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

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**EVIDENCE**

**Tuesday, April 1, 2014**

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**Chair**

**Mr. Joe Preston**



## Standing Committee on Procedure and House Affairs

Tuesday, April 1, 2014

•(1900)

[*English*]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** Let's call this meeting to order, please.

This is meeting number 25 of procedure and House affairs committee, on the study of Bill C-23.

The meeting is in public and televised tonight. We have, to start off with, the commissioner of Canada elections, Monsieur Côté.

Mr. Côté, will you introduce your guest? I understand you have an opening statement.

**Mr. Yves Côté (Commissioner of Canada Elections, Elections Canada):** Indeed, sir.

[*Translation*]

Thank you very much, Mr. Chair.

I would like to thank the committee for giving me the opportunity to testify today regarding the changes proposed by Bill C-23 and their impact on my role as commissioner of Canada Elections.

I am accompanied today by Audrey Nowack, senior counsel, who provides us with legal counsel.

Before discussing the bill itself, I believe it would be useful if I first reminded the committee of why the position of commissioner of Canada Elections was created 40 years ago in 1974 and placed within the Office of the Chief Electoral Officer.

[*English*]

The traditional view of the Department of Justice at the time was that it should not be involved in prosecutions under the Canada Elections Act. Such prosecutions, to quote the attorney general at the time, in 1974, should be the responsibility of the Chief Electoral Officer “whose independent position could not be questioned”. At the same time, the Chief Electoral Officer was concerned that his own involvement in the investigation and prosecution of election offences could be seen to diminish his impartiality. This led to the creation of the position of commissioner of Canada elections, in 1974.

The position was placed within Elections Canada so that it would be fully independent from the government. The mandate of the commissioner initially was confined to offences involving election expenses, but was later broadened, in 1977, to include the enforcement of all election offences, including prosecution. With the creation of the office of the director of public prosecutions, in 2006, election offences are now prosecuted by the DPP.

Let me now turn to my comments on the bill that is currently before you.

[*Translation*]

The first point I'd like to address has to do with the organizational changes proposed by the bill.

Bill C-23 proposes to go much further than what was done in 2006, by placing the commissioner within the Office of the Director of Public Prosecutions, or DPP.

As you consider this proposal, I think it is important for you to understand the benefits of the current model which, in my view, strikes a proper balance between investigative independence and a coherent and informed application of the Canada Elections Act.

Indeed, I must stress that, as commissioner, I have enjoyed complete and unfettered independence with respect to the conduct of investigations and the choice of enforcement action, including the decision to refer a matter to the DPP.

•(1905)

[*English*]

I have been in the job for almost two years, and there has never been any attempt by the Chief Electoral Officer, or by anyone at Elections Canada, to interfere in any way with the manner in which I and my investigators do our work. In other words, and I think it is important that I state this, I alone as commissioner decide what to investigate, how to conduct my investigations, and what measures are to be taken, including possible referrals to the DPP.

At the same time, my presence within Elections Canada allows me to have direct insight into how the law is administered and also to understand the main challenges faced by Elections Canada with respect to compliance. This informs my interventions and reduces the risks that regulated entities, such as political parties and candidates, are caught between conflicting interpretations of the rules.

The need for such coherence explains why to my knowledge, in the vast majority of regulatory regimes, the administration and enforcement of the rules are vested in the same agency. Examples of this would include the Canada Revenue Agency, the Competition Bureau, Fisheries and Oceans, and the Canada Border Services Agency.

This, by the way, is true even for the CRTC, which under the very terms of Bill C-23 would be granted the mandate to administer and enforce the rules on what is referred to as “voter contact calling services”.

[Translation]

With the separation of the commissioner from Elections Canada, there is, in my view, a danger in the long term of a disconnect between the administration of the rules and their enforcement. To avoid that risk, it is critical that an ongoing relationship between the two entities be preserved and nurtured.

This goes beyond transfers of information in support of investigations—something which, in fact, Bill C-23 does not explicitly provide for and which requires amendment to ensure timely and effective investigations.

It also means that the two entities will need to create structured mechanisms to continue to work in an open and collaborative fashion. For example, a joint committee on regulatory compliance may need to be established to discuss trends or new issues that arise as a result of evolving practices by political parties and candidates.

Moreover, given that under Bill C-23, political parties would be able to request written opinions from the Chief Electoral Officer on the application of the act and that these opinions will be legally binding on the commissioner, there need to be mechanisms for consultation between the commissioner and the Chief Electoral Officer.

[English]

In placing the commissioner within the office of the DPP, Bill C-23 would bring under the same roof two functions that are normally, and for good reasons, kept separate.

This structural change raises important questions with respect to the separation of the investigative and prosecutorial functions—a separation that was deemed sufficiently important in 2006 to remove prosecutions from the commissioner. It also raises concerns with respect to at least the perceived independence of the commissioner from the government of the day.

Bill C-23 provides that the commissioner's investigations be conducted independently of the DPP. I do have, of course, every reason to be confident that neither the DPP nor the Attorney General would interfere in my investigations. However, the fact that the commissioner would be placed within the office of the DPP—and that the DPP reports to the Attorney General on the commissioner's activities—does, it seems to me, present challenges, at least in terms of perception.

For all of these reasons, Mr. Chairman, I do not think that the proposed move to the office of the DPP is a step in the right direction.

The second matter that I wish to address relates to the commissioner's investigative powers. The CEO mentioned in his appearance how important it is to have timely and effective enforcement of election laws. It is fair to say that, among Canadians, there is an expectation—and I would say an entirely reasonable one—that significant violations of the rules governing elections will be dealt with swiftly and within a normal four-year electoral cycle.

When the very legitimacy of an elected office is at stake, the need to resolve allegations of electoral wrongdoing is, by definition, a pressing matter. This is why, as I indicated in my annual report, I

believe it is essential to give the commissioner the ability to seek a court order to compel testimony.

• (1910)

[Translation]

My experience to date has been that it is not uncommon for individuals who are not directly concerned with an investigation, but who may possess important information, to refuse to co-operate. In a political context, where partisan loyalties are strong, this should probably not come as a surprise. However, this can cause significant delays or even compromise an investigation.

A power to compel testimony in the context of election investigations exists in many provinces and territories, including Quebec, Ontario, New Brunswick, Nova Scotia, Manitoba, Alberta and Yukon. Other regulatory agencies have similar power. The recommendation that both the Chief Electoral Officer and I have made is that this power be given to the commissioner with a number of appropriate safeguards, as exist in the Competition Act. These safeguards include the following.

First, before obtaining a court order, a prior judicial authorization is required, based on affidavit evidence showing that the person likely has information relevant to an investigation of an offence under the Canada Elections Act.

Second, every person has the right to be assisted by counsel and to have counsel present at the interview.

Lastly, and this is extremely important, the person being interviewed under these circumstances would have the right not to have the evidence used against the person who is required to testify.

[English]

These safeguards would present, in my view, a balanced approach to ensuring more effective enforcement. Mr. Chair, I want to be absolutely clear: if this amendment is not made, investigations will continue to take time, and in some cases a lot of time. Importantly some investigations will simply be aborted due to our inability to get at the facts.

Bill C-23 should also be amended to improve the regime proposed for voter contact calling services. First, whether it is a live or an automated call, there should be an obligation to identify the source of the call immediately at the start of the message. Second, and most importantly, entities providing automated services or making live calls should be required to preserve a record of the telephone numbers that were contacted and to make that record available to the commissioner through the CRTC. Without telephone numbers, it is difficult to see how the proposed regime can be of much use.

[Translation]

Finally, with respect to the powers of the commissioner, I want to express my deep concern with the limitations imposed by the bill on my ability to inform the public of the results of my investigations. There are certainly excellent reasons to preserve the confidentiality of investigations. These mainly include considerations of privacy and fairness, as well as the need to protect the integrity of ongoing investigations. For this reason, I, like my predecessors, will generally not comment on or disclose information related to investigations—except where necessary in the course of the judicial process.

There are, however, rare but important exceptions to this. Where allegations have been publicly made that cast a doubt on the integrity of an election, and where an investigation shows these allegations to be unfounded, it is important for the commissioner to be able to reassure Canadians by making his findings public, including by providing factual details of what was uncovered. My predecessor has twice done this in recent years, and it is important that my successors and I be able to do the same in the future.

●(1915)

[English]

Finally, I'd like to mention the addition of a number of new offences and the proposal to increase fines. The increased fines in particular are a significant and welcome improvement to the regime. However, as I indicated in my annual report, achieving compliance with election rules should not rely primarily on criminal offences and sanctions. The criminal process is inherently slow and heavy-handed. It is ill-suited to the vast majority of instances of non-compliance that we in the commissioner's office encounter, which are of a purely regulatory nature such as, for example, late filings of reports.

Administrative sanctions such as the proposed automatic reduction of reimbursement of election expenses in cases of overspending are generally much better suited to deal with compliance issues related to political financing. In this regard I hope that this measure in Bill C-23 would point the way for future reforms.

[Translation]

In concluding my remarks, I would like to indicate that I fully support the amendments relating to enforcement that the Chief Electoral Officer suggested at his appearance a few weeks ago.

I am aware of the fact that the Minister for Democratic Reform has written to the committee and that he appears to be open to some amendments dealing with the limitation period as well as the threshold to initiate investigations.

And, in closing, I would strongly encourage the committee to also consider the other amendments on enforcement proposed by the Chief Electoral Officer.

Now that I am finished with my introductory remarks, I would be pleased to answer any questions, insofar as they do not relate to the particulars of investigations.

Thank you very much.

[English]

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

We will proceed to a seven-minute round.

Mr. Lukiwski, you're first.

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

And thank you, Mr. Côté, for being with us here today.

I think I want to start my line of questions, or dialogue with you at least, on your role as an independent commissioner. Currently, and correct me if I'm wrong, my understanding is in taking a look at the

org chart that you right now are in effect an employee of Elections Canada, are you not? In other words, you report to them. They have the ability if they wish, or the Chief Electoral Officer has the ability, to fire you. Is that correct?

**Mr. Yves Côté:** It is not correct, Mr. Chair, in the following sense, that I am not an employee of Elections Canada. I have a special import appointment made pursuant to section 509 of the act, and the act calls for me, as I mentioned in my opening remarks, to see to the enforcement of the Canada Elections Act. And in the exercise of that mandate, I act in a manner that is totally independent from both Elections Canada and the Chief Electoral Officer.

I have been in the job for 20 months and since then there has never been any attempt by the CEO, by elected officials, by political parties to interfere with my investigations or to influence how they unfold.

**Mr. Tom Lukiwski:** I understand that. I'm just trying to get a sense of the structure, the corporate structure here. So then who has the ability to hire you or dismiss you?

**Mr. Yves Côté:** The appointment is made by the CEO.

**Mr. Tom Lukiwski:** The Chief Electoral Officer?

**Mr. Yves Côté:** Yes, indeed, pursuant to section 509 of the act.

**Mr. Tom Lukiwski:** And dismissal, if that happened?

**Mr. Yves Côté:** I think the general principles of law that would apply would be that he who has the power to appoint has the power to dismiss.

**Mr. Tom Lukiwski:** But even though that is the case, you're saying that he is not in effect your boss. You don't report to him.

**Mr. Yves Côté:** Absolutely. It is absolutely clear in my mind—

**Mr. Tom Lukiwski:** I know, and I'm sorry, but I always gone on the principle that if someone can hire me and fire me, then that person is in effect my boss. But I'll take you at your contention.

Why I'm trying to get at is that Bill C-23 would make you truly independent. In other words, the Chief Electoral Officer now can direct you to investigate a certain case. Bill C-23 would give you full independence. The Chief Electoral Officer, for an example, could request an investigation be conducted, as anyone else could request an investigation, but you would have the full authority to investigate based on your own decision, not a directive from someone else? So I think that increases and enhances your independence, which I would think would be a good thing, particularly—and I don't know if this has ever happened before, I honestly don't, but theoretically, since the Chief Electoral Officer has the ability to appoint and dismiss you, as you've mentioned—in terms of what would happen if in fact there was a case where you felt you had to investigate an employee of Elections Canada. Would you not think there would be a conflict there?

●(1920)

**Mr. Yves Côté:** There is a lot in that question, Mr. Chair. I'll try to attack it in bits and pieces.

The Chief Electoral Officer does appoint the commissioner, but in my sense he's not the boss. And an analogy to this would be that the government appoints judges but the government is not the boss of the judges. Once the CEO has appointed the commissioner, then the commissioner is responsible and he alone is responsible for enforcement of the act.

**Mr. Tom Lukiwski:** Can the Chief Electoral Officer direct you to conduct an investigation?

**Mr. Yves Côté:** He could refer a file to me and direct to me that I should investigate it, but then how I do the investigation, how far I go with it, what I do with it, would be entirely within my purview.

**Mr. Tom Lukiwski:** But it would still be his determination that an investigation be conducted, be initiated, right?

**Mr. Yves Côté:** He would say to me, please look into this, investigate this. I would say, thank you very much, and then I would with my director of investigations decide how I was going to investigate that.

**Mr. Tom Lukiwski:** Would you be able to refuse his request or his directive?

**Mr. Yves Côté:** The CEO is an agent of Parliament and my presumption would be that if he refers a file to me for investigation, he probably has good grounds to do that.

**Mr. Tom Lukiwski:** But under Bill C-23, and this is the distinction I'm trying to make.... I'm certainly not trying to be argumentative here, but I think it's an important distinction. Under Bill C-23, you would not be directed by anyone. It would be your decision and your decision alone if you wished to conduct an investigation. It would be based on a complaint or if someone requested, but it would be your decision. Currently, you're suggesting, or you're saying, to this committee that if the Chief Electoral Officer directs you to conduct an investigation, you will. You may conduct it in your own fashion, that's great, but you have no right to refuse.

**Mr. Yves Côté:** Well, there's an act of Parliament that specifies the circumstances in which the Chief Electoral Officer may ask me to conduct an investigation. So Parliament has spoken and has said that this is the way it should be. Again, I think it's very important that, if the CEO does that, then I decide how I'm going to do that, in the same way that if Bill C-23 is passed as it is now, if our office were to move with the office of the DPP, I would decide how investigations are to be conducted.

**Mr. Tom Lukiwski:** On my question about what would happen in the event that you ended up having to investigate someone in the Chief Electoral Office itself, would there not be a perceived—at least a perceived—conflict there since the Chief Electoral Officer himself, as you admitted, appoints you and can dismiss you?

**Mr. Yves Côté:** I don't think that there would be any conflict of interest.

I'll tell you a couple of things—

**Mr. Tom Lukiwski:** A perception? You stated in your brief that one of the reasons you don't think it would be appropriate to be housing your office with the DPP is the perception that there might be some conflict. Do you not think the same perception would be created if you were to investigate an action by the electoral officer, as he in effect is the one who can hire or dismiss you?

**Mr. Yves Côté:** I'd say at least two things on this.

One is that I certainly would see any cases involving an electoral officer or an employee of Elections Canada where fraud or misbehaviour of some sort was alleged as being a very serious matter. I can assure you that, as commissioner, this is something that I would get to the bottom of with all the energy and all the tools that I have at my disposal. That would be point number one.

Point number two, there are many benefits—as I think I alluded to in my opening remarks—in our being now part of Elections Canada, and it has to do with the day-to-day operations. It's very important for us, as enforcers of the legislation, to understand the priorities, to understand the environment in which decisions that we take have to be taken. We cannot operate in a separate world, on a separate planet. We have to have that access.

More importantly, if Bill C-23 is passed as it is now, there will be serious issues that will come up in terms of what information the CEO may communicate to me as commissioner. Right now, we're both within the same organization so the flow of information is free and it goes quickly. If I am to move into a different organization, which now would be a department of the government, there will be all kinds of issues having to do, for example, with privacy and personal information in terms of whether or not the CEO has the power to disclose and communicate that information to us. Certainly this is an issue that should be addressed because that kind of uncertainty would create no end of problems and headaches.

I would put it to this committee, Mr. Chair, that this is a very important issue. There has to be clarity in the law in terms of what the CEO can communicate to me, if Bill C-23 is passed as it is, and also in terms of what I may request of the CEO.

I would go one step further. It seems to me that there should be a provision in the bill, again if it is passed as it is, that would compel the CEO to respond to any request I make for information and to give me that information. In the same way, Bill C-23 provides—with the new scheme that might be created—that the CRTC would have to disclose to me any information that I requested of them, in terms of the new scheme that is being created for voter contact.

• (1925)

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

Thank you, Mr. Lukiwski.

We're quite over time again, so let's try to watch where we are.

Mr. Scott, you're up for seven minutes or thereabouts.

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

Thank you, Mr. Côté.

I won't even summarize what you've said, but it seems very clear that you've given a whole bunch of reasons why the symbiotic relationship between your office and the rest of Elections Canada is one of the benefits of staying there. You've indicated a number of other dangers of moving to the DPP.

My question is, can you see any problem with the current location of your office within the structure of Elections Canada, any problem that is being solved by moving your office to the office of the DPP?

**Mr. Yves Côté:** I do not, but what I would add is this: if the preoccupations about possible conflict of interest in our being within Elections Canada is one that is deemed to be requiring an adjustment or a fix, it seems to me that a much better approach would be to put into the Canada Elections Act the same kind of statutory guarantee to my office and to my tenure as would be made now if we were to move to the DPP.

To me, that would address both issues: my issue about remaining within Elections Canada to have quick access and better understanding of the issues, and at the same time it would address the perception that apparently some people have that there may be a lack of independence or a lack of security of tenure.

**Mr. Craig Scott:** Apparently some people do have that perception despite all evidence to the contrary.

So basically you're saying for anything done in this act that is a benefit—for example, security of tenure is built into Bill C-23 in a way that it doesn't exist right now for your office—there's no reason that couldn't have been done by keeping your office within Elections Canada, for example.

**Mr. Yves Côté:** Indeed.

**Mr. Craig Scott:** Exactly.

Okay. Thank you.

I'm assuming you were consulted by the minister. Do you have any kind of an insight into truly why he would want to move your office?

**Mr. Yves Côté:** I was not consulted by the minister on the bill.

**Mr. Craig Scott:** You were not consulted.

**Mr. Yves Côté:** I was not.

**Mr. Craig Scott:** Shall we move on to another issue? You and the Chief Electoral Officer have both made very good cases in a couple of reports—you, in your 2012-13 report—concerning the need for a power to apply to a judge to secure a judicial order to compel testimony of witnesses. In your report, you detailed all the different ways in which witnesses do not cooperate and make investigations difficult. Is any of this coming from direct experience of recent investigations with witnesses? For example, with respect to the use of fraudulent calls during 2011, did you encounter any of these problems that have informed your view of the need for the power to compel witnesses?

**Mr. Yves Côté:** First, Mr. Chair, as I said, I will not comment on any investigations. However, in answer to the question that was put to me, I will state on the record that there have indeed been cases, a number of them, in which during the performance of our investigative work we have come across people who have had information that was relevant to our investigation and have simply refused to talk to us. That has happened more than once, including for matters of some significance.

• (1930)

**Mr. Craig Scott:** I commend page 13 of your report to everybody for your overall description of the kinds of problems that are presented by that.

I believe you've emphasized it in a way that cannot be.... You said, "I believe it is essential to give the commissioner the ability to seek a court order to compel testimony". You talked about the safeguards that would exist with that along the lines of the Competition Act, and you said, "I want to be absolutely clear: if this amendment is not made, investigations will continue to take time, and in some cases a lot of time. And, importantly, some will simply be aborted due to our inability to get at the facts."

Is it the case that for any investigation—not one in particular—that your office might have had to abort or for which it might have been lacking this power, that this power would help?

**Mr. Yves Côté:** This power would greatly help. As I said, we've had a number of instances in which individuals who, in our view, have had information relevant to our investigations have refused to talk. I do think that it is essential. If we are to conduct investigations diligently, know results soon enough, and get to the bottom of things, we simply need this power.

**Mr. Craig Scott:** Perhaps I could just move on to one other aspect. There are a few things in the act that everybody has heard about. There's the fact that you have a duty to inform people who are being investigated subject to an exception. There's the fact that you can't talk about investigations subject to an exception, but that exception doesn't include when an investigation is closed. When it's closed, you won't be able to say anything. There are a bunch of things that actually seem to be new fetters, such as that you have to have a reasonable ground to suspect an offence has been committed in order to investigate. The minister suggests that was a mistake.

There's another one here, and I'm just wondering what you would have to say about it. Am I right in thinking that at the moment in the structure of Elections Canada, the CEO has delegated to you the signing authority from the consolidated revenue fund so that you can hire temporary investigators, forensic specialists, and that kind of stuff? Is that correct?

**Mr. Yves Côté:** I currently have the statutory power, which, by the way, is maintained in this bill, and I welcome that. If the bill is passed as is, I will continue to have access to the CRF.

**Mr. Craig Scott:** You will, but that will be with the approval of the DPP. Is that correct? Is there any reason we couldn't write into the bill the fact that you alone would have the direct signing authority in order to have access to the statutory fund for temporary investigators?

**Mr. Yves Côté:** I think there is some refinement, perhaps, to the way in which the government expense system works that calls for a deputy head, the accounting officer of a department, or, in the case of Elections Canada, the CEO, to have final sign-off. But certainly within the framework as it exists now, when I have had to have recourse to funds from the consolidated revenue fund, it has always gone through without any problems. That's what I would say on that.

**Mr. Craig Scott:** Thank you.

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

Mr. Lamoureux, please, for seven minutes.

**Mr. Kevin Lamoureux (Winnipeg North, Lib.):** Thank you, Mr. Chair.

I have been listening to you, Mr. Côté, and what you do is reinforce in my mind just how bad...how this legislation, Bill C-23, is a destructive force to democracy here in Canada. This is not a step forward. This is a significant step backwards. I feel insulted in regard to the degree in which you weren't even consulted, you said, in regard to your position as the commissioner and having that position transferred out of Elections Canada.

I think you've been exceptionally clear. I had a few questions that I would like get on the record with you.

The in-and-out scandal, robocalls, overspending, and cheating: these are things that the public as a whole feels have taken place in the last election. There is a general feeling of public confidence...of a lack thereof, because of the thousands of phone calls that were made because of the last election. There's this huge expectation that you, as the commissioner, are going to be able to get to the bottom of a lot of these very important issues.

I'm not asking you to comment on any specific issue, but what I'm thinking about is, going forward, if this legislation were to pass without amendments such as compelling a witness, would you clearly state that it would in fact make it more difficult for you to acquire any sort of a prosecution?

• (1935)

**Mr. Yves Côté:** Mr. Chair, I don't think I would phrase it in the way it has been stated. What I would say is that the current scheme as it exists should be and must be improved so that we have more tools in our box, and what I find is that in Bill C-23, in spite of the fact that the CEO and I have called for this additional power, I have to of course note that the additional power is not being given to us.

**Mr. Kevin Lamoureux:** You're right.

You state on page 7 of the presentation, "And, importantly, some"—you're referring to files—"will simply abort due to our inability to get at the facts."

**Mr. Yves Côté:** Yes, I have said that.

**Mr. Kevin Lamoureux:** That tells me that if someone's going to violate a law, there's a very good chance that you're going to have to abort because of your inability to get to the facts, and the reason why you can't do that is that you have individuals who make a mockery of our Elections Act. All they have to say is, "I'm not interested in assisting you", because you cannot compel.

**Mr. Yves Côté:** Mr. Chair, what I would say is that I think the words that appear in my opening remarks have been carefully chosen. What I would say is that some investigations would abort because of our inability to get at the facts.

**Mr. Kevin Lamoureux:** Both you and, I understand, the Chief Electoral Officer felt it was important that you have the ability to compel. In your presentation, you make reference to many other organizations, independent associations, that have the ability to compel. They don't even have to go to a court. You're requesting the ability to appeal to a court in order to get someone to compel.

**Mr. Yves Côté:** That's correct. What we are saying is that what we have put forward is a recommendation that we have a scheme that's very similar to what is in the Competition Act, so that, as the member just said, we would apply to a judge, and a judge would sit between us and the citizen and would decide whether or not, on the circumstances of the case, to give us the order that we were seeking. The member is quite right that in some other regulated areas—in particular, perhaps, in the securities world—the head of the organization has the power himself or herself to issue those orders.

**Mr. Kevin Lamoureux:** That's right.

I think it's important that we repeat what I think was something that you made a statement on during your opening remarks. In 1974, when your office was actually created, it was felt at that time that it would go to the Department of Justice, but then it moved and evolved to get outside of the Department of Justice, because there was this perception that the Government of Canada might have some influence, versus if it were to go to Elections Canada, it would not only be perceived to be, but in real terms, based on what you said, truly would be that much more independent.

**Mr. Yves Côté:** That's the history of the provision, and if I may, Mr. Chair, I'd like to add something here.

In order to ensure fair competition, the Parliament of Canada decided to give the commissioner of competition that power, and I think one way of looking at this would be to say that if we want to have fair elections, as opposed to fair competition, why would we not give or why would Parliament not give to the commissioner the same kind of power that the other commissioners have to ensure fair competition? It seems to me that the set of values at play is at least equivalent and therefore it seems to me that Parliament would certainly be consistent with itself if it decided to do for fair elections what it has quite clearly chosen to do for fair competition.

**Mr. Kevin Lamoureux:** Yes, it would seem to me that in essence this bill is going to weaken your ability to be able to get justice when an election law is violated, and your office is going to become that much more costly because you're going to have to set up special groups to deal with Elections Canada.

Is that a fair assessment?

**Mr. Yves Côté:** There will certainly be inefficiencies if our office is transferred to the office of the DPP in terms of what I referred to before, in acquiring the information and communicating the information back and forth between the two organizations, and, if the tool box is not made more complete by way of giving us the ability to apply for an order to compel, then yes, investigations will continue in some cases to be long or extremely long.

• (1940)

**Mr. Kevin Lamoureux:** More costly, fewer prosecutions is a very likely scenario, along with a public loss of confidence in the independence of your office. Is that true?

**Mr. Yves Côté:** I've made my point on these things and I would not necessarily adopt the way in which you have stated the issue, but I think that's essentially what I have said, not exactly what you said.

**Mr. Kevin Lamoureux:** Have you ever had the opportunity to express your thoughts directly to the minister?

**Mr. Yves Côté:** No.

**Mr. Kevin Lamoureux:** Have you made any inquiries with the minister, that you would like to share your thoughts with the minister?

**Mr. Yves Côté:** No.

**Mr. Kevin Lamoureux:** Can you give us some sort of indication.... Now that many people are aware of the fact that all they have to do is just say no and then they don't have to provide testimony, do you believe that will weaken the law as that gets better known?

**Mr. Yves Côté:** It will not help.

**The Chair:** We will go to a four-minute round, starting with Mr. O'Toole.

**Mr. Erin O'Toole (Durham, CPC):** Thank you, Mr. Chair, and thank you, Mr. Côté, for your service, including, as I learned tonight, as a JAG officer.

**Mr. Yves Côté:** Indeed.

**Mr. Erin O'Toole:** I'm going to suggest to you a better analogy than the Competition Bureau because your presentation reminded me a lot of law school over a decade ago and some work I did, particularly because you described yourself as the enforcer of the legislation. That was a line you used.

A better comparator would be securities commissions because they are commissions that regulate and administer securities in the public interest, and confidence in the public markets is critical. In the last 15 years, securities commissions with commissioners—and a very similar structure—have moved away from also being multi-functional agencies with investigative, prosecutorial, and even adjudicative functions that would be similar in some ways. In 2003, Justice Coulter Osborne had what was called the fairness committee about bifurcating the OSC, much as the B.C. securities commission did.

The reason I use that is that it's clear to me. There was the creation in 1974, where you said the Chief Electoral Officer had some concerns about this being housed within the agency, and then the splitting off of the prosecution mandate to the DPP in 2006. Is Bill C-23 not really the completion of that bifurcation? So now we have Elections Canada running something in the public interest, in the public good, from an administrative standpoint, and to respect all principles of natural justice, the backward-looking function—the investigation prosecution—is housed entirely distinctly. Now not just the prosecution but also the investigation is housed within the DPP. Is that not just the completion of that bifurcation and is that not in line with modern public administration practices?

**Mr. Yves Côté:** I would go back, Mr. Chair, to some of the points I made in my opening remarks.

One is that we have in Canada at least four provinces that have in place the system that we have been proposing, and I'm referring in particular to Ontario, Quebec, Manitoba, and Alberta. I would also point out that the Australian Electoral Commission has that power as does the U.S. federal elections commission.

I would also point out, as I said in my opening remarks, that we have within the federal government agencies such as the Competition Bureau, Fisheries and Oceans, Canada Border Services Agency, the Canada Revenue Agency where we still have the—

**Mr. Erin O'Toole:** If I may, because I don't have much time, I use the securities commission example because of the regulatory overhaul in the last 15 years, and because I think it serves very similar purposes in the public interest. I sprung this on you now, so feel free to provide the committee with your comments afterwards, but do you not see the benefit, from a public confidence standpoint, of having that administrative function housed in one distinct administrative body, Elections Canada, and your function, the investigative aspect, housed separately, much like the securities commissions have done?

**Mr. Yves Côté:** I don't, and I don't for a number of reasons, but the main one would be that if this issue of the independence of the commissioner is a real concern, it could be addressed by way of amendments to the Canada Elections Act.

● (1945)

**Mr. Erin O'Toole:** I did mention that as a concern. I'm saying that as a principle of public administration that's what a lot have been doing.

**Mr. Yves Côté:** Even as a principle of administration, as you say, I think the Canada Elections Act can be made clear with whatever it is that would be required to state, in black and white, that the commissioner is to exercise his functions in a way that is completely independent and so on. But the other thing is also the loss of efficiency that would necessarily flow, in my view, from us being taken out of Elections Canada and moved into a department of the government.

And that's a real issue at a time when we are challenged to be more timely in our investigations and come to conclusions more quickly. Any time you put distance, and you allow barriers to build in terms of the exchange of information—

**Mr. Erin O'Toole:** But isn't distance what I'm getting at? Isn't that separation of the two functions important from a public confidence standpoint?

**The Chair:** That's probably a very good question, Mr. O'Toole, but I'm going to move on to the next person.

Madam Latendresse, for four minutes.

[Translation]

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

Mr. Côté, thank you for being here today.

My questions have to do with proposed clause 510.1, a new provision that will limit most of the information you will be permitted to disclose. In fact, this provision means that you will have to maintain secrecy on everything that happens in your office. However, there is a list of exceptions, including this one:

(b) information that, in the Commissioner's opinion, is necessary to carry out an investigation.

So you can disclose that kind of information.

Under the current provisions of the bill, do you think you would still be permitted to disclose this information once an investigation is completed?

**Mr. Yves Côté:** Mr. Chair, as I mentioned in my opening presentation, according to my interpretation and that of the lawyers and legal counsel who advise me, clause 510.1 raises very serious issues about whether, when an investigation is completed, I will be able to disclose the outcome, except to state that the investigation has been concluded and that we have decided not to take any action.

For cases that receive heavy media attention and in which we would like to assure Canadians that we did an investigation and give them an overview of what we discovered, what we did and why we came to those conclusions, unfortunately I have to say that, when my legal advisers and I read clause 510.1 as proposed, we conclude that our capacity to provide a report like that would be extremely limited, if not completely non-existent.

**Ms. Alexandrine Latendresse:** So you are suggesting that the provision be amended.

**Mr. Yves Côté:** Absolutely.

**Ms. Alexandrine Latendresse:** Thank you.

My next question concerns the appointment of the next elections commissioner.

Is it true that the Chief Electoral Officer might not be consulted about who is appointed?

**Mr. Yves Côté:** That is what I saw in the bill.

**Ms. Alexandrine Latendresse:** What is your opinion on that?

**Mr. Yves Côté:** Commenting on this matter is not really my role. However, I found it strange, and I have a lot of difficulty understanding why it was considered a good idea to include a provision like this in the bill.

However, perhaps there are people who are better positioned and better informed than I am who could answer your question.

I was surprised to see that the provision was included.

**Ms. Alexandrine Latendresse:** Another provision stipulates that no former or current employees of Elections Canada can be appointed commissioner. I imagine that you find that a little odd as well. It looks like we are hammering on Elections Canada about the commissioner, which is weird.

**Mr. Yves Côté:** It raises serious questions.

**Ms. Alexandrine Latendresse:** Thank you.

Could you also speak generally about the consultation done by the Minister of State? Was your office consulted on the changes to the Canada Elections Act that affect your office? Were you personally consulted?

**Mr. Yves Côté:** Mr. Chair, I think I have answered this question already. I will repeat that neither I nor the people in my office were consulted by the Minister of State on the provisions in the bill.

**Ms. Alexandrine Latendresse:** The Chief Electoral Officer and you have made recommendations in the past. Were some of them included in the bill?

**Mr. Yves Côté:** Generally, I think the Chief Electoral Officer told you what was included.

In my opinion, some proposed amendments are positive, such as the increase of fines in certain situations and the creation of new offences. For example, if someone obstructs our investigations, that would now be an offence. I think it is a very positive change. There is also a new offence for impersonation, passing yourself off as someone else. I think that is a welcome amendment.

I also pointed out in my opening remarks that we also propose introducing an administrative sanction, meaning that the reimbursement on election expenses would be reduced if someone overspends. I think that is a step in the right direction. It's useful.

I think there should be more things like that. As I mentioned, the Canada Elections Act, which is extremely complex, sanctions a lot of offences. The act includes at least 600 sections, and a number of the offences are only regulatory in nature. As a citizen who has respected the Canadian justice system, I do not believe that criminal prosecution should be the only way we handle these offences. There should be other things, like administrative measures that would enable us to resolve matters more quickly and with more predictability. We could then spend more time on files that truly are more important, given the nature of the allegations made or the offences committed.

• (1950)

[English]

**The Chair:** Thank you, Mr. Côté.

We'll go to Mr. Reid to finish this round. You have four minutes, please.

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

I've been on this committee for over a decade. We get regular reports from the Chief Electoral Officer. The commissioner of elections tends to come here less frequently.

In terms of how you report, do you publish any independent reports similar to the ones the CEO publishes, reports describing your activities over the past year, what you've been doing? Is anything like that done by you?

**Mr. Yves Côté:** Last September I issued an annual report, which was the first report issued by the office of the commissioner. That report is out there. It describes our activities and our work. It also contains a certain number of recommendations in terms of the challenges we were facing and we are recommending to the government some of the changes that should be made to allow us to deal more effectively with those challenges.

**Mr. Scott Reid:** So you published that last September. That was the first time an annual report had been put out. But it's your intention to do this on an annual basis from now on?

**Mr. Yves Côté:** It certainly is my intention. In that respect, I would note that the bill, as it currently reads, provides that it is not the commissioner anymore who would be reporting on these activities; rather, it is the director of public prosecutions who would report on the activities of the commissioner, except for the specifics of investigations, as the bill says.

I think this is regrettable. I think the commissioner of Canada elections, wherever they sit in the organization, should have the ability to make their own report about their activities without any kind of filter anywhere.

**Mr. Scott Reid:** Let's see if I understand this right. As it stands now, the Canada Elections Act does not mandate that you produce a report—it's your own initiative—but it doesn't forbid you from doing a report. The new legislation would actually prevent the kind of report you issued last September. Is that correct?

**Mr. Yves Côté:** The provision in the bill specifies that it is the director of public prosecutions who would report to the Attorney General about the activities of the commissioner.

**Mr. Scott Reid:** Is there anything that would make it impossible, in your mind, to amend the bill to permit you to report directly to this committee?

**Mr. Yves Côté:** I don't know, in terms of machinery of government and parliamentary procedure, whether I should be reporting to this committee or to Parliament. But certainly it seems to me that nothing would prevent this committee or Parliament from amending the bill and making it clear that the commissioner himself or herself has the ability to make a report on his activities.

Whether it goes to this committee, to Parliament at large, or to both houses of Parliament is an issue that—

**Mr. Scott Reid:** Well, I can give you an opinion, which is that you should be reporting not to any other committee but to this committee and the reason is that we deal with all elections matters. It makes sense to have the same committee overseeing these things. The analogy I've given in previous hearings is to a board of directors. If your company has multiple divisions you want all management to be reporting to the same board of directors.

But that's a very interesting piece of information.

**Mr. Yves Côté:** The analogy that I would make, Mr. Chair, would be that the Chief Electoral Officer reports to the two Houses of Parliament. That is my understanding. Given that there is some element of commonality between the two, an amendment could also provide that the report of the commissioner would be like the report of an agent of Parliament and could go directly to the two Houses of Parliament.

• (1955)

**Mr. Scott Reid:** All right, that's very helpful. Thank you very much.

**The Chair:** Great, then we have completed.

Thank you, Mr. Côté, for coming tonight and sharing your information with us.

**Mr. Yves Côté:** I would like to thank the Chair and the members of this committee for taking the time to hear from me. Thank you very much.

**The Chair:** Thank you.

We will suspend just for a couple of minutes while we change witnesses.

• (1955)

\_\_\_\_\_ (Pause) \_\_\_\_\_

• (2000)

**The Chair:** I will call us back to order. We are still in meeting number 25 and we are still televised and in public. We have a new guest, Mr. Corbett.

It is great to have you here and I apologize for the lateness of the hour but we have been working what seems like around the clock on Bill C-23. You have an opening statement I understand, so please go ahead and tell us your thoughts and then we will ask you some questions.

**Mr. William Corbett (Former Commissioner of Canada Elections, As an Individual):** Thank you, Mr. Chairman.

Mr. Côté has covered a lot of the ground, as you well know, in a very thorough way and I'm hopeful that perhaps I can add some contextual information from my six years as commissioner of Canada elections, which ended in July 2012. Before that, I was employed by the Department of Justice for 34 years, mainly in the criminal law branch, so I'm well familiar with the DPP and his organization. During my time as commissioner, I was involved in three federal elections in a period of a little more than four years. You probably remember them all.

I'm concerned for the ability of the commissioner to investigate alleged violations of the act in an effective and timely way. I'm a practically oriented person. There's nothing in the amendments that will enhance the ability of the commissioner to investigate alleged violations of the act, and there's one amendment that will detract from the ability of the commissioner to investigate violations of the act.

One of the main problems with significant investigations is that they take too long. One investigation that we completed took two years and one month. The director of public prosecutions spent 16 months reviewing what we had done. The prosecution brief was a few pages short of 400 pages. It was a book, and this was a summary of the evidence that we had managed to put together. In this case and in some others, delay is occasioned by key witnesses, who decline to be interviewed by an investigator. In some cases, key witnesses were discouraged, actively discouraged, from being interviewed by an investigator.

What is missing from the amendments is the authority to seek a judicial order to require a vital witness to be examined by the investigator. This authority would avoid the need to use more complicated, expensive, and intrusive procedures, and might very well save considerable time. Again, I can't say a lot about cases before the court, but you can imagine what we had to go through when we had to sort out robocalls in general.

The Internet is unregulated, it's the Wild West, and a number of judicial orders we had to obtain, and what we had to learn as we pushed our way through this quagmire was remarkable. Had we been able to compel witnesses, we might very well have advanced the case much more quickly. I'm very concerned for the public perception of things when we can't advance these cases of considerable public interest.

We already have an injunction power in the act, which allows us during the election period to go to a court for an injunction to get something done. We've never used it. We've waved it around from time to time, and people know it's there, and we can pursue it if we want. I expect that an authority to get a judicial order to compel someone to be interviewed might not have to be pursued all that often. Persons couldn't say to a witness, "You don't have to cooperate," because the law would then provide a means to obtain cooperation. Its availability would frequently be sufficient. I would expect to obtain cooperation from witnesses.

What is detrimental in the amendments is the removal of the commissioner's office from Elections Canada to the office of the director of public prosecutions. Elections Canada is a vital centre of information, and intelligence, and expertise in federal electoral matters, and there isn't any other. The director of public prosecutions certainly is not.

What you would do with this is, you would remove investigators from ready access to the experts at Elections Canada: the legal experts, these are people who are engaged in knowing this act and providing legal advice on it on a regular basis, including to investigations, keeping investigations in line, if you will; the auditors, who apply the law to the financial aspects of campaigns; and the experts who run the election, who apply the laws to the actual vote and the campaigning in the election period.

• (2005)

It's important to remember that the commissioner's office is composed of about 20 people. They rely on resources where they can get them. Elections Canada is the main source of that. As well, other police forces assist investigators. The DPP provides assistance to investigators in getting judicial orders and on matters before the court.

I'm not sure if the move would disturb the ability of investigators to get access to the records that are kept at Elections Canada. There are specific sections of the act that guarantee access to certain records, but taking the investigators out of the organization may raise a problem for access to records. Records are vital to confirm complaints, and referrals from auditors with regard to financial matters. That's a legal matter that I'm not able to give you an opinion on, but it's something to be concerned about.

There is one other aspect that needs to be brought to your attention. It's important, and I don't believe any other source has identified it for you. I'm referring to the monitoring role of irregularities during the election period. I went through three elections. Each election period was about 35 days long. We put together a team of investigators and the legal staff assigned to them. They were on the ground every day during the election period. We double-shifted so that we covered 12 hours a day.

So the complaints flow in from returning officers, members of the public, and political parties as to what's going on during that 35-day period. We monitor the election, and we take action to ensure that the rules are being followed. We have dedicated contacts within the political parties. We ask the political parties to straighten out something that may be going on that they're better able to deal with. We have contacts with the municipal police forces. We take the complaints, we put them in the computer, we run them up the screen, we assign investigators if something needs to be done, and we get after it—not with the idea of prosecuting charges down the way but with the idea of regulating the playing field as the campaign rolls along.

As you well know, there is a never-ending complaint about signs. Municipalities don't like them if they interfere with traffic. Landlords don't like them when the tenants put up big signs in the windows. Signs get stolen. People have signs on their property that they didn't approve of. Signs are put on signs. Signs are put on government signs. Sign teams have fights over the best places to put up the signs. We sort these things out.

As another example, a candidate wants to get inside a condominium to campaign—a lot of people are living in condominiums these days—and the management doesn't want them in there. The regulations of the condominium corporation may prohibit them from getting in there. We make contact with the condominium corporation. We contact the lawyers, if we can find them. We read them the riot act: here's the law, sort this thing out, because a candidate is entitled to reasonable access to a condominium, an apartment building, or a shopping centre. These are the things that get dealt with.

You may recall the oddball one in Quebec, where a journalist got access to a ballot box and photographed the ballot box open. It looked like it had been damaged and beaten up. They made quite a fuss over it. We looked into it immediately. The matter was sorted out by our investigators, the municipal police force, the returning officer, and members of the parties on the ground who looked at the box and were satisfied that the ballots inside the envelopes had not been disturbed. They all agreed that they could be accepted. We sealed it up and got on with business.

These are the kinds of things that happen, as you yourselves know, during an election period. We're there 35 days in a row, two shifts a day, watching this stuff not to prosecute down the road but to regulate. This is a regulatory statute.

I don't know who is going to do it in the next election, because I'm certain the DPP isn't going to do it. I don't know who else is going to do it. Could someone else at Elections Canada do it? I don't think they have the skill set. Investigators have a particular skill set. Our investigators are all mostly 30-year police veterans.

• (2010)

They're very good at getting municipal police forces to look into our matters when they aren't priorities for them. There's a very practical aspect of this that you need to be aware of in the removal to different agency, which as I say, doesn't have the expertise and is used to acting in an independent way from investigators.

Removal of the commissioner from Elections Canada does nothing to enhance the independence of the office. I have to tell you, political interference is non-existent. I never encountered it in any form at all; I never had an investigator advise me that there had been anybody trying to interfere with an investigation. The Chief Electoral Officer, in my time, maintained a strict hands-off approach. The decisions were made by me and the director of public prosecutions with regard to prosecution matters.

As far as how we do things and what we do, we put together a 19-page document, which is on the Elections Canada website, to tell the public what we do and how we do it. It's available to anybody who wants to take a look at it. I should say, it's not usual for investigators to be associated with the prosecutor's office. I worked in the prosecutor's office for many years in the regulatory context in particular, although prosecutors do prosecute regulatory offences. Their main preoccupation, and that of the DPP, is with Criminal Code offences, drug offences, terrorist offences, money laundering, tax evasion, and things like that. It's not common, in the common law context, for investigators to be working out of a prosecutor's office or to be associated with or under the umbrella of a prosecutor's office, even in a general way. Investigators are usually located with the agency responsible for implementing the legislation, and that's primarily because it's a regulatory agency and the goal is not prosecution; the goal is compliance.

Personally, I don't like prosecutions. I'd just as soon get compliance with the requirements of the act and the goals of the legislation. What happens, and is happening more though, is it gets adversarial. Witnesses refuse to be interviewed; witnesses are discouraged from being interviewed; it becomes adversarial. If they cooperated and we were able to get to the bottom of something in a timely way—and that does happen—there are other avenues besides prosecution that can be used to obtain compliance. We have a compliance agreement, in fact, that we can use and it's used in many minor cases, for that matter. There are serious cases that can't go that way; you do have to investigate with an eye on prosecution.

Prosecutors, generally, want to take an independent view of an investigation after it's completed. In fact, the less they have to do with the investigators beforehand, the better. If they have been involved with the investigators because they had to make a court application, someone else in the office will make that decision to prosecute. The prosecution role is who to charge, what to charge, and who not to charge. If it's criminal, it goes to a criminal court.

Let me say a few words about election or voter fraud, which is something of a concern to you. We looked into a number of cases of alleged organized voter fraud when I was commissioner. The complaints were found to be without substance, and no charges were pursued. I put out a press release on two of these, and another one was looked into by a company called Navigant. A few cases of individual illegal voting were prosecuted but, in my opinion, while

administrative errors were found, significant voting fraud was not taking place.

I came into the job as an outsider, and what struck me as interesting were the ethics that are at work in the electoral process. The 60% of people who vote are very serious about it; they're very concerned for and they support the system and the process enormously. That was my first observation. Similarly, the people at Elections Canada were impressed by the role that they were performing, from the most senior to the most junior person. It begins with a fair election and a reliable result.

• (2015)

That's the beginning of the democratic process.

That's my little speech for today.

**The Chair:** Super. Mr. Corbett, I could listen to you all night but I know the members want to ask questions so we're going to let them do that.

We go to the seven-minute round. Mr. Lukiwski, you're starting.

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

And thank you very much, Mr. Corbett, for being here.

It's good to see you again. We have seen you before at this committee. I, like my colleague Mr. Reid, have been on this committee for what seems like an eternity—I guess for the last eight years.

I do have a question about one of your former investigations. May I ask, sir, since this investigation I'm going to be referring to has been completed, are you able to talk about completed investigations?

**Mr. William Corbett:** I'd rather not be reconducting the investigation or a prosecution, mind you, but—

**Mr. Tom Lukiwski:** There were no charges laid here, but I'm just curious. It's always been something I've been extremely curious about. Now that I have the opportunity to be with you in the same room, I'd just like to get some information to satisfy my curiosity.

It refers back—I hope you can remember—to a case involving a former Conservative member of Parliament by the name of Jeremy Harrison. In the 2006 election Jeremy Harrison was running in the far north of Saskatchewan. It's the Meadow Lake riding provincially, but it was the Desnethé—Missinippi—Churchill River riding federally.

**Mr. William Corbett:** Desnethé—Missinippi—Churchill River, yes.

**Mr. Tom Lukiwski:** Right.

Now at the time during that federal election, of course, Jeremy was the incumbent. And we were listening to the poll results come in and at the end of the evening by the time I went to bed, the media had declared Jeremy the winner because he was up by a few hundred or perhaps even several hundred votes. His main opponent was a Liberal candidate by the name of Gary Merasty. Gary was a fairly well known first nations individual, a former chief of one of the bands up in the northern Saskatchewan area.

What happened was there was only one poll left to report. Jeremy was up by, as I say, a number of votes, a few hundred votes, and declared the winner. I went to bed thinking he was re-elected. I woke up in the morning and all of a sudden I find out that Gary Merasty had won. The circumstances were such that the last poll to report was from a very northern riding on a first nations reserve and the report came in three and a half hours late, after they had obviously known all of the vote counts up until that point in time. And when the ballots were counted three and a half hours later they found an amazing thing. They found, number one, that over 100% of the eligible voters in that first nations reserve voted. I think it was about 103% to 105% of voter turnout. And every single ballot cast was in favour of Mr. Merasty.

Of course, Mr. Harrison thought this was highly unusual, as do I still to this day. I think most reasonable Canadians would think there was something fishy going on there. Probably if you were to be making a haphazard guess as to if there was voter fraud, perhaps someone wanted Mr. Merasty to win, waited to find out what they needed to win in terms of votes, stuffed the ballot box, submitted it, *ergo*, presto, change-o, Mr. Merasty wins.

Your office, I believe, conducted that investigation and the report we got back I think was from the Chief Electoral Officer. Mr. Corbett, it might have been from you, but I think it was Elections Canada that reported back saying they found no evidence of wrongdoing and in fact they thought this was in effect almost a good thing because they were trying to encourage first nations participation in elections so having 103% was a good thing. Why was there more than 100%? They really couldn't enumerate; they didn't know how many people actually lived on the reserve and so to say there was 103% turnout was perhaps not accurate. And then to the point that every single ballot cast was in favour of the Liberal candidate, again, they didn't find anything unusual there, at least nothing to warrant recommending to the DPP a prosecution or a court case take place because Mr. Merasty was a well-known first nations chief, former chief, so therefore it's quite possible that 100% of the people casting ballots voted for him.

I didn't understand there was much of an investigation there. On the surface it would appear to me, and I think to most reasonable Canadians, that something fishy happened.

Can you recall that investigation, sir? And can you shed any light just to satisfy my curiosity, which has been bothering me for the last number of years?

• (2020)

**Mr. William Corbett:** We did put out a press release—

**Mr. Tom Lukiwski:** I remember that.

**Mr. William Corbett:** I have it in my hand here.

**Mr. Tom Lukiwski:** I'm asking you, sir.

**Mr. William Corbett:** The press release is better than my memory.

When you talk about more than those on the voters list voted, that was in fact the case. The voters list was vastly incomplete with regard to the eligible possible voters in that community. I recall the band people being asked why there was such a unanimous vote for one person and the band people's response to that, as I recall it, was

“we told people that they'd get a better deal from the Liberals than the Conservatives if they voted Liberal, and that's what happened”. I don't know that's against the law to call a band meeting and suggest to people how they should vote and which way is in their best interest.

**Mr. Tom Lukiwski:** Did they find out why the delay, why the lapse?

**Mr. William Corbett:** No, I don't remember the delay part.

**Mr. Tom Lukiwski:** It was over three and a half hours.

**Mr. William Corbett:** There were numerous people vouched for in that election who were not on the list. People in that riding had no municipal addresses. They had post office boxes in the next riding, but they lived there. The people running the polls knew everybody in town. They could have vouched for everybody. People didn't have drivers' licences with addresses on them. It was an interesting investigation to review because I didn't know these places existed, frankly, until I read that there.

**Mr. Tom Lukiwski:** In your investigation, did you raise any possibility of voter fraud? Did you consider that as an option?

**Mr. William Corbett:** What kind of voter fraud would you be...?

**Mr. Tom Lukiwski:** Stuffing the ballot box?

**Mr. William Corbett:** No, we didn't find that. We didn't find that.

**Mr. Tom Lukiwski:** I know you didn't find it.

**Mr. William Corbett:** What we found was a lot of bungling and records that weren't made out properly, if you will, administrative problems.

**Mr. Tom Lukiwski:** Was there nothing in your investigation that would cause you to recommend that perhaps the vote should be overturned or perhaps a new election should take place?

**Mr. William Corbett:** No. One thing that surprised me, though, was that the band offered a prize for voters to get the vote out. There was going to be a raffle with a television set, and I thought, well, there's something there. You can't bribe people to vote. We interviewed the band people. The band people said, “Well, you can't get anybody out to do anything around here without a raffle and a prize. It's the way we do things. If you want a meeting, you have a raffle and a prize to get them to your meeting.”

**Mr. Tom Lukiwski:** So let me get this straight. So the band people offered a big screen TV as a prize and encouraged people to vote for one candidate over the other.

**Mr. William Corbett:** No, they didn't encourage people to vote.

**Mr. Tom Lukiwski:** Or said that they would probably get a better deal....

**Mr. William Corbett:** Well, yes.

**Mr. Tom Lukiwski:** To me that's a bit of encouragement.

**An hon. member:** How many inches is your television?

**Mr. William Corbett:** So how do you get the names in the buckets for the draw? Well, the band office is here and the voting is going there, and you sit in the window with the band list and you watch them as they go in. You circle their names. You cut them out. You stick them in a hat and you draw a name, and Mrs. so and so won the television set and refused to speak to us.

**Mr. Tom Lukiwski:** There's nothing irregular there in your opinion.

**The Chair:** Mr. Lukiwski, your time is up and I have no TVs for you.

Mr. Harris, you're up, seven minutes, please. It's great to have you here today, Mr. Harris.

**Mr. Jack Harris (St. John's East, NDP):** Thank you, Mr. Chair, and I'm happy to be here.

And thank you, Mr. Corbett, for your testimony and your story.

I wonder if I can ask you this. Mr. Lukiwski just spent his whole seven minutes asking about an investigation that was closed. I understand that if this were legislation after that was passed, you wouldn't be able to tell us about this investigation that was closed, would you?

**Mr. William Corbett:** I don't know. I'm not familiar with the—

**Mr. Jack Harris:** You're not familiar with the legislation—

• (2025)

**Mr. William Corbett:** I don't know the details of that legislation—

**Mr. Jack Harris:** Let me tell you that what it says is that if an investigation is closed and no charges are laid, the elections commissioner is unable to provide any information or even comment about the investigation. So you wouldn't have been able to tell this story to Mr. Lukiwski after this election has passed. Do you think that's a helpful thing, that if an investigation takes place, if no charges were laid, you couldn't comment on it?

**Mr. William Corbett:** When I became commissioner I was concerned for the fact that we would spend a great deal of money and effort investigating something, conclude that it wasn't a matter that could go to prosecution, and we couldn't say anything publicly. So I said, I'm not going to do that. Where there's a considerable public concern, I'm going to put out at least a press release as to what we found, and that didn't go over very well with the press people at Elections Canada, but I did it anyway.

**Mr. Jack Harris:** But would it bother you that this act would prevent you from issuing such a press release?

**Mr. William Corbett:** I think the public is entitled to know.

**Mr. Jack Harris:** Not only would it prevent you from issuing a press release such as that, but what if you had an investigation and you had concluded there was very serious fraud but that you couldn't lay any charges because people were refusing to cooperate even under the encouragement of people involved in the election, and you couldn't comment on that? Would that be in the public interest for you to be unable to tell the public that there was fraud, but you couldn't identify the perpetrators because no one would cooperate and they were under instructions to do so?

**Mr. William Corbett:** I've never had to deal with that issue and I don't know frankly how I would deal with that issue.

**Mr. Jack Harris:** Well, would it be in the public interest if there's going to be a law to say that you couldn't tell the public about that?

**Mr. William Corbett:** Well, I understand your point.

**Mr. Jack Harris:** Okay.

**Mr. William Corbett:** I like the idea of openness in this line of work, as much as it can be done.

**Mr. Jack Harris:** You've also said that investigations take quite a long time, and that it's difficult sometimes to get to the end of them. Mr. Côté told us that some investigations would be aborted because people could refuse to cooperate. It's almost like advice to people as to how to game the system. Go big so the investigation takes a long time. Tell people to refuse to cooperate, and do your calling outside the country because there's no prohibition against that.

Why would some people craft an elections act that sets things up like that? Do you have any reason why some would do that?

**Mr. William Corbett:** What I was describing, that we don't get the cooperation we should get from people, is a relatively new phenomenon. I found it very discouraging that people would make appointments to be interviewed and then would cancel them.

**Mr. Jack Harris:** I was impressed, Mr. Corbett, with your statement. I agree with you about the 60% of the people who vote who take this very seriously as a sacred right or an obligation. They want to have what you call a fair election, with a reliable result that we call the foundation of democracy.

How can we have a situation where the Securities Commission looking after the management of the stock market in the public interest, the CRTC, and Fisheries and Oceans looking after fish catches can compel witnesses to give information and fulfill an investigation but with this most fundamental, sacred foundation of democracy—having a fair election—enforcers, commissioners such as you were, and your investigators have no right to ensure that the fundamental democracy of our country has the same kind of powers to do the proper job, as you said, in seeking compliance. Does that make any sense to you?

**Mr. William Corbett:** Well, it's my obligation to bring it to the attention of members of Parliament. That's what I'm doing today.

**Mr. Jack Harris:** So, you don't see any reason why this should be any different? In fact, I would suggest to you that you probably think that elections and fair elections being run properly are of far more significance than some other aspects of our society.

• (2030)

**Mr. William Corbett:** That's what I believe for sure. This is much more important legislation than, say, the Fisheries Act, or I don't know what others. This is where democracy begins.

**Mr. Jack Harris:** So, Mr. Corbett, I do have one question that disturbs me. The recommendation of the Chief Electoral Officer, in terms of the example you referred to of robocalls, is that the information be required to be kept for one year. Is that sufficient time? For example, if an investigator decided now that they needed access to the CIMS data from the Conservative Party going back to just before the last election, in April of 2011, there would be no problem if that didn't exist. But there could be the possibility that information would be required more than a year after an event, could there not?

**Mr. William Corbett:** I don't know that we've looked at enough events yet to determine that. We got complaints about robocalls, as you know. The first thing we would want to know is what kind of message the complainant got. Did they get the phone number of the person calling them? Is there some way we can confirm what they're saying to us? The complaints were not exactly all the same. We have to confirm the complaint is real before we're going to move on it.

So, I would presume an investigator would be quickly looking for the information in the data bank. If investigators had ready access to it, they could sort out the complaints if the person doing it had registered. But frankly, we just haven't had enough experience with it yet.

**The Chair:** Thank you, Mr. Harris. You are over your time.

We'll go to Mr. Simms for seven minutes, please.

**Mr. Scott Simms (Bonavista—Gander—Grand Falls—Windor, Lib.):** Mr. Corbett, thank you for coming.

When I first looked at this bill, I saw the moving of the office into the DPP as an exercise in independence. But as I spoke to people and in doing a little bit of investigating, I realized that maybe that's not such a good thing, because it's more like an exercise in isolation. Also, from some of the stuff you said earlier, it seems to me that if you're working as the chief investigator and you're looking at getting all the information that you can, a lot of this information comes from DROs, poll clerks, and auditors—at least in the evidence that I see.

**Mr. William Corbett:** Yes.

**Mr. Scott Simms:** Even though the government says you would have every right to go to them, the access is not readily available. It seems to me that as an investigator within Elections Canada you exercised your independence, but at the same time you were able to see the red flags that went up from polling stations and divisions across this country.

**Mr. William Corbett:** I'm not sure whether you're talking about the monitoring role or the investigation role here.

**Mr. Scott Simms:** I mean the investigation.

**Mr. William Corbett:** Elections Canada has a warehouse full of paper after an election. It is all bagged, and you sort through it to find this, that, and the other thing. That's available, but we need elections people to find it for us in the warehouse in order to get into it, to get access to it. This wouldn't necessarily be hindered if you were outside.

I'm more concerned about being able to draw on the expertise. Elections Canada is the only centre for federal election expertise in the country, if you want the lawyers and want to know how they do

business, if you want to know how they run the election, if you want to know what the auditors are doing and how they apply the law.

This is what I would call applied law, not theoretical law. This is a statute that somebody has to implement in a real-life scenario. It's a learning experience in this organization for investigators: how do they do business? You want to be able to draw on the people who have been doing it for some time.

**Mr. Scott Simms:** Does this go to what you said earlier, which I thought was very interesting, when you said that for the commissioner it's not about the prosecution as much as it is about compliance?

**Mr. William Corbett:** Exactly.

**Mr. Scott Simms:** That's what plays into this, because they have that field around them whereby they can go back and forth with the people who do the fieldwork, such as the auditors.

Would you agree, then, that this is an exercise in isolating a particular office?

• (2035)

**Mr. William Corbett:** Well, it's going to isolate it. Whether or not it's aimed to do that, it will.

We've had situations in which there was clearly a violation of the act. We went to the political party and said, "Here's what you have to do to make it right", and they said yes, we will. And they did. So we went into a compliance agreement with them rather than a prosecution. This is the idea of getting compliance without prosecuting.

My colleague Mr. Côté is dead right. If you get into the criminal courts, the judge will have attempted murder sitting here, and other cases sitting there, and you're bringing him an Elections Act case. There isn't a lot of interest, if you want to know the truth.

**Mr. Scott Simms:** You mentioned that the DPP is far more concerned with Criminal Code offences than with this, which really involves a totally different mindset, if you consider the compliance issue.

**Mr. William Corbett:** Exactly.

I'm concerned about the adversarial context that I see coming into elections matters from time to time, and I'm concerned that we have to prosecute.

Do you have any idea how many offences there are in the Elections Act?

**Mr. Scott Simms:** I have a fair idea.

**Mr. William Corbett:** It's something in the vicinity of 200. Are we going to prosecute everybody for everything? Of course not; we can't possibly do that.

The person I feel the sorriest for is the official agent, who has to put these things together after the campaign is finished and everybody has gone home and all the euphoria is gone. Some of them are absolutely overwhelmed—well-meaning, well-intentioned people. I've had accountants write to me and say, "I can't possibly sort this mess out and I'll never be an official agent again." If you can simplify life for those people, that would be a significant step forward.

I'm off the topic now.

**Mr. Scott Simms:** No, that's quite all right. You're well within the scope of what we want to hear. I think the ability to compel a witness's testimony, as touched on by the current commissioner earlier—you made reference to the robocalls affair—is a very essential part of the job, in light of what you said about the situation, even now. The separation of that office into DPP probably makes the power to compel testimony even more important.

**Mr. William Corbett:** I would think so. I don't want to dwell on robocalls too much, but we had no idea what can be done on the Internet by way of triggering 100,000 calls for a very small price. I don't know what's coming next.

**Mr. Scott Simms:** I don't know whether you have any comment about this, but recently I was reading about the necessity of reporting to CRTC concerning scripts.

Do you care to comment on that? When it comes to compliance, do you think that's an effective measure?

**Mr. William Corbett:** I don't know; I don't even know the details of this legislation. I don't know it that well. I'm sorry; you'll need someone else to answer that.

**Mr. Scott Simms:** That's okay.

But looking at this situation in total, when you were commissioner and as ex-commissioner, did anyone come to you officially from the government to ask, is this really effective?

Would the powers that are currently held within the Competition Act be something that would have benefited you in your investigations? No one has really discussed that.

**Mr. William Corbett:** No, I wouldn't say so.

I'm delighted to see the penalties becoming more substantial and being brought more in line with regulatory penalties in other legislation. It's not quite a full step, but it's certainly a decided improvement. There is nothing worse than spending a pile of money investigating an offence with a \$5,000 fine.

**The Chair:** Thank you, Mr. Simms. You can get your question in before your time expires, but I don't give you another one. Thanks.

Next is Mr. Van Kesteren.

Welcome to the committee tonight; it's good to have you here.

You'll have four minutes.

**Mr. Dave Van Kesteren (Chatham-Kent—Essex, CPC):** Thank you, Chair.

Four minutes? Well, I'll try to be quick. I thank you all for this opportunity.

I wasn't going to say anything, until I heard Tom's story. It reminded me of one of my own.

Mr. Corbett, I don't know whether I agree—as a matter of fact, I really don't agree—with you when you suggest that all elections in Canada are fair and honest. I think for the most part that's correct, but I was thinking of this little phrase, "Eye hath not seen, nor ear heard" what people's imaginations will conjure up.

Back in 2004, the first year I ran, I was one of those who was narrowly defeated, by 403 votes or something like that. I was as green as grass; I had never run in an election before and had never been involved in one.

Somewhat dejected and depressed, we went back to the drawing board and looked at the polls and dug up and started to look at all those numbers. We noticed one particular poll in which, doggone it, we were wiped out—not close, but wiped out 53 to 2, or 60 to 2, whatever it was. It was somewhat depressing. The obvious question was, what are these polls? Well, they were nursing homes. I ask you, because I know the answer and I hope you have the same answer...

Surprisingly, the next time around we put people inside those nursing homes and, doggone it, I think we won most of those nursing homes.

I want to go back to what you were saying about prosecution and taking it out. I would think, being just like everybody else who would be somewhat fearful and nervous about doing something wrong, that if there were repercussions or if there were something that might result in a little bit more than what Mr. Lukiwski was saying about the act—that nothing had really happened—I'd be reluctant, if I were involved in a scheme like that.

Wouldn't you agree that this kind of change in the Elections Act might prevent that sort of fraud from ever happening again?

• (2040)

**Mr. William Corbett:** I'm sorry; changed to what, again...?

**Mr. Dave Van Kesteren:** Let's call it hanky-panky. Let's just call it those little irregularities that people have conjured up through the years. If you were working inside a polling station, wouldn't you think that people might be a little afraid of pulling off something like that?

**Mr. William Corbett:** Do you mean if there were an offence?

**Mr. Dave Van Kesteren:** Yes. Well, it's an obvious offence.

**Mr. William Corbett:** You'll have to give me a better definition of the offence here, but in the polling station there are numerous people watching what goes on, including scrutineers from the political parties, are there not?

**Mr. Dave Van Kesteren:** We didn't have scrutineers on that particular...

Okay, we can argue that it was my fault. You're right; I probably should have had scrutineers. We didn't have the people; we were new at this game.

But whether or not there were scrutineers present, isn't it wrong to take some old folks who—I'm guessing—really didn't know what day it was, let alone who they were going to be voting for—?

**Mr. William Corbett:** Yes, it is. It's influencing the vote.

I presume there is an offence in the act, among those 200, that might fit it already. I think there is a genuine case for concern about how voting is conducted at nursing homes.

**Mr. Dave Van Kesteren:** Would it be possible that if we were better able to identify those things, and if the repercussions were such that it might be a little bit more than...? I'm just trying to think

**Mr. William Corbett:** A fine of a little more than a couple of thousand dollars....

**Mr. Dave Van Kesteren:** Yes.

**Mr. William Corbett:** Yes. That's what your legislation will do now. It will make the penalties more severe. I believe there's an offence for that already.

**The Chair:** Thank you, Mr. Van Kesteren.

We'll go now to you, Mr. Scott, for four minutes. Apparently Madam Latendresse is giving you all her questions.

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

Thank you, Mr. Corbett, for being here.

One piece of your testimony that I thought was extremely important, because frankly I don't think we've heard it before, is your description of the involvement of the staff of the commissioner of Canada elections on E-Day itself, their role in working with Elections Canada staff—

**Mr. William Corbett:** It's the election period, the whole 35 days—

**Mr. Craig Scott:** —for the election period, the whole 35 days, and their role and that kind of troubleshooting and scouting of irregularities. You asked who will do it now that this symbiotic link with Elections Canada is gone. I believe you said, flat out, “Well, the DPP won't be doing it.”

**Mr. William Corbett:** That's right.

**Mr. Craig Scott:** So who will?

**Mr. William Corbett:** As I say, it would have to be picked up presumably by Elections Canada, without the assistance of investigators.

I'm not talking about a couple of our investigators; we had everybody there every day for 35 days. It was a full-court press on this. And these are matters, as we say.... Can we can we deal with them right away to keep things fair? I don't know. I don't know....

• (2045)

**Mr. Craig Scott:** This question is only semi-rhetorical. Do you think the unintended result of the move of the office to the DPP is going to enhance our electoral process?

**Mr. William Corbett:** Well, you need a regulator during that 35-day period of time, engaged, and the benefit from investigators, I would submit, sir, is that they're good at it. They're skilled at it. They're 30-year veterans of police forces and dealing with people and getting municipal police forces to help out. When an investigator phones and says they want to talk to you about something, generally speaking the head of a condominium corporation will listen to them. They're very good at getting things done.

**Mr. Craig Scott:** I guess it's a sad thing that—

**Mr. William Corbett:** If there's someone else who can do it, I'd be pleased to hear it.

**Mr. Craig Scott:** Right, but it's kind of a sad thing when such a major consequence as that would emerge from a completely unnecessary move of an office to another area of the capital, due to reasons that seem to amount to not much more than a having hate-on for the Chief Electoral Officer.

**Voices:** Oh, oh!

**Mr. Craig Scott:** I want to ask you about another closed investigation. It's something called the in-and-out expense laundering scheme. Are you aware of how the mechanics of that were discovered? Did it have something to do with having access to candidate-level returns or returns at the district association level?

**Mr. William Corbett:** It had to do with audit work on campaign returns—

**Mr. Craig Scott:** Exactly.

**Mr. William Corbett:** —large numbers jumping off the page.

**Mr. Craig Scott:** So there were large numbers jumping off the page, but the office in question did not have access to the national-level documentation and receipts, to any party documentation and receipts. Is that correct?

**Mr. William Corbett:** That's correct.

**Mr. Craig Scott:** Would you say that the lesson from how the Conservative Party's in-and-out expense laundering scheme was discovered would be that it would be beneficial if the Chief Electoral Officer had access to national-level documentation and receipts for national campaigns?

**Mr. William Corbett:** I'm sure the Chief Electoral Officer would agree with you on that point, but it wasn't vital in that particular case.

**Mr. Craig Scott:** Not in that case....

**Mr. William Corbett:** There was so much other information available.

**Mr. Craig Scott:** Okay.

Thank you so much.

**The Chair:** We'll go to Mr. O'Toole for four minutes to finish this round.

**Mr. Erin O'Toole:** Thank you, Mr. Chair.

Thank you very much, Mr. Corbett, for your time and your experience. It was very interesting.

I have a couple of questions based specifically on your comments. I'm going to take you through a couple of those comments before asking the questions that arose from them.

You said first that in your experience, both in Justice and within the commissioner's office, it was unusual for investigators and prosecutors to be housed together. You also said that the relatively small office of the commissioner—I think you said there were 20 people—relies heavily on Elections Canada resources, so it's a small unit housed within a larger one and totally reliant on the resources.

You talked about the legal experts. There's a question I have on that. The legal experts you rely on, do they advise both the commissioner and the Chief Electoral Officer and the administration side?

**Mr. William Corbett:** They could, but in fact I don't believe they were. We had legal officers working with us pretty much all the time, individual, but the same legal unit looked after all the legal matters. Elections Canada was concerned that whatever legal position Elections Canada took was reflected in our office as well.

**Mr. Erin O'Toole:** You also said one of the reasons you found it unusual for investigators and prosecutors to be together was that the regulatory statute was at issue, and the goal of the Elections Act is compliance. Is it fair to say that the investigation side is less rooted in that goal and more in looking at the 200 infractions you mentioned after the fact?

• (2050)

**Mr. William Corbett:** No. As I say, if we can get compliance without worrying about the infractions, we're interested in doing that. That is fostered when witnesses do talk to us and tell us what's gone wrong and what's happened. That's the first step towards a cooperative and perhaps a compliance agreement and no referral at all. Compliance agreements are dealt with by our office alone. When people are cooperating and telling us what's happened, that's good faith, right off the bat.

**Mr. Erin O'Toole:** I'm glad you mentioned that. I'm glad to say I'm not personally familiar with the compliance agreements, but you talked about them in your testimony. In those cases where there's been an investigation, will the commissioner himself, with the investigators and the team, determine whether a compliance agreement is appropriate in that situation?

**Mr. William Corbett:** Yes.

**Mr. Erin O'Toole:** Is the Chief Electoral Officer consulted in those decisions?

**Mr. William Corbett:** No.

**Mr. Erin O'Toole:** Then to be clear, the commissioner's team will be involved in the investigation, decisions about prosecution, and

even decisions about settling potential prosecutions, and all of that is housed within Elections Canada.

**Mr. William Corbett:** Not decisions about prosecutions. We do an investigation. Compliance agreement fits best with a minor matter as opposed to, say, voter fraud or other things. Can I give you an example? Overspending on a campaign by a certain number of thousands of dollars. We're not taking that to prosecution.

**Mr. Erin O'Toole:** That's a good example, because I think we're all familiar with a few cases of some of those agreements even with the current Parliament.

**The Chair:** Your question has now run out of time. It's very close to nine o'clock in the evening and I think we'll let Mr. Corbett go for the evening.

Thank you very much. Mr. Corbett, anytime you want to meet and have a coffee, I could listen to your stories most of the day.

**Mr. William Corbett:** I have to tell you that as an outsider, it was an experience and an education on the electoral process for me to be there.

**The Chair:** Thank you so much for coming tonight.

Members of the committee, we are here tomorrow night at 1 Wellington from seven o'clock through till 10 or later.

Anything else for the good of the committee?

Seeing nothing, we are adjourned.

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