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# **Standing Committee on Procedure and House Affairs**

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**EVIDENCE**

**Tuesday, May 28, 2013**

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**Chair**

**Mr. Joe Preston**



## Standing Committee on Procedure and House Affairs

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• (1030)

[English]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** We will start our meeting.

We are here, in the first half hour of our meeting today, pursuant to Standing Order 110 and 111, an order in council appointment of Richard Fularczuk to the position of Law Clerk.

Sir, if you have an opening statement and you'd like to share it with us, that would be great. Then we'll ask you a few questions.

**Mr. Richard Fularczuk (Law Clerk and Parliamentary Counsel, House of Commons):** Thank you, Mr. Chair,

[Translation]

and honourable members.

[English]

You have a copy of my statement, but I would like to present it.

[Translation]

Thank you for inviting me to appear before you to discuss my competencies and qualifications to perform the duties of the Law Clerk and Parliamentary Counsel.

[English]

Before I speak to these matters, let me say that it is a great honour and privilege to have been given the opportunity to serve this House and its members.

I will do my utmost to discharge these duties in a manner that justifies the trust you have shown in me.

[Translation]

You have before you a copy of my curriculum vitae. I do not intend to take you through it in detail, but instead wanted to touch on the major themes as they relate to the duties of the Law Clerk.

When I first reviewed the description of the position, it was apparent to me that there were two very different roles. One role, borrowing from a text of the Speaker of the House, is to act as "In-House Counsel" to the House of Commons and Members of Parliament.

The other role relates to the specialized support provided in the legislative context particularly in respect of private members' bills and amendments. To take on this role, a candidate has to be well-grounded in one or the other of those domains. Finding someone with mastery of both sets of skills would be a challenge, I think.

• (1035)

[English]

Frankly, my strengths lie on the in-house corporate counsel side of the ledger. In this role, many of the functions are very like those I performed while with two federal crown corporations: the National Capital Commission and Atomic Energy of Canada Limited. These involved, among other things, providing legal advice and support in matters related to contractual obligations, labour and employment law, and litigation, while also serving as part of senior management in terms of corporate governance and planning.

What is different about the position of the Law Clerk is that legal advice and support must also be provided in respect of matters that are unique to the House. Matters of privilege are first and foremost here, but also matters of constitutional and parliamentary law that would not typically arise in other entities or contexts.

However, when I moved from private practice to the NCC, and again from the NCC to AECL, I had to very quickly become adept in areas of the law that previously I had no personal hands-on experience in. I'm a quick study, and whether it was access to information and privacy or the legal implications for my client of the differing approaches of nations to dealing with nuclear liability, these were areas in which I became conversant reasonably quickly.

[Translation]

I want now to touch on the area of legislative drafting support.

Both at the National Capital Commission and the Atomic Energy of Canada Limited, I was involved with the legislative and regulatory drafting process in matters related specifically to those two crown corporations.

However, I was also involved with the project undertaken by the Minister of Justice to ensure that all federal legislation spoke equally in English and in French, and in both juridical contexts, the common law and the civil law. I have some experience here, but will need to strengthen my abilities in this area, and have the confidence that I can do so.

I wanted to highlight something else that is unusual about the NCC. It owns real property and assets and conducts programs on both sides of the Ottawa River and therefore in both legal systems. Although my formal legal studies were of the common law and I am a member of the Ontario Bar Association, I have had more than a passing exposure to the civil law regime. I think this is a valuable asset in the in-house counsel role.

[English]

A final note is that at both the NCC and Atomic Energy of Canada I practised in a highly regulated environment and one that was subject to considerable external scrutiny. I believe that too will bear dividends in my new role.

I would now be happy to answer any questions you may have for me, in English *ou en français*.

**The Chair:** Thank you very much.

We'll go to questions. We have seven-minute rounds. We'll try to do one of them.

Mr. Reid.

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

I want to start by asking if you'd agree with this general characterization of one of the aspects that makes your job unique. I could be wrong and I'm genuinely interested in what you have to say on this. It seems to me that an unusual situation exists. There is an unusual tension inherent in our Constitution in that the written Constitution discusses the idea that Parliament carries on and inherits privileges associated with Parliament from the United Kingdom. We have a Constitution modelled on and similar to that of the United Kingdom, which implies that Parliament's privileges have some kind of protection and that there's a need to draw boundaries around them to ensure that they are respected.

However, ultimately, unlike in Britain, those boundaries, if push came to shove, I suppose could be resolved through the courts. Thus, someone who deals in the law, as opposed to the conventions relating to parliamentary privilege, would have some say in the matter and presumably have to develop some opinions on it. I'm curious about your thoughts on this. Is it a serious area of concern?

**Mr. Richard Fuzarczuk:** You've touched on an important area. I will say this is my eleventh day in the role. I haven't yet developed the level of mastery of the nuances of constitutional and parliamentary law that I need for this role. What I'm sensitive to and what I'm alive to is that there are domains in which Parliament has enacted legislation to carve out areas that would historically have been the subject matter of privilege.

I'm alive to this issue. I can tell you that the briefings I'm getting from my staff are sort of like sipping water from a fire hose right now, as I try to develop the fluency I will have to have with these concepts. I can only assure you, as I said in my opening comments, that I'm alive not just to this but to an array of other issues that raise profound questions that my staff and I will be expected to respond to.

Maybe that's another thing I need to point to. The good news for me is that I'm not alone in this position. I have a team of people and a long tradition of having worked on these very sensitive questions, and I intend to make full use of that. I believe I have the full support of the team, and I am encouraged and pleased by the kind of welcome I've received from them and the kinds of briefings they started providing for me even before I arrived.

I'll ask you to give me a little time to develop the kind of mastery I need. I understand you have considerable experience in this domain, and it is an important issue, but I think it would be a bit premature for me to try to expound on those issues right now.

**Mr. Scott Reid:** Right. Out of curiosity, could you expand on your team, who they are? I know they're very good, very professional. We've seen them at work in the past. If you would, please tell us a little bit about who they are and what they do.

**Mr. Richard Fuzarczuk:** The team breaks down into two distinct functions: we have what I'll call the legal side of the team and the legislative support side of the team.

I'm sure you have dealt with Richard Denis, the deputy law clerk. Amongst the other lawyers, we have Steve Chaplin, Catherine Beaudoin, Anne-Marie Genin-Charette, Greg Tardi, and Louis MacHabee. We have a good group of lawyers with an array of both calls to the bar and experience in different domains who form that side of the House, I'll call it.

Then we have the legislative side of the House, who are providing the direct support for the private members' business. They're headed up by Marie-Andrée Roy. We also have Doug Ward, who is one of the drafters there.

To be frank, I've been taking things in little bites. I started on the legal side and I have not worked as closely yet with Marie-Andrée and her group, and for a good reason: they are quite occupied right now with a lot of private members' business that's coming forward at this point in the sitting.

I have a lot of confidence in what I've seen so far in their abilities. I can see their capacity to respond to demands in a timely fashion, and this is something that is very encouraging for me.

That gives you a bit of the flavour. Of course, there's a team behind them, supporting the administration of the office.

• (1040)

**Mr. Scott Reid:** Thank you.

Do I have any time left, Mr. Chair?

**The Chair:** You have a minute and a bit.

**Mr. Scott Reid:** I'm curious. Obviously we are not the only parliamentary body in the country. There are 10 provincial legislatures. Do each of them have a parallel office to your own, or do they structure it differently from the way you do here?

**Mr. Richard Fuzarczuk:** My understanding is that they do. I have reached out to the association that represents that group. I'll be meeting with all my colleagues and peers in Edmonton in September, for a couple of reasons, frankly: to build that network with them and to learn what I can from them. There are like offices in the other jurisdictions.

**Mr. Scott Reid:** Thank you very much.

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

Mr. Cullen, you have seven minutes or any portion thereof.

**Mr. Nathan Cullen (Skeena—Bulkley Valley, NDP):** Good morning. Thank you.

Any portion thereof? I'm in politics, Chair. It will be the entire portion, trust me.

Mr. Fajarczuk, I offer a sincere welcome from the official opposition, the New Democrats. You have a very challenging job. You have an impressive resumé.

Members of Parliament, and therefore Canadians, rely a great deal on the advice we receive from your office: that it's of the highest quality, which it has always been, and that it is non-partisan, as it has always been.

Parliament is a unique body. We like to think of ourselves as unique, compared to other institutions, and it's a highly charged environment—I'm sure you appreciate that.

As I said, you have an impressive CV, and you made some mention of this in your comments. I'm searching for what you're going to rely on from your experience to make those decisions you'll have to make when offering us legal counsel in this unique and politically charged environment. Have you had other experiences you'll be able to draw on in which you've had to make those kinds of decisions in that kind of context?

**Mr. Richard Fajarczuk:** If you're talking about the politically charged environment, I'm not going to make equivalent the experience I had, for example, working at the National Capital Commission. There are several different quantum steps between the two; nevertheless, there were issues that polarized the local community in which the NCC was involved during the 19 years I was there. Certainly dealing with very strongly held views, frequently on opposing sides of issues, was a real learning experience for me, and learning how to navigate in those waters was important.

I want to bring this nuance to it. As legal counsel you end up giving different types of advice. The rule I always held first and foremost was that if I'm acting purely in the role of legal counsel and there's a decision to be taken, the objective I want to achieve is that the decision-maker is a fully informed buyer at the time of making the decision. It's frequently not the case that the lawyer is making the decision; he's providing the legal analysis that supports the decision-maker in moving forward.

That's not always the case, depending on where you are in the management structure of the organization. As I became part of the management team at the NCC, it became one thing to have my lawyer's hat on and advise on the legal implications of what they were proposing to do or the options they were considering. My job was to make sure they were fully conversant with them. Then, as a member of the management team, I had a role to play there in offering my thoughts on the preferred way to go.

• (1045)

[Translation]

**Mr. Nathan Cullen:** What qualifications do you have to help you face very political decisions? We have to make some decisions at this time regarding the Senate and the scandal involving Mr. Duffy and Mr. Wright. The answers are not very clear from a legal perspective.

[English]

As you say, with your legal hat on there's not always an answer you can give as counsel to say, "This is absolutely where the law lands and you will be correct in saying this." You present options, risks, and whatnot.

In the role you're playing right now, incorporating constitutional aspects of this, which are different from corporate aspects, a similar affair of a cheque or some potential malfeasance would look different under an NCC lens, under AECL, under a corporate lens from how it does here in Parliament.

You mentioned earlier about relying on corporate knowledge, I suppose, to use a term, that exists within your team right now. That gives me some assurance, to be frank. Again, your resumé is very impressive, but the application of those experiences to this particular environment, when the advice you will be offering us could potentially be so important to the sanctity of Parliament and its ability to do its work, to hold government to account....

Do you follow me? I want to be very respectful, absolutely.

**Mr. Richard Fajarczuk:** I appreciate that. I guess my response is this. As I said, I'm not going to pretend that I have experience I don't have. I've offered you the kinds of experience that I do have. That's the closest touch point to the kind of thing you're talking about.

What I can offer you is this, and I think the CV bears this out. I'm thorough in terms of preparing and responding to things. I have a good work ethic. I have a good team work ethic as well, with the group that's around me. What I have found is that the thing that best serves me, whatever the situation, is the preparation, to have the best possible understanding.

I'm not going to pretend, as I said, that the kind of nuanced advice that I may have been giving in the previous context compares, but it gives me some touch points for this. As I said, I'm a quick study, not just on the legal side, but on the broader dynamic, and I will rely a lot on that corporate knowledge in the group to inform my ability to respond to these kinds of challenges.

**Mr. Nathan Cullen:** Thank you for that.

This is an unusual type of job interview. It's not really, but it is, by the acts of Parliament and how you come to the role you have. In this committee we ask questions that you may see in a normal job interview but in a different context.

One of your roles in offering advice to parliamentarians on all sides of the House is the ability to speak truth to power, where a member of the opposition presents your office with some legislation that is unconstitutional, according to your advice, yet it may be politically important for a government or an opposition member to present that bill. What experience have you had in having to speak that truth to power, in giving advice that people don't want to hear, yet is important for, again, protecting Canadians' right to have a Parliament and a government that actually respects their Constitution?

**Mr. Richard Fajarczuk:** I think what you're asking is...it's the essential role of what the lawyer does for the client always. I've had many times, within private practice and in public practice, where the clients didn't want to hear what I was telling them. It goes back to that opening rule that I stated for you, which is that I view my role, when I'm wearing the hat of lawyer, especially when there are competing options, as making sure that the client is fully apprised of all of the risks and consequences of what they're going to do. I have no difficulty telling them that.

In a sense, I have the ability to stand off and say, "I'm giving you legal advice. You're going to be making the decision, but when you do it, you're going to be an informed buyer; you're going to understand the implications that flow." I think that's the best I can do as the lawyer.

I remember when I first came into public practice, it was very common to hear this kind of conversation: "He doesn't want to hear that." I found that totally absurd, because the consequences of someone not hearing and being ill-prepared or blindsided, in my view, would be far worse than being confronted with your honest take on what the story is.

That's been a guiding principle for me throughout private sector days and public sector days. It's the way I view my role. As I said, I take very seriously the trust you're placing in me. I consider this an incredible honour, and I'm going to do everything I can to discharge the function in the fashion I spoke about.

• (1050)

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

Mr. LeBlanc, you have seven minutes, please.

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

Mr. Fajarczuk, welcome. Welcome to Parliament. I share my colleagues' views that your resumé, your experience, is impressive. We're lucky that somebody of your experience was interested in assuming what I'm sure you'll find at some points is a nightmare function.

I note that in 1975 you graduated from St. Michael's College at the University of Toronto. A decade later, I got my first choice of colleges and I went to Trinity.

**A voice:** Oh, oh.

**Hon. Dominic LeBlanc:** I'm glad to see you're a U of T grad.

I wanted to follow up perhaps on Mr. Cullen's questions. I had a brief experience in the private practice of law in New Brunswick, and I've often wondered about people who work as legal advisers in a context as complicated and as treacherous as Parliament or the House of Commons. You'll have people asking you, and I hope in good faith, for legal advice or a legal opinion with perhaps completely contradictory objectives. They're hoping you'll say that such-and-such is possible, or such-and-such is not, or that something is wise or is unwise.

On the exact same issue, probably more than any other function... and I was trying to imagine a large crown corporation like AECL or an organization like the National Capital Commission, which, as you

correctly noted, at various times on various issues becomes politicized, often around different development initiatives, different policies, or decisions they make obviously in this city.

In my experience as a parliamentarian...and it's different, to be fair, in a minority context than in a majority context, where there's a bit more predictability, both in committee deliberations and in votes of the House itself. But one thing that I was struck by, albeit in the minority context of either Mr. Martin's or Mr. Harper's government before 2011, was the ability of parliamentarians or committees to get access to information.

This is not in the context of the legislation, of the statute, but to be able to dig out or tease out particular information from governments or in some cases from other parliamentarians. The Senate process that may be undertaken in the coming weeks will again sort of touch on this idea of the ability of people to get information that people claim as parliamentary privilege or, in the solicitor-client context, as solicitor-client privilege.

In your experience, either at the NCC or at...and you'll forgive me if I don't understand the extent to which access to information applies to the National Capital Commission or to AECL. I see in your resumé that you were involved in the access to information and privacy context, so I assume it fully applies to the NCC.

**Mr. Richard Fajarczuk:** It fully applied at the NCC. There was an area that was carved out of the application of ATIP in the context of AECL, for obvious reasons.

**Hon. Dominic LeBlanc:** Sure: business and commercial—

**Mr. Richard Fajarczuk:** It had to do with some of the sensitivity of the materials that AECL deals with.

**Hon. Dominic LeBlanc:** Sure, and there would be the normal protections of commercial or business information.

From your experience, maybe in private practice, how do you balance out...? I think I'd be curious to see, if we had you come back in a couple of years, whether the impressions you had after two weeks were the same as your impressions after two years. My sense is that one of the functions of parliamentarians is to get access to information, not in the statutory context, although that is one of the instruments, but to be able to represent their constituents or speak in Parliament based on facts and information that often, for contradictory reasons, a particular institution or a particular government may not want to be so transparent in giving.

I'm wondering if you had any experience in your practice with dealing with the decision to advise somebody to disclose something or not, based on statute or on perhaps a litigation context that you saw either coming down the line or before you.

• (1055)

**Mr. Richard Fajarczuk:** There are two flavours to your question. I'm going to try to deal with both of them.

There were many times—on one side of your question you talked about advising to disclose—where notionally under, let's say, ATIP we had an available exemption for which a plausible argument could be made. But again, now wearing my management hat, the view was that it better serves the organization to release this information than to resist on the basis of a plausible invocation of that exception. I've been there. As I said, in the role of manager and as part of the senior management team, you're going to weigh a lot of different consequences than just the purely legal sort of binary obligation. Is it eligible to be suppressed or withheld, or is it to be disclosed?

When you start talking about litigation...I must admit that I have an instinct that goes back to my private practice days, and I guess it's something that started back in law school. I remember Arthur Maloney, one of the most distinguished practitioners, came to speak to us at Western. He said that the mere fact that you've been retained is a matter of privilege, not something to be disclosed without your client's instruction. So certainly during my private practice days, that was a habit that became quite inculcated in me, and I still have that natural instinct—any lawyer will. When you talk about litigation, especially when you're talking about the disclosure of information that might expose your client, that's something, as I said, where I will tend to start from that initial position, because it's the one I've lived for 30 years or so.

Having said that, there have been times when, on balancing all the factors, you've made the determination as part of the management team that you're going to make a release of information. That's something that I've been prepared to recommend as well. It's something I guess that grows with your maturity too. When you're a younger lawyer, you might tend to be a little more binary about stuff: the law says this; that's what I'm going to do. As you become a little more experienced about the implications, you may be prepared to take a more nuanced view and ask what really is in the client's better interest.

I don't know if that answers your question.

**Hon. Dominic LeBlanc:** It does. Thank you very much.

**The Chair:** Thank you.

We've completed our time today. Thank you.

Monsieur LeBlanc invited you back in two years. I'd like to invite you back more often if you feel you need to. This is a great place you can come, and we're happy to have you come and share information with us.

**Mr. Richard Fugarczuk:** As I said, Mr. Chair, thank you to all members. I guess I have to say I'm excited about the prospect of being given the opportunity to serve this House and its members. If you want me back, you know where I live.

**The Chair:** All right. Thank you.

We will suspend for two minutes while we change witnesses and move on to the second part of our meeting today.

•(1055) \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1105)

**The Chair:** We will resume our meeting.

Welcome, Monsieur Mayrand. We're happy to have you here today.

Committee, we're here today pursuant to Standing Order 84(1) on the main estimates, vote 15 under Privy Council, and other issues pertaining to Elections Canada.

Monsieur Mayrand, I know you have an opening statement for us. If you'd you be happy to share that with us and introduce your guests who are with you here today too, that would be great.

After your opening statement, we'll go to rounds of questioning.

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

[Translation]

Thank you, Mr. Chair, for inviting me to address the committee today.

Appearing with me are Stéphane Perrault, Deputy Chief Electoral Officer, Legal Services, Compliance and Investigations; Michel Roussel, Executive Director, Registration and Voting Services; and Belaineh Deguefé, Deputy Chief Electoral Officer, Policy, Planning and Public Affairs.

Last year, I committed to producing two reports. The first was in response to the occurrence of deceptive communications with electors during the 2011 general election. I transmitted it to the Speaker on March 26, 2013.

The second was the result of a comprehensive review undertaken in light of procedural and record keeping errors by election officers during that same election. I shared this report directly with the committee on April 30, 2013.

I am pleased to discuss these two reports today, as well as my office's main estimates for 2013-2014.

[English]

I will first deal with the report entitled *Preventing Deceptive Communications with Electors*.

For electors, communications with parties in Canada during an election is fundamental to effective participation. Parties and candidates also need to contact individual electors to engage them in the political process.

With new technology and increasingly sophisticated software, political parties and entities can more readily understand demographics and identify the preferences of electors, as well as communicate with them. However, these communications need to be regulated. Abusive communications that convey false information or mislead electors are likely to undermine trust, not only in the perpetrators, but in the political process as a whole.

The recommendations that I put forward in my report are designed to reconcile those different interests. While some of them are administrative, most require legislative change. I would like to highlight a few recommendations that require legislative intervention.

The first is in response to Canadians' concerns regarding what may be a significant amount of personal information gathered by parties in their databases.

Electors need and expect assurances that their personal information is used for proper purposes and is adequately safeguarded. There are principles accepted throughout the world with regard to protection of personal information that apply in Canada to most non-governmental organizations, large or small. They relate to collection, use, and dissemination, and to the responsibility that each organization must assume for personal information under its control.

I recommend that political parties be required by law to have in place policies and rules that are in line with these privacy principles before receiving voter lists from Elections Canada.

A second set of recommendations is designed to better regulate telephone calls made by political entities to electors.

I recommend new rules governing calls to electors to complement current CRTC rules on unsolicited communications. For example, in all cases, callers should be required to disclose the name of the candidate or party on whose behalf they are calling.

As well, political entities should be required to provide specific information about telemarketing services on a timely basis. On the other hand, companies providing the services should be required to keep records of communications made during an election period. The records should be disclosed to the commissioner to facilitate an investigation, following judicial authorization.

These recommendations would ensure greater transparency of campaign activities, a more rapid intervention in the case of complaints, and more effective investigations.

Indeed, the investigations into deceptive calls has made us keenly aware that the Commissioner of Canada Elections needs better tools to do his work. Good rules are of little use if they cannot be enforced.

I have recommended that the commissioner be granted the power, subject to prior judicial authorization, to compel persons to provide information relevant to an investigation either by testifying or by producing documents. The commissioner strongly supports this recommendation.

● (1110)

Under the Charter of Rights, information so obtained could not be used against persons required to testify. However, it could help to determine whether an offence has indeed been committed and thus make it possible to act more quickly and to facilitate investigation.

Such a power already exists in most provincial electoral statutes, and at the federal level it also exists under the Competition Act.

[Translation]

Those are my key recommendations for preventing deceptive communications.

I will now turn to the report entitled *Compliance Review: Final Report and Recommendations*, dealing with voting day procedures. As the committee is aware, in the last general election, there were a number of procedural and record keeping errors on election day for

registration and voter identification. While there is no evidence that unqualified electors were allowed to vote, the conduct of an election must be accounted for through proper record keeping.

I therefore commissioned an independent electoral expert, Mr. Harry Neufeld, to conduct a rigorous and comprehensive review to understand the scope and the causes of these errors, and engage stakeholders in proposing solutions for the next general election and beyond. We agree with Mr. Neufeld that, in the longer term, a fundamental redesign of the voting process is required. A simplified process is vital to sustain an electoral system that, for one day every four years, relies on some 200,000 ordinary citizens to serve their neighbours and democracy in the role of election officers.

Redesigning the voting process is a large undertaking that demands a prudent approach. As required under section 18.1 of the act, I intend to seek the approval of this committee, as well as the Senate committee responsible for electoral matters, to pilot a new voting model that will include technology at the polls and a reallocation of election officer tasks. Following a successful pilot test, my office would propose significant legislative reform to implement the new model nationally after the election in 2015. I plan to engage both parliamentary committees in the coming months on the model and our plans for the pilot.

In the interim, some improvements need to be made administratively. For example, we will simplify forms and procedures. As well, we will improve the delivery of our training program, notably by investing in computer-based training. In addition, we plan to extend, to all electors, the use of the voter information card as proof of address, when presented with another authorized piece of identification. This should reduce the need for vouching.

Yet such administrative improvements will have little impact unless they are accompanied by a few specific legislative amendments. For the most part, these amendments were identified in my 2010 recommendations report to Parliament, and were largely endorsed by this committee. They were highlighted again in my response to Mr. Neufeld's recommendations. Three are most critical.

First, I am seeking legislative changes to allow full online voter registration, which would reduce the number of election day registrants and improve the quality of the voters' list. The act should provide more flexibility for electors to establish their identity and residence electronically. This would permit us to offer and promote a complete online registration service in most provinces and territories.

Second, I am seeking changes allowing us to recruit and train election officers earlier. The provision granting candidates the authority to nominate election officers should be removed. I realize this goes beyond my 2010 recommendation, but I believe it is warranted based on Mr. Neufeld's recommendation.



Third, the legislation should permit returning officers to appoint additional election officers, including supervisors, with the Chief Electoral Officer's authorization. Enough staff must be available to ensure prompt and efficient service at the polls, and to check that procedures are being followed.

●(1115)

I would like these amendments as well as those suggested in my report on deceptive communications with electors to be included in the expected government bill on electoral reform. I would be pleased to offer any technical support the government might need in developing the bill and of course, to support this committee during its review.

[*English*]

I will now turn to the main estimates and other priorities for my office in 2013-14.

Elections Canada is funded by and operates under two separate budget authorities. The first is a statutory authority that draws directly from the consolidated revenue fund. This authority funds all Elections Canada expenditures other than salaries for indeterminate positions. Our projected statutory draw for 2013-14 is \$85.8 million.

The second is an annual appropriation that covers only the salaries of indeterminate positions. For these main estimates our appropriation is \$30.1 million. It is this component that the committee is considering for approval today.

As I informed the committee last year, Elections Canada has reduced its operating budget by 8% in response to the deficit reduction action plan. To ensure that resources are focused on the highest priorities linked to our mandate, Elections Canada completed a zero-based budgeting review in 2012-13. In addition, we began implementing workforce adjustment measures and informed employees in January that 32 indeterminate positions would be eliminated.

The agency's plans and priorities for 2013-14 are twofold. First, we are continuing to support the electoral boundaries readjustment process. Once the commission has completed its final report and the new representation is proclaimed—likely this September—we will have seven months to implement the new boundaries. Second, we will continue to pursue a number of initiatives to bring registration and voting services closer to electors.

These complement our efforts to improve compliance and maintain Canadians' confidence in their electoral system and its administration.

For example, we are redesigning the voter registration IT system to access a national voter list. This is necessary in order to integrate online voter registration services and offer them during the election. The new system will be an essential component, enabling us to manage voter lists in real time at polling stations after 2015.

As well, in advance of the next election we are planning to conduct pre-election drives to improve registration rates among youth and aboriginal electors. We are also planning to expand voting services on campuses and extend them to some other locations where these electors gather, such as community centres and friendship centres.

With appropriate legislative amendments providing full online registration, these initiatives will add convenience for electors and reduce known barriers, especially when combined with the use of the voter information card as proof of address. They would also improve the quality of the voter lists, decrease the number of election-day registrants, and reduce the need for vouching.

Finally, we are continuing to enhance our information tools for political entities. This includes updating the handbooks for registered political parties and electoral district associations.

To conclude, it is my hope that any amendments to the legislation will be adopted by spring 2014 in order for my office to implement changes and secure additional resources in time for October 2015.

We understand that the government intends to table a comprehensive bill that will need to be considered carefully. I have provided two reference documents to the committee this morning. One is the CEO's report, "Preventing Deceptive Communications with Electors". The other one is "A Review of Compliance with Election Day Registration and Voting Process Rules". I hope these documents may be of assistance during our discussion.

As always, I will remain available to this committee during its study of proposed legislation.

Mr. Chair, my colleagues and I are happy to answer any questions the committee may have.

Thank you.

●(1120)

**The Chair:** Thank you. I believe we probably have some.

We'll start first with Mr. Lukiwski for seven minutes, please.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Thank you very much, and thank you, Monsieur Mayrand and your officials, for being here.

I have a number of questions and we have a couple of hours, so hopefully we'll be able to get all of them in that timeline.

If I can, I want to start with a little update, if possible, if you can provide it, of the ongoing robocall investigation. I understand since the investigation is still ongoing there's probably very little you can tell us in terms of the details you have uncovered so far, but I can assure you our party, probably more than any other, would like to see a speedy resolve to this. As you know, many of the opposition have been accusing our party of being the ones who perpetrated the voter suppression phone calls of the infamous Pierre Poutine investigation. We did not. We've stated that categorically. I will do so again. We believe in getting out the vote, not voter suppression, but of course until such time as the investigation is completed, it is very difficult for us to prove we had nothing to do with that. Justice delayed is justice denied.

So even though I know you won't be able to provide much in terms of actual information as to what you have uncovered, I do have a few questions that hopefully will assist us in knowing what to expect once the investigation has been completed.

First, after the investigation has been completed and either a report or a recommendation based on the investigation has been submitted, who actually makes the decision whether or not charges will be laid? Would that be your office, or would that be the Commissioner of Canada Elections' office?

**Mr. Marc Mayrand:** Neither of them. It will be the Director of Public Prosecutions. The file will be sent to the DPP, who will assess whether there's a reasonable chance of conviction and whether it's in the public interest to file charges. If so, he will apprise the Commissioner of Canada Elections to proceed with filing charges before the court.

**Mr. Tom Lukiwski:** This is probably an unfair question, but is there a rough timeline, an average timeline? How long does that take after a report has been submitted and a decision is made and there is the final word on whether or not charges are going to be laid? What would be an average timeline after the report of the investigators has been completed?

**Mr. Marc Mayrand:** I think that answer would be better provided by the DPP. Again, matters vary. Delay will vary depending on the complexity and the nature of the case. They have to assess all the evidence and satisfy that it meets the criminal threshold in terms of evidence.

**Mr. Tom Lukiwski:** Do either Elections Canada or the Director of Public Prosecutions have any procedures, practices, or policies that you follow in terms of at least saying you will try to determine whether charges should be laid at an earliest opportunity? Again, I'm just trying to get to the point...if a report has been received but there's a long, undue delay, those people who are under question obviously are still waiting for an answer, and I think most Canadians would like an answer as well.

What kind of a procedure does your office and the public prosecutions office follow, if any?

**Mr. Marc Mayrand:** My understanding is that as soon as the commissioner is satisfied he has gathered enough evidence to justify prosecution in his mind, he will provide a brief to the DPP.

As for the internal process, I would suggest the DPP would be in a better position to answer your questions.

**Mr. Tom Lukiwski:** I have a final question on this and then I'll move on, if there's time remaining.

Is there any information you can provide to this committee as to the status of the investigation, other than that it's ongoing?

**Mr. Marc Mayrand:** I think we all know about Guelph. As for the others, these investigations are still continuing as we speak.

**Mr. Tom Lukiwski:** How much time do I have left, Chair?

**The Chair:** You have two and a half minutes.

**Mr. Tom Lukiwski:** Maybe I can turn now to a completely different subject, and that's the New Brunswick model. You mentioned in your report that you have plans to try to introduce

different procedures that might facilitate better operations of voting at polling stations.

Correct me if I'm wrong, but my understanding is that you're suggesting—based on what I believe has happened in New Brunswick—a system where when voters are entering a polling station, they are first met by one individual who gathers identification materials and then directs them to a polling location, to try to better facilitate a quicker vote by members. In other words, rather than having people traditionally vote during rush hours at a polling station that maybe has 20 or 30 people in line, this one individual gets all the information, confirms they are eligible to vote, and then directs them to any one of a number of different polling stations. Is that...?

• (1125)

**Mr. Marc Mayrand:** Whoever is available to serve the elector...

**Mr. Tom Lukiwski:** Has that been the practice in New Brunswick to date?

**Mr. Marc Mayrand:** It is the model in New Brunswick. It has been the model during municipal elections in New Brunswick for a few occasions; it was tested there. And it was used in the last New Brunswick provincial election.

**Mr. Tom Lukiwski:** Based on what you've seen from the information provided to you, or firsthand, are you satisfied that that would be a worthwhile initiative for Elections Canada to pursue?

**Mr. Marc Mayrand:** Certainly, it would need to be adapted for the federal context, but it's a promising model, in terms of better service for electors, better compliance at the poll, and more efficient use of resources.

**Mr. Tom Lukiwski:** Did you want to try to do a pilot project based on that, or is that a firm recommendation you are making to the committee?

**Mr. Marc Mayrand:** I think it would be more prudent to test it in a federal election, either a byelection or even in a few ridings during the 2015 general election.

I think we want to also introduce technology at the polls, and this needs to be fully tested before we ramp it through across the country.

**Mr. Tom Lukiwski:** If there's a byelection, or a series of by-elections, prior to the next federal election, would your office be prepared to implement a pilot project?

**Mr. Marc Mayrand:** Subject to approval from the committees of both the House and the Senate—timely approval for the pilot—we could be ready to run a pilot for any byelection happening in early 2015, if any are called.

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

Mr. Scott for seven minutes.

**Mr. Craig Scott (Toronto—Danforth, NDP):** Thank you, Mr. Chair.

Thank you, Mr. Mayrand, for being with us.

No doubt you're aware of the decision that was released last week by Justice Mosley in the McEwing case and some of the conclusions that were drawn with respect to voter suppression calls, that they have been orchestrated and they were widespread. The judge found fraud to have existed. The judge also signalled the high probability that the Conservative Party's CIMS database was the source of the information used for the voter suppression.

He also observed that the Conservative Party, "...made little effort to assist with the investigation at the outset despite early requests". He's referring here to Elections Canada investigations.

One last thing he did, to be fair to all individuals, was to find that neither the CPC nor any MPs or individuals were found to have been specific perpetrators. But the judge did say, "...the evidence points to elaborate efforts to conceal the identity of those accessing the database and arranging for the calls to be made." I emphasize the word "those".

Basically the question is, Mr. Mayrand, were these conclusions by the judge in any way a surprise to you? Whether they were or they weren't, is there any way you can help us understand the challenges and the obstacles Elections Canada has been facing in its own efforts to identify the perpetrators of the fraud?

**Mr. Marc Mayrand:** I can't speak for the commissioner on these matters. I think I will let everyone draw their own conclusion from the judgment of Justice Mosley, which can speak for itself.

I think in the reports you have before you today there are a number of recommendations that deal with the challenges we're facing during the investigation of the affair referred to as "robocalls". There is the lack of timely information being accessible to the commissioner or to Elections Canada; the fact that there's no real standard in the industry for the retention of documentation, which is problematic; and the fact that the commissioner has no authority to compel various individuals or parties to testify or provide information. These are three key issues that have been faced by the commissioner, especially in this case. Again, when people don't want to talk to him, he has very few options, even though those people may not be suspect but may have relevant information to the investigation.

I would focus on these three elements.

• (1130)

**Mr. Craig Scott:** Following along those lines, obviously you're suggesting as well that we need legislative reform for these items to actually be in place.

Now, we know that in March 2012 there was a motion adopted in the House by all parties requiring the government to table legislation by September, which didn't happen. We're eight months later and we still don't see the reform legislation that we're all anticipating. The NDP did deposit our own bill in October in an effort to actually put forward some of the principles you just mentioned.

I have three sub-questions relating to this.

One is, would the investigation likely be more effective or be different if what you're recommending now were in place? Second, if we are able to get this legislation before us—we haven't seen it—and it eventually gets passed, will that still help with the 2011 events?

These are procedural investigative powers, and presumably they can apply to events that occurred before. I want to make sure I understand that that's correct. The last question is, how soon do we need to have this legislation?

**Mr. Marc Mayrand:** I'll start with the last part of your question. In my opening remarks, I suggested that we need legislation in place with royal assent by spring 2014. The broader the scope of the reform, the more time we need to get ready to implement it. I think we need a bit of leeway before the next GE—general election—in terms of significant legislative reform.

Would the recommendation I put forward make a difference? Definitely. I think it would accelerate the process, and I think we are all concerned by the delays in those investigations and the fact that of course justice delayed is justice denied, as one of your colleagues mentioned. These amendments are designed to improve the timeliness of investigations. It would also improve the ability to gather evidence, which is key for the commissioner and for the DPP.

**Mr. Craig Scott:** Including evidence relating to 2011...?

**Mr. Marc Mayrand:** On that one, I would probably have to see the text of the legislation. There may be transitory provisions in the bill. Without those, it would likely be applicable. The problem we have is that it would be three years after the possible circumstances that led to the investigation and evidence may be long gone.

**Mr. Craig Scott:** Lastly, because I only have a minute, with respect to the comment by the judge about the lack of cooperation at the outset, despite early requests—and that was reported in the media—I'm wondering if this is public knowledge or whether you can confirm that it took something like three months before the Conservative Party, through their lawyer, actually responded to an investigator's request for access to interview certain people.

Were those media reports accurate, to your knowledge?

**Mr. Marc Mayrand:** I think those media reports are based on ITO procedures that were filed in court, where it was pointed out that there were some delays in dealing with the matters. Again, the proposed amendment that I put forward here would alleviate those issues.

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

Monsieur Dion, you have seven minutes, please.

• (1135)

[Translation]

**Hon. Stéphane Dion (Saint-Laurent—Cartierville, Lib.):** Thank you, Mr. Chair.

Good morning, Mr. Mayrand. I would like to thank you and your colleagues for being here today.

Let's begin with last week's court decision. Justice Mosley revealed certain things we strongly suspected, that there were orchestrated fraudulent calls across the country targeting Canadians who had let it be known they did not plan to vote for the Conservative Party. The judge told us that the most likely source was the Conservative Party's database. Finally, the judge complained of the fact that the Conservative Party had done everything in its power to delay and complicate the entire process.

The next step is your own investigation. It will include about 50 ridings. Canadians need to know who is responsible for these fraudulent calls.

Do you have the full cooperation of the Conservative Party in this affair?

**Mr. Marc Mayrand:** When it comes to these issues, I cannot speak on behalf of the commissioner, nor the investigators. I do know they are having conversations and meetings with the people in question and that the investigation is following its course.

However, in the Guelph case, three persons of interest who may have relevant information have refused to meet with investigators. I believe that fact is in the public domain.

**Hon. Stéphane Dion:** It is in the public domain. Which leads us to a question I meant to ask you later on, but will ask you now.

Is it possible to refer these three reluctant witnesses to the RCMP?

**Mr. Marc Mayrand:** No. Under the current legislation, there is no such provision. For the time being, these are not suspects. They are merely individuals who may possess useful information. Under the current act, the commissioner has no enforcement power over those individuals. As far as I know, they are not committing an offence, at least not under the Elections Act or the Criminal Code.

**Hon. Stéphane Dion:** And the recommendations you have made would allow for...

**Mr. Marc Mayrand:** Yes, with a court's authorization, the commissioner could oblige a person to testify and produce documents.

**Hon. Stéphane Dion:** Did Minister Uppal consult you this time about the expected bill?

**Mr. Marc Mayrand:** No. I was just informed that a bill was being prepared and would be introduced in a few weeks. I was not consulted as to its specific provisions.

**Hon. Stéphane Dion:** I find that unfortunate. If you were to provide your advice ahead of time, many delays and errors could be avoided.

**Mr. Marc Mayrand:** As I indicated in my opening remarks, I remain available to the government if it wishes to solicit my advice or my opinion on certain aspects of the reform.

**Hon. Stéphane Dion:** Mr. Mayrand, for the last few remaining minutes, I would like to ensure that your recommendations do not allow any loopholes to be included.

First of all, you recommend much larger penalties for impostors who are posing as Elections Canada officers. We are talking about fines as high as \$250,000 and longer periods of incarceration, if necessary.

Yet, during the last election, in a riding next to my own, certain people posed as Liberal Party representatives. In the Mont-Royal riding, where there is a large Jewish community, people received phone calls on the Sabbath. Mr. Cotler is quite certain that his team would not have committed such a terrible mistake.

Are you also going to discuss impostors who pose as members of another political party?

**Mr. Marc Mayrand:** As formulated, the recommendation would cover the situation you just described. The communicant would be guilty of misrepresentation, whether it concerned Elections Canada or another political entity.

**Hon. Stéphane Dion:** Very well. I just wanted to ensure that was clearly stated in the text.

**Mr. Marc Mayrand:** It is included in the report. That should be clear.

**Hon. Stéphane Dion:** Very well. I will take a closer look at it. That is not how I understood it.

[*English*]

You recommend that telemarketing services should keep records of all communications made in Canada during the election. Why is it only during the election? It may also disappear outside elections. Now, for some years, we are in permanent elections in Canada.

**Mr. Marc Mayrand:** We're trying to achieve a balance. The rules that are provided would cover all telecommunications.

With regard to the retention of documents, again, we are concerned that it not be subject to the will of this committee and Parliament that we limit intrusiveness in the operation of telemarketing companies. Again, there are different standards nowadays that apply. There is no uniform industry standard, and I don't believe there are formal regulations that govern the retention of the types of records we're looking for, so we have curtailed the recommendation to the specific issues we were facing.

• (1140)

**Hon. Stéphane Dion:** I have a concern about that. We may look at that more carefully when we see the bill to determine if it is something we should revisit.

I have another point close to this one. Your next recommendation, on page 39 of your report, states that companies should preserve specified records if required by Elections Canada—if required by Elections Canada. However, on page 27 of the report, you state that some companies don't keep records unless billing is required, first, and they do it for a short period of three days. Three days is a very short time for a complaint to Elections Canada and to be sure that the data is not destroyed before that. Why not have an overarching rule that states that telemarketing services should keep records whether or not we are in or out of a writ period?

**Mr. Marc Mayrand:** That's something again that the committee and Parliament can consider. I think it would probably require some consultation with the industry as to why they proceed the way they do.

In terms of the practice right now, it's a well-established standard in the industry that telecommunication companies—not telemarketing companies—do not keep records unless they charge for communications. You end up in the interesting situation where you use land phones for which there are no charges. There's not necessarily a record of the communication coming into your home, but if you receive a call from a wireless, there's probably a record of that transaction.

**Hon. Stéphane Dion:** I have other questions, but next time.

**The Chair:** Mr. MacKenzie.

**Mr. Dave MacKenzie (Oxford, CPC):** Thank you, Mr. Chair.

Thank you, Mr. Mayrand and your folks, for being here today.

I have more than one area I would like to discuss with you, but one of the things I understand is the nominating of officials to work at elections. Certainly, I know in my riding—and I suspect in others—many of the returning officers have a very difficult time in finding the people to recruit and to staff.

I know a number of times they have indicated that it is the responsibility of the candidates from all parties to produce lists of appropriate people to staff there. In your recommendation you're indicating you'd like to take that nominating process away. How would you fix the problem of not having enough poll staff?

**Mr. Marc Mayrand:** There are maybe a few points. The act requires the returning officers to go to the candidates who ranked first and second in the last GE to recommend personnel. The returning officer has to wait until 17 days before election day to get those names from candidates.

The reality is that over a few election cycles now, the number of referrals by candidates have been declining significantly. In fact, nationally, barely one-third of the electoral workers are identified by candidates, and in some parts of the country there are none at all. That significantly impedes a returning officer from starting recruitment much earlier and then providing the proper training in a timely manner.

The situation we face right now is that the recruitment is done at the last minute—two weeks before election day—and suddenly a returning officer who has to recruit about 800 workers needs to train them during that period. Again, during that period—I'm saying 17 days, but there are only seven days before advance polls, so within a week—they have to identify all the workers they need for advance polls, train them, ensure that they are qualified, and then assign them to polling stations in the various districts. It's a daunting task for them, and it's an issue or a situation that continues, with poor compliance with basic procedures at the poll.

I think Mr. Neufeld recommended changing that, and I'm coming back to this committee today saying that it's time we get rid of that rule.

That being said, candidates and parties can always direct people to our website recruitment tool, and their referrals would certainly be considered by a returning officer.

• (1145)

**Mr. Dave MacKenzie:** I'm not saying it's a bad idea, because my group is one that refuses to hand over the names; it takes away from our workers and our support.

**Mr. Marc Mayrand:** Exactly.

**Mr. Dave MacKenzie:** I just wonder if you have a system or a plan whereby you're going to staff the polls where we've had this difficulty?

**Mr. Marc Mayrand:** Yes, we do. We'd start earlier. For the last election we introduced an online recruitment tool. We got over 40,000 applications online, and that will continue to grow as we promote it with Canadians.

**Mr. Dave MacKenzie:** Thank you.

I come from a law enforcement background, and I have a great deal of difficulty with the suggestion that an accused has to cooperate with somebody who's conducting an investigation. It's never been my experience in policing. No one has to cooperate.

I'm wondering if you can point to any other legislation in which someone accused of something—it doesn't mean they're guilty of anything—has to provide the evidence that you feel would go towards proving or disproving your case.

**Mr. Marc Mayrand:** I have not been talking about accused individuals. Every Canadian has rights guaranteed by the Charter of Rights that says no one has to provide evidence against himself or herself.

What I'm looking for is the authority and power, which exists for the vast majority of provincial electoral bodies, as well as for the Competition Bureau and many other regulatory agencies, to require a person to attend an interview if that person, in the view of the investigator, may have in his or her possession information that is relevant to an investigation. That power would be exercised only with the authorization of the courts. It's not a free ride for investigators—quite the opposite.

Again, if in the course of an interview an individual provides evidence that may be against their interests, the interview has to stop. They have to be told right away. In any case, the information cannot be used against them.

**The Chair:** Thank you.

We'll go to Mr. Cullen.

Try to keep it to five minutes. We were a little generous there.

**Mr. Nathan Cullen:** Thank you, Chair. I'm sure the generosity will extend.

A free and fair vote lies at the heart of our democracy, hence our spending some time here today. Thank you for your work on that.

There are obvious problems and loopholes that need to be fixed. Fraud has been committed, as was commented on by my friend and by Judge Mosley—coordinated, systemic, and widespread. I would suggest that the Conservative Party didn't do itself any favours in that case, and that the judge also noted in his own recommendations, as you've said, that there was some sort of trench warfare in trying to deny the justice. I'm curious now that my Conservative colleagues are concerned about the principle of justice delayed being justice denied.

You issued a report in 2010, more than a thousand days ago, with some recommendations that would help fix the holes in our electoral system. Is that true?

**Mr. Marc Mayrand:** There were certainly a good number of recommendations that would have helped us over the last few years.

**Mr. Nathan Cullen:** You recently issued another report, some five weeks ago, with more recommendations. Has the government consulted with you on incorporating some of those recommendations into legislation?

**Mr. Marc Mayrand:** No, not at this time.

**Mr. Nathan Cullen:** You haven't been consulted?

**Mr. Marc Mayrand:** Not at this time.

**Mr. Nathan Cullen:** The government announced that they were introducing a bill that was meant to fix some of these problems. Were you consulted on that piece of legislation?

**Mr. Marc Mayrand:** No.

**Mr. Nathan Cullen:** It seems to me that you would have something to say about this, being the Chief Electoral Officer, having spent a lot of time on this, and being an expert in this field. I'm surprised that the government felt that briefing the Conservative caucus was okay, but that not briefing you on legislation to fix our electoral system was a good idea.

You're an ally in this. This is the point of confusion that I have. Maybe you have similar sources of confusion. One would assume that in restoring confidence.... Some people have said that we need to maintain the confidence of Canadians in our electoral system. I would think after the robocall scandal and Pierre Poutine there would actually be an effort to restore confidence, so that when people vote in an election and someone is elected, they know they were duly and legally elected and fraud wasn't committed.

I think Canadians are rightly concerned that the integrity of the system has been weakened. Would you agree with that statement?

• (1150)

**Mr. Marc Mayrand:** I think the events of the last general election are certainly cause for concern for Canadians. They've told us loudly and in large numbers. That being said, in the current system we have different mechanisms to ensure that elections are run properly. There's access to the courts. So far, the courts have maintained the elections.

But I do agree, and that's why I'm coming forward with those additional recommendations today. We really need to modernize our legislation. We're out of sync with the times. It has not been looked at carefully. We need to bring it from the 19th to the 21st century.

**Mr. Nathan Cullen:** You say from the 19th to the 21st century. That's a big jump.

**Mr. Marc Mayrand:** Yes.

**Mr. Nathan Cullen:** We only get to bring that, though, if there's political will to do it. You can make all the recommendations you want. You don't have the powers right now to stop fraud in the 2015 election campaign, unless, as you said, you get legislation in time. You say that spring of 2014 is sort of your drop-dead date. Would any legislation that comes after that be of use to Elections Canada in order to make sure that fraud isn't committed in the next election? You're up against the clock.

**Mr. Marc Mayrand:** We are up against the clock. We have a fixed date, and yes, we need to know what are the rules of the game well ahead of the game being played.

**Mr. Nathan Cullen:** Okay.

We know what the problem is—"we" collectively—and we have solutions that are on offer, both from your office and from Mr. Scott, who, in introducing his legislation, took some of those recommendations and put them into a proposed bill.

Yet we don't see the legislation. We asked the minister about it yesterday. He went back to his "in due course" or some sort of expression that means nothing.

**A voice:** It was "the not too distant future".

**Mr. Nathan Cullen:** Excuse me: the not too distant future. I get them confused.

If the political will is absent, you can't do your job.

**Mr. Marc Mayrand:** It's increasingly difficult to meet Canadians' expectations with regard to the fairness and integrity of the electoral process if we don't modernize our legislation.

**Mr. Nathan Cullen:** By "modernize", you just make it so that people can't commit fraud. That's what you mean.

**Mr. Marc Mayrand:** No. I mean that we need to start looking at the way the voting process is designed. We need to introduce technology into the system. Nowadays, I need signatures, documents, papers, and all of these sorts of things that are not aligned with the times. Canadians deal less and less with paper. They want to deal with us electronically.

**Mr. Nathan Cullen:** For my final question, is it lawful for a senator to campaign during the writ period and also claim expenses? Does that now involve your department? Does that involve your office?

**Mr. Marc Mayrand:** The Elections Act provides rules as to how you can choose to participate in campaigns. Whether you're a senator or an MP, we have a handbook that describes pretty precisely what has to be reported in returns from candidates and for parties. The costs incurred in campaigning in favour of a candidate or a party need to be reported as election expenses.

**Mr. Nathan Cullen:** Thank you.

**The Chair:** Thank you.

Mr. Chisu, you're up for five minutes, please.

**Mr. Corneliu Chisu (Pickering—Scarborough East, CPC):** Thank you very much, Mr. Chair.

Thank you very much, Mr. Mayrand, for your great presentation and for the great recommendations you are proposing.

By the way, in regard to my profession, I am a licensed professional engineer, so I am not, like many of my colleagues, a distinguished lawyer. My preoccupation during the last election was to respect the law, because if I did not respect the law, I would lose my licence, and that licence is very important for me.

When you are looking at the database.... I'm asking about the voter database. How are you keeping this database updated? There are a lot of changes, and I think this is due to the mobility of our people. It is very important to have a good database. In that way, you are avoiding exactly the things we are looking at avoiding, such as avoiding fraud and other unnecessarily negative events. That is my first question.

Second, how are you updating your administrative changes? Obviously we are evolving, and the need for administrative changes is evolving with time. When was the last time you updated the administrative changes that are under your purview and your powers?

Also, when did you update the procedures? There are the procedures, for example, for requesting the times in regard to how, if you have an election violation, you are proceeding to lay a charge or to do something that corrects the situation.

• (1155)

**Mr. Marc Mayrand:** With regard to the register of electors, we continuously keep it up to date. We get information from various sources. I'll just name the main ones.

We get information from CRA. When Canadians file their tax returns they can tick a box, so that information comes to us. If they have changed their address during the year, that will be noted in our register.

Similarly, we get information from drivers licensing bureaus in most of the provinces and territories, which again will update us on various changes of address.

We also get information from Citizenship and Immigration Canada with regard to new citizens and we get data from the vital statistics bureaus, which provide us with the names of deceased electors.

This information is provided regularly and is constantly used to update the register. That is between elections.

Again I would point out that in any given year, the information for 18% of electors changes in the register. In order to correct that 18% variation and make sure that the list is up to date for elections, we have various revision procedures that are prescribed by the legislation.

During the election period, electors can contact their returning officers to update their information or to register. They can be visited in specific neighbourhoods across the country as a result of targeted revisions. Finally, they can register on polling day at the poll.

That is how the list is constantly being updated. We're proposing that, with online registration, it will be easier for electors to register and update their information. They will not have to contact the returning officer; they will not have to wait for registration on polling day, but they will do it at their own convenience. Under secure measures, they will be able to update their information and ensure that they have the VIC with their right address and will be directed to the right polling location.

I'm not sure whether you want me to continue that story.

**The Chair:** There are 15 seconds left of the five minutes.

**Mr. Marc Mayrand:** I would suggest that we update our administrative procedure continuously. We are committed to constant improvement of our processes. We engage political parties, we engage Canadians, we engage parliamentarians on these matters. We have discussed with this committee Vision 2015, which discusses very specific initiatives designed to improve the administration for the next general election.

**The Chair:** Thank you.

Mr. Armstrong, you may take five minutes, please.

**Mr. Scott Armstrong (Cumberland—Colchester—Musquodoboit Valley, CPC):** Thank you, Mr. Chair.

I want to thank our guests for being here today.

As someone who has been involved in politics on the political side as a campaign manager, I know that there have been many criticisms—I'm sure you have heard them—of the accuracy of the electoral list and the changes that constantly have to be made.

You said here today that you're hoping to use technology to correct some of the problems that exist with the current list. Can you speak a little more in depth to the ways in which you see technology helping make that list a little more accurate?

**Mr. Marc Mayrand:** First of all, we launched a limited service allowing electors to verify online whether they are registered and, if they are registered, whether at the correct address. They can also change that address if they want. Because of the way the act is drafted currently, these services are quite limited during an election campaign: you cannot register and you cannot move from one riding to the next during an election.

That's the purpose of the recommendations I've put forward to the committee. Having the real-time update for elections and offering the opportunity to electors to update their information will improve the quality of the lists.

At the same time, as we move forward, having the list available electronically at the poll will make sure that a person is not trying to register at more than one place for an election. Albeit that this is rare, if it happened, it would be detected through the system.

In addition to that, the system would automatically tell candidates' campaigns who has voted during the day. Right now, we produce small reports every 20 minutes, and they are cumbersome to fill out and not that useful for candidates, I understand. Adding a live update on who has voted would I think be much more efficient for campaigns.

• (1200)

**Mr. Scott Armstrong:** You say you're going to have the ability to have this as a pilot project in a byelection or maybe after 2015. Is that the timeline we're looking at?

**Mr. Marc Mayrand:** For 2015 we would like to introduce it as a pilot project in a few ridings. I don't want to wait. In 2015 I'm asking for full online registration services, so live lists at the poll as a pilot project, to be expanded across the country in 2019.

**Mr. Scott Armstrong:** There are going to be some who are concerned about the security around this process. We used to do door-to-door enumeration, where someone would actually come to the door and they'd get ID. A lot of people who have worked in politics for many years on the party side thought that was a much better system.

With an online registration system, I think there probably is some merit to it, but what steps can you take to ensure security around that system?

**Mr. Marc Mayrand:** We have devised an authentication system based on what exists currently that's available to us. Until we get a national authentication system at the federal level, we'll have to patch through a system of varied authentication.

To verify if you are on the list, you only have to enter your name, your riding, or your address. That will confirm if you're on the list. If you want to change your address, as we discussed with this committee a few years back, you will have to provide a secret to Elections Canada, which is your date of birth.

During an election, if you want to add a new registrant or add a change from a riding to another, we will ask you about your driver's licence, which is information we already have. That will allow us to authenticate who the user is.

**Mr. Scott Armstrong:** I want to switch, just for a second, to the new voting model you've talked about piloting as well. When a voter walks into the poll, what is different? What will they see different in the new voting model as opposed to what we've done in the last several elections?

**Mr. Marc Mayrand:** Maybe a comparative I can use, the best illustration, is imagine going to a bank. Normally there's a reception desk at the bank and someone asks you, "What service are you looking for, sir or madam, today?" If it's a standard service, you're directed to the first teller who's available. If you need a special service, you're directed to a special office, special advisers.

In a nutshell, that's what we are looking to build. That's what the New Brunswick model is about. It's a system that's centred on electors as opposed to polling stations, a physical table where we're focusing on serving electors. The benefit of it is that it will reduce waiting times, especially at advance polls, where the lineup can build very quickly. The processes are more cumbersome there, so it's not rare to see people waiting for an hour, for example, at an advance poll.

This system will accelerate the processes; it will isolate those who need special or exceptional services. We will have a special track there, and they will meet with specialized officers who have received specialized training to deal with exceptions. I think that would give better service to the elector, be a more efficient use of resources, and probably fewer resources would be used in this model.

• (1205)

**Mr. Scott Armstrong:** Thank you.

**The Chair:** Madame Latendresse, you're up for five minutes, please.

[Translation]

**Ms. Alexandrine Latendresse (Louis-Saint-Laurent, NDP):** Thank you, Mr. Chair.

Mr. Mayrand, thank you for your remarks. I would also like to thank your colleagues for being here today. We are pleased to be able to ask you questions and explore this issue a little further. Indeed, we believe it is extremely important.

In your reports and recommendations, you mentioned some pilot projects you wanted to implement to increase youth engagement in the electoral process. Today, you mentioned once again the possibility of setting up polling stations on university campuses

and allowing more youth to work as electoral officials during the campaign and on election day. You know, and I believe the committee also knows, how important youth engagement is for me. It is also very important for the NDP.

We would very much like to collaborate as much as possible with Elections Canada in the context of such initiatives. For this reason, I am advising the committee that I am tabling the following notice of motion: That this committee:

a) recognize that reports of the Chief Electoral Officer submitted to Parliament from 2010 onward demonstrate that, if Parliament does not modernize our electoral system in order to engage young Canadians, lower and lower percentages of eligible voters will turn out to vote in future federal elections; and

[English]

That this Committee conduct a comprehensive study before December 2013 on potential mechanisms to enhance youth electoral engagement in Canada, with the view to implement such changes before the next federal election, including: modernizing the online voter registration system; ensuring there are polling stations on university and college campuses across the country; recruiting and training more youth to act as elections officers; raising awareness about how and where to vote, especially among mobile college and university students; considering an electronic voting system; considering automatic registration; and removing barriers to pre-registering young people at age 16 as prospective voters, in advance of eligibility to vote at age 18.

[Translation]

Do you think the cuts to Elections Canada's budget will affect your recommendations and pilot projects?

**Mr. Marc Mayrand:** In our business plan for the current fiscal year and our vision for 2015, I talk about reducing barriers in order to make voting more accessible, for youth and young aboriginals among others. This is a priority for Elections Canada. We need to allocate the necessary resources to ensure we attain this objective for 2015.

**Ms. Alexandrine Latendresse:** Could you provide us with more details about your plans to set up polling stations on university campuses and reserves in an attempt to increase voting among these groups?

**Mr. Marc Mayrand:** We already have polling stations on reserves.

What we want to do in this case, is similar to what we offer workers employed by forestry, mining or oil companies, like for example the tar sands sites in Alberta. We provide special services there for voting. We would like to apply this model on campuses.

Let me hasten to add that we will not be able to offer this service on all Canadian campuses. We will have to discuss the issue with the main stakeholders in order to choose which campuses, community centres and friendship centres will receive this service from us.

**Ms. Alexandrine Latendresse:** Very well.

I would like to hear more about electronic registration. Can you tell me what this will change for the younger population?



**Mr. Marc Mayrand:** We see that the youth registration rate is approximately 72% whereas the national average is 92%. There is therefore a considerable shortfall in that regard, for all kinds of reasons. The current system requires the voters' consent before they can be registered. We know that in British Columbia and in other provinces, if voters do not express their desire to not be registered, they are registered automatically.

Moreover, motor vehicle registration offices and sometimes Revenue Canada send us information on young voters. Nonetheless, in order to register them we have to have their consent.

We write to these young people. Every year, 300,000 letters are sent to them from our offices. Unfortunately, the response rate is minimal. They would probably answer email more than correspondence on paper. We see that the lower the registration rate, the more difficult it is during an election campaign for them to know how and where to vote.

Our strategy therefore is to improve the registration rate, including that of young people and young aboriginals, with the hope that this will encourage them to participate more in the process. In that way, it will be easier for them to exercise their right to vote.

• (1210)

**Ms. Alexandrine Latendresse:** Am I mistaken—  
[English]

**The Chair:** Thank you, Madame Latendresse. Your time is complete.

Mr. Lukiwski.

**Mr. Tom Lukiwski:** Thank you very much.

How much time do we have?

**The Chair:** I'll go five minutes with you. I've been very generous here so far, I guess.

**Mr. Tom Lukiwski:** I have a couple of questions, but briefly I want to go back to the personation issue and some of your remedies for it. I don't know whether I'm understanding it correctly—and I use the word “personation”, as opposed to “impersonation”, just to be accurate. You've talked about bringing in some sanctions against people who personate either elections officials, party officials, or candidates. Is that correct?

**Mr. Marc Mayrand:** Yes.

**Mr. Tom Lukiwski:** I'm going back to the case we saw in Guelph last year, which to my knowledge was the only documented illegal robocall case in the last election, in which the Liberal candidate at that time sent out a robocall. Actually, it wasn't an automated call but a live person on the.... No, it was a recorded call. Not only did they not indicate that it was the Liberal candidate's campaign team phoning, but the woman who recorded the call used a fraudulent name. In other words, she didn't identify herself accurately; she used a different name—which to me indicates it was intended to be deceptive, but nonetheless....

Would that extend to and be captured under your recommendations? They're not trying to personate an election official; they're not personating, obviously, a different election official, but they are conducting what can only be considered to be an illegal robocall.

Would that situation be captured under your recommendations?

**Mr. Marc Mayrand:** The case was sanctioned by the CRTC under specific rules. As put forward, the recommendation would not cover such a situation. Again, we have to be careful....

First of all, I didn't hear the call itself, but I think in all sorts of promotional activity there are all sorts of fictitious characters being used, by all campaigns and all candidates, and I wouldn't want these as being characterizations of personation.

In a nutshell, the recommendation put forward would not cover the example you mentioned.

**Mr. Tom Lukiwski:** Okay—although I think it should. But that's fine.

The other thing I want to get to is something that you've identified on the compliance side of your report. Basically, it deals with the issues that you've identified, the problems that you've identified, in polling stations across Canada in the last election. I think it even infers that some of these problems were far more widespread than that, and went back a few elections, where there were a lot of difficulties with procedural non-compliance at polls.

Even though your report suggests that you don't think it really impugned anybody's right to vote, didn't stop anybody from voting who should have been allowed to vote, clearly there were some problems that could affect the integrity of the vote.

I congratulate you on coming out with the report, identifying that you had some internal problems, but why did it take so long to identify those problems? Do you think the problems were mainly a function of the people who were manning the stations really being volunteers with poor training? Can you give us some sense of why the problems occurred, and more importantly, what you're going to do to try to fix them in the future?

**Mr. Marc Mayrand:** With respect to the timeliness, I should point out that it's the first time Elections Canada has done any sort of post-event audit of what occurred at the polls. I'm not aware that any other electoral management body, either here in Canada or around the world, does any such audit. In fact, there's an old saying among EMBs that you don't want to look under the hood.

That being said, I thought that given the issues that were brought in the Etobicoke situation, we needed to understand what was the state of the land and how we could address it. That's what Mr. Neufeld did.

It's complex; there are many contributing factors. One thing is that the whole system was designed for Canadians in the neighbourhood to serve their neighbours in allowing them to vote. That's great, when you think of it.

I don't think we can blame those people, who have extraneous working conditions—poor pay, long hours, very complex procedures, with limited training because of the constraints that exist, and, increasingly, clients who may be difficult to serve at times.

I think our approach is to say, no, we need to address the many contributing factors. For the short term, we've put forward some recommendations to address it for 2015. We know that will not be enough, however. We need to do more. We need to redesign the whole voting process. We need to rely more on technology to ensure compliance than on human behaviour. There will always be human behaviour, but we need to minimize that.

I have examples that occurred and came to light in Etobicoke.

One was of a mother showing up with her daughter at a poll, before neighbours who knew them. The daughter didn't have a piece of ID, so she needed to be vouched for. The staff did the procedure, but instead of putting the name of the mother, they put the word "Mother" on the form.

That's an irregularity. But I don't think anybody would challenge the validity of the vote that took place.

In a nursing home, for example, for whatever reason, the electors, the residents, needed to be vouched for. Well, they were vouched for by a staff member, I believe it was a nurse, who certainly knew the residents, who knew who they were, who knew that they resided there.

But that's an irregularity. The nurse certainly didn't reside in that home, so technically she was not allowed to vouch for them, and therefore the vouching was irregular. I think everyone around this table would agree, however, that these people were legitimate electors and should have been allowed to vote.

So we need to rely more on better training, and specialization of tasks, but also on technology to deal with those matters.

• (1215)

**The Chair:** Thank you.

Mr. MacKenzie.

**Mr. Dave MacKenzie:** Thank you, Chair.

Mr. Mayrand, I think the focus has been a great deal on robocalls. I'd just like to have your opinion. Is it a fact that all parties keep lists in computers, data that makes it available for them to get out voters?

**Mr. Marc Mayrand:** My understanding is that most national parties, larger parties, have some sort of database of electors—their supporters and members of the party.

**Mr. Dave MacKenzie:** Sure, and that would be logical if your intention is to get out the vote. I think that's the 21st century now, the most logical thing.

And is it equally true that candidates and parties use technology that gets referred to as robocalls, in a general sense?

**Mr. Marc Mayrand:** Yes, that is increasingly true.

**Mr. Dave MacKenzie:** So much of what has been done is always attributed to the Conservative Party, and yet the only conviction registered has not been associated with the Conservative Party. Would that be fair?

**Mr. Marc Mayrand:** Yes, but we're talking about two different things.

**Mr. Dave MacKenzie:** But I think that's the reality. There are certain—

**Mr. Marc Mayrand:** There were findings by the CRTC; I'm not sure they are convictions, but they were findings by the CRTC.

**Mr. Dave MacKenzie:** I think, somehow, that gets lost in the translation. I'm not trying to build it up on somebody else, because that's not fair. But I don't think blaming everything on the Conservative Party list is fair either. That's my opinion, and I would expect you would understand that.

**Mr. Marc Mayrand:** That's why my recommendations focus on the future and how we can provide better rules for using those communication tools properly.

**Mr. Dave MacKenzie:** Sure, and in a general sense, across the board, I think that's fair.

With respect to the legislative changes proposed in the recent compliance report, it would appear that many of those things were recommendations you made to this committee after the 40th general election. I think this committee endorsed most of these recommendations when you brought them before us. I think that's a fair assessment from the past.

• (1220)

**Mr. Marc Mayrand:** Yes, that is largely true, and I pointed out some variations today in my presentation.

**Mr. Dave MacKenzie:** Would it be accurate to say that these changes were recommended to this committee by your office? How helpful to your office would the implementation of many of these proposed legislative changes, in the recent compliance report and in your report on the 40th general election, be in significantly reducing the number of errors made by election officials at the polls?

**Mr. Marc Mayrand:** They would contribute significantly for 2015. With greater flexibility and recruitment, more time for training, better training tools, and online services for registration, I think we can make a difference. Will we entirely fix the problem? I don't think that will happen until we have redesigned the whole process.

**Mr. Dave MacKenzie:** I think it's fair to say that constant improvement is always something that's out there, even though we'll never get perfect. But you've made your recommendations, this committee has concurred, and now we're at the implementation stage.

**Mr. Marc Mayrand:** Before implementation, we need to see legislation that reflects those recommendations.

**Mr. Dave MacKenzie:** But I think this committee concurred in the past.

**Mr. Marc Mayrand:** It did concur, certainly; I think it was in the summer of 2011. But we're still waiting for legislation.

**The Chair:** Madame Turmel.

[Translation]

**Ms. Nycole Turmel (Hull—Aylmer, NDP):** Thank you, Mr. Chair.

Mr. Mayrand, I would like to come back to my colleague's question about 18-year-old youth and the 300,000 envelopes that you send them. In order to assist you in this process, do you have any recommendations or suggestions that would allow for communication with young people before they reach the age of 18?

**Mr. Marc Mayrand:** There are several and they should stimulate public debate.

As I said earlier, should we have the power to automatically register voters who are old enough to vote and who have the required qualities to do so rather than insisting on getting their active consent? We can imagine that there are countries or places in this world where registration is mandatory. I am not proposing that we make registration mandatory, but when we know who the voters are and where they live, we could at least be able to register them, unless they indicate that they do not want this to be done, which rarely happens.

We would like to be able to keep data. Often, young people have a driver's licence from the age of 16. Obviously, they do not yet have the right to vote. Under the current legislation, we cannot keep data on these young people. We have to wait until they reach the age of 18. However, perhaps we could register young people from the age of 16. In fact, at that age, they are often well-ensconced in their families and they have stable lives, as it is shortly before they will leave home for college or university. We could register them, and ensure that this registration is not in effect until they reach the age of 18.

These are models that exist in different countries in the world. Here in Canada, we believe that British Columbia is in the process of evaluating this type of system.

**Ms. Nycole Turmel:** Thank you.

I will talk about the workforce a bit later if I have time.

I would like to come back to one point. In this morning's papers, there was talk of some 40 election contributions made the same day in a certain riding for a specific candidate. This occurred in 2009. When such a situation arises and it is noted that many people from the same company send an election contribution on the same day, do Elections Canada representatives have the ability or the power to determine if there is a problem? Perhaps we cannot talk about a problem because, legally, they have the right to do so, but this may occur following the payment of a bonus or an end-of-year bonus. Do you have the power to do prevention work and question such a situation?

**Mr. Marc Mayrand:** In order to do that, we would require additional information. It is legal to make a donation to a party or a candidate and the limit for an individual is \$1,200.

The fact that groups get together to make a donation to a given candidate's campaign is absolutely not illegal in and of itself. However, it would be illegal if this action was motivated by a financial reimbursement. In such a case, we might start asking ourselves questions. The law is clear. The money must come from the contributor or donor and not from a third party. The mere fact that people from the same organization, whatever it may be, make donations to a political entity is not itself illegal. We would have to have other information.

We can see that contributions are often made on the same day. It is often the case when there are fundraisers. In those situations, we have no idea who the donors' employers are. This information is not sent to Elections Canada and there is no such requirement in the

legislation. We are always keenly aware of these things and if relevant information justifies taking additional steps, we will do so.

**Ms. Nycole Turmel:** Thank you.

• (1225)

[English]

**The Chair:** Mr. Scott.

**Mr. Craig Scott:** Mr. Mayrand, I wonder if you could explain the annotation in the estimates saying that you wouldn't be going ahead with an e-voting project. Is that purely for privacy reasons, or is it also budgetary?

**Mr. Marc Mayrand:** I would say it's both.

Financially, we realized as we looked at it more closely that it would be expensive. In the current fiscal context we thought it would not be advisable for us to invest massively in this initiative.

As I mentioned briefly, we also have concerns about online registration, about proper identification methods and the lack of an existing universal one at the federal level. I think everybody thinks that online voting means you can vote from any computer, at home, at work, or anywhere around the world. I think that would require much public discussion as to whether we are, as a society, comfortable with having unsupervised voting on a large scale. Some would argue you already have it through mail voting, but again, that's a very small piece. As a society, are we at the point at which we would accept unsupervised voting for the vast majority of electors? I think this is a discussion we need to have. It's beyond my jurisdiction, I would suggest.

In terms of security, these matters can be dealt with in due course.

**The Chair:** Thank you.

We'll do one more round. We've captured everyone in our first round, but due to time constraints, I don't think we'll get fully through a second. We'll do a seven-minute round, one for each, and call it a day at that point.

Mr. Armstrong, you're up first. You can share your time or use it.

**Mr. Scott Armstrong:** I'll share my time with Mr. Lukiwski.

**The Chair:** I thought you might.

**Mr. Scott Armstrong:** The compliance report, the usefulness of the ACPP—this is the Advisory Committee of Political Parties. Do you find this is a useful group? Do they provide adequate information to you?

**Mr. Marc Mayrand:** Yes, it is a useful group. Can it be made more useful? Probably, and we're looking at ways of achieving that.

It's absolutely key for Elections Canada to have a direct connection with political parties, to understand their concerns and to share with them our initiatives, because we want to make sure we're responsive to their needs within the constraints of the legislation. But we're responsive to political parties' expectations. We want to facilitate their work, facilitate compliance. The ACPP serves a useful purpose in that regard.

On the voting model, I think parties have a key interest in that. We're going to use the ACP to validate some of our approaches with regard to redesigning the voting model. They were quite involved with online registration at the time, and they will continue to be. When we explored the alternative voting devices for disabled electors, they were involved in that process too. We'll continue to involve them.

We also involve them in regulatory initiatives. We have a full agenda with them.

**Mr. Scott Armstrong:** Great. Thank you.

I'm going to turn the rest of my time over to my colleague.

• (1230)

**Mr. Tom Lukiwski:** Thank you very much.

Throughout the entire time here we haven't really talked much about your budget and the main estimates, so I have a couple of quick questions here. I know we don't have much time.

I believe in the last appearance, sometime last year, you mentioned you were going to a zero-based budgeting model. Could you give us an update on that process and what your findings have been, the effectiveness of that model?

**Mr. Marc Mayrand:** We completed it late last fall, and the net result of it, as I mentioned in my presentation, was that we would have to eliminate 32 indeterminate positions at Elections Canada. I would suggest that half of them are as a result of fiscal restraint; the other half are as a result of the need to reinvest in areas of higher priorities. We have reinvested a bit of money in the commissioner's office to support investigative work. We've reinvested in political financing because they were finding financial pressures. We also reinvested in the whole new area of compliance at the polls, which needs to be resourced if we want progress on these things.

**Mr. Tom Lukiwski:** Did I hear you correctly? I'm sorry, I don't want you to repeat yourself. Did you say this exercise is going to result in a reduction of 32 full-time staff positions?

**Mr. Marc Mayrand:** Yes.

**Mr. Tom Lukiwski:** What is the staff complement currently?

**Mr. Marc Mayrand:** It's 372.

**Mr. Tom Lukiwski:** Has that increased, decreased, stayed about level over the past, say, two or three elections, or have you seen a need to have more people in your staff complement?

**Mr. Marc Mayrand:** There is a need to have more people. Before we did this zero-based budgeting exercise, we also did an A-base review two and a half years before the fiscal restraint settled in. At that time we found we were missing about 25 indeterminate positions. But, again, things change. We had to deal with the fiscal restraint and we have moved on that.

At some point in time I will have to go back to Treasury Board. We will have 30 new ridings in 2015. We need staff to support those ridings.

There are a number of things out there that are new, and they will, I believe, justify additional resources.

**Mr. Tom Lukiwski:** Let me see if I have this clear. My understanding is that the budget that affects general elections is not

affected because statutory requirements take care of that. If there are going to be 30 new ridings, the majority of the cost would be come election time, would it not? Are you suggesting that just because there are 30 new ridings your office will require new staff?

**Mr. Marc Mayrand:** Yes, I am.

**Mr. Tom Lukiwski:** How does that work? I'm not quite connecting the dots here.

**Mr. Marc Mayrand:** We make a distinction among three phases: ongoing operations to sustain the organization—that's the core minimal staff we need to continue to operate and to make sure you have a list every year, that maps are up to date, and all these things; in addition to that, in the year before an election we get into what we call readiness, where we now bring ROs into the fold and start preparing them for the election; and then we have the conduct of the election.

What's readiness and what's conduct? That's statutory authority. Whatever is ongoing is indeterminate staff. This is the core group of workers who are needed to make sure that in 2015 we'll be able to run the election.

**Mr. Tom Lukiwski:** All right.

We're just two and a third years out from the next federal election. I know it's difficult to estimate the cost of general elections and byelections that far out, but would you hazard a guess? It's going to be a larger election, obviously, with 30 new ridings.

Based on that and on what your staff complement may be, what do you think the percentage increase might be compared to the last election? Is there any way you might be able to hazard a guess there?

**Mr. Marc Mayrand:** I think it would be highly imprudent for me to project for 2015.

**Mr. Tom Lukiwski:** When do you think you would have an estimate?

**Mr. Marc Mayrand:** Probably at the end of 2014 we will have a good sense of it. We'll know about the legislation. We'll know about the initiative that we have discussed to date in terms of Vision 15. We will have been able to cost them out, and we will, as we always do, establish a budget for the election.

I would point out to the committee that over the last four GEs, our costs have remained stable. The cost is between \$11 and \$12 per elector to conduct an election. That has remained at \$11 to \$12, despite inflation. Through various changes we've managed to find other efficiencies, and we will continue to do our best to contain costs.

• (1235)

**The Chair:** Thank you.

You're all doing very well today in asking that long question and leaving very little time. It's been reflected in all of your time today.

Mr. Cullen, let's try to finish up. We'll go to Monsieur Dion after you.

**Mr. Nathan Cullen:** We've talked a lot about restoring integrity to the electoral process and the concerns that Canadians have in seeing all of these instances. I also asked you about what consultation, or total lack of consultation, the government has made in terms of addressing this fundamental issue of how to restore that integrity.

I'm also reflecting on Judge Mosley's decision, the one you've also closely watched and listened to. There was a quote from his ruling that said Conservatives showed little effort to assist Elections Canada with the investigation.

Do you recall that quote from the judgment?

**Mr. Marc Mayrand:** I'm not sure he was referring to Elections Canada in that quote.

**Mr. Nathan Cullen:** There was a possibility that it was reported incorrectly—engaged in trench warfare.

Here's my question about pattern. If the judge found—whether it was your investigation or the investigation of the court itself—that there was great reluctance and feet dragging and all the rest of those things, to get at that justice, and there was denial of that justice from the delay, we then transfer it over to the legislative change, the rules changes we need, the political will that has to come from Parliament, and a similar dragging of the feet delay.

We now have a deadline. You didn't use that term “deadline”, but you said that if you didn't have the legislation confirmed and in your hands by the spring of 2014, we will conduct the next federal election under the same rules as we did with the last one, in which all these fraudulent calls went on and some Canadian voters were disenfranchised from their opportunity to vote.

**Mr. Marc Mayrand:** Or we will run the risk that the rules will be poorly understood and we will not be sufficiently prepared.

When I say “we”, I mean not only Elections Canada. I think candidates and campaigns need to know the rules early on, as well as Canadians. I think it's important that there's ample and early notice.

**Mr. Nathan Cullen:** You talked about not wanting to look backwards, but of course we look back to try to fix something going forward. There is a cloud that has now surrounded some of those elections and people currently sitting in the House. If we're not to have that cloud over the next election and the integrity questioned again, we need the changes.

Yet in due course we see these answers from the government, with no consultation with you who are the experts on fixing the holes in the system. This is what is confounding to many of us. It would be the first call I would make, if I saw you as an ally as opposed to an enemy. It would be the first call I would make to confer and consult in meaningful ways, not what we've seen so far.

I asked a passing question at the end of my last round about the Senate. I want to know what triggers an investigation on your part, similar to the House of Commons but that also applies to the Senate. Is it on a reporting of a complaint that a member of Parliament or a senator was claiming expenses while campaigning that you would begin an investigation? What can initiate an investigation on your part, and does it fall within your mandate?

**Mr. Marc Mayrand:** Investigations fall under the mandate of the commissioner.

It depends on the issue that may arise, but let's say it's a complaint about claims made during a campaign. Normally the first thing would be to see if there are enough facts in the complaint to validate the information. The second thing would be to look at the audit of the return we did to see if those claims or expenses have been reported and how they've been reported. If there are reasons or there is an issue there, it may be referred to the commissioner.

**Mr. Nathan Cullen:** I just want to follow this through. It starts with a complaint: “I saw Senator so-and-so campaigning during the writ period.” You can then look at the campaign statements to see if there was any filing of the costs of having that senator there. If they're not accounted for, if the campaign didn't pay for their travel.... Are those the kinds of things we're talking about—per diems and so on? What kinds of things are you looking for? I'm just trying to understand what powers you have and what kinds of things you're looking for that you hear from complainants.

•(1240)

**Mr. Marc Mayrand:** That varies depending on the political entity. For candidates, we're entitled to ask for all the receipts and to ask that all the charges be documented. If there is an indication that so-and-so was campaigning there, we can ask questions, and we can ask for evidence and validation of the costs that were reimbursed. That would trigger a reimbursement from the—

**Mr. Nathan Cullen:** That's for the candidates themselves?

**Mr. Marc Mayrand:** It's for candidates, for parties, and EDAs. We mentioned in 2010 that we didn't have access to supporting documents for various claims.

**Mr. Nathan Cullen:** And you can't insist on getting those?

**Mr. Marc Mayrand:** No. That's another tool I have been looking for.

**Mr. Nathan Cullen:** You've been asking for this tool since 2010.

**Mr. Marc Mayrand:** Yes.

**Mr. Nathan Cullen:** You've asked for the tool to catch somebody who is campaigning illegally or charging essentially illegal expenses to the taxpayer for campaigning for a candidate. Right now you don't have access to the documents to verify whether they were charging back—

**Mr. Marc Mayrand:** I have access to documents related to individual candidates' campaigns. I don't have them for whatever has been charged to a party. I don't know what's been charged to a political party or even an EDA in that respect. Some of the campaign activities may have been charged to the EDA or the party.

**Mr. Nathan Cullen:** But you don't know?

**Mr. Marc Mayrand:** They will report expenditures at large. I don't have a way of verifying specific expenditures. I don't have access to receipts or invoices.

**Mr. Nathan Cullen:** But you want access.

**Mr. Marc Mayrand:** I asked for it in 2010.

**Mr. Nathan Cullen:** Thank you.

It's difficult to not comment on that. If those in charge of the election are asking for certain tools to make sure the elections are fought fairly, and they are not given those tools, one can only draw a couple of conclusions. That's being done out of laziness or intentionally. Incompetence is a third option, I suppose. That's too often levied in government.

I want to talk about youth participation for a moment.

**The Chair:** You have about 10 seconds.

**Mr. Nathan Cullen:** That's perfect.

Do you believe if people could vote online, as they do for the leadership of parties, for example, under a system that is currently employed, that could potentially open up the door for youth participation to a higher level in particular, as they are much more a generation that exists online?

**The Chair:** Thank you.

We'll see if we can get the answer under Mr. Dion's questioning.

**Hon. Stéphane Dion:** That's unfair. You put me under an obligation to get an answer about that.

**The Chair:** You don't have to ask that question. I'm just saying we can get an answer if we can.

**Hon. Stéphane Dion:** But I want my minutes. Thank you very much, Mr. Chair.

Unfortunately, Mr. Cullen, I will focus on my questions.

I just want to give you a last opportunity, Mr. Mayrand, to maybe add something on the two main concerns that I think Canadians will have after we have this meeting with you. I mentioned that in French at the beginning of our meeting. The first concern is that you have not been consulted by Minister Uppal about the next legislation.

The second concern is the possibility that the Conservative Party will continue to derail the proceedings for your own investigation, as they have done with Justice Mosley up until now. I'll give you an opportunity regarding these two concerns. Is there a way you will be consulted in the coming days about what is happening now with the new legislation?

**Mr. Marc Mayrand:** I'm always available. I would suggest, however, fortunately, that we have the mechanism that provides an illustration that allows me to bring those reports to the attention.... I'm assuming the government will consider the recommendations that are brought forward in my report. I think there were statements to that effect.

Along with everyone else, I will have to see what's in the legislation.

**Hon. Stéphane Dion:** That's a very interesting report, but as you have seen, we have a lot of questions on the report. I would like the minister to take the opportunity to do the same.

With regard to the current investigation and the need to have the full cooperation of every one, I ask my Conservative colleagues to speak to their government and to be sure they stop doing what they did with Justice Mosley.

Is there anything you'd like to say about that?

●(1245)

**Mr. Marc Mayrand:** I think investigations are being carried out by the commissioner. I think he is facing challenges on various fronts from time to time. I have confidence that he will be able to overcome them, especially if we get through the recommendations that we've put forward.

**Hon. Stéphane Dion:** Speaking about these recommendations, on page 33 of the English version, you state that personal information collected by political parties, misused by local campaigns, remains the responsibility of the parties. My question is, did you use the word "campaigns" purposely, or is it something that will also apply outside campaigns?

**Mr. Marc Mayrand:** To me, we were focusing on the context of those deceptive communications. But at large, my view or my recommendation is that parties, like any other organization, should be subject to the universal privacy rules—

**Hon. Stéphane Dion:** Always—not only during campaigns?

**Mr. Marc Mayrand:** Always, and to me it's an issue of trust between Canadians and political entities.

[*Translation*]

**Hon. Stéphane Dion:** One thing is of great concern to me. If we only concentrate on election campaigns, we will miss many things that occur before the campaigns.

My other concern regards third parties. If a party wants certain things done by a third party that are illegal or unethical— it could be a lobby group that shares the same cause—how can we tackle the problem and ensure that this will not occur?

**Mr. Marc Mayrand:** Laying down privacy rules based on these universal principles assures us already that the information must be used for the purpose for which it was gathered. There are all kinds of rules intended to protect and assure voters that, in this case, the information is used for the intended purpose only.

A problem may occur if Elections Canada sends the electoral lists to candidates or to parties. The only thing in those lists would be the names and addresses of voters. This information is limited. The legislation is clear as to what can be done with this information. One of the issues we are facing is that, more and more, the information contained in a list is simply integrated into party databases. This raises all kinds of issues. We will have to raise them during an advisory committee meeting with the political parties.

However, once this information has been integrated into the party databases, it could be argued that the information has lost its intrinsic quality and that it is no longer an electoral list. As a result, the provisions of the Elections Canada Act do not apply. That is why, in the report, I wrote that at the very least we would have to enact new regulations on personal information protection, on the use, gathering and management of this data by political entities.

**Hon. Stéphane Dion:** Do you ask the political parties to tell you, upon request, to whom they gave this information?

**Mr. Marc Mayrand:** We could of course discuss that, but we promote the following mechanism. In order to be able to receive the electoral lists in the future, parties will have to get the confirmation of an independent party guaranteeing that the privacy rules are followed and that the protocols are in place. These rules should stipulate that the information can only be shared for the purpose for which it was gathered, that is to solicit funds or to reach voters, to ask their opinion or to obtain their point of view and not for any other purpose that would be foreign to political activities.

**Hon. Stéphane Dion:** We would therefore have to know with whom this information is being shared.

**Mr. Marc Mayrand:** Yes, the party should know.

**Hon. Stéphane Dion:** They should be obliged to inform Elections Canada of this.

**Mr. Marc Mayrand:** We feel that an expert should have to attest to the fact that the information is being used only for the purpose for which it was collected.

**Hon. Stéphane Dion:** I have a bit of time left.

As far as automatic counting is concerned, you propose that we follow New Brunswick's example. Have you looked at the rate of rejected ballots? Does that increase?

I have friends in New Brunswick who tell me that if you vote for a mayoral candidate without voting for a single candidate for councillor, the ballot could be rejected.

● (1250)

**Mr. Marc Mayrand:** There may be complications, particularly in the case of a municipal vote because it is even more complicated. At the federal level, it should not happen because you are only choosing one candidate.

[*English*]

**The Chair:** Thank you.

We've completed the questioning of our witnesses today. We'd like to thank them for coming.

It has always been special, having you visit us, and I'm sure we will have you again soon. We'd love to be able to deliver redistribution to you on time and complete. It has been a nice break today, not to be doing that. This committee will return to that on Thursday, and we endeavour to get you all of the information on new ridings on time for your next election.

I suggest that we now go in camera to discuss two or three issues. If we could do that fairly quickly, we'll finish on time.

[*Proceedings continue in camera*]

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