goodyear: It provides the definition as follows:

Election advertising means the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated.

I want you to notice that on page 30, as well as on the top of page 31, there is another statement that uses the phraseology "registered party or candidate".

Would you agree that both of these passages refer to advertising that promotes or opposes—

Mr. Marc Mayrand: I appreciate the questions. I just want to point out to the committee that these matters have all been raised before the Federal Court. There has been extensive cross-examination of witnesses from Elections Canada on these matters. That testimony will be available as part of the public record in due course. I just want to—

Mr. Gary Goodyear: I'm just going to wrap it up, then, because I know my time is just about out. It's very important, please.

Why do you think the language was changed in 2007 and is now being applied to the 2006 campaign?

The Chair: Do you have a response, sir? No?

Mr. Marc Mayrand: The main reason was that changes that came through the Federal Accountability Act triggered a review of the manual. We made all sorts of amendments—

Mr. Gary Goodyear: But that act came after the election.

The Chair: Mr. Goodyear, I look forward to hearing your next round of questions, which you will certainly get tomorrow.

Monsieur Nadeau, s'il vous plaît.

[Translation]

Mr. Richard Nadeau: Thank you, Mr. Chairman.

Mr. Mayrand, one aspect bothers me a great deal. Some Conservative candidates who took part in this scheme said they didn't know they were taking part in a scheme and that they trusted the Conservative Party in the entire matter that is before us today.

In another connection, but along the same lines, the candidate for Brome—Missisquoi clearly indicated in an e-mail to Lawrence Cannon, who was the candidate for Pontiac at the time, that he didn't want to take part in the scheme.

Wouldn't there be a message somewhere there that there were indeed some individuals who officially agreed to close their eyes and others who refused to break the law, unlike the situation of the 67 Conservative candidates and members who are the subject of an investigation today?

• (1600)

Mr. Marc Mayrand: The Commissioner of Canada Elections will be responsible for determining whether any offences were committed in this matter. The information that you cite was made public as a result of the Commissioner's legal proceedings. I wasn't aware of that information at the time the decision was made.

Mr. Richard Nadeau: That's fine.

So, Mr. Mayrand and Mr. Bernier, it's clear that we should absolutely meet with the Commissioner of Canada Elections to learn more, if that's possible, and that that is no longer your responsibility in the exercise that concerns us. That's what I understand.

Mr. Marc Mayrand: As I told the Chairman, the committee is master when it comes to determining the witnesses it wishes to hear. I am simply pointing out that, since the current investigation is actively continuing, I very much doubt that the Commission can enlighten the committee any further.

Mr. Richard Nadeau: Thank you, Mr. Chairman.

[English]

The Chair: Mr. Reid.

Sorry...?

Mr. Sukh Dhaliwal: I bring a motion to adjourn the meeting.

The Chair: No, we passed a motion to have one full round, and we're almost finished it.

Mr. Reid, please.

Mr. Scott Reid: I've been looking at the five criteria, Mr. Mayrand, that you have on pages 8 and 9 of the English version of your presentation. You had several presentations, and this is the one that considers the regional media buy program. You listed five criteria, and looking at them, it strikes me that four are really different versions of the same thing. You're referring to the national party engaged in the administration of local election advertising. The reference in your first point was to a lack of detailed knowledge of the regional buy by official agents, because that detailed knowledge was at the party level. You then refer to the lack of contractual agreements by any of the participating candidates with the supplier, because that contractual relation was carried out at the level of the party. In your third point, you note that arrangements were made for the purchase by the party and invoicing is done via the party rather than through the local campaigns. Your fourth point is that the party made the financial arrangements and actually carried out the payments. Those are all versions of the same thing, which is the administration of these ads by the party.

It seems to me that you are conflating the idea of administration and the idea of beneficial use of the advertising. The beneficiaries were in fact the local campaigns, and the administration was done by the parties. If that is evidence of one group or one side of that transaction undertaking costs on behalf of the other, I suggest to you that you have it backwards. In fact, this is evidence of an uncosted benefit being carried on by the national party. It actually benefited the parties. If anything, there's a case that the parties' overall expenses should be lowered and the candidates' overall expenses should be raised, which is the exact reverse of what you're doing. Frankly, you just have it backwards. I can't see how else to interpret this.

Your fifth criteria talks about how the expenses claimed by each campaign do not reflect the commercial value of the ad placement. I assume what you're referring to here is something like this. A number of ridings get together and pay for an ad, but the benefit to each of the ridings does not correspond to the amount they paid for them. That might well be the case, but if it is the case, it seems to me that you have two adjoining EDAs and they're paying equal amounts.... Well, let's say they're paying unequal amounts but you determine they're getting equal amounts of benefit from it. It seems to me that what this really amounts to is a transfer from one EDA to the other, and that the appropriate action is not to claim that it's gone up to the national level, but rather that it's gone from one EDA to another, adjoining or not adjoining.

I'm asserting that the expenses you say ought to be attributed to the national campaign actually ought to be made elsewhere. Could you explain to me what is wrong with my logic?

•(1605)

Mr. Marc Mayrand: Just to be clear, the transactions here were conducted by the campaign. If there is a transfer, as you suggested, to another campaign, that's an illegal transfer, and we would have a problem with that. A candidate's campaign cannot transfer goods, services, or money to another candidate.

Mr. Scott Reid: I follow that, but nevertheless, it seems to me that it's a different scenario than the one you posited.

Mr. Chair, I'm going to take the remaining time I have to make the following motion:

That pursuant to Standing Order 108(2) in reference to the current study under way by this committee, that the committee request that the Chief Electoral Officer appoint an independent investigator to review allegations of a leak, and that this investigation include all individuals who were privy to information about the search at Conservative Party headquarters before the search took place.

The Chair: Order.

Colleagues, the member has put forward a motion by which the committee, and it says it here clearly, would request that the Chief Electoral Officer appoint an independent investigator to review allegations of a leak, and that this investigation include all individuals who were privy to information about the search before the search occurred.

During the questioning, I believe Mr. Mayrand indicated that he'd be happy to look at whatever—there are five people now—and so on.

The motion is in order, because we can request anything we want, but we have no jurisdiction to mandate that this happen. The motion before us effectively says that the committee request that such a review be done. And the Chief Electoral Officer will consider our request.

I'm going to rule it in order, and I don't want any debate. I think it's fairly straightforward. It was discussed earlier. I'd simply like to put the question on this motion, as I read it, into the record. Would that be acceptable?

We'll have Mr. Martin on a point of order.

Mr. Pat Martin: I would point out, Mr. Chair, that we have notice rules on this committee. I believe on a motion of that type you would have to serve notice and wait the 24-hour requisite period, and we could deal with it at the next meeting.

•(1610)

The Chair: Thank you, Mr. Martin.

That, in fact, is incorrect. The 24-hour notice period is not required for motions related to the current business. There is no notice requirement, because the motion is related to the business currently being dealt with by the committee. Those are our rules. It's not a personal opinion. I just want to make sure that we follow the rules of the committee and of the House.

We'll have Mr. Poilievre. Is it a point of order as well, did you say?

Mr. Pierre Poilievre: Yes, on a point of order.

The Chair: Be sure it's a point of order, please.

Mr. Pierre Poilievre: On Mr. Martin's concern, I believe you have ruled correctly.

The Chair: You had better get to it quickly.

Mr. Pierre Poilievre: I think we would be amenable to having this thing debated tomorrow if members believe they need a day to consider it. It doesn't need to be done instantaneously.

The Chair: Thank you for the debate. That's not a point of order.

Madame Lavallée. Is it on a point of order, Madame?

[*Translation*]

Mrs. Carole Lavallée: Mr. Chairman, the subject of the motion is not the subject we are currently debating. We are discussing the matter of the ethics of Conservative Party members who hold public office; we are not studying the search that was conducted at the offices of the Conservative Party. Furthermore, 24 hours' notice must be given for a motion.

[*English*]

The Chair: Madame, I understand your views, but that is not a point of order. That's an opinion. It's a matter of debate.

The motion before us is in order. It is relevant to the business currently before the committee. It is debatable if the members want to debate it.

The honourable member here has indicated that he would be prepared to defer the debate on this motion until tomorrow. It sounds like a good idea to me, and if acceptable to members, we'll pick it up there tomorrow first thing.

At this time we will move on for five minutes to a quick discussion of future witnesses, if that's acceptable to the committee. We have to finish the round as well.

Mr. Martin, I apologize. I got distracted.

Mr. Martin and Mr. Hubbard still have time, under the previous motion passed by the committee, to participate in this current round. So I'm going to turn the floor over to Mr. Martin, then Mr. Hubbard, then Mr. Goodyear. That will be the end of the round in question.

We will then have a few moments. We need to get instructions from the committee with regard to future witnesses. It will only take a short moment. Please bear with me. We're going to finalize it tomorrow, but you have to be instructed about providing lists today for tomorrow.

Mr. David Tilson: Will my three motions be dealt with tomorrow, Mr. Chair?

The Chair: That would be helpful.

Mr. David Tilson: Will that be tomorrow morning and not tomorrow afternoon?

The Chair: Could we discuss that when we get to it today?

Mr. David Tilson: As I understand it, we're dealing with it today, but I'm prepared to say that these three motions could be dealt with at the same time as the motion from Mr. Reid—tomorrow morning. But if you don't want to do that tomorrow morning, I'd like to do it now.

The Chair: I'm going to give the floor to Mr. Martin, followed by Mr. Hubbard, followed by Mr. Goodyear, for five minutes. That finishes the round, and then I will give you an answer as soon as that finishes. How's that?

Mr. Martin, go ahead, please, for five minutes.

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

I think we've heard a great deal of technical and fairly complicated testimony and very useful information today, but I think it's useful at this point in our study to reflect on the idea that one of the main purposes and tenets of our Elections Act is to take big money out of politics, to take away any unfair competitive advantage that the one with the biggest purse might hold in an election campaign, and to create a level playing field.

You, Mr. Mayrand, pointed out that it's your duty to ensure such a level playing field exists. I for one, on behalf of the Canadians I present in the riding of Winnipeg Centre, want to thank you personally for the diligence with which you've undertaken this study and the application of the act to create that level playing field. I think you're to be complimented.

I also feel that the reference to the commissioner was eminently justified, given the affidavit that we've read and the information that keeps surfacing. I believe the commissioner was correct in raiding the headquarters of the Conservative Party, if in fact he wasn't getting the cooperation that he should have been getting in asking for documentation and answers to the questions he was putting to the Conservative Party. If the allegations are true in the affidavit, then one party hijacked the 39th election, the 2006 election, because they had a fatter cheque book. Everybody knew they were sitting on stacks and stacks of money, more money than they could legally spend, so some of us believe they created a scheme whereby they could spend greater than their limits. You saw it as your duty to investigate this diligently, and I, on behalf of the people I represent, thank you for it.

That's all I have to say. I'm going to hand the floor over to my colleague.

•(1615)

[*Translation*]

Mr. Thomas Mulcair: Thank you, Mr. Chairman.

I too am pleased to thank Mr. Mayrand for providing us with very full answers that have made it possible to clear up considerable ambiguity.

I would like to go back to a question that was asked on the other side of the table. I am taking the liberty of making a suggestion. I myself have previously been a senior public servant, and I know the difference between being a legislator and a person who administers an act. Here we are raising the five factors, one of which is established by the act, to the same level. Commercial value is stated in the act. The other four factors enabled the Chief Electoral Officer to determine that, in his view, these were not candidate expenses under the terms of section 451 and that, consequently, he would not reimburse them. However, it makes it possible to suggest that, with this kind of mix, one could get the impression—that was the drift of the questions, some of which were ours, at the outset—that we are confusing "legislative requirement" with "administrative requirement". That, in my view, is a mistake.

I want to thank you very much for what you have done on behalf of us all. What you had to do today was demanding, but it was in the

interest of our democratic institutions. As my colleague from Winnipeg-Centre has just mentioned, a scheme was put in place by the Conservatives in an attempt to use money to buy the last election, despite the clear prohibitions of the act. Thank you for being here to defend us in this matter. Thank you.

[*English*]

The Chair: Thank you very much.

Mr. Hubbard, go ahead, please.

Hon. Charles Hubbard: Thank you, Mr. Chair.

I'd like to go to the business of limits for election expenditures by both parties and individuals. Overall, in terms of these 68 situations, it appeared that the Conservative Party had reached its maximum or approached that maximum. It's the old story, Mr. Chair, that there is a smell test to a lot of this after time. The whole thing is not smelling very good, because apparently this group that got involved with purchasing a lot of media decided to allocate that expense back to particular candidates in different ridings. With that in mind, one has to almost assume that it was a scheme to launder money or to get money moved around so that candidates at the local level would assume expenses of a national party.

Is it true, Mr. Mayrand?

Mr. Bernier, we haven't had an opportunity to ask you. When you look at the \$18 million that we're approaching, and there is another nearly \$1.3 million about to be spent, the guy who's sitting there shuffling this money around suddenly realizes he's going to go over the limit, so the invoices go back to the individual ridings to which the \$1.3 million is allocated. It would appear, therefore, that the maximum limit—the cap on the Conservative Party—hasn't and will not be exceeded. Is that correct, Mr. Bernier?

Mr. François Bernier (Director, Legal Services, Elections Canada): I believe, sir, that this is the situation and the facts that the Commissioner of Canada Elections is investigating, among other things.

Hon. Charles Hubbard: So my assumption would probably be what Elections Canada is attempting to show in the courts.

My colleague just asked about what it's costing Elections Canada to deal with this issue in the civil courts. The idea came up that it's maybe going to cost \$800,000 or \$1 million. Mr. Bernier, in terms of that court action, will you look for costs from the Conservative Party to make sure that our federal treasury and Elections Canada are not caught for the millions of dollars they're going to have to spend to defend their position regarding what the Conservative Party is saying?

•(1620)

Mr. François Bernier: I think that would be a decision for the CEO to make at the appropriate time.

Hon. Charles Hubbard: So in effect we're dealing with money here that's been shuffled around. But the main point in all this apparently is that the chief financial agent of the Conservative Party avoid being accused of exceeding his election limit spending. Is that the correct interpretation of what this is all about?

When we look at things in terms of the national party, 50% of its spending is refunded to it by the federal government. In terms of candidates, 60% is refunded to the candidate or to his party. So really we're spending millions of dollars to contest in court 10% of \$1.3 million—in other words, about \$130,000. But the only reason for this being in court is that the chief financial agent of the Conservative Party will be accused of overspending and could be subject to heavy financial penalties and up to five years in prison under the act. Is that correct, Mr. Bernier?

Mr. Marc Mayrand: I would say that we're before the Federal Court because there's a dispute regarding some decisions I had to make under the legislation.

Hon. Charles Hubbard: But to reiterate, you not only have to be a business person, you also have to look at the reality of what finances are about. The \$130,000 is all the money that is really under dispute. No matter where you allocate the money—whether it be to the national party or to the 67 candidates—the only big problem legally is the position of the chief financial agent of the Conservative Party of Canada who is in violation, if he loses in court, of the Elections Act through having had the Conservative Party overspend.

I think, Mr. Chair, we also said today that the government changed in 2006 by fewer than 30,000 votes. So the implication probably in terms of all of this is that somebody spent more money than they should have spent in order to get enough seats in the House of Commons to form a minority government.

Mr. Harper, you know, Mr. Chair, has a long history of fighting with Elections Canada. It goes back to his time before he became Prime Minister, when he dealt with the National Citizens Coalition. He was in court with Elections Canada. So it's simply a continuation, Mr. Chair, of the efforts of the Conservative Party to challenge Elections Canada and to make sure they get their own way and operate a country the way they want to operate it, which is not the way our Liberals or the NDP or the Bloc want to see Canada operated. It's a simple situation. It's a good job we're not looking at some external group that is coming in to see what we're doing with our Elections Act.

Thank you, Mr. Chair.

The Chair: Okay. That comment has been taken. Thank you very much.

Thank you, colleagues. That ends the round as required and requested by the committee....

My apologies.

Mr. Gary Goodyear: That's okay. I'm easily forgotten.

The Chair: See what happens when you go after 4 o'clock? Things grind to a halt.

Mr. Gary Goodyear: Yes, I know. I'm ready to go.

Thank you, Mr. Chair.

The Chair: Mr. Goodyear, I apologize. You have five minutes.

Mr. Gary Goodyear: It's completely okay.

I want to continue with my questioning on the handbook. I think we established the last time we were on the handbook, Monsieur Mayrand, that the handbook is actually designed to help candidates

struggle their way through the Elections Act, and that in fact the handbook that was in play for the 2006 election actually had the phrase in it that advertising was okay for a registered party or a candidate. Those two key issues were in that particular handbook. I showed you the handbook, and you agreed that in fact that was the case.

We point out that in the act itself, which is quite detailed, subsection 407(1)—and I won't go on to read it—actually uses the same phraseology, in that advertising expenses include any costs “to directly promote or oppose a registered party, its leader or a candidate during an election period”. That was in 2006.

Now let's turn to the 2007 version. This is the latest one. You had indicated at the end of the last questioning that the text had actually changed—it had been modified—and it no longer has a reference to a registered political party. In fact, the handbook simply says “a candidate”.

I asked you why you thought that was the case and why there was a need for the language to change. I'm not sure it was picked up on the microphone. I believe you said it was because of the Accountability Act. I'm going to ask you that question again, if you don't mind, and then I have a series of questions that require just a yes or no answer.

Can you tell the committee why the language was changed from what was in the handbook that was in play for the 2006 election to what we have in this handbook, written by your office in March 2007?

• (1625)

Mr. Marc Mayrand: Again, Mr. Chair, this is a matter that's been presented before the Federal Court. The impact of this manual has been the subject of various cross-examinations and arguments between the parties. I would refer to those discussions before the Federal Court and wait for the court to decide on those matters.

Mr. Gary Goodyear: So you're taking back now the fact that you said it was the Accountability Act that caused the change? You're just going to wait for the court decision?

Mr. Marc Mayrand: No, no. The revision was on the occasion of the Accountability Act, absolutely.

Mr. Gary Goodyear: Thank you.

Can we agree, at least, though, that the phraseology has changed, that it's different?

Mr. Marc Mayrand: Absolutely, yes. We're not denying that.

Mr. Gary Goodyear: Is it not a fact that the handbook was changed after the 2006 election to prevent candidates from running party ads?

Mr. Marc Mayrand: No.

Mr. Gary Goodyear: No?

Mr. Marc Mayrand: That's not an accurate reading of the new version of the manual.

Mr. Gary Goodyear: Okay. Can you tell the committee—

Mr. Marc Mayrand: The other thing I would like to point out is that the latest version of the manual, of course, would apply to the next election and not the previous one.

Mr. Gary Goodyear: Oh, that's very good to know. Thank you for making that clear.

Can you tell the committee how and when the process that led to the March 2007 revision began? When did you begin rewriting the manual?

Mr. Marc Mayrand: As you know, I wasn't in the position at that point in time. I would have to come back to the committee. But I am pretty sure that has been raised before the Federal Court too.

Mr. Gary Goodyear: We'll be here tomorrow. Perhaps you can enlighten us on that tomorrow.

Did Elections Canada propose that Parliament amend the definition of "election expense" in section 407 of the act to clarify it? Did you ask Parliament or propose to Parliament that the act be changed?

Mr. Marc Mayrand: No. The provision is quite clear.

Mr. Gary Goodyear: The provision in the act, though, does say "candidate" and "party", "registered party". That's great. That's good to know. So you didn't ask Parliament to amend the definition?

Did Elections Canada make any report to Parliament about any difficulty in the interpretation of the election expense in section 407 of the act? Was there any report?

Mr. Marc Mayrand: I'm not personally aware of any. I would have to come back to the committee on this matter.

Mr. Gary Goodyear: Did Elections Canada have any discussions whatsoever with any registered party before changing the handbook?

Mr. Marc Mayrand: No.

Mr. Gary Goodyear: Who benefits from advertising in an election? Is it the party? I guess what I'm asking is, who gets the vote? Is it the candidate or the party?

Mr. Marc Mayrand: Electors vote for candidates.

Mr. Gary Goodyear: The act clearly states that a candidate can choose which way would most benefit him or her in the application or the allocation of the vote.

Mr. Marc Mayrand: That is correct, and that's what the new manual says.

Mr. Gary Goodyear: But that was not in effect in the 2006 election—correct?

Mr. Marc Mayrand: It was in effect in the older version. It's made even clearer with the new one. But again, it's a matter that's been argued and will continue, I'm sure, to be argued before the court.

Mr. Gary Goodyear: Is that the end of my round?

Thank you, Mr. Chair.

The Chair: That's the end of the round. Thank you.

Thank you, colleagues, for your patience in going through this first part. We've had some discussions. We still have a very brief discussion—maybe five minutes—if I understand the agreement among all the parties here with regard to future witnesses.

That means, Mr. Mayrand and Mr. Bernier, that you are excused for today. We look forward to hearing you again tomorrow at 10 a.m.

Discussions have been held with the parties, and as we did with the witnesses for the Mulroney-Schreiber hearings we held, the parties came to the agreement that each of the parties would submit its list of proposed witnesses. I believe it worked reasonably well. I think it's very difficult for members to start to anticipate or to debate individuals. I think we would like to see the proposals come from each party.

What I'm proposing again to the committee is that the members of each party submit to the clerk, no later than 10 a.m. tomorrow, their list of proposed witnesses, which will include the name of the person and their title or any other identifying information so that we know their affiliation. For instance, "John Doe, official agent for Mrs. Smith" would be helpful. But Mr. Tilson also added a sentence or two in his motions to explain the relevance of the proposed witness. That would be helpful to the committee in determining whether or not we should hear from the proposed witness.

When these lists of proposed witnesses, with identification and a declaration of relevance, are submitted to the clerk, the clerk will consolidate the lists, eliminate duplicates, and group them by like witnesses. The consolidated list will be translated into both official languages and circulated to the full committee before we break at noon, so that the committee members will have an opportunity to discuss their preferences with regard to the consolidated witness list. We will come back after we have completed the questioning of Mr. Mayrand and Mr. Bernier, and then we will work through the proposed consolidated witness list to the satisfaction of the committee members, if that's acceptable.

Is that agreeable to the members?

Some hon. members: Agreed.

The Chair: Mr. Dhaliwal has a question.

●(1630)

Mr. Sukh Dhaliwal: Yes, Mr. Chair.

I would like to add that as the chair, because you have the list of witnesses, you are going to call those witnesses.

The Chair: You're way ahead of us. I don't have a list. I won't see a list until you all get it, because this information is going to the clerk, not to the chair.

Mr. Sukh Dhaliwal: But you have the power to subpoena those witnesses.

The Chair: You're ahead of me. We'll deal with establishing all these details tomorrow. I'm simply asking members today, if it's acceptable, that tomorrow, no later than 10 a.m., each party's proposed witness list be submitted to the clerk, with identification and a statement of relevance, as Mr. Tilson has done. We will then work on them after we have finished with our two witnesses tomorrow, until we finish.

Mr. David Tilson: At two o'clock we would debate the list.

The Chair: That will be at the end of our witnesses. I don't know how long our questioning will take.

Mr. David Tilson: Maybe we could debate the list at two o'clock. That's what I understood we were going to do.

The Chair: I think we do have to finish with the witnesses. Mr. Poilievre had indicated to me that there was questioning for these witnesses.

Mr. David Tilson: We could always come back another day, Mr. Chairman. We may need them another day, but I just understood

from our discussions with you that the list would be debated at two o'clock.

The Chair: Well, after two o'clock, I certainly had indicated, because you're not getting it until the break, and I assume we'll be coming back. But it depends where we are with the current witnesses. If we have not dismissed them, I don't want to get into our committee business. That's why the item is on the notice of motion for tomorrow's meeting.

• (1635)

Mr. David Tilson: We agree, Mr. Chairman.

The Chair: Thank you.

That's agreeable?

Some hon. members: Agreed.

The Chair: Thank you, colleagues.

We're adjourned until tomorrow morning.

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