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Chair

Mr. Joe Preston

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•(1105)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): I call the meeting to order.

Today we are meeting in public. Pursuant to Standing Order 108 (3)(a), we are discussing matters relating to the draft regulations adapting the Canada Elections Act for the purposes of a referendum.

Monsieur Mayrand, it's great to have you here two meetings in a row. It's always hard to get you, so when we can have you for two meetings in a row, it must be urgent for us to look at this for you. We will give you a few moments for opening comments and to introduce the people who are with you, and then I'm sure members of the committee will have some questions as to what steps you'd like us to take next.

The floor is yours.

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

I'm pleased to appear before the committee again today to discuss the proposed referendum regulation and, more generally, the federal referendum system.

With me today are Mr. Stéphane Perrault, senior general counsel, and Mr. Jean-François Morin, counsel with our legal services.

Before dealing with the draft referendum regulation, I'd like to take a brief look at the referendum system as a whole. The current Referendum Act was adopted in 1992. Basically, it provides a mechanism for consultation on questions relating to the Constitution of Canada outside an electoral period. This act sets out rules that specifically govern the holding of a referendum. For example, it specifies the manner in which the referendum question is approved and the sequence of events that must take place before the referendum is called and held. It also sets out the rules for registration and funding of referendum committees and defines offences and penalties specific to a referendum.

But the Referendum Act defers to the Canada Elections Act for many of the more general aspects of a referendum, and assigns to the Chief Electoral Officer the task of adapting, by means of regulation, the relevant provisions of the Canada Elections Act. To guide the Chief Electoral Officer in this task the Referendum Act includes, in schedule II, a list of Elections Act provisions that do not apply to referenda. The draft referendum regulation that I submitted to Parliament on June 12, 2009, is the product of this adaptation exercise.

I would now like to draw your attention to certain issues that emerged as my office worked to update the referendum regulation. The first issue is the lack of synchronization between the statutes. There are many references in the Referendum Act, particularly in schedule II, to provisions of the former Canada Elections Act as it existed before the legislative reforms enacted in the year 2000.

The Referendum Act has never been the subject of a thorough review. Consequently, the referendum system has not kept pace with the legislative evolution of the electoral system, the result being that the two systems have become desynchronized, even though they should be complementary. It is therefore very difficult, even for the well-informed reader, to fully grasp which provisions of the Canada Elections Act are applicable in the context of a referendum and which are not. This is an important issue, since it undermines the clarity and precision that must characterize any legislative system.

There are other technical difficulties that could impede the effective administration of a referendum. For example, the Referendum Act precludes returning officers from appointing deputy returning officers and poll clerks who have not been recommended by the parties. This situation stems from a series of amendments made in 1996 to the Referendum Act and its schedule II when the Canada Elections Act was amended to establish the national register of electors. This could clearly become problematic, given the declining number of election workers recommended by the parties. As I mentioned in an earlier report, barely 33% of the workers are currently recommended by parties. If the act is not amended by the time a future referendum is held, I will work with the parties to find an appropriate solution.

In a briefing note accompanying the draft regulation, I informed Parliament of two concerns relating to management of the lists of electors.

The first has to do with the transmittal of the revised and official lists to the deputy returning officers for the conduct of the vote. The second has to do with privacy risks as a result of the wide distribution of certain preliminary lists of electors to registered referendum committees. I would remind you that the adaptation for a referendum of subsection 93(1.1) of the Canada Elections Act would require me to provide an electronic copy of the preliminary lists of electors for all the electoral districts in the country or provinces where the referendum is held to each referendum committee that requests it.

For both of these concerns, there are solutions that involve legislative interpretation. With regard to the transmittal of the lists to the deputy returning officers, it should be remembered that schedule II of the Referendum Act, in its current form, precludes the returning officer from providing the deputy returning officer with the list of electors necessary to conduct the vote. However, another provision of the referendum regulation that sets out the list of election materials that must be provided to the DROs mentions that the returning officer is to provide the deputy with the list of electors. The list necessary for the conduct of the vote could thus be provided to the deputy returning officer under this incidental provision. This is not an ideal solution, but it would nevertheless resolve the problem.

• (1110)

As for the privacy risks, we plan to minimize them through stricter interpretation of subsection (10)(1) and schedule II of the Referendum Act. In 1992, preliminary lists of electors were provided about ten days before polling day. Today these lists correspond to the revised lists of electors. I will therefore be amending the draft referendum regulation so that it excludes all provisions providing for the distribution of preliminary lists to registered referendum committees, including subsection 93(1.1)

[*Translation*]

During my last appearance before this committee, I mentioned that the Director of Public Prosecutions Act does not expressly confer on the DPP the authority to launch prosecutions under the Referendum Act, contrary to what is the case for prosecutions under the Canada Elections Act. Parliament should explore a solution to this matter as the uncertainty regarding his authority could compromise the capacity to mount prosecutions in connection with a referendum.

The points I have brought up are of a mostly technical nature and could be resolved as part of a legislative review of the Referendum Act. Should you request it, I would be pleased to provide you with recommendations in this regard.

I will now address three aspects of the referendum system that raise policy questions.

The first concerns the funding of referendum committees. The controls provided for under the Referendum Act are comparable to those involving third parties during an election. In broad terms, any referendum committee must register if its expenses reach a set amount; its expenses limit depends on the number of electors in the districts where it will be active; it must appoint an agent and an auditor; and it must submit a financial return.

The federal system also allows the establishment of any number of committees to be created during a referendum campaign whether they are in favour or against the question that is the subject of the consultation. Each committee has its own expense limit.

This system has undergone no major alterations since 1992. It sets no limits for contributions and allows contributions from corporations and unions.

My authority to adapt election rules for the purposes of a referendum do not allow me to fundamentally review this system and bring into it the political financing rules applicable to elections.

However, Parliament could choose to adopt such measures, as part of a legislative review.

A second policy aspect concerns the penalties for offences during a referendum. All these penalties are set out in the Referendum Act. However, they have not changed since 1992, unlike those for election offences, which were thoroughly revised in 2000. For this reason, different penalties apply to similar offences, depending on whether the offence was committed during an election or a referendum. This is another example of the lack of synchronization between the Referendum Act and the Canada Elections Act.

The third aspect involves inmate voting, a question I raised in my presentation on October 8. Under the current legislative framework, inmates serving sentences of two years or more are not eligible to vote in a referendum. This inconsistency is the result of two decisions by the Supreme Court of Canada: in *Sauvé* (2002), where the Court ruled it was unconstitutional to prevent these inmates from voting under the Canada Elections Act, and in *Haig* (1993), where the Court ruled that the constitutional right to vote in an election does not extend to referendums.

The three aspects I have just touched on raise policy questions that are not for me to address.

Adapting the Canada Elections Act for the purposes of a referendum is basically a technical exercise. As you can see, such an exercise is not sufficient to solve most of the issues I have described today.

That is why I believe that it would be desirable for Parliament to consider a legislative review. Such a review could be confined to resolving the technical difficulties arising from the age of the Referendum Act. If so, I would be pleased to provide the committee with my recommendations.

But the committee might want to undertake a broader review of the act and address policy issues such as those that I described or others that the committee identifies. It is not for me to voice an opinion on this subject, but if that is what the committee would prefer, it would be more useful for me to set aside my technical recommendations for a later stage of the review process.

Mr. Chairman, this concludes my presentation. Thank you for the opportunity to discuss this subject with the committee. My colleagues and I will be happy to answer your questions, and please be assured that we will take your remarks into consideration in the proposed regulations before finalizing them.

Thank you.

• (1115)

[*English*]

The Chair: Thank you very much.

We'll go to questioning of the witnesses.

Is there anyone from the official opposition who would like to lead the questioning today?

Monsieur Proulx.

[*Translation*]

Mr. Marcel Proulx (Hull—Aylmer, Lib.): Good morning, Messrs. Mayrand, Perrault and Morin.

The Canada Elections Act has been amended a number of times since the regulations were amended in 2001. Can you tell me why the amendments to the Referendum Act were not done at the same time or in parallel?

Mr. Marc Mayrand: There may be a deficiency in that respect. The Canada Elections Act is amended regularly, without regard to the impact that can have on the Referendum Act. Perhaps we should take this into account as soon as there is an amendment to the Elections Act. There have been legislative reforms since 2001: a significant one in 2004 and, during the last Parliament, at least three bills with an impact on referendum regulations. As a result of the many elections, by-elections and electoral events, we were unable to propose an update to the regulations before now.

Mr. Marcel Proulx: In your view, how should the committee proceed with an update, a modernization? Do you think it should conduct a clause-by-clause review and then see how that matches up with our recommendations—perhaps I should say your options—or do you think instead that you should make recommendations to the committee so that it can examine them?

Mr. Marc Mayrand: We can definitely submit recommendations to the committee on technical changes designed to make the act operational.

As for the policy questions that I mentioned in my presentation, it is up to the committee to identify them. There are no doubt some that I haven't mentioned. The idea would be to determine the issues raised and whether it's appropriate to review those policies.

Mr. Marcel Proulx: If the committee asked you to prepare a list of the various technical recommendations, could you do that quite quickly, with your team?

Mr. Marc Mayrand: Yes.

Mr. Marcel Proulx: Thank you.

[*English*]

The Chair: Mr. Proulx has not used all of his time.

Mr. Cuzner.

Mr. Rodger Cuzner (Cape Breton—Canso, Lib.): You said that in 1992 the preliminary lists of electors were provided ten days before polling day, and today these lists correspond to the revised lists of electors. So are you advocating that the lists not be distributed prior to a referendum?

• (1120)

Mr. Marc Mayrand: The lists will be distributed, but they will be the revised lists, as opposed to the preliminary lists. Again, concerns out there are mostly about privacy. In the last referendum in 1992 there were 241 committees. Each of those committees had access to those lists of electors.

What we're suggesting in the regulation is that only the revised lists be distributed to committees, and only for the ridings in which they intend to operate. When they register they must indicate for which ridings they will operate. That will give them the tools they

need to reach electors, but it will not give them more than is actually needed.

Mr. Rodger Cuzner: Yes, because in 1992 they received all the lists.

Mr. Marc Mayrand: Yes.

Mr. Rodger Cuzner: Okay. Thank you.

The Chair: Mr. Lukiwski.

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

Thank you, Monsieur Mayrand, for appearing here again.

I have a couple of comments first, and then I guess I'll ask for a response from you.

My personal opinion is that we need to do a study at this committee, a legislative review. With no disrespect to the drafters of the original act, I think there are a number of areas that need some serious review and revision. For example, from a policy standpoint, right now, if I understand correctly, if there were to be a referendum, you could not, because of the legislation, hold a referendum at the same time as a general election. Is that correct?

Mr. Marc Mayrand: Correct.

Mr. Tom Lukiwski: To me, that makes no sense whatsoever.

In terms of cost efficiency, for example, it would just make sense. I know other provincial governments have done that recently: Ontario and British Columbia. As an example, that's one policy change that I think is kind of obvious. I don't know why it wasn't included in the first drafting.

Also, if I understand correctly, the way the act is structured now, parliamentarians can only make recommendations. Is that correct? We can't actually make policy or legislative changes to it. Your broad powers are such that you're the only body that is allowed to actually make changes to the act. Is that correct?

Mr. Marc Mayrand: To the regulations, not the act.

Mr. Tom Lukiwski: Okay, to the regulations.

I think parliamentarians should have the ability to direct that as well.

There are a number of other areas, both technical—which you mentioned you'd have the ability to do—and more substantive policy changes that I think the parliamentarians need to be involved in. I know you're somewhat reticent to make comment or give an opinion on this, but my opinion, for the members of this committee and for the record, is that I very strongly believe this committee needs to do an extensive review of the act itself and then bring you, and many other witnesses, of course, forward to give us some advice, and then to make some recommendations for some very substantive policy changes.

With respect to your suggestion that if we were to do a review perhaps it would be best served if you did not offer any technical recommendations, I don't think that would be a problem. I frankly would like to see any and all recommendations you have regarding the act. I think that would help us.

Mr. Marc Mayrand: My reservation in that regard is only that if there are substantive policy changes, it may influence the specifics of the technical recommendations, but I'm sure this can be worked out.

Mr. Tom Lukiwski: Yes.

So I don't really have any direct questions of you. Some of my colleagues may have, but I just wanted to indicate for the record that I think some major revisions within the act are needed and I think this committee would probably be the best body in Parliament to engage in a review and conduct this study.

Mr. Chair, I'll cede the rest of my time to any of my colleagues who have questions.

The Chair: Mr. Albrecht.

Mr. Harold Albrecht (Kitchener—Conestoga, CPC): Thank you, Mr. Chair.

Thank you, Mr. Mayrand, for being here today.

You mentioned that your report today is divided into technical and policy issues, and you mentioned a number of technical revisions that you might suggest. I'm sure you're disappointed to know that I haven't read this cover to cover, but you said you'd be happy to recommend changes. Are they in fact included in this draft?

• (1125)

Mr. Marc Mayrand: No, they're not in it. The ones that I identify in my presentation and in the briefing note circulated before the meeting in June point out technical changes that would need to be brought to the legislation itself.

Mr. Harold Albrecht: Okay.

Going back to the question of referendum officials, my understanding is that currently only 33% of the officials who are appointed for elections are actually suggested by one of the two parties. Under this act, you wouldn't be able to appoint any beyond that. So how do you perceive that you would address that shortfall?

Mr. Marc Mayrand: I hope to benefit from the goodwill of political parties to work this out, but that's again a good example of how far apart the two legislative regimes have gone in terms of the operation of an event. For no doubt good reasons, in 1992 the schedule of the Referendum Act specifically pointed out the provisions of the Canada Elections Act that do not apply, provisions of the Canada Elections Act that allow the returning officer to go beyond the parties if there are not enough workers. That was taken away, and that would certainly be a technical amendment recommended from our part.

Mr. Harold Albrecht: You mentioned on page eight of your remarks today that the federal system allows the establishment of any number of committees. Can there in fact be more than one committee per riding?

Mr. Marc Mayrand: Yes.

Mr. Harold Albrecht: So you could have five committees in a riding?

Mr. Marc Mayrand: Five for the yes, ten for the no—

Mr. Harold Albrecht: And then in terms of the maximum expense limit, it was 56 cents per elector in 1992, and it's probably up to—

Mr. Marc Mayrand: Seventy-eight, I believe.

Mr. Harold Albrecht: Seventy-eight. So each committee could in fact spend that maximum within that riding?

Mr. Marc Mayrand: Yes. So for national committees you could have a multiplicity of the national committees who would also have authority to spend, each of them, to the limit allowed.

Mr. Harold Albrecht: So in effect there is no limit.

Mr. Marc Mayrand: There's a limit per committee. How many committees are created is up to those who want to participate. That's why, again, this is really an issue of public policy in terms of updating the Referendum Act because as we all know, things have changed dramatically over the last decade and a half in terms of financing.

Mr. Harold Albrecht: Based on those observations, I would certainly concur with my colleague Mr. Lukiwski that it's time for a pretty major re-look and possible recommendations for change.

Thank you.

The Chair: Monsieur Guimond.

[*Translation*]

Mr. Michel Guimond (Montmorency—Charlevoix—Haute-Côte-Nord, BQ): Thank you, Mr. Chairman.

Thank you for your presentation, Mr. Mayrand. I know this will disappoint you a great deal, but I don't have any questions to ask you.

Mr. Chairman, I believe it's possible to ask a question that isn't intended for the witnesses. In this case, it's for the parliamentary secretary to the government leader. I would like to know whether the government intends to propose a legislative review. With regard to this matter, that could be the factor triggering the next part of our work. I don't have any objection to us meeting to begin examining the question, but we would have to know where the government stands. The purpose of my comment isn't at all to trap the government. Every time I speak, you think I have hidden intentions and that I'm going to pull out a bazooka.

Mr. Mayrand, in the second paragraph on page 10 of your presentation, you say: "That is why I believe that it would be desirable for Parliament to consider a legislative review."

Mr. Chairman, if, through you, Mr. Lukiwski is able to tell us whether the Privy Council officials and legal experts have begun to draft a bill containing provisions to that effect, we could determine whether everything here is covered or whether we want to make amendments, make additions. If that's not among the legislative priorities, it might be appropriate for us to examine the act and then suggest amendments to Parliament.

• (1130)

[English]

The Chair: Thank you. I'm sure we'll get all the information we can out of Monsieur Mayrand today and from that the committee will make a decision as to what form the study will take.

Mr. Lukiwski, in response to that?

Mr. Tom Lukiwski: Yes, just to whether there's a point of order, but just to respond to Michel's questions, to my knowledge, quite frankly, there are no plans right now for any legislative review. However, I believe that if we had a study from this committee giving recommendations to the government as terms of amendments needed to the act, I'm sure that would be very helpful. Again, I'm just giving my opinion that I think that this is something frankly that transcends political boundaries. It affects all of us, and I think that if we had this committee take the lead and do a committee study and report to the government with our recommendations for changes, if we think changes are required, that the government would take that report very seriously.

The Chair: Thank you.

Monsieur Godin.

[Translation]

Mr. Yvon Godin (Acadie—Bathurst, NDP): I would simply like to get some clarification, Mr. Mayrand. Earlier you talked about the regulations and the act. Can the regulations to the Elections Act be amended by Parliament or is that the exclusive responsibility of Elections Canada?

Mr. Marc Mayrand: The Canada Elections Act has no regulations; everything is provided for in the Canada Elections Act.

Mr. Yvon Godin: Everything's in the act; so there aren't both.

Mr. Marc Mayrand: Rather than review all the provisions of the Canada Elections Act—there are 40 sections in the Referendum Act, whereas there are more than 500 in the Canada Elections Act—the Chief Electoral Officer was asked to adapt the Canada Elections Act to the context of a referendum and to do so by regulation. That's what we did for the Referendum Act.

Mr. Yvon Godin: All right. At that time, the power to make changes or to amend the act without having to resort to Parliament was given to Elections Canada by means of regulations.

I will side with Mr. Guimond.

Mr. Lukiwski, you say we should do the study, then the presentation. I'd have to take a look at where we've gotten with that. I remember that we conducted one study, for example, on electoral boundaries. We did a major study on that subject. I would have to see whether we did anything after that.

If we take the trouble to conduct a study, it would be good for the government to be in the mood to make a change as well. You shouldn't make a committee work for months and months without a bill emerging at the end of it. It's always better to know that the government wants the same thing, that is to work on this part of the act to adapt it to the situation today.

It would be good to check with the government. Then, having made the check, we could start a study. Perhaps that's putting the cart

before the horse, but, on the other hand, it's good to know where the government is headed with this.

[English]

The Chair: Do you have any response, Mr. Lukiwski?

Mr. Tom Lukiwski: Certainly I'll undertake to do just that, Yvon.

Our focus right now, frankly, is on other matters, primarily the economy, but I do sense that—

An hon. member: And law and order.

Mr. Tom Lukiwski: Well, it's on many things. I think there is certainly an appetite for changes to this. I think we've all identified some changes that probably should be made to the act, and I think, frankly, the work of a committee study could greatly assist the government in that regard.

In direct answer to your question, Yvon, I'll certainly undertake to get an answer to see whether or not any study from this committee on this particular issue would be worthwhile.

The Chair: Mr. Tilson, I have you on my list.

Mr. David Tilson (Dufferin—Caledon, CPC): Oh yes, indeed.

Whether the government's going to study it or this committee's going to study it, I have a couple of questions because Mr. Mayrand is here. You've indicated that you'd rather only deal with questions that are technical, as opposed to political, I suppose. I don't know.

You have obviously looked at this issue, and my question to you is whether there are other jurisdictions anywhere in Europe, the United States, or Canada that this committee or the government could look to as a model.

• (1135)

Mr. Marc Mayrand: I would suggest four models right here in Canada. There's the one in Quebec, the one in B.C., and in Ontario. They have run referendums concomitant with elections in the last three events: two events in B.C., and one in Ontario.

There are several jurisdictions around the world that also have referendum regimes. We would have to look into those to see if there are any that maybe should be considered more closely than others.

Mr. David Tilson: If this committee decided to review it, would you be prepared to put forward specific recommendations for amendments?

Mr. Marc Mayrand: Certainly, for technical amendments. Again, in matters of public policy, I'd be happy to provide the committee with the information that's needed to assess various public policy choices. I would refrain, however, from recommending any specific public policies. I think that is a matter that belongs to the committee and Parliament as a whole.

Mr. David Tilson: Okay.

I have no other questions other than to say, as someone who is not a member of this committee, that I appreciate Mr. Godin's comments that sometimes you can study something, and whoever's in office may or may not look at it. We've all been on committees where that takes place. However, this obviously is an area that cries out to be changed and this is the committee to do it.

Again, as someone who can leave the room after this committee, I'd recommend that this committee look at this.

The Chair: It's nice of you to give us work, Mr. Tilson.

Mr. David Tilson: It's a pleasure.

The Chair: Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Thank you.

I was going to say two things.

In terms of other models to look at, obviously there are some provincial models in Canada. But the most useful examples are obviously the ones that are parliamentary governments, like Canada's. While the Swiss have an interesting and very distinguished record with referendums, there are some substantial distinctions, and similarly with referenda in assorted U.S. states. I used to live in Washington State. Typically, they had a number of referenda at the same time. There are some useful things to learn. But the best examples, I would think, would be in Australia, particularly since in Australia their referenda are mandatory for constitutional amendment—the Referendum Act is assumed to apply to constitutional amendments, as opposed to ordinary legislation—and New Zealand. They would be the two that seem to me to have the most relevance for our situation. So that was one thought I wanted to put out there.

The second thought I wanted to put out for the benefit of committee members is I used to be a staffer here, and I remember there's a mandatory legislative review of the Referendum Act, which was dealt with in.... I've actually used this as a metaphor for everything that's wrong with mandatory legislative reviews. It was dealt with in less than one minute in this committee back in the 1990s, and dealt with in such an obscure fashion that it wasn't until several years afterwards—I was working on Parliament Hill—that I figured out that it actually had been dealt with at all. So there's an absence. It's something that should have happened. That it was mandated by law was honoured in theory but not in practice. It would be a good idea, I think, to come back and do that.

A final thought is if we're going to take over the regulations, regulatory function, from the Chief Electoral Officer, once it's been recommended, I would say we would probably want to make sure that the regulations not simply be done by means of the government issuing them, but that there be some kind of review in committee of those regulations prior to their adoption.

In a sense, it would reverse the role, but if you looked at it in this committee, Mr. Mayrand would be brought in and asked questions prior to rather than after the fact. I think that would be beneficial. There is a reason why we don't have regulations under our electoral law: it's so that the party in power can't manipulate them. I think the same thing would apply to a lesser degree but nonetheless would

apply to some degree to a referendum. It would be valuable to make sure that they can meet the sniff test before they go into effect.

• (1140)

The Chair: Are there any questions of witnesses?

Monsieur Guimond.

[*Translation*]

Mr. Michel Guimond: Mr. Chairman, I wouldn't want my question to be ruled inadmissible. It doesn't concern the Referendum Act and it may be of interest to all colleagues.

Mr. Mayrand, for when does the act provide for the electoral boundaries review? The last time, we conducted an exercise. Mr. Reid and Mr. Godin sat on the subcommittee with me. I know the boundaries are redrawn following the 10-year census, for the election that follows. Whatever the case may be, I would like to prepare psychologically for that quite tiresome exercise.

You like me so much, you were delicate enough not to rule my question inadmissible.

[*English*]

The Chair: Such a profound question. We'll allow it today.

[*Translation*]

Mr. Marc Mayrand: The electoral boundary review process will begin once we've received the 2010 census results. Very notionally, we should receive those results in the spring of 2011, which will trigger the review of electoral boundaries across the country.

On our side, we've started to plan for the exercise starting in 2010, in terms of geographic products, and to see how we will support the commissions in the exercise that should be conducted in 2011.

[*English*]

The Chair: Monsieur Godin.

[*Translation*]

Mr. Yvon Godin: Now that we've started to disregard the Standing Orders, let's continue.

This is interesting since we have a little time and it's worth it to use Mr. Mayrand's knowledge while he's here. At the same time, it gives the committee a chance to discuss the subject. I was talking about this problem with Mr. Lukiwski earlier.

I agree with Mr. Guimond; a major study has been conducted. As I was saying, we mustn't do any work for nothing, without knowing whether the government is ready to move the bill forward. We've conducted a major study on this; we've worked months and months, but we have to remember the reason for this study.

In the last commission, it was the first time in Canada that this kind of case wound up in court, and the court decided. For example, in the riding of Acadie—Bathurst—those who were here may remember it—Elections Canada had taken a group of francophone voters from the Acadie—Bathurst region and transferred them to the Miramichi region. The people protested loudly; it was incredible. There were demonstrations; postcards were sent to the Speaker of the House of Commons. He answered that he did not work at Elections Canada. There were all kinds of things. The case went to court and the court ruled that there had been a violation on the grounds of a community of interest. The community of interest means something; it isn't just figures. In the way the commission saw it, if there were 80,000 persons in one riding, its neighbour should have roughly the same number. In Elections Canada's view, it's unacceptable for one riding to have 86,000 persons and another 52,000. So the decision was made to take those people and throw them into another riding. That's when the court said that there was no community of interest between the two.

I'm going to come back to what I was saying. We conducted a study on the subject and submitted recommendations. That's one thing, Mr. Chairman, that I would like us to consider again because there was a report in the House. We could add it to the committee's work or, in the steering committee, we could consider examining it as part of future business. We should start studying that in advance. Mr. Mayrand says that new figures will be published in 2010 and 2011. So this is a project we should undertake now to make sure we have regulations. Things didn't go well at that time. All the political parties were unanimous on those recommendations.

● (1145)

[English]

The Chair: I understand, and I love the enthusiasm of members looking for work for this committee. We have gone a little far afield of the Referendum Act. Certainly the steering committee will now remember that we've had this conversation, and as we move closer to the redistribution discussions, we'll have to have those again.

Mr. Plamondon, do you have a question for our witness?

[Translation]

Mr. Louis Plamondon (Bas-Richelieu—Nicolet—Bécancour, BQ): Since we have the time and the opportunity to hear from you, sir, and since we're taking the liberty of deviating slightly from the agenda, perhaps you'll allow me to ask you a question. Quite some time ago, you conducted a number of investigations concerning members of Parliament. We've heard nothing further about that. Are the investigations still under way? Will they lead to prosecutions? What has happened with the entire controversy that caused over certain candidates or elected members? Where does the matter stand?

Mr. Marc Mayrand: Mr. Chairman, I don't know whether—

Mr. Louis Plamondon: You don't want to answer?

Mr. Marc Mayrand: There are two aspects. The policy and the constant position we've adopted are not to comment on ongoing investigations. The results of completed investigations are posted on the Elections Canada website. You can see the cases in which there have been prosecutions, the results of those prosecutions, the cases in which there have been compliance agreements, and so on.

Mr. Louis Plamondon: How many investigations are still ongoing?

Mr. Marc Mayrand: I can't tell you that from memory; I'd have to consult the Commissioner of Elections Canada.

Mr. Michel Guimond: Are there any cases before the courts? Ask him that.

Mr. Marc Mayrand: I can get back to you on that, but I can't tell you from memory how many files are under review.

Mr. Louis Plamondon: Can you send us the number?

Mr. Marc Mayrand: Yes, I'm going to prepare a report for you.

Mr. Louis Plamondon: Are there any cases before the courts?

Mr. Marc Mayrand: Yes, there's one case in court.

Mr. Louis Plamondon: Only one?

Mr. Marc Mayrand: There may be others, but there's one that I'm aware of.

Mr. Louis Plamondon: What would be the consequences...?

[English]

The Chair: We're getting quite far afield on this. I would like to wrap up the referendum piece. I know it's nice to have the Chief Electoral Officer with us today, but I know he did not come prepared to speak on every matter under his area of expertise. Let's bring it back to the Referendum Act and decide what this committee will do on the Referendum Act.

[Translation]

Mr. Louis Plamondon: I addressed another subject because others before me had done the same and I thought we could take advantage of the Chief Electoral Officer's presence here.

[English]

The Chair: As a chair with leniency, I allowed it to happen, and see what happens when I do? It may prevent me from doing it in the future.

Will the committee entertain a motion about doing a study on the Referendum Act, and if so, what form will that take?

Mr. Lukiwski.

Mr. Tom Lukiwski: I think we need to do a study, but I appreciate the comments from Monsieur Godin and Monsieur Guimond as to whether the government is going to put forward a legislative review and whether a study would in fact be a worthwhile exercise or just a make-work project.

I've already stated to Monsieur Godin that I would undertake to come back and give some indication to committee members on whether the government would like to see a study from this committee. I will do that at the earliest opportunity.

If you would like, Chair, I can relate the findings of my undertaking to you and you can communicate that with the other committee members.

The Chair: Okay. Should we wait for that, or should we move forward and start assembling what witnesses we may want to see, or areas of study? I leave it to the committee's discretion. If we'd like to wait for a response from Mr. Lukiwski, then we could do that. If not, we could start our planning and wait for that response.

I'm glad it's unanimous.

Some hon. members: Oh, oh!

[*Translation*]

Mr. Yvon Godin: Mr. Chairman, in one way or another, we'll have to do it. I simply said it would be good to know whether the government would be ready to put it on the agenda and to table a bill. If we do all this work and summon witnesses just to be told by the government that this isn't a priority, we'd be just as well off doing it next spring. I don't think it will take Mr. Lukiwski a year to go and see how the government views the matter. We should have the answer next week.

• (1150)

[*English*]

Mr. Tom Lukiwski: I would think we'll have an answer at the latest by next week in terms of whether the government is planning to introduce any legislation or do a legislative review. At this point in time, as I already indicated, my sense is that there's nothing on a priority basis and it may not come for some time. That's why I'm suggesting, assuming I get information on this from the government,

that it would be a worthwhile exercise for the committee to do a study.

I agree totally with Yvon. Let's not do a make-work study just because there's nothing else on the agenda. If we do a study and come through with some substantive recommendations for changes to the act, I think the government would find that very, very helpful. I'll just try to confirm that for the committee members before we entertain any thoughts of a study.

The Chair: I would suggest to the committee that we wait for that answer until the meeting scheduled for this time next Tuesday. At that meeting, if the will is to move forward we would then give a certain amount of time to put together witness lists and different things in order to properly prepare for the study.

Is that the will of the committee?

Some hon. members: Agreed.

The Chair: Mr. Mayrand, should we walk down that path you'd be welcome to come back. We certainly would be asking you at some point to come back and give us your recommendations.

Mr. Marc Mayrand: It would be a pleasure.

The Chair: Anything else for today's committee?

No? Great, we'll see you next Tuesday.

The meeting is adjourned.

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