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# **Standing Committee on Access to Information, Privacy and Ethics**

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**EVIDENCE**

**Thursday, August 14, 2008**

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**Chair**

**Mr. Paul Szabo**

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## Standing Committee on Access to Information, Privacy and Ethics

Thursday, August 14, 2008

•(1000)

[English]

**The Chair (Mr. Paul Szabo (Mississauga South, Lib.)):** Order.

This is meeting 49 of the Standing Committee on Access to Information, Privacy and Ethics. Our order of the day is a motion adopted by the committee that states:

That the Standing Committee on Access to Information, Privacy and Ethics investigate the actions of the Conservative Party of Canada during the 2006 election, in relation to which Elections Canada has refused to reimburse Conservative candidates for certain election campaign expenses in order to determine if these actions meet the ethical standards expected of public office holders.

This morning we have witnesses, first, from the Public Prosecution Service of Canada. We have with us Madame Chantal Proulx, who is the acting deputy director of public prosecutions; and Mr. Don Beardall, the senior counsel. Then, following that, we have the Chief Electoral Officer.

I would ask the clerk to please swear in the witnesses.

Colleagues, Mr. Brian Saunders, who is the public prosecutor, discussed with me late last week the possibility of being able to make a brief opening statement by Ms. Proulx simply to advise the committee about who they are and what their responsibilities are, so that we are guided. I would like to ask the committee for its approval to permit a brief five-minute opening statement by Chantal Proulx with regard to introducing the public prosecutor's office. Would that be acceptable? Thank you.

After that, we'll move directly to questions.

Thank you kindly for appearing. Madame Proulx, I know you and Mr. Beardall are aware that in appearing before a committee you are covered under parliamentary privilege and that nothing you say before this committee can be used against you in any other proceedings. I know you're well aware of that, and I would like to simply ask you to proceed now with your opening statement as approved by the committee.

Mr. Tilson, you want the floor?

•(1005)

**Mr. David Tilson (Dufferin—Caledon, CPC):** I just want to ask you a question. I have seen the orders of the day. Is Mr. Mayrand coming this morning or is he coming this afternoon?

**The Chair:** He will come before us on completion of the public prosecutor's office. He will be here momentarily.

**Mr. David Tilson:** Do we have a timeframe for these witnesses, or how are you conducting this meeting this morning?

**The Chair:** We're going to hear from the witnesses, and as you know, the committee is the master of its time schedule. We will deal with these witnesses until the members have satisfied themselves that they've asked their questions. We'll excuse them and then bring Mr. Mayrand. So I can only speculate on how long that will be.

**Mr. David Tilson:** Okay, that's fine. Thank you.

**Mr. Gary Goodyear (Cambridge, CPC):** On a point of order, please, Mr. Chair, we have a witness here, Mr. Sam Goldstein, who I just heard present himself to you. He has explained to me that he received his summons at 4:30 on Monday to appear here on Tuesday. He called the clerk and said that wouldn't be possible on such short notice. He's here now, and I heard you tell him to go and sit at the back of the room.

I'm requesting that he be allowed to sit and testify and that you inform us if any side deals have been made with these witnesses or any other ones.

I'm asking you, sir. We have room for this witness.

I suppose I should ask the committee to allow a medium change in the procedures to put one more witness at this table so we can hear more than half the truth.

**Some hon. members:** Agreed.

**The Chair:** Just a moment.

**Mr. Gary Goodyear:** You can't go out to the media and say people who were summonsed didn't show, when you're not allowing people who were summonsed to sit at the table.

**The Chair:** Order, colleagues.

Mr. Goldstein is the past candidate in the riding of Trinity—Spadina. I think I should simply advise the committee what transpired in our contacts.

He was left messages on July 28. He finally got back and said he was only available on August 12, which was two days ago. He wanted to be paid up front for his expenses and said he would decide whether to come or not. He asked how many people were coming and if people were being summonsed. We heard nothing further after that. On August 1, I issued the summons. I sent the summons to Kilrea and associates. On August 11, Mr. Goldstein contacted us and said he had received his summons. On August 12, he called again and said he would not appear on his scheduled date. That was two days ago. He said he would not appear on his scheduled date—that being August 12—but would rather come on Thursday.

So we have a situation here where we have had contact with this honourable gentleman, and he did not agree to appear on the date we asked, and so it's up to the committee to determine whether or not....

After we made the determination of the availability of witnesses, we grouped witnesses of like persons so that candidates and official agents would be together, so that questions wouldn't have to be repeated in different panels if you could have like people together, candidates and official agents together.

So we're faced now with a situation where we have the public prosecutor's office. The questions to them will have nothing to do with a candidate per se. Following that, we have scheduled Mr. Mayrand. These two items will take at least, I would think, until 11:30, maybe 12 o'clock, and then we have our meetings with regard to our business for dealing with Mr. Martin's question about discussing our plan to deal with witnesses who did not appear, as well as to discuss future witnesses and future meetings. So that is our plan for the day.

Mr. Goldstein happens to be here. I wasn't aware, but he is here, and some honourable members would like to hear from him today. Now, it's up to the committee to decide whether it will slot him in somewhere and where.

• (1010)

**Mr. David Tilson:** In light of that, Mr. Chairman, I move that Mr. Goldstein be welcomed to the witness table now.

**The Chair:** I'm sorry, we had a list. The first on the list was Madam Redman.

**Mr. David Tilson:** Yes, but I have a motion. I've made a motion.

**The Chair:** The first person I have to recognize—

**Mr. David Tilson:** You asked the committee, Mr. Chairman, and in response to that I made a motion. You asked the committee and here is a motion. Let's have debate on it.

**The Chair:** I understand that, but I have a speakers list, sir.

**Mr. David Tilson:** But a speakers list on the motion?

**The Chair:** I have a speakers list to be recognized after I—

**Mr. David Tilson:** A speakers list on what?

**The Chair:** On the matter of how to deal with Mr. Goldstein.

**Mr. David Tilson:** Well, I've made a motion, Mr. Chairman.

**The Chair:** I understand that, but you were not—

**Mr. David Tilson:** Well, you can't just have a little chat with Mrs. Redman. The issue is, there's a motion on the floor.

**An hon. member:** The motion is on the floor.

**The Chair:** Maybe Mr. Goodyear would concur that before you can make a motion you need to be recognized and have the floor, and you did not, sir.

**Mr. David Tilson:** You recognized me.

**The Chair:** No.

**Mr. David Tilson:** Yes, Mr. Chairman, you had invited questions from the floor, and I made a motion.

**The Chair:** I had a list already. It's not I who had a list; the clerk has—

**Mr. David Tilson:** Normally you have a list for something, and you don't have a list for something. Is it a list to have a chat?

**The Chair:** With regard to the matter I was addressing, I concluded by saying that I needed instructions from the committee. The members who had already asked—Madam Redman, Mr. Proulx, Mr. Martin, Ms. Lavallée.... Mr. Del Mastro had already put his name in, and now, sir, you're asking that your name be put in as well. I'm going to follow our normal practice and take members in the order in which they asked to appear on a list on this matter.

Our first person on the list is Madam Redman.

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

I think it's wonderful that Mr. Goldstein is here, and I think we should hear him. However, I suggest that it would be more appropriate to make the same offer to Mr. Goldstein as you made to Mr. Finley when he showed up at a time other than when he was scheduled, and that is that we would hear him after we've heard the scheduled witnesses.

So I would suggest that we hear from these witnesses and Mr. Mayrand, and when they're done, then we could schedule having Mr. Goldstein come to the table and at that point in time hear his testimony.

And I would like to raise a point of order after we have resolved this.

**The Chair:** I think that sounds like a very reasonable accommodating suggestion, that after we deal with the two scheduled witnesses, we would then hear from Mr. Goldstein. And we'll go to—

**An hon. member:** We have two possible—

**The Chair:** No, this is one. Our witnesses are the public prosecutor, the electoral officer, and then Mr. Goldstein. Is that acceptable?

**An hon. member:** Of course not.

•(1015)

**Mr. David Tilson:** How is your list coming, Mr. Chairman?

**The Chair:** That's the suggestion.

Mr. Proulx, do you want to make—

**Hon. Karen Redman:** That was a motion. I moved that.

**The Chair:** That was a motion? Okay.

**An hon. member:** I'm on the speakers list. I demand to be noticed.

**The Chair:** I understand that.

**Mr. David Tilson:** I want to know about the list, Mr. Chairman.

**An hon. member:** I want to speak to the motion.

**Mr. David Tilson:** How's your list coming?

**The Chair:** Madam Redman has moved that we hear from Mr. Goldstein after the two witnesses, which is the same arrangement we had offered to Mr. Finley.

**Mr. Marcel Proulx (Hull—Aylmer, Lib.):** I agree with Ms. Redman's suggestion and motion.

**The Chair:** Our next one is Mr. Martin.

**Mr. Pat Martin (Winnipeg Centre, NDP):** I wish we didn't have a motion to that effect on the floor, but I will speak to the motion if that's the basis on which I've been given the floor.

I feel strongly that we should finish the scheduled agenda for today and then consider whether or not to hear Mr. Goldstein, following the same reasoning as we had with Mr. Finley.

You don't get to pick and choose when you appear before our committee. We accommodated him and gave him the date that he said was most convenient—in fact, the only date he said he was available, August 12. That's when he was scheduled. He chose not to be here. His official agent was here and gave a lot of very valuable, important testimony. It was very balanced testimony. The story of Trinity—Spadina's election campaign has been heard, in fact, so there's no compelling, pressing reason to stop us in our tracks and entertain Mr. Goldstein because he feels he wants to speak today.

I'm very concerned that his testimony, given the way he's conducted himself so far, is going to be fairly inflammatory and maybe even disruptive to the committee's work.

And I have the same point as I wanted to make yesterday. We want to book a considerable amount of time today, which may be the last day we have to deal with these matters for weeks, to study and hear from the law clerk to determine just what steps we take to sanction those witnesses who thumbed their noses at our committee and chose to ignore the summons. That's going to take a fair amount of discussion and a fair amount of conversation, because it's a complicated method, as you expressed, Mr. Chairman.

I'm concerned that we will be out of time after we thoroughly deal with the Director of Public Prosecutions. I have many questions for the Chief Electoral Officer. I think that will take us at least the morning session, and I want the afternoon session reserved for the business that we were promised today and that we prepared for.

No one could have foreseen that Mr. Goldstein was going to show up today and ask to be heard. If we are going to be generous and try to accommodate him today, then maybe after the afternoon session, which would probably be from two o'clock to 3:30 or even two to four o'clock—maybe at four o'clock—we could hear Mr. Goldstein and get it in today, but not before what you promised us would be, and what we agreed would be, the agenda items of the day.

So I speak against Madam Redman's motion for that reason. In fact, I would put an amendment to the motion: that we make legitimate efforts to hear Mr. Goldstein today after the scheduled agenda items that were promised to us yesterday.

**The Chair:** That amendment is in order.

So that all colleagues understand, we'll now be addressing the amendment, but certainly in the context of the whole motion. In both instances, whether the amended motion or the motion as it stands passes, Mr. Goldstein will be heard today. It's just a matter of whether it will be after Mr. Mayrand or after we finish our committee business this afternoon.

Moving on with our list, I'll go to Madame Lavallée.

[Translation]

**Mrs. Carole Lavallée (Saint-Bruno—Saint-Hubert, BQ):** Mr. Chair, it does seem somewhat cavalier for a Conservative party worker to appear here after being invited to appear on a different date, so he appears here without giving us notice, at the last minute, and asks to be heard right now, squeezing the witnesses we had already scheduled for hearing. It is hard to imagine that we can continue to operate like this in this committee.

We do, however, clearly sense a Conservative philosophy behind this, the philosophy of people who always seem to be above the law, above the rules, and can do what they see fit and talk at the same time as other people, with no manners...

You have no manners, Mr. Del Mastro. I am speaking. When you speak, I always listen to you. So I would like you to do exactly the same thing. Thank you.

So I was saying that this is part of a Conservative philosophy, to have no manners and appear without letting anyone know.

That being said, we do have manners. So I think we should hear him, in fact. I was preparing to amend Ms. Redman's motion when Mr. Martin did it. So we will agree to that amendment being adopted. Thank you.

•(1020)

[English]

**The Chair:** Mr. Del Mastro.

But before I go there, I'm sensing there's a little animation going on here while people are making their interventions. Let me be straight. There's a little bit of heckling going on here, and people are throwing....

Like this, Mr. Del Mastro. Exactly like that. When somebody has the floor, somebody like you jumps in and tries to disrupt or deflect attention.

I'm now asking members to please restrain themselves when another member has the floor. Do not interrupt, because it means that other members can't hear what's being said. Other people here who are following these proceedings cannot hear because members are throwing in throwaway remarks and gratuitous heckling for no reason whatsoever. And I want it to stop. Understand that, all honourable members. I want it to stop.

Mr. Tilson, you have the floor. Oh, are you still on? Okay, carry on, and then we'll go to Mr. Tilson.

**Mr. Dean Del Mastro (Peterborough, CPC):** I'd like to move a subamendment to the amendment, which is that we hear Mr. Goldstein immediately.

Mr. Chair, if you want to know, Mr. Martin pointed out yesterday why he's the cussing cowboy over in the corner, and it's because you're the architect of this disaster. You could have told Mr. Goldstein when he arrived, "Yes, I believe it's entirely unreasonable that you received a summons Monday late afternoon to be here Tuesday. We appreciate that you made the arrangements to come to Ottawa to provide your testimony." This is an opposition witness, the jury's witness. None of our witnesses were even allowed. Now they're telling him, "Thanks for coming. We don't want to hear from you."

**The Chair:** Order, sir.

There's an important point here that I want you to be aware of. Mr. Goldstein confirmed to us that the only date he was available was August 12, and that's where we slotted him. This is a change to us. This is not what we expected. We slotted him there. We slotted him on the date he preferred, and now we have this other situation.

**Mr. Dean Del Mastro:** Mr. Chair, you just told the committee, I would say probably 10 minutes ago, that subsequent to receiving his summons he was in contact with the clerk and said he could be here Thursday, not Tuesday. So you have known that for several days—again, something you've withheld from the balance of the members of this committee.

Now we have people saying they don't want to hear from this witness. People are saying we need to sanction people. Well, it's entirely unreasonable. You either want to hear from your witnesses, the opposition either wants to hear from its witnesses—we know they didn't want to hear from ours—or they don't. Which way do you want it? Let's hear from him right now.

Thank you.

**The Chair:** Sir, could you please put your subamendment in writing so that the clerk has it? I want it put in writing.

**Mr. Dean Del Mastro:** Can I see the original motion in writing, please?

**The Chair:** We have the motion and the amendment. I just want to—

**Mr. David Tilson:** Do you have them in writing, Mr. Chairman?

**The Chair:** Yes.

**Mr. David Tilson:** How come you have them?

**The Chair:** Well, they have to be translated.

Mr. Tilson, you have the floor on this. There's a motion, an amendment, and a subamendment, but I think the issue is all one. So if you'd like to provide your input—

**Mr. David Tilson:** No, I don't think I can add to this wonderful debate.

**The Chair:** Okay. The next person on the list is Mr. Lemieux.

**Mr. Pierre Lemieux (Glengarry—Prescott—Russell, CPC):** Thank you, Chair. I would like to comment on this.

This witness should be heard now. You've made a huge fuss about the appearance of witnesses and witnesses not appearing. You've made a huge fuss about your summonses, the summonses you issued. You've gone to the media with all your concerns. You've played it up in the media. And now we have witnesses coming, responding to the summons, and you're brushing them aside: "Take a seat in the back."

We have Mr. Martin, who wants to put aside a lot of time to discuss the issue of summonses and people not coming. But I think anybody, any Canadian, would realize that if someone received a summons on Monday afternoon in Toronto, to expect them to be in Ottawa on Tuesday morning is not practical. It's not realistic.

You might say that he offered back in July that August 12 was free, but from the time he said that and you delivered a summons to him, his schedule probably changed. I don't know about your schedule, but my schedule changes. I had to make changes to my schedule, and my schedule is constantly changing. Maybe he can enlighten us, but I think we have to hear from him on this matter.

What I want to say, sir, is that you have made a huge fuss here in committee and to the media about witnesses not appearing and about summonses you've issued. We've had Doug Finley come in front of us, and you turned him away. This is the campaign manager at the national level. You turned him away. "He's not our witness." You turned him away.

We have a gentleman who has been summonsed by you to appear here today and you're turning him away. You're throwing him to the back, as are the opposition. And this after Mr. Martin wants long healthy discussion on what we should do about people who don't respond to summonses.

That's my point. We should hear from the witness now.

•(1025)

**The Chair:** To be clear, Mr. Lemieux, you talked about "you", the chair, has done this, and "you", etc. I would like to inform you, if you weren't aware, that the decision not to hear Mr. Finley when he arrived on Monday was voted on by the committee. The committee decided not to hear him then.

I have not dismissed Mr. Goldstein as you said. Please don't put words in my mouth.

**Mr. Dean Del Mastro:** [Inaudible—Editor]

**The Chair:** Well, because we have a witness in front of us. I can't be having a conversation.... I don't know why you're interrupting me again in the middle of my statement to the committee.

**Mr. Dean Del Mastro:** [*Inaudible—Editor*]

**The Chair:** Again you're interrupting, Mr. Del Mastro. I'm speaking to Mr. Lemieux. I'm asking you specifically, sir, please don't interfere. Don't interrupt when others have the floor.

As a consequence of Mr. Goldstein coming, which was unknown to me, I have asked the committee to consider what they would like to do in this situation. We have motions before us now—a motion, an amendment, and a subamendment, Mr. Lemieux—and these are all by the committee.

I am asking you, please, not to say that I did anything. I follow the instructions of the committee. Don't blame the chair when there are motions that are put by members and voted on by the members of this committee.

**An hon. member:** I have a point of order, Mr. Chair.

**The Chair:** Please do not say the chair is doing anything unilaterally. I've heard this far too often. I won't take that anymore. The chair does not run this committee; the committee runs the committee.

The next person after Mr. Lemieux is Mr. Goodyear.

**Mr. Pierre Lemieux:** No, no. I'd like to respond to that, Chair.

**The Chair:** No. I'm sorry, there's no debate. You finished your statement and I'm correcting you, sir. You misled people about what was going on here, sir.

**Mr. Pierre Lemieux:** No. This is what I want to clarify.

**The Chair:** Order, order.

**Mr. Pierre Lemieux:** Order to you, sir.

**The Chair:** You don't have the floor, and don't say “order” to the chair.

**Mr. Pierre Lemieux:** This is the problem with this committee, the way in which you're operating it.

**The Chair:** You don't have the floor, sir, and I'm asking you to behave yourself and stop interrupting. We have another colleague who has the floor.

**Mr. Pierre Lemieux:** It's a kangaroo court.

**Mr. Paul Szabo:** Stop interrupting, Mr. Lemieux.

Mr. Goodyear, please.

**Mr. Gary Goodyear:** Mr. Chair, I will debate the amendment. But before I do that, Mr. Chair, you know full well—well, maybe you don't know full well—that the chair is here to oversee the proceedings, not to steer the committee and offer his defence of his actions at every opportunity.

Mr. Chair, in the last number of meetings on this issue you have spoken 420-something times. If you divide that by the time we've spent on this issue, you yourself have participated about every 90 seconds. That's steering a committee, not overseeing it.

Now, to the point of the amendment—and I'm going to appeal to the committee—I want people to know that when the chair says, “the

committee did this”, if you look at the records, it's the tyranny of the majority. However, I'm appealing now to the tyranny of the majority.

Please hear me out. Please, Mr. Proulx.

We had Mr. Doug Finley—not even our witness—show up on Monday. He told the committee that he couldn't come at the time agreed upon. He was offered another time, but he wasn't able to appear at that time. There was an opening for him to sit at the table because a witness didn't show. So there was no reasonable need to not hear Mr. Finley.

We have a gentleman at the back of the room who was summonsed. The fact is very simple. It's a very simple thing. The gentleman was summonsed. He tried to make an accommodation to appear. I would suspect—I'm quite sure—when we speak with Mr. Beardall, who obviously is a senior counsel with an extremely busy schedule, that some accommodations were made, as all chairs make with all witnesses.

We have a gentleman here. We have a seat sitting right there. This gentleman's doing his best to honour the summons in the best way he can. This gentleman is not unemployed. He doesn't have freedom every single day. Mr. Martin might think it means nothing for people to cancel their clients or their patients, to tell their patients, “I'm sorry that you're ill; we'll have to see you another day.”

This is ridiculous. The gentleman's here. It's plain and simple. He's not the witness of the committee; he's your witness. None of our witnesses were allowed by the committee to be here. And we want to hear from your witness.

Is it possible that because the testimony of your witnesses so far is going so badly for you—they're proving our case—you don't want to hear from this witness?

Now, I'm hoping I'm wrong on that. And you can prove I'm wrong on that by allowing this gentleman his right to tell his story, the story you originally wanted to hear, right now, not later. Because—I'm going to tell you something the chair mentioned yesterday—once Mr. Mayrand is up, he's here to close. He's here to wrap it up, to hear any questions we have outstanding. And that, to me, means—you know what?—this game's been planned all along.

I absolutely feel that it's a simple thing. I do not support the original motion. I think this witness was called by the opposition.... Mr. Chair, you summoned the witness. You failed to make reasonable accommodation. The witness is here. There's room. There's time. There's no reason not to hear this witness immediately.

I support the subamendment. I will not support the motion.

● (1030)

**The Chair:** We'll go to Mr. Pacetti.

**Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.):** Thank you, Mr. Chairman.

I'm relatively new, and I feel an air of compromise. Perhaps I can help. I'm going to make a quick point, maybe just a friendly amendment.

Seeing as Mr. Tilson was looking at putting slots in, perhaps after we hear the witnesses that have been called, out of courtesy to them, we can ask Mr. Goldstein, but we slot him in for half an hour, between 12 o'clock and 12:30, before our lunch break. Maybe everybody would be open to that compromise.

The only thing is that I also feel strongly about what Mr. Martin said about the fact that we aren't ready for him, and perhaps our questions will not be as in-depth as we would like. Perhaps we have an option to call him back at a later date.

It is a friendly amendment, if you guys want to take a crack at it.

**The Chair:** Thank you.

There is no friendly amendment, and you forgot about Mr. Mayrand, who is also a scheduled witness.

We now have Mr. Lemieux.

**Mr. Pierre Lemieux:** I have nothing to add.

**The Chair:** Thank you.

There being no further speakers, I'm going to put the questions on all of the matters necessary to dispose of this.

Mr. Del Mastro has a subamendment to basically remove all of the words of every other motion after the words "that Mr. Goldstein". So the subamendment basically wipes out the amendment and the motion, and just says that Mr. Goldstein shall be heard immediately.

Is that correct, Mr. Del Mastro?

•(1035)

**Mr. Dean Del Mastro:** That's right.

**The Chair:** Is everybody clear on that question?

(Subamendment negated: nays 6; yeas 5)

**The Chair:** I'll now move to the amendment that Mr. Goldstein be heard after the committee has completed its agenda items for the day. That means after we deal with all of the matters that are on our order notice paper today, including our discussion of future witnesses. So it would be at the end of all other business.

Mr. Martin.

**Mr. Pat Martin:** If I could make it clearer, I'm not sure what the clerk heard me say, but I meant to say "at the conclusion of the witnesses and the other agenda items", which is talking about the possible consequences of failing to appear.

**The Chair:** That's understood.

**Mr. Pat Martin:** Then we would debate whether or not to hear Mr. Goldstein. That was the intent of my motion. We would deal with the matter after all the other agenda items, and the result might be that we would hear him at that time.

**The Chair:** Unfortunately, we're having the debate now on hearing him. So it's effectively that we will hear Mr. Goldstein today

after we finish the agenda items we had originally scheduled for today.

**Mr. David Tilson:** I want to make sure I understand. You're saying it would be at the end of everything, including business matters.

**The Chair:** Yes.

**Mr. David Tilson:** I can't agree to that. You may never hear the guy. You'll be hearing him at midnight.

**The Chair:** But does everyone understand the amendment? We would put Mr. Goldstein at the end of whatever business we discussed yesterday that we were going to do today.

(Amendment agreed to: yeas 6; nays 5)

•(1040)

**The Chair:** We have one more vote. The amendment has carried. We now have the motion as amended, which is basically the same vote, that Mr. Goldstein be heard after the committee has completed its agenda items for the day.

(Motion as amended agreed to: yeas 6; nays 5)

**The Chair:** That has carried, so we will hear Mr. Goldstein today as soon as possible after completing our other scheduled business for the day.

We'll move back to our witnesses. I apologize for the delay. The committee has agreed to allow you to make your opening statement. I invite you now to address the committee.

Please proceed.

**Mrs. Chantal Proulx (Acting Deputy Director of Public Prosecutions, Public Prosecution Service of Canada):** Thank you, Mr. Chair and honourable members.

We have been asked by this committee to explain the role of the Public Prosecution Service of Canada, the PPSC, in general terms and specifically in relation to the Canada Elections Act.

Joining me from the PPSC is Don Beardall, who's a senior counsel with the headquarters counsel group.

The PPSC was created on December 12, 2006, with the coming into force of the Director of Public Prosecutions Act, which forms part 3 of the Federal Accountability Act. Essentially, the branch of the Department of Justice responsible for criminal prosecutions, then known as the Federal Prosecution Service, became a separate organization. The PPSC's core duties and responsibilities are largely the same as those of the branch of the Department of Justice that it replaced.

Our enabling legislation, the Director of Public Prosecutions Act, outlines our powers, duties, and responsibilities. We are responsible for initiating and conducting prosecutions within the jurisdiction of the Attorney General of Canada on behalf of the crown, and for advising law enforcement agencies in respect of investigations that may lead to prosecutions within our jurisdiction.

The establishment of the PPSC as a distinct organization did not change the way we operate. Prosecutors continue to prosecute across the country, and police and other investigative agencies continue to seek the advice of our prosecutors as they make decisions about their investigations. Prosecutors' decisions continue to be made free of improper or undue influence, unaffected by partisan or political considerations.

Our role as legal adviser to law enforcement agencies is distinct from the investigative role performed by the agencies themselves. The PPSC is not an investigative agency, and our prosecutors are not investigators. Prosecutors and investigators exercise separate and independent roles in Canada. Prosecutors do not initiate, direct, or supervise investigations. That is the role of the police or investigative agency. They are the ones who decide whether to commence an investigation, whom to investigate, how to investigate, and whether, at the end of an investigation, to lay charges. This separation between investigative and prosecutorial authority is well entrenched in Canadian law.

Once charges are laid by the police or an investigative agency, the prosecutor must decide whether to proceed with a prosecution or not. The test we use is as follows. The prosecutor examines the evidence to see whether there is a reasonable prospect of conviction. If there is, then he or she decides whether, in light of the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. If the prosecutor is not satisfied that the prosecution should proceed, he or she is required to put an end to it by withdrawing or staying the charges.

[*Translation*]

Committee members may know that in some territories and provinces of Canada there is a mechanism for prior approval before laying charges, which means that the prosecutor exercises discretion when the investigation is completed, but before charges are laid. The test is the same, except that we must be satisfied that it is met even before the police or investigative agency lays charges.

Although the investigative agencies and prosecution services perform separate and independent roles, they work in collaboration. For example, it is common for police and investigative agencies to seek the advice of prosecutors during an investigation. However, this does not mean that prosecutors assume any responsibility for the investigators' work: the investigation is still their responsibility. They are the ones who decide whom to investigate, how to investigate, and ultimately they decide whether a case will be submitted to a prosecutor.

● (1045)

[*English*]

A general point I wish to make is one that may be well known but is nevertheless worth repeating. Prosecutors in Canada act independently in the exercise of their prosecutorial discretion. The principle of prosecutorial independence is well established in Canada and, indeed, has been recognized by the Supreme Court of Canada as a constitutional principle.

Federal prosecutions and, I might add, those conducted by provincial prosecution services are conducted or ended as a result of decisions taken independently by crown prosecutors. These

decisions must be grounded in an independent assessment of the evidence in conformity with the jurisprudence developed by the courts and subject to the publicly available guidelines contained in prosecutors' policy manuals. These guidelines clearly state what considerations are appropriate and which are inappropriate when making a decision about a prosecution.

I mentioned earlier that our core duties are largely the same as those of the branch of the Department of Justice that we replaced. One area, however, where we have jurisdiction to prosecute that the Department of Justice did not is in relation to Canada Elections Act offences. Until 2006, the prosecution of elections under the Canada Elections Act was the responsibility of the Commissioner of Canada Elections. The passage of the Federal Accountability Act changed all that. The Director of Public Prosecutions has been given jurisdiction in this area by provisions in our enabling legislation, the DPP Act, as well as by amendments to the Canada Elections Act.

With respect to Canada Elections Act offences, the DPP Act states that the director initiates and conducts prosecutions on behalf of the crown with respect to any offences under the Canada Elections Act as well as any appeal or other proceeding related to such prosecutions. These prosecutions are not under the jurisdiction of the Attorney General of Canada. This has important consequences. First, unlike all other prosecutions, the Attorney General cannot issue directives to the director in respect of Elections Act prosecutions, nor can the Attorney General assume conduct of such prosecutions. Second, the director is not required to report to the Attorney General on Elections Act prosecutions.

The Canada Elections Act maintains the separation between investigative and prosecutorial responsibility that characterizes our criminal justice system. Investigations are conducted by the Commissioner of Canada Elections, and the Director of Public Prosecutions decides whether to initiate prosecutions under the act. At the conclusion of the investigation, if the commissioner believes on reasonable grounds that an offence under the act has been committed, he may refer the matter to the director, who shall decide whether to initiate a prosecution. If the matter is referred to the director, the director applies the same decision-to-prosecute test as is applied in all other cases. If the director decides the test is met, the director shall request the commissioner to cause charges to be laid.

As with investigations in other areas, if requested, the PPSC may provide legal advice and assistance to Elections Canada during the course of its investigations to assist it in complying with the rule of law. The provision of advice and assistance during the investigative stage is not determinative of whether a prosecution will be proceeded with at the end of the investigation.

I'm pleased to have the opportunity today to explain the role of the PPSC in general terms and in Canada Elections Act matters. However, before concluding, I do wish to advise the members of this committee that I am unable to comment in any fashion about any investigation that may currently be under way. In addition, the PPSC has provided advice to Elections Canada and continues to do so, but I cannot discuss what advice may have been sought by investigators or what advice may have been provided by the PPSC to investigators. Solicitor-client privilege applies in these circumstances.

That concludes my remarks. Mr. Beardall and I would be pleased to answer any questions. Thank you.

**The Chair:** *Merci, Madame Proulx.*

Mr. Lemieux has a point of order.

**Mr. Pierre Lemieux:** Thank you very much, Chair.

I just wanted to comment and thank Madame Proulx for her opening statement. Her last sentence, though, raised a question in my mind. She said she could not respond—

• (1050)

**The Chair:** Order, please.

**Mr. Pierre Lemieux:** No, I'd like to finish my point of order. She

**The Chair:** Order, sir. Order, sir.

**Mr. Pierre Lemieux:** Is there a separate side deal for these witnesses as well?

**The Chair:** When the chair says “order”, this gentlemen here turns your mike off so that you will listen to what I have to say. I know you can turn it on, but sir, if you want to—

**Mr. Pierre Lemieux:** Chair, you consistently cut people off and then you don't allow us to respond after you comment, so you never hear the full point of order.

**The Chair:** Sir, you called the point of order, and it is not a point of order. You were giving opinion. It is debate. It is out of order. I'm moving on to the questioners.

Mr. Proulx.

**Mr. Pierre Lemieux:** It has to do with procedure, Chair.

**The Chair:** You did not say that. You said you wanted to comment on her last sentence and then you went on, “I want to ask you a question.” You cannot do that under a point of order, sir.

**Mr. Pierre Lemieux:** I have a point of order on procedure. It has to do with this *sub judice* argument, in that you have afforded certain witnesses the ability to use the *sub judice* argument to not answer questions, but you have not afforded it to others. So far you've only said that Monsieur Mayrand had that privilege. I'm hearing today that there's another witness or group of witnesses that has the same privilege.

On procedure, have you afforded that privilege to witnesses other than Monsieur Mayrand?

**The Chair:** Mr. Lemieux, are you finished? Tell me when you're finished, and then I'll speak.

**Mr. Pierre Lemieux:** I'm finished. I'd just like an answer.

**The Chair:** Your point of order is not a point of order. You're asking a question. You can't ask a question on a point of order. You know that.

I've already addressed this fully with the committee. Mr. Walsh, the law clerk of the House of Commons, has issued his opinion on this. It was circulated in both official languages to all honourable members, including you. You have the answer. You asked a question to which you already have the answer. Please don't do that, sir.

I want to move now to Mr. Proulx for questions.

**Mr. Marcel Proulx:** Thank you, Mr. Chair.

I want to welcome the witnesses this morning.

Mrs. Proulx, I enjoyed your comments on your role. Tell me if I'm understanding correctly that you are very independent, in the sense that you don't respond to a minister, the government, or a committee; you make your decisions and don't have to justify your decisions, except ultimately to the courts. Is that right?

**Mrs. Chantal Proulx:** The Director of Public Prosecutions Act sets out that the Director of Public Prosecutions conducts prosecutions under and on behalf of the Attorney General. The decisions made by the DPP are independent and free of any partisan or political influence, but the DPP reports to the Attorney General in an annual report on the activities of his office. An exception is made within the DPP Act and the Canada Elections Act, the result of which is that the Elections Act prosecutions are removed from the area that the DPP reports to the Attorney General.

The DPP, in the area of Elections Act prosecutions, does not report to the Attorney General, nor can the Attorney General direct the DPP or assume conduct of an Elections Act prosecution.

**Mr. Marcel Proulx:** Thank you.

Because we're talking about an election, I assumed that my sentence included the words “Elections Act”. So as far as the Elections Act is concerned, you do not answer to a minister, the Attorney General, the government, or anybody except ultimately the courts.

**Mrs. Chantal Proulx:** That's correct.

**Mr. Marcel Proulx:** Thank you.

I'm very tempted to ask what your involvement is in this particular case, but in view of the fact that you have a client-privilege relationship, I'm not going to ask you that.

If any wrongdoing is clearly established by this committee or other courts, what could be the potential—I'm not going to call them charges—results?

• (1055)

**Mrs. Chantal Proulx:** To be clear on the process, the Elections Act investigations are conducted by the Commissioner of Canada Elections. At the conclusion of the investigation, should the commissioner feel that on reasonable grounds an offence has been committed, he would refer a prosecution brief to the Director of Public Prosecutions. That person would apply the two-pronged test, namely whether there's a reasonable prospect of conviction and whether it's in the public interest that a prosecution proceed.

If the director answers both of those questions in the affirmative, he will cause the commissioner to lay charges.

**Mr. Marcel Proulx:** Do you feel free to tell me if there's been any consultation between him and you, or your office, at this time?

**Mrs. Chantal Proulx:** “Him” being the commissioner?

**Mr. Marcel Proulx:** Yes, madame.

**Mrs. Chantal Proulx:** We have spoken with the commissioner. We have provided advice to Elections Canada in relation to a number of matters.

**Mr. Marcel Proulx:** You haven't replied to the other part of my question in the sense that should you find there is sufficient evidence or sufficient questions for charges to be laid, or if there is sufficient information or sufficient proof and charges could be laid, what could be the potential penalties or potential accusations.

**Mrs. Chantal Proulx:** I'm not able to answer that question in the abstract.

**Mr. Marcel Proulx:** Okay.

Mr. Chair, is there time left?

**The Chair:** You have two minutes, sir.

**Mr. Marcel Proulx:** I'll switch them over to my colleague Mr. Pacetti, if you don't mind.

*Merci, Madame Proulx.*

[Translation]

**Mr. Massimo Pacetti:** Thank you, Mrs. Proulx. I know there are questions you can't answer, but we are looking at a scenario that presents obvious problems.

In what cases does the Public Prosecution Service of Canada give advice to Elections Canada or the Commissioner?

**Mrs. Chantal Proulx:** It is up to the investigative agency to contact the Public Prosecution Service to request advice during an investigation. It is the investigative agency that decides to proceed with certain steps, for example to appear before a judge to obtain some authorization.

**Mr. Massimo Pacetti:** I don't want to interrupt you, but I only have two minutes.

So it has to be really serious. Elections Canada doesn't come to you and ask how it's going or whether it's going to rain tomorrow. If it decides to ask for your opinion, it is because the allegations are serious.

Could criminal penalties go as far as prison sentences?

**Mrs. Chantal Proulx:** It is not uncommon for an investigative agency to ask us for legal advice about all sorts of offences that will have different consequences. All sorts of investigative agencies contact us very frequently about this.

[English]

**The Chair:** There's a half a minute left, if you have a quick one.

**Mr. Massimo Pacetti:** I'll just pass, then. Thank you.

**Mr. Gary Goodyear:** I have a point of order, Chair.

**The Chair:** No, we'll finish off the half minute.

**Mr. Massimo Pacetti:** No, we're done.

**The Chair:** You're done? Okay, we'll go to our next questioner, but Mr. Goodyear has a point of order.

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

In fact, the point of order has to do with a question from Mr. Proulx. I saw that Massimo got into his question, so I waited out of courtesy so as not to interrupt him.

Mr. Chair, we just heard the witness choose not to answer the question, and I do recall you said at one point we would deal with this issue on a case-by-case basis. I don't believe the witness has been offered an exemption, what we call the Mayrand accommodation. Can you now deal with this issue? I would like an answer to that question.

**The Chair:** Mr. Goodyear, you know that when the committee adopted the motion to do this investigation on the in-and-out scheme, the committee made a decision to proceed.

Order, please, Madame Lavallée.

The committee also decided that we would have Mr. Mayrand appear and that the chair should undertake to have him appear. Mr. Mayrand was contacted by me to have some initial discussions to inform him. He expressed some reservations about appearing at all, because there was this ongoing proceeding—the investigation by Mr. Corbett—as well as the case of the two official agents of two ridings who were challenging or trying to quash the Chief Electoral Officer's decision not to approve the expenses claimed in their advertising expenses. At that time, and as we discussed, at the first opportunity we raised this with the committee that to have Mr. Mayrand appear, it would be with the understanding that he would be able to invoke basically the—

**Mr. Gary Goodyear:** On a point of order, Mr. Chair—

**The Chair:** Well, we are actually on a point of order.

• (1100)

**Mr. Gary Goodyear:** We have a 45-minute speech going here, and I really just wanted to know.

**The Chair:** Excuse me, sir, you made a point of order and you asked a question, and I have to answer it.

The committee was apprised that the condition of Mr. Mayrand appearing was that he could invoke the *sub judice* convention if it was a matter that would potentially prejudice or compromise any other proceeding, and I'm sure that our witnesses are aware of this as well. That was the understanding, and we've had this discussion before the committee three or four times, so everyone understands what the situation is with Mr. Mayrand.

Subsequently I received an opinion from the law clerk of the House of Commons. That has been circulated to all honourable members. Any witness, including Mr. Muttart, I believe Mr. Lepsoe, and a couple of others who had raised this issue—RMI, Retail Media, had raised it—all of them, received a copy of the law clerk's letter explaining the application of this issue of not being able to answer it because it's before another proceeding.

It has to do only with those people who have a direct involvement in the proceeding. They have to be parties to the proceeding. Mr. Mayrand certainly is. RMI was, in regard to another proceeding—not the one that Mr. Mayrand was, but there was a proceeding—but that never came up yesterday and they answered all the questions.

So the question is, then, that should questions come up to these witnesses, there's no special accommodation to them. They are aware of the law clerk. If they have a solicitor-client relationship on certain matters, they will declare that, and of course we can't ask them on that.

With regard to other matters that may come up, which may, for good reason, as Mr. Walsh laid out in his letter, they would indicate that they can't answer it for that reason, and then we would consider the validity of the reason.

That did not occur. The question from Mr. Proulx was posed, the witnesses answered, and we moved on.

So there is no special arrangement for anyone else. The rules of the House are clear. The existence of the *sub judice* convention is not an excuse for a witness not to answer a question. Okay?

**Mr. Gary Goodyear:** I have a point of order on a different issue, then, Mr. Chair, please. I do apologize. It seems like I keep doing this.

The point I'm making now is that with all due respect to our witnesses, in fact, they are the solicitors acting for Elections Canada. The whole thing is client-attorney privilege. I totally respect that it has to be accounted for.

So again, with due respect for the witnesses, I don't see the relevance to these witnesses. If all we're going to do is hear about what the department does and doesn't do, I can look that up on the website. I don't see the relevance here at this place.

We had a witness who was totally involved in this situation. You yourself just said attorney-client privilege can be respected. Correct me if I'm wrong—I'm not a lawyer—but it sounds like these are the attorneys to the client, Elections Canada.

You're contradicting yourself. I just don't know what to say anymore. This is as confusing as it possibly could be. Could it run any worse than this? I don't think so.

• (1105)

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

I would like to remind the committee members that these witnesses were requested by the committee, and the committee list was approved. That's why they're here. They also fully understand and explained in their opening statement, which was approved to be made by this committee, that solicitor-client matters may arise and they would certainly invoke that, and it must happen.

With regard to whether or not they refuse to answer a question on the basis that it may compromise or prejudice some other issue, they will advise us and be specific as to the nature of why they can't do that, and the committee will have to decide whether or not they want to force the question. But I think we understand where this is going.

That said, it is the committee's decision, whether or not.... The *sub judice* convention is a voluntarily imposed convention by them.

Mr. Goodyear, again, just as Mr. Tilson was doing yesterday in pleading the case for the witness not to answer a question, as I referenced under Marleau and Montpetit yesterday, actually is interference with witnesses. I think the witnesses are perfectly capable of dealing with issues that come up that may cause them some concern. They will raise it themselves. They're in the business; I'm sure they know what to do.

That said, our next speaker is Madame Lavallée.

**Mr. David Tilson:** Mr. Chairman, I have a question.

**The Chair:** Madame Lavallée.

[Translation]

**Mrs. Carole Lavallée:** Thank you, Mr. Chair.

Welcome to this sitting of the Ethics Committee. As you can see, the Conservatives have very elastic ethics. They are not very polite to our witnesses, and we apologize.

Mrs. Proulx, you gave us a long presentation in English and I noticed that you have a document in front of you. Could you give it to the clerk so he can distribute it to us?

You will understand that your presentation was very specialized, and while the translation service in the House is excellent, there were bits I missed. So I would like to review the document, when it has been translated.

I will tell you that I am not a lawyer, so my questions may seem naive to you, but I would ask that you indulge me a little.

For example, Mr. Goodyear said that you were legal counsel to Elections Canada. Is that correct?

**Mrs. Chantal Proulx:** To answer your first question, a copy of my opening remarks was given to the clerk earlier for distribution to committee members, if they wish.

I think it is not correct to describe us as counsel for Elections Canada in the traditional sense of the word, as it is understood in the solicitor-client context. Let me explain. The mandate of the Public Prosecution Service of Canada is governed by the principle of independence. In the course of an investigation, it is our job to provide advice to the investigative agencies, but that advice is in no way intended to steer the investigation in one direction or another, or even to recommend particular steps in the investigation. Our job is to assist the investigators. I can give you an example.

An investigator may come to see one of our Crown counsel to request assistance in preparing a search warrant, for example. There are various search warrants in the Criminal Code, and each section of the Criminal Code prescribes certain obligations that must be met when an application for a warrant is made to a judge. As well, section 8 of the Canadian Charter of Rights and Freedoms guarantees protection against unreasonable search or seizure. There is extensive case law under section 8 of the Charter dealing with the definition of an unreasonable search.

Our role in that context would be to help an investigator present all of the facts that are relevant to the application. That might include facts that do not support the warrant application. Then they have to be set out in a document so the judge can make an independent decision, as to whether or not the warrant should be granted.

So the role involves providing assistance, which may include legal advice on aspects that may not be entirely consistent with the case law. But it is not a solicitor-client relationship in the traditional sense, which consists more in a lawyer receiving instructions from the client and acting on those instructions.

•(1110)

**Mrs. Carole Lavallée:** Do you only give advice, or do you take action in some regards?

**Mrs. Chantal Proulx:** Some sections of the Criminal Code call for active participation. I would offer the example of wiretap applications. The application has to be made by Crown counsel. So in some cases there is an overt act, yes.

**Mrs. Carole Lavallée:** If I understand correctly, Elections Canada is responsible for administering the Act, the Elections Commissioner may conduct investigations, and when he has completed his investigation, he submits it to you so you can help him prosecute. Is that it?

**Mrs. Chantal Proulx:** It isn't helping to prosecute. Rather, when the Commissioner of Elections Canada has completed his investigation, he submits the investigation file to us with a request that the director initiate a prosecution.

**Mrs. Carole Lavallée:** The Chief Electoral Officer initiates a prosecution.

**Mrs. Chantal Proulx:** The Director of Public Prosecutions of Canada initiates a prosecution. At that point, the Director reviews the file and if he decides that the test for prosecuting has been met, he asks the Commissioner of Elections Canada to have charges laid. From that point on, the prosecution is handled entirely by the Director of the Public Prosecution Service of Canada.

**Mrs. Carole Lavallée:** Do you get a lot of requests of this nature from the Chief Electoral Officer in a year, for prosecutions?

**Mrs. Chantal Proulx:** We were assigned the task of prosecuting under the Elections Act a little over 18 months ago, in December 2006. Since December 2006, we have received a few cases.

**Mrs. Carole Lavallée:** How many is "a few"?

**Mrs. Chantal Proulx:** Charges were laid in one previous case by the Director of Public Prosecutions.

**Mrs. Carole Lavallée:** There has been one case. Is that case known? Do we know what it is about? Can I ask you which one it is?

**Mrs. Chantal Proulx:** It is a case that came from Toronto last year. It involved an MP. I'm sorry, his name escapes me at the moment.

**Mrs. Carole Lavallée:** Can you provide it for us later?

**Mrs. Chantal Proulx:** Certainly.

**Mrs. Carole Lavallée:** Can I also ask you...

That's it?

[English]

**The Chair:** That was *la dernière question*, and you asked it.

Mr. Tilson.

Oh, I apologize; I've skipped over. It's Mr. Martin, and then Mr. Tilson.

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

And thank you, witnesses. What you've told us today reinforces in my mind the importance of the study that our committee has undertaken, if we're going to get to the truth about this election financing arrangement prior to the next federal election.

As I understand you, we're about three quantum leaps away from this matter ever being resolved in the courts. The only action currently before the courts is the one filed by the Conservative Party asking for clarification or challenging Elections Canada's interpretation of the Elections Act.

At this point, from what you've said, the Commissioner of Elections has yet to decide whether, on reasonable grounds, an offence against the act has in fact been committed. He's not finished his determination of that point. Is that correct?

**Mrs. Chantal Proulx:** All I can speak to is whether something has been delivered to our office, and I can tell you that it hasn't.

**Mr. Pat Martin:** I think we can assume, then, that he has yet to decide whether an offence is yet to be committed. That's one hurdle we have to get past.

Second, if he does believe that, then the commissioner "may" refer the matter to the Director of Public Prosecutions, because he goes through his own test, I presume, whereby if he has no idea that this could ever be successfully prosecuted or that it's in the best interests of Canadians, he may decide that in his own opinion an offence has occurred but he's not going to submit it to your office.

And then third, you have to decide, through those same tests, I suppose, whether it warrants prosecution.

We're still three fundamental steps away from trying the Conservative Party for election finance violations. My worry is that we're only now convicting and prosecuting and putting in jail Liberals who were involved with the sponsorship scandal, and this is three or four years later.

My question is about timeframes. With a complex case like this, what would be a realistic timeframe, once you get it into your hands and decide that yes, it's worthy of prosecution? Given the court agendas today, could it be a year before it's heard, or eighteen months, or two years?

We've seen the way witnesses disappear too. It could be that you'll have a very uncooperative group of witnesses, as in those Hells Angels trials where witnesses are disappearing all the time. Those 11 principal actors of the Conservative Party who snubbed their noses at our summonses may in fact snub their noses at summonses issued by the federal courts too.

Could you give me, in your professional opinion, a realistic timeframe for a complex prosecution like the one you may be asked to undertake?

•(1115)

**Mr. Don Beardall (Senior Counsel, Public Prosecution Service of Canada):** Perhaps I can answer that, Mr. Martin.

The reality is that, no, I can't give you a single realistic timeframe.

**Mr. Pat Martin:** No, but give us a best guess, in your professional opinion, sir.

**Mr. Don Beardall:** Well, the difficulty is that cases, even complex cases, vary so much in their circumstances, in the kinds of issues—charter issues or evidentiary issues or whatever issues—they might raise that there is no predictability in the abstract for saying how long a complex case would take.

That said, the point you've made is that complex matters can take, in some cases, years to make their way through the courts after charges are laid, and I would have to agree with you that this is indeed a reality.

**Mr. Pat Martin:** I would suggest that we need to know well in advance of that just what the rules are, because if the Conservatives did nothing wrong, then they're enjoying a legal unfair competitive advantage over the rest of us who don't exceed our national spending limits. In other words, until somebody says clearly that what they did was wrong, and if we have another election in six or twelve months, then the other parties had better do the same thing to create a level playing field. They spent millions of dollars more than their national spending limit by this scheme and put us other parties at a huge disadvantage.

It just reinforces in my mind the importance of what this committee is doing. I don't think this issue will get an airing in the courts before we have another federal election. There has to be an election by October 2009.

Do you think this matter will be resolved in the courts by October 2009?

**Mr. Don Beardall:** As I said, Mr. Martin, there are too many unknown factors to be able to make even an uncertain prediction.

**Mr. Pat Martin:** But realistically, sir, we're still prosecuting Liberals over the sponsorship scandal. There are guys who have gone to jail in the last month or so.

Do I still have time, sir?

**The Chair:** You still have two minutes, Mr. Martin.

**Mr. Pat Martin:** The test applied, you've said, was whether there's a reasonable likelihood of conviction, I suppose. Is that one of the tests you told about, Mr. Beardall?

**Mrs. Chantal Proulx:** The actual wording in our prosecution policy manual is "the reasonable prospect of conviction".

**Mr. Pat Martin:** Concerning the search warrant or the raid on the offices of the Conservative Party headquarters, was your office consulted in any way, shape, or form about how that might take place, or was it strictly the elections commissioner and the police, in the investigative stage?

**Mrs. Chantal Proulx:** I'm respectfully going to decline, Mr. Martin, to answer that question on the basis that it's protected by solicitor-client privilege.

**Mr. Pat Martin:** Fair enough.

The justification in the affidavit to obtain the search warrant cited that "The CONSERVATIVE FUND CANADA...did incur election expenses...the total amount of which exceeded the maximum amount allowed for the election expenses of the Conservative Party"—etc., and it also stated that the Conservative Fund Canada—"knew or ought reasonably to have known" that the filings contained "a

materially false and misleading statement", contrary to certain sections of the Elections Act.

Do you know what the penalties would be in the Criminal Code for those two offences should they be successfully prosecuted?

• (1120)

**Mr. Don Beardall:** The offences would be set out in the Elections Act. Off the top of my head, no, I don't know what the penalties are for those particular offences.

**Mr. Pat Martin:** So those penalties are unique to the Elections Act, and the penalties are in the Elections Act alone. I see.

How am I doing for time, Mr. Chairman?

**The Chair:** We are there.

**Mr. Pat Martin:** Then I'm finished.

**The Chair:** Thank you.

We now have Mr. Tilson.

**Mr. David Tilson:** I'd like to return to the issue of solicitor-client privilege. In your opening statement, madam, did you say that you couldn't give testimony on anything involving this particular motion that the committee is reviewing?

**Mrs. Chantal Proulx:** What I wanted to convey to the committee in my opening statement was that, should Mr. Beardall or I be asked any questions about what legal advice may have been sought by Elections Canada or provided by the PPSC, we wouldn't be in a position to assist the committee, because those matters are protected by solicitor-client privilege.

**Mr. David Tilson:** When did that solicitor-client privilege arise?

**Mrs. Chantal Proulx:** In a 1999 decision of the Supreme Court of Canada called *Regina v. Shirose*, the Supreme Court recognized that the advice provided by crown counsel to investigative agencies during the investigative stage is protected by solicitor-client privilege.

**Mr. David Tilson:** I thank you for that.

I guess what I'm asking you is, when did this particular solicitor-client privilege arise?

**Mrs. Chantal Proulx:** It would have arisen when the advice was sought and provided.

**Mr. David Tilson:** And when was that?

**Mrs. Chantal Proulx:** Quite frankly, I'm not certain when Elections Canada first spoke to one of our crowns. I can tell you that I had contact with them several months ago.

**Mr. David Tilson:** Was that the first time?

**Mrs. Chantal Proulx:** I'm not certain.

**Mr. David Tilson:** It was after the election?

**Mrs. Chantal Proulx:** Certainly.

**Mr. David Tilson:** Yes.

I appreciate your providing the committee with information as to how the public prosecution office operates; that was very informative. But really, you can't answer any questions involving what the committee is studying, because of solicitor-client privilege.

**Mrs. Chantal Proulx:** As I indicated, the solicitor-client privilege is something we are bound by. The other area of privilege, if you allow me that description, by which we are bound is to protect the integrity of any ongoing investigation. We have an ethical and moral obligation as prosecutors.

**Mr. David Tilson:** Absolutely. I understand that.

I guess I want to be clear here as to what you think about your being here today. I'm sincere when I tell you that it was informative for you to tell the members of the committee—at least it was for me, though I can't speak for other members—what the office of public prosecutions does and surrounding questions, but as far as the direct questions with respect to the motion this committee is reviewing are concerned, all of those matters are privileged. That's your position.

I'm not trying to trick you. I just want to be clear where you stand

**Mrs. Chantal Proulx:** I understand.

**Mr. David Tilson:** —because, quite frankly, I think it's inappropriate for you to be here. I think anything you say involving these matters could prejudice any of the investigatory proceedings that are carrying on.

I'm trying to agree with you. I don't think you should be here today.

**Mrs. Chantal Proulx:** We're certainly of the view that any question about any specific ongoing investigation is something we are not able to answer. That said, it's hoped that an explanation of the role we play and what we do is, in and of itself, somewhat helpful to the committee.

• (1125)

**Mr. David Tilson:** Mr. Chairman, I quite frankly think you should excuse these witnesses. It's all very nice to have lectures about what different offices do, and this one in particular—it's very informative—but we're here today to study the motion. I'm not going to read it; you've read it so many times that I'm getting sick of it, quite frankly. But I don't know why we're taking up the time of these valuable counsel. They have better things to do.

I'm finished with my questions. Mr. Del Mastro may have some questions.

**Mr. Dean Del Mastro:** Thank you, Mr. Tilson.

It's our feeling on this side of the table that this is an entirely illegitimate study, and that the Liberal chair has been changing the rules as he goes and has been cutting special deals with some witnesses and not others.

All of our witnesses were disallowed by the ladies and gentlemen of the jury across. They barred our national campaign director from appearing. They have worked to silence a witness here today, appearing under summons. They've been hiding documents, including the one that you said you provided for circulation. We've heard the chair contradict himself on numerous occasions, giving his Liberal colleagues preferential treatment, asking them to pass motions.

So I'm very interested in the Mayrand accommodation, a special accommodation—a side deal—that you're operating on. When were

you scheduled to appear at this committee? When did you agree to appear at this committee?

**Mrs. Chantal Proulx:** It was last week.

**Mr. Dean Del Mastro:** And were you given a number of dates on which you might appear, or was it specifically this date? Or were you asked when you could appear?

**Mrs. Chantal Proulx:** I'd say it was a combination. We were told that the committee would be convening this week, and we offered to make ourselves available. At the end of the day, there was an agreement on this morning, and we're here.

**Mr. Dean Del Mastro:** So you got your choice of dates; that's great.

Did Mr. Szabo tell you that you had such ability to set your choice of dates, to give dates that would conform to your schedule?

**Mrs. Chantal Proulx:** I didn't speak with Mr. Szabo about that.

**Mr. Dean Del Mastro:** Who did speak to Mr. Szabo about that?

**Mrs. Chantal Proulx:** Mr. Saunders and Mr. Szabo had a conversation. I should add that I also spoke to Mr. Szabo, but prior to Mr. Saunders' conversation, and we didn't discuss dates.

**Mr. Dean Del Mastro:** Did Mr. Szabo indicate that you had the Mayrand accommodation—being allowed to not answer questions, to invoke privilege?

**Mrs. Chantal Proulx:** I didn't speak with Mr. Szabo about that.

**Mr. Dean Del Mastro:** Did anyone in your office speak to him about it to say that you would be invoking privilege?

**Mrs. Chantal Proulx:** Not to my knowledge.

**Mr. Dean Del Mastro:** Have you seen Mr. Walsh's letter?

**Mrs. Chantal Proulx:** No.

**Mr. Dean Del Mastro:** But if you did see it, that might make you feel comfortable so you wouldn't exercise privilege? I don't read it with the interpretation that Mr. Szabo has indicated at all.

**The Chair:** We're over seven minutes.

**Mr. Dean Del Mastro:** Are you going to allow her to answer the question?

**The Chair:** Yes, I'll give her a chance.

**Mrs. Chantal Proulx:** I'm not sure how to answer the question. Not having seen the letter, I can't speak to what it says or how it might make me feel.

**Mr. Gary Goodyear:** I have a point of order.

**The Chair:** Before your point of order, on August 5 I circulated to the committee, in both official languages, through the clerk, copies of the witness lists. They showed all of the witnesses, morning and afternoon, for all four days, including Madam Proulx and the Chief Electoral Officer. Subsequently Mr. Beardall was added to provide some support.

All of this was decided and circulated to you on August 5, including who was summonsed. This has already been sent out. There were no side deals. There are no side deals with anybody, quite frankly. So in terms of time, this was all settled over a week ago and circulated to the members. That's just for your information.

Mr. Goodyear, please.

**Mr. Gary Goodyear:** Thank you, Chair. I'm going to pass.

**The Chair:** Mr. Del Mastro, please be careful. Make sure it's a point of order.

•(1130)

**Mr. Dean Del Mastro:** It's procedural, Mr. Chair.

My point of order has to do with the fact that my question related to the fact that some witnesses have been allowed to select their dates and others have not. Today a witness showed up who was responding to a summons and was not provided the ability to select his date.

You have decided to enter a debate. You are trying to defend your actions, sir. You have been changing the rules as you go, and the point is that some witnesses have been able to pick their dates and others were dictated their dates. There is a stark contrast. You also did not allow the national campaign manager of the Conservative Party to appear on a date that was convenient to him. That was your choice, supported by the ladies and gentlemen of the jury.

**The Chair:** I think everybody understands.

**An hon. member:** [*Inaudible—Editor*]

**The Chair:** Excuse me, we're on a point of order, sir. You'll have to wait until we complete this one before we can do another one. Would that be all right with you? Okay.

The reason I raised this document, which was circulated to all members electronically by the clerk's office—this was on August 5—was that it included all the dates on which people were scheduled to appear that were agreed upon and included in the summonses. The representations by Mr. Del Mastro about some people not being given a choice is not true. In fact, Mr. Goldstein chose August 12, and he was scheduled to be here August 12.

**An hon. member:** [*Inaudible—Editor*]

**The Chair:** Mr. Del Mastro has just said that I didn't give him a choice, and now he wants to appear today.

He also said, and I must respond.... The point of order provided some information that was false and misleading. Mr. Finley was scheduled and summoned to be here—

**An hon. member:** [*Inaudible—Editor*]

**The Chair:** Excuse me, I issued a summons to be here August 13 on August 7. After I issued the summons, he first contacted the committee. So to say that I didn't give Mr. Finley any choices.... Mr. Finley walked into this hearing room on Monday morning and said, "I want to appear now." I can't imagine in a court of law some witness walking in and saying, "Your Honour, I'm here, and I want to appear now." I mean, that's how ludicrous it is.

I would like to say that if members are going to make allegations, their facts must be correct. In Mr. Del Mastro's case, every point he made was wrong and misleading. I'm going to have to correct every member who does that. Okay?

Now, we have—

**Mr. Gary Goodyear:** No, no, Mr. Chair, I'm sorry. I have a point of order after you. I have a point of order.

**Mr. Pat Martin:** These guys are disrupting the meeting... [*Inaudible—Editor*]...and we can't do our work.

**The Chair:** Order. Order, please.

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

**The Chair:** Order, please. Order, please.

Could you please keep the conversations down a little bit? Thank you.

I'm a little concerned about how things are going here, but members have the right to raise points of order, and I'm going to hear them. I'm going to encourage them to make sure they're points of order. Maybe they can check with their neighbours first before they disrupt the proceedings and bring them to a full stop. And be concise so that the chair can rule or take some action pursuant to a point of order.

We have two more to go, but I really have to get back to our committee.

Mr. Lemieux had asked for another point of order.

Go ahead, sir.

**Mr. Pierre Lemieux:** Thank you, Chair.

It's on procedure. I object to your constantly jumping in and offering your point of view on things. Mr. Del Mastro's questions were directed at the witness, and the witness answered. There was no need for the chair to jump in and offer his explanation, his point of view, and what he thought happened and in what order. You're constantly cutting people off, like me and my colleagues, in the middle of their points of order. You then rebut the point of order and don't allow a response. You just say that we've dealt with it; it's over. You call order right away. Yet you will jump into the middle of questioning when you feel it's appropriate. You did this all day yesterday too. You were jumping in at the end—

•(1135)

**The Chair:** Order.

**Mr. Pierre Lemieux:** There we go again.

**The Chair:** Order, order.

**Mr. Pierre Lemieux:** I object.

**The Chair:** Order.

**Mr. Pierre Lemieux:** I object.

**The Chair:** Order.

**Mr. Pierre Lemieux:** Mr. Chair, Mr. Chair...

**The Chair:** I don't know why you're smirking and laughing, sir, but—

**Mr. Pierre Lemieux:** Because you're cutting me off.

**The Chair:** Exactly. This is not a point of order.

**Mr. Pierre Lemieux:** It is a point of order.

**The Chair:** No, it's debate. You are giving opinion, sir. That's debate.

**Mr. Pierre Lemieux:** That's what you're doing, sir. You are jumping into things.

**The Chair:** Sir, sir.

**Mr. Pierre Lemieux:** Here we go again. It's going to play out again. Go ahead.

**The Chair:** I've called order. Order. I called order. Okay?

Sir, my ruling is that it is not a point of order, it's a matter of debate. Okay? I thank you for your comments, but I think we shouldn't be jumping into points of order that we're not sure.... We had this yesterday. I have given rulings. I know that you haven't been here for all the hearings, but I have given references from Marleau and Montpetit related to points of order, particularly with regard to debates on points of order, which are permitted at the discretion of the chair. And that is in Marleau and Montpetit. I'll get you the reference after the meeting so that you know that.

Now, I understand Mr. Goodyear also had a point of order.

Please, sir.

**Mr. Gary Goodyear:** Thank you, Mr. Chair. I want to thank you for getting us a few of the documents we requested this morning.

On one of the documents you handed to us this morning, and I'll read it, it says: "Hi Erica, As discussed, some of the witnesses remain not served...". Doug Finley may have been summonsed, but he was never served. Again, sir, you are—

**Mr. Pat Martin:** We have witnesses. This was a scheduled agenda item for later in the meeting, to discuss people who were summonsed and failed to attend. This has nothing do with hearing witnesses.

They're disrupting the meeting. They're goading you into wasting time, and they're wasting all of our time. We're not going to let them...[*Inaudible—Editor*]...until the clock runs out and we're finished.

**An hon. member:** We're here all day.

**Mr. Pat Martin:** I asked you yesterday, Mr. Chairman—

**Mr. Gary Goodyear:** I'm not done, Mr. Chair.

**Mr. Pat Martin:** —to start ruling like a chairman. Don't let these guys dominate these proceedings.

**Mr. Gary Goodyear:** I'm not finished.

**The Chair:** Order, please.

Please, everybody understands the situation we are in and what's going on. We don't have to explain that. I don't think any other party would like to be in the same position and have to take these actions, but this is the reality. It's nice to play the roles, but ultimately we are all being held accountable by our performance and what we do here.

I encourage members to remember that we are being observed. It is a reflection not only on ourselves but on other colleagues and Parliament. We need to do better. We wouldn't get away with this nonsense in business. Outside of the parliamentary sphere, you wouldn't last a day like this, and you all know it.

I want members to please tone it down. You have rights, but with those rights come responsibilities. You have the right to speak, but you have the responsibility to speak at the right time in the right way, and I expect all honourable members will take that into consideration.

Mr. Goodyear was on a point of order. Please let him finish it.

**Mr. Gary Goodyear:** Thank you very much, Mr. Chair.

I hope you noticed that I was very calm and respectful. I remain that way.

I just heard you say that Doug Finley was summonsed. I have documents from your office that say his summons was never served. We had this discussion yesterday about you misleading the committee and the media. I'm wondering if you will take the opportunity now to confirm from your own documents that Mr. Finley was never served with a summons.

**The Chair:** You have misquoted what I said. It was that I had issued the summons, not that he was served. If you say someone was summonsed, as opposed to the chair issuing a summons, they're different. When you want to play with words, that's fine.

Mr. Finley was here on Monday. He was here on Monday.

**An hon. member:** We have a witness here, and we're supposed to be discussing the work of the committee.

**The Chair:** I understand.

Mr. Goodyear, you raised a point of order—

**An hon. member:** It was not a point of order.

**The Chair:** Excuse me. I told you, sir, that I would get the blues from August 12. I got the blues. About midnight last night I finally finished with my responses to each and every point you raised, sir, about information requests you asked for, their status, and can you get this and other things. And I made other statements that you wanted me to explain.

I have them. There are 22 points. I think it would take about a half-hour to present them to you—each and every one—as I had undertaken. I don't want to have to do that now in the middle of our other business. This is a matter I was hoping to deal with after we dealt with witnesses.

If the committee wants me to deal with your 22 questions, I will do that, but I don't think it's the right thing to do.

**An hon. member:** No.

**The Chair:** I have the answers for you here. Whenever you want the half-hour to 45-minute presentation of my response to all your questions you issued in a 25-minute speech to this committee, I will do it.

Now, I have no more speakers.

**An hon. member:** Everybody wants to speak.

**The Chair:** The last time I looked, they were rubbed out.

Okay. Madam Redman, you have the floor.

• (1140)

**Hon. Karen Redman:** Thank you, Mr. Chair.

I would like to thank Madame Proulx and Mr. Beardall and apologize for what you've had to witness.

You mentioned in one of your earlier comments, Ms. Proulx, that the mandate for the Director of Public Prosecutions is about 18 months old. Is that correct?

**Mrs. Chantal Proulx:** We were created on December 12, 2006.

**Hon. Karen Redman:** As whip, from time to time I recognize that the Canada Elections Act is pretty prescriptive. I have had members investigated for sometimes very minor infractions—sometimes it's paperwork—and that is brought to my attention. Those kinds of small issues would never come to you, would they?

**Mrs. Chantal Proulx:** It's difficult to answer your question, because a decision whether or not to seek our advice is one that's made by Elections Canada. I can't tell you when they would or would not seek our advice.

**Hon. Karen Redman:** Can you just clarify for me—and I know other questioners have touched on this—how many cases Elections Canada has referred to your department in the 18 months?

**Mrs. Chantal Proulx:** Are you asking me how many cases they've referred for prosecution or how many times they have asked for advice?

**Hon. Karen Redman:** Both.

**Mrs. Chantal Proulx:** In terms of referrals for prosecution, I believe Madame Lavallée asked me the same question. There has been one case. The charges were laid.

In terms of seeking our advice, there have been a number of occasions. How many specifically I don't think I can tell you, because it's possible that I wouldn't be personally aware of every call an Elections Canada investigator may have made.

**Hon. Karen Redman:** Okay.

Having you called in is obviously very serious, and you've talked about the two-pronged test that you have, as to whether it's in the public interest or the possibility of success in the prosecution. You've clearly laid that out, and I appreciate it.

My colleague Mr. Martin talked about the search warrant. There must be criteria by which you decide whether or not you're going to put in for a search warrant. I don't know what the right word is; I guess it would be to “enact” a search warrant. Can you tell us what the test is for deciding whether or not that course of action would be followed in part of an investigation?

**Mrs. Chantal Proulx:** Just to be clear, the application for a search warrant is made by an investigator, and we assist them with preparing the application.

The test is set out in whatever section under which the search warrant is being applied for. There are a number of sections contained within the Criminal Code that authorize different kinds of searches. The most commonly used section in the Criminal Code is section 487. Generally an investigator who is seeking a warrant under section 487 would have to demonstrate reasonable grounds for believing that an offence has been committed and that evidence of the offence is in the place to be searched.

•(1145)

**Hon. Karen Redman:** There has been a fair amount of questioning by my Conservative colleagues around the possible leak concerning that search warrant. When we asked these same

questions of Elections Canada, what we were told by Mr. Mayrand was that they had done an internal investigation and satisfied themselves that there had been no leak from Elections Canada.

I'm just wondering whether, as item number one, any charges or questions were made about your department, and number two, whether there was any investigation made to ensure that if there had been a leak, it had not come from the deputy director of public prosecutions or anybody who works for you.

**Mr. Don Beardall:** I am certainly not aware of any inquiry from Elections Canada to us regarding the matter of a possible leak.

With respect to the Public Prosecution Service, we have no credible information—or no information at all—that would give an air of reality to any suggestion that a leak emanated from the PPSC. That said, we have made internal inquiries, and those inquiries have again yielded no information that would justify any further inquiries or investigation.

**Hon. Karen Redman:** So one can assume from your statement, Mr. Beardall, that you are satisfied that there was no leak from your department.

**Mr. Don Beardall:** That's correct.

**Hon. Karen Redman:** Thank you.

**The Chair:** Mr. Del Mastro.

**Mr. Dean Del Mastro:** Thank you.

Ms. Proulx, I just want to go back to where I was a minute ago. You indicated that you had a conversation with Mr. Szabo a couple of weeks ago. Would that be accurate?

**Mrs. Chantal Proulx:** Yes.

**Mr. Dean Del Mastro:** So it was before Monday of this week?

**Mrs. Chantal Proulx:** It was.

**Mr. Dean Del Mastro:** So you had a conversation with Mr. Szabo, the chair of the committee, before Monday.

I'm just going to read to you unedited copy from Monday, August 11, 2008, of this committee where it reads:

Colleagues, as you know, the committee submitted a list of 79 witnesses. And I want to first report to the committee that the clerk's office did an excellent job to make all attempts to contact these proposed witnesses. The chair had no direct contact with any witness at any time, other than Mr. Mayrand, who you know I spoke to in our last meeting...

Is that true? Can I give you this just so you can read it and just confirm that the chair did in fact make contact with a witness at some time?

**Mrs. Chantal Proulx:** I'm not sure I understand the question. Are you asking me if the chair contacted me?

**Mr. Dean Del Mastro:** The question is that the chair indicated to this committee that he had no contact with any witness at any time other than Mr. Mayrand, and we've been indicating that there have been special deals, that the committee has been a farce, that the chair is acting in a partisan fashion, that he's misled the media with respect to summons; and we have another incident where the chair has specifically misled the committee.

I'm just asking you if you were in contact with Mr. Szabo. You've indicated that you were and that it was before Monday.

**Mrs. Chantal Proulx:** In answer to your question, I can advise the committee that I contacted Mr. Szabo when I learned that our office had been contacted to inquire whether we would appear. I contacted the chair because I wanted to better understand what was being sought of our department.

**Mr. Dean Del Mastro:** So would it be fair to say that if he indicated he had no direct contact with any witness at any time that that wouldn't be accurate?

**Mrs. Chantal Proulx:** I can't comment on that.

**Mr. Dean Del Mastro:** You can't comment on it. Can I give you this so you can read it and tell me if it's accurate? You've just indicated to me it's not accurate.

**Mrs. Chantal Proulx:** I can advise the committee that I did contact the chair. Whatever conclusion the committee draws from that is up to the committee.

**Mr. Dean Del Mastro:** So once again we have an incident where the chair has specifically misled the committee. We've demonstrated where he's misled the media in scrums outside with respect to summons. Mr. Goodyear pointed out where he misled with respect to who had received summons.

Once again, I come back to the Mayrand accommodation that he's made, the special accommodation he made for one witness, the misrepresentation he's made with respect to the letter from Mr. Walsh, and I'm left with nothing but to point out exactly what we've been saying from day one about this committee, that it is a farce, it is a kangaroo court, and it's an illegitimate process.

And ultimately, Mr. Martin would like to speak about how people have shown contempt for this committee. Well, I would argue that this committee has shown contempt for the Conservative members of this panel. It is an absolute travesty that this has occurred and an absolute tyranny of the majority, and this is no credit to Parliament whatsoever.

I have nothing further.

• (1150)

**The Chair:** Excuse me, I think there have been some allegations made to the chair.

**An hon. member:** All kinds of allegations.

**The Chair:** Mr. Goodyear, I would like to—

**Mr. Dean Del Mastro:** What else haven't you told us, Mr. Chair? What else are you lying about?

**The Chair:** Sir, did you say what else am I lying about?

**Mr. Dean Del Mastro:** What else have you misled the committee about?

**The Chair:** Did you say I was lying, sir?

**Mr. Dean Del Mastro:** Would you like to review the notes, Mr. Chair?

Off the record. I withdraw.

**The Chair:** Off the record you want to withdraw? That's good.

**Mr. Dean Del Mastro:** No, I said it was off the record. I withdraw it, Mr. Chair. But here's the point. Did you mislead the committee? Read this. Did you mislead the committee?

**The Chair:** You're asking me the question?

**Mr. Dean Del Mastro:** Yes.

**The Chair:** Okay, I'm going to answer it.

**Mr. Dean Del Mastro:** Wonderful.

**The Chair:** Just give me a moment, because I will get you the precise dates.

I was in Durham, North Carolina, visiting my daughter and my granddaughter. I had my granddaughter on my lap, sitting on the couch, looking at hummingbirds.

Excuse me, but I think people will want to understand the tactic that Mr. Del Mastro has tried to pull here.

This was in July, the last week of July, after we had the hearings. Madame Proulx called me because she had been advised that the committee, at its prior hearings, had requested that the public prosecutor's office appear. She asked me the question, "What does the committee want us to do?"

I have never talked to Madame Proulx. It was a call to me out of the blue, and I said, "Three parties have asked for you to appear. The clerk will be in touch with you. I don't know what their interest is." That was the extent.

In fact, Mr. Saunders, the public prosecutor, called me subsequently, still having some questions about whether or not they should appear, because of their solicitor-client relationship and because of a potential *sub judice* issue. It wasn't until last week that Mr. Saunders finally agreed to be a witness.

So on this idea that I had misled the committee, I didn't know they were a witness. I make no contacts myself.

**An hon. member:** On a point of order—

**The Chair:** Excuse me.

I made no contacts with an approved witness and certainly did not discuss side deals. There are no side deals with anyone. Mr. Walsh's letter with regard to the *sub judice* convention has been provided to anybody who raises the issue, and that's how the committee operates. That's it.

So as to my role—and I answered that question—with regard to third-party witnesses, you know I have contact with Mr. Mayrand. I was instructed by the committee to do that. But with regard to the public prosecutor's office, I have no idea why people put it on, but I initiated no phone calls.

**An hon. member:** I have a point of order.

**The Chair:** That is the answer to it. So all of the information that you provided, Mr. Del Mastro, was false and misleading, and you should apologize for the misinformation. Okay?

Go ahead.

•(1155)

**Mr. Dean Del Mastro:** Mr. Chair, you said that you had no contact with any witness at any time. Those are your words, not mine.

**The Chair:** At the time, they were not a witness.

**Mr. Dean Del Mastro:** No, that's not true, Mr. Chair. You've also indicated when the witness list was drawn up, because you've indicated that our witnesses were unreasonable for not showing up.

Mr. Chair, you've indicated—

**The Chair:** I initiated no contact with any witness.

We're moving on. Thank you.

**Mr. Dean Del Mastro:** Mr. Chair, you indicated that you had no contact with any witness at any time. The witness has indicated otherwise. Is that truth according to a Liberal or not?

**The Chair:** Well, sir, I have shaken hands with every witness. I suppose you are going to have to say, because I shook hands and said hello—

**Mr. Dean Del Mastro:** Is that straight up, according to a Liberal, or not?

**The Chair:** I mean, I've met a lot of witnesses.

**Mr. Dean Del Mastro:** Saying you didn't when you did, and then trying to justify it by asking for an apology from somebody who's pointing out that there are significant inconsistencies with your actions with respect to this committee, with your conduct, with your statements, here you've been caught bold-faced, saying one thing and having done another. I'm just really curious as to how you'd like to respond to that, other than to say it didn't happen, or I was listening to the hummingbirds, or whatever you're saying you were doing. Clearly, you said one thing and did another.

**The Chair:** Thank you.

Mr. Nadeau, you're our second last speaker.

[*Translation*]

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

Good afternoon, Mrs. Proulx, Mr. Beardall.

Has the Public Prosecution Service received a file from the Commissioner of Canada Elections regarding the subject being studied by the committee?

**Mrs. Chantal Proulx:** As I said in reply to other questions I have been asked, we have been and continue to be consulted by the Elections Commissioner. However, I cannot disclose the content of those conversations. We have not received a file from the Commissioner asking the Director of the Public Prosecution Service to exercise his discretion and decide whether or not to lay charges.

**Mr. Richard Nadeau:** Is it necessary for the Elections Commissioner to make a complaint in order for you to act?

**Mrs. Chantal Proulx:** Under the Act, yes.

**Mr. Richard Nadeau:** If I understand correctly, you may not, of your own accord—when I say "you" I am referring to the Public Prosecution Service—lay a charge.

**Mrs. Chantal Proulx:** We are not investigators, we do not lay charges. Once charges are laid, we take over the case and conduct the prosecution.

**Mr. Richard Nadeau:** We are meeting here because the Conservative Party had excess spending on the order of \$1.3 million in the last election. That party is the only one that is being investigated, when there were 15 other parties that presented candidates in the last election campaign. Sixty-seven of its candidates, some of whom have become MPs and others ministers, are under the Elections Canada microscope.

Do you conduct other kinds of investigations? For example, the Bernier-Couillard, Cannon and Obama cases have been in the news. Were you contacted, or at least consulted, by the government about those cases? Are there other cases that have been reported to the Public Prosecution Service?

**Mrs. Chantal Proulx:** The decision as to whether to initiate an investigation is made by the investigative agencies alone. If, in the course of an investigation, they want to obtain advice about any case under investigation, they may contact us. However, I cannot comment on the cases to which you refer.

**Mr. Richard Nadeau:** I would like to ask you a question about the "mechanics" in terms of Parliament. What kind of budget do you have?

**Mrs. Chantal Proulx:** What kind in terms of size?

**Mr. Richard Nadeau:** Yes.

**Mrs. Chantal Proulx:** Our budget is about \$124 million a year.

**Mr. Richard Nadeau:** Those funds were voted by the House of Commons and Parliament as operating expenses.

**Mrs. Chantal Proulx:** Yes.

**Mr. Richard Nadeau:** I have no other questions, Mr. Chair.

[*English*]

**The Chair:** *Merci.*

Mr. Martin, please.

**Mr. Pat Martin:** I have no questions. Thank you.

**The Chair:** Mr. Proulx, you're the last speaker.

•(1200)

[*Translation*]

**Mr. Marcel Proulx:** Thank you, Mr. Chair. I will be splitting my time with my colleague Mr. Pacetti.

Mrs. Proulx, I understand your mandate, but I'm having a bit of trouble figuring out exactly what cases Elections Canada or the Elections Commissioner can use your services in.

I'll give you an example. A Mr. Reg Petersen, Mr. Goodyear's campaign manager, voluntarily entered into an agreement with Elections Canada regarding a problem he was facing. Does Elections Canada consult you when it doesn't know whether there should be charges or negotiations? Is that your role, or does Elections Canada have its own lawyers? Of course Elections Canada has its own lawyers, but when it comes time to lay charges, does it do that itself or does it consult you?

**Mrs. Chantal Proulx:** Elections Canada may not lay charges without the approval of the Director of the Public Prosecution Service, in that the Director has to be consulted and apply the test for prosecuting before a charge is laid by an Elections Canada investigator.

**Mr. Marcel Proulx:** But if he believes there has been an offence, that would not prevent him from negotiating something with the individuals or their lawyers. In the case of Mr. Petersen, there was a compliance agreement, a settlement he made voluntarily, in which he acknowledged he had sinned and had to suffer the consequences. In that case, he doesn't have to consult you.

**Mrs. Chantal Proulx:** That's correct. The Commissioner has the authority to decide whether he wants to negotiate what you call a compliance agreement.

**Mr. Marcel Proulx:** Thank you, Mrs. Proulx.

Mr. Pacetti.

[*English*]

**Mr. Massimo Pacetti:** Perhaps I'll speak English, just to make it a bit clearer.

Elections Canada has legal counsel. Elections Canada will not come to your department for frivolous or small items. They have the personnel, they have the competent people—do they not?—to handle these small frivolous cases. So when you do actually get a case, I would imagine it has to be something serious.

**Mr. Don Beardall:** Well, as I think we've indicated earlier, our involvement in Elections Act matters is not common. They fairly rarely arise. But any investigative agency—

**Mr. Massimo Pacetti:** Excuse me. So they're not common. We understand there's been a large number of inquiries to your department, but now you sort of contradicted yourself. I can't imagine there being that many cases where your department has been asked to intervene.

**Mr. Don Beardall:** There have not.

**Mr. Massimo Pacetti:** My understanding from Mrs. Proulx is that there was one where a prosecution was undertaken, and there were many...to me it sounded as if you couldn't even count them, there were so many. But I should think there would be fewer than a handful, that perhaps the only other one would be the one we're studying today.

**Mr. Don Beardall:** I would have to let Ms. Proulx respond, because she has better knowledge with regard to actual numbers.

However, your question was in regard to the seriousness of cases that might be referred to us. Any investigative agency, including Elections Canada, would come to us when they feel they require our input and advice. It would not be a matter of the seriousness or otherwise of the matter, so much as whether or not it raises issues on which they need our assistance.

**Mr. Massimo Pacetti:** That was my exact point from my opening question about an hour and a half ago. So we've finally gone full circle.

So the only time Elections Canada will come to your department is when it's a serious case, meaning there are going to be prosecutions and they're ready to go. They know what the two

criteria are. You've explained them to us and they know. You've enlightened us—you've enlightened everybody—but I think if it doesn't respond to the common good, there is no use prosecuting somebody, if we're talking about an expense report that wasn't signed or an official agent's name that was not on an advertisement. But in this case, it's obvious that Elections Canada has come and consulted with you.

My question is this. What is the action that's going to result from all this? Is anybody going to be thrown in jail, and is it going to be done within the next 12 months? That's what we'd like to know.

• (1205)

**Mr. Don Beardall:** Sir, as we've indicated previously, we are not in a position to comment on any particular investigation that may be going on right now, and in any event we can certainly not speculate as to what the outcome of the commissioner of elections' investigation would be in any particular case. We cannot say if the matter will ever be referred to us for our consideration.

**The Chair:** Thank you.

Mr. Dykstra.

**Mr. Rick Dykstra (St. Catharines, CPC):** Thank you, Chair.

I just want to pursue that a bit further, because I'm trying to clarify and understand your position with respect to attending here this morning and also in relation to what you can and what you can't comment on. Are decisions about what you can or can't comment on made by your department?

**Mrs. Chantal Proulx:** Yes, they are.

**Mr. Rick Dykstra:** So you disagree with Mr. Walsh's interpretation of a witness's testimony at committee here, then?

**Mrs. Chantal Proulx:** As I've indicated, I haven't seen Mr. Walsh's opinion.

**Mr. Rick Dykstra:** Let me just read a couple of things he says. I respect the fact that you're going to make a decision; that's not my issue here. It's just that we have the law clerk, who sent a letter to our chair indicating that:

A witness' position in court is not affected by what is said before a committee, as such testimony cannot be used, directly or indirectly, in such proceedings.

He then goes on to say:

As you know, this convention is an informal rule of practice and not a formal rule of procedure, and applies only to Members of Parliament speaking in the course of parliamentary proceeding, whether in the House or in committee.

So I'm just not quite sure where this line in the sand was drawn. It's great to have you here. You were created because of the Accountability Act, and it's good to have someone who obviously... once you pass legislation, we can see the results of that legislation and why you're here to do the job you're doing. But it's very difficult, other than hearing the outline of your position and what your responsibilities are, to find out exactly what your thoughts are with respect to the issue we're dealing with here.

For example, I would like to know how the warrant was executed and why so many people were aware of the fact that a warrant had been executed, almost in fact before it was public. Why would that procedure in respect to Elections Canada have been so public versus, I'm sure, other cases you deal with that remain so private?

**Mrs. Chantal Proulx:** To deal with your questions in sequence, in terms of the passage that you just read from Mr. Walsh's letter, I think there's an important distinction between someone who appears before this committee and is a potential witness in a subsequent proceeding and someone like Mr. Beardall and me who appear before this committee but in fact are almost certainly not going to be witnesses should there ever be a subsequent criminal proceeding.

Our claim of privilege is based on entirely different considerations. There's a public interest involved in the protection of ongoing investigations, and we have an ethical and moral obligation to uphold that. We are also bound by the Supreme Court of Canada's decision to respect the solicitor-client privilege that attaches to our advice. So while I do understand Mr. Walsh's letter, our issues are different.

**Mr. Rick Dykstra:** He says this, in fact: "Subject to a decision otherwise by the committee, the *sub judice* convention does not give a witness the right to not answer questions"—unless the committee decides that you don't have to answer the questions.

**Mrs. Chantal Proulx:** Again, I'm not an expert on the *sub judice* convention, but I can indicate that it is not the basis on which we're relying to respectfully decline certain questions that are put to us. The convention, as I understand it, covers matters where a witness is asked to testify in these proceedings about matters that may be raised in subsequent court proceedings or may in fact be pending before the court at the time the questions are asked.

**Mr. Rick Dykstra:** You're pretty clear on the motion that's before the committee in terms of what the committee is going to investigate. At the time you were asked to come here, didn't you wonder why you would be making a presentation on something you can't comment on?

**Mrs. Chantal Proulx:** We did have concerns when we learned that the committee had asked for our appearance, and we wanted to be quite clear about the limits of the assistance we can provide to the committee.

**Mr. Rick Dykstra:** Based on the fact that you made the committee aware of those significant and severe limitations, the committee still wanted you to come here.

**Mrs. Chantal Proulx:** That's my understanding.

•(1210)

**Mr. Rick Dykstra:** If you had to choose, would you have come?

**Mrs. Chantal Proulx:** I'm happy to assist the committee in any way that I can within the limits of our ability.

**Mr. Rick Dykstra:** But your abilities are significantly and severely limited. Has it been useful for the committee to hear what you've had to say?

**Mrs. Chantal Proulx:** I guess that's up to the committee, frankly.

**The Chair:** Sir, I regret, but your time is up.

Mr. Beardall and Madame Proulx, as has been the practice with other witnesses, we have offered you a brief closing comment or statement to the committee. If you care to correct anything that was said, or to amplify, stress, or cover something that was not done, this might be a good opportunity. If you wish, you have an opportunity now to make a final comment to the committee.

**Mrs. Chantal Proulx:** Perhaps just by way of correction in response to one of the last questions posed, and that Mr. Beardall answered, about the number of instances of Canada Elections Act files upon which we have been consulted, I echo Mr. Beardall's evidence that there have been few.

My previous response, that there were numerous occasions, related to a question I was asked about how many contacts we'd had with Elections Canada. I'm not aware of every contact a prosecutor may have had, and there probably have been several.

**The Chair:** Thank you kindly.

The witnesses are excused.

I would call Mr. Mayrand, please, to come to the witness table.

As I indicated to members, Mr. Mayrand has no opening remarks, and I understand from members that there may not be very many questions for him. So we could excuse him as well before we break.

Welcome back, Mr. Mayrand and Mr. Bernier.

Mr. Bernier is counsel for Elections Canada, and Mr. Mayrand is here because, as you know, the committee had requested five personnel from Elections Canada who are participating in the investigation. In a letter from Mr. Mayrand, and in a discussion with him, he laid out the reasons why he felt it was not proper for those five persons directly involved in an ongoing investigation that has emerging developments to appear. But he agreed to come, as the Chief Electoral Officer responsible for Elections Canada, in lieu of those five persons should there be any further questions.

I understand that he has no opening statement to make, and he's available to answer any member's questions.

Go ahead, Madam Redman.

**Hon. Karen Redman:** Thank you, Mr. Chair.

And welcome back, Mr. Mayrand.

I want to touch on an affidavit by a Geoff Donald, who is currently a Conservative staffer but who was involved in the 2006 election campaign. In an affidavit he purports that all parties did exactly the same thing as this in-and-out scheme the Conservatives are now trying to defend.

Are you familiar with that affidavit?

•(1215)

**Mr. Marc Mayrand (Chief Electoral Officer, Elections Canada):** I'm aware of the affidavit.

**Hon. Karen Redman:** I'm wondering if at any time, in your capacity, you've come across anything equivalent to the media buy by the Conservatives that is now commonly called the in-and-out scheme. Can you think of any other examples equivalent to the issue we're now dealing with before this committee?

**Mr. Marc Mayrand:** As I indicated in my previous testimony, I believe I said that there were no similar matters. I have since provided information to the committee under the undertakings, and I indicated that there have been four situations identified in which there were questions about expenses incurred.

**Hon. Karen Redman:** But there is nothing equivalent to this scale.

**Mr. Marc Mayrand:** Again, I won't comment on specific files.

**Hon. Karen Redman:** Obviously all of us around this table have run as candidates, obviously successfully. We're here. We have official agents. We take the rules of Elections Canada very seriously. Can you talk to us for a minute about what, from your perspective, constitutes authorization by an official agent for an expenditure?

**Mr. Marc Mayrand:** It has to be a proper expense, as I described, again, in a previous appearance. It has to be authorized by the agent; if not by the agent, it has to be authorized by another person who is herself or himself authorized in writing.

**Hon. Karen Redman:** Is there any expectation that somebody on the campaign, or indeed the official agent, may have seen a copy of this, seen this ad on a tape, or approved the transcript in any way?

**Mr. Marc Mayrand:** Again, I'm not in a position to comment on or respond to this question. We're talking about several transactions. I can't give you a definitive answer, I'm sorry.

**Hon. Karen Redman:** Is it legal for a federal party to download an expense after it's been signed off by the federal arbitrator, dealing with media specifically?

**Mr. Marc Mayrand:** The Elections Act, as I indicated earlier, does not allow for the transfer of expenses. It allows for the transfer of funds, goods, and services, but not expenses.

**Hon. Karen Redman:** You may or may not be able to answer this, but is it not the role of the federal arbitrator specifically to make sure spending limits are adhered to?

**Mr. Marc Mayrand:** I will let Mr. Bernier answer.

**Mr. François Bernier (Director, Legal Services, Elections Canada):** Are you referring to the broadcast arbitrator?

**Hon. Karen Redman:** Yes. Is it legal for a party to download expenses after they've been signed off? Is it not the role of the broadcast arbitrator to make sure spending limits are adhered to?

**Mr. François Bernier:** No, that is a responsibility of Elections Canada. The functions of the broadcast arbitrator are centred on the allocation of free and paid time to political parties, and so on, and ensuring that networks and parties respect those rules.

**Hon. Karen Redman:** So just for free advertising, not for paid advertising...?

**Mr. François Bernier:** As you know, in an election parties are guaranteed a certain amount of paid advertising time at the lowest available rate. He will see to the application of that.

In terms of reporting the expense, that's political financing. That's the responsibility of Elections Canada as such.

**Hon. Karen Redman:** So the media arbitrator makes sure it's fair amongst parties. Then by extension, would it be legal for a party, after having signed them off through that process, to download those expenses to individual ridings? Would that not certainly be breaking the spirit if not the letter of the law?

**Mr. François Bernier:** I think we may take the broadcasting arbitrator out of this equation. The answer is simply, as the CEO has indicated, you cannot transfer expenses. I think that's the best answer I can give you.

•(1220)

**Hon. Karen Redman:** Thank you.

**The Chair:** Madam Lavallée.

[*Translation*]

**Mrs. Carole Lavallée:** Let's just pick up where you left off. It is illegal to transfer expenses. You did say that, you did explain it the last time you were here. We got a document about the 67 candidates who in fact paid the expenses for what seems to us to be the national secretariat of the Conservative Party. The excess expenses allegedly total nearly \$1.3 million.

In the testimony we have heard this week, we learned that at least one Conservative candidate who was involved in what might be called an in-and-out transaction is not on the list of 67 candidates who are the subject of the present investigation. That candidate is Liberato Martelli, in Bourassa riding, and he says he received a \$14,000 in-and-out transfer. His financial statement submitted to your offices at Elections Canada show this. He says he met with one of your investigators. In fact, when we look at his electoral campaign return, we see that he received \$10,750 from the Conservative Party. In that financial statement, it states that this was not an advertising expense. I checked for the other candidates, and the amount is shown in the advertising column—there is a little radio/TV column beside the "other" column—but in his case it is shown in the office expenses column. So he apparently had a \$10,750 expense, and he says these were not his own expenses, it was money that was taken by the Conservative Party. In addition, he tells us that Michel Rivard, a Conservative Party employee, came to his office to do the financial statement and did not show him anything or explain anything to him. He told him to sign here and there and he left.

Can you tell me whether it is possible for there to be another system that would mean that these expenses are shown not in the advertising column but in the office expenses column?

**Mr. Marc Mayrand:** Once again, I do not want to comment on open cases. I can confirm, and this is clear from the public records, that Mr. Martelli's situation is not connected with the media buy case.

**Mrs. Carole Lavallée:** Is Mr. Martelli's situation connected with another situation?

**Mr. Marc Mayrand:** We are in fact questioning the expenses.

**Mrs. Carole Lavallée:** Don't give me any names just now, but have you seen situations like Mr. Martelli's in other financial statements?

**Mr. Marc Mayrand:** Once again, I prefer not to comment on open cases that are still under review.

**Mrs. Carole Lavallée:** You understand that if there is another parallel system, it would be useful to know. In any event, we will know it at some point. In any case, it is clear that there is at least one.

**Mr. Marc Mayrand:** I did say that Mr. Martelli's case is still under review.

**Mrs. Carole Lavallée:** After the review, is there an investigation?

**Mr. Marc Mayrand:** We will see how things to.

**Mrs. Carole Lavallée:** Have I understood the procedure correctly?

**Mr. Marc Mayrand:** It's hypothetical at this point. When the review of the return is completed, we will see whether an amended return should be requested or some other action is needed.

**Mrs. Carole Lavallée:** You know that the MPs have not testified before the committee. When we met with the candidates who lost the election and their official agents, they told us that they had relied to a large extent on the Conservative Party to give them information about the legality of the procedure. Their lawyer or the people from the party told them that what they were doing was legal.

Did official agents consult you about the legality of this procedure during the last election campaign?

• (1225)

**Mr. Marc Mayrand:** When I appeared in July, I was asked whether the party had consulted us. My answer was no, that we had no indication of that in our files.

Regarding the agents, I am not in a position to answer that question at this time.

**Mrs. Carole Lavallée:** In the document you sent us on August 6—you don't have to look at it, I know you know it by heart—you answered a question Russ Hiebert asked you, essentially asking whether the other parties had done the same thing as the Conservative Party. I'm summarizing his question there. You say in that document that a review of the database of financial returns, etc., and the review identified that for the 38th and 39th general elections candidates had reported, first, some expense that was paid to the party, and second, a transfer of funds from a party riding association.

In other words, you didn't find anything in particular. For the other parties, you found nothing illegal in the 39th general election, on January 23, 2006, or in the 39th general election, in June 2004.

Is that correct, that you found no system similar to the Conservative Party's in any other party?

**Mr. Marc Mayrand:** According to the analyses that I provided to the committee, we discovered no situations that resembled the media buy situation. However, as I pointed out in the letter, there are four cases still under review.

**Mrs. Carole Lavallée:** But there isn't a system like the Conservative Party's.

**Mr. Marc Mayrand:** Again, I am not going to comment on cases that are still being reviewed at Elections Canada.

**Mrs. Carole Lavallée:** If I understand correctly, based on the Conservative Party's system, or gimmick, the party absolutely wanted to break through its spending ceiling, which was \$18.9 million. Because it had more money, it found the way to ship its expenses to the ridings, and not necessarily, as we have seen this week, with the authorization of the candidates or official agents, to whom they did not always provide an explanation.

I want to be sure I have understood correctly. The last time you came to the committee, you told us that for an expense to be considered to be authorized by an official agent, five criteria have to be met, the first being that the agent must have known about it. As we have seen, some candidates did not even know about it.

[English]

**The Chair:** If Mr. Mayrand has an answer.... If not, we have to go on to somebody else. You're well over seven minutes.

[Translation]

**Mr. Marc Mayrand:** Because the question was not completed, it would be difficult for me to answer it.

**Mrs. Carole Lavallée:** Remind me what your five tests are.

[English]

**The Chair:** No, I'm sorry, no more.

Mr. Martin.

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

Thank you, Mr. Mayrand and Mr. Bernier, for being here again. It gives me an opportunity to restate the confidence that the NDP, my party, has in your office and in the job you're doing. I recognize that coming to this committee would be like going to the dentist for a root canal for any sane person who has to sit in your seat, so I thank you for being here.

I don't have many questions, really. Let me summarize it.

If I understand correctly, the official agent and the candidate both sign off on the financial statements for the election returns, and when they do so they attest that the expenses they are claiming, first of all, actually occurred in the local election campaign, and secondly, were at fair market value and not at some inflated price so that they can get more rebate.

Is that statement accurate?

**Mr. Marc Mayrand:** They both sign to the effect that the return reflects the transactions that occurred during the campaign and are in compliance with the act.

**Mr. Pat Martin:** It's that to the best of their knowledge, both those things are true.

We heard testimony that some official agents had no direction or control over the money that was transferred into their accounts, that they did not spend it locally. In fact, one official agent testified he had no idea what the money was for. He actually thought he was going to get leaflets and pencils and stationery for his campaign for the money that was transferred in and out of his account.

In that example, without naming that riding or that person, would this, in your estimation, qualify as being a local campaign expense under the direction and control of the official agent?

**Mr. Marc Mayrand:** Again, as I indicated to the committee in mid-July, the circumstances that you have just mentioned were considered in coming to the decision not to authorize the reimbursements, because it did not satisfy me that the expenses had actually been incurred by the candidates.

• (1230)

**Mr. Pat Martin:** And was that original adjudication made by the previous Chief Electoral Officer, Jean-Pierre Kingsley, or did he rule on any of those returns?

**Mr. Marc Mayrand:** It was done by me in March 2007. I don't recall whether.... I'm sorry, it was April 2007.

**Mr. Pat Martin:** Very good. Thank you.

Fair market value and the commercial value of these purchases or the expenses claimed has come up a few times. One of the examples that particularly jumped off the page at us concerns York South—Weston, Davenport, and Parkdale—Hyde Park, three contiguous ridings. One was charged \$49,999 for the advertising, one was charged \$39,999, and one was charged \$9,999, for essentially the same advertisements.

We made the point that radio ads and TV ads don't recognize electoral boundaries, that there's spillover, and so it's the area that you're saturating. And I don't think there's any TV or radio station in Toronto whose coverage stops midway through the city. If you're buying a radio ad for downtown Toronto, you're probably covering them all.

Do you have any comment about how you assess the real commercial value of the advertising that took place and the variance in the values?

**Mr. Marc Mayrand:** As I indicated again in my previous testimony on this matter, this is another circumstance that caused me to conclude that the expense was not incurred by the candidate—the fact that there was disparity in the amounts being claimed for what appeared to us as a common expense. There was no reasonable explanation for the variation in the amounts being charged.

**Mr. Pat Martin:** One of the other justifications for the search warrant sworn out on the affidavit that justified the search warrant says: The CONSERVATIVE FUND CANADA...did on or about June 6...file with the Chief Electoral Officer election returns...that it knew or ought reasonably to have known contained a materially false or misleading statement, contrary to subsection 431(a)

Can you elaborate what specifically the misleading statements would have been in the election returns filed by the Conservative Fund Canada?

**Mr. Marc Mayrand:** Again, I think the document you're referring to is part of the proceeding that led the commissioner to seek a search warrant, part of the court record, and I will not comment on those at this point in time, given that the investigation is ongoing.

**Mr. Pat Martin:** Although this particular aspect is in the public domain, you still feel that the—

**Mr. Marc Mayrand:** Yes, but again, the proceedings are far from over.

**Mr. Pat Martin:** All right, I won't press that point.

We heard testimony from another candidate in this time who called this arrangement a creative fundraising scheme to help ridings that have very little financial reserve to build up their bank account. Putting the money into their account and pulling it out again gave him the opportunity to claim a rebate of 60% of that amount, and it was justifiable to create a level playing field, he argued, because the winning incumbent Liberal candidate had a bigger bank account than he did. Therefore, in a creative way, it was justifiable to walk this money past that bank account long enough to file for 60% of it from the taxpayer.

Do you have any comment on that attitude?

**Mr. Marc Mayrand:** No. I think I'll leave it to the committee to make its own conclusions on those comments.

Again, I would simply say that the current regime does not allow for the transfer of expenses among entities.

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

Mr. Lemieux.

**Mr. Pierre Lemieux:** Thank you very much, Chair.

I thank you for being in front of us this morning, Monsieur Mayrand.

I'd just like to ask you a few questions about the conditions under which you're here. The first has to do with the dates of your first appearance, July 15 and 16.

Were there any negotiations over your availability to appear in front of the committee on those days, or were you just categorically told you must be there on the 15th and 16th? Were there any discussions at all about your flexibility to appear?

• (1235)

**Mr. Marc Mayrand:** There was some discussion as to whether I would be available for a certain period in July.

**Mr. Pierre Lemieux:** Good. I appreciate that. Actually, I think that's quite reasonable. The committee was convened. It would be unreasonable to just issue you a dictum to be here and then to convene the committee afterwards.

I'm asking because, of course, there are other witnesses in this very block who were just issued dictums: "You will be here at this time; we don't care what your schedule is." I don't mean you, I mean the witnesses. It was the same with summonses. Some of them were summoned at exact times, with no flexibility shown.

I just want to show that there's a difference here.

As well, I was reviewing your previous testimony and I noticed, then and now, the *sub judice* argument that you're using to not answer certain questions. For example, you had said, "I will not comment on ongoing investigations of the Commissioner of Elections Canada or the specifics of the case currently before the Federal Court." I understand that.

You were sitting here during the last committee meeting. You know there were many points of order raised, and the chair, of course, ruled in favour of *sub judice*. How important is this matter to you, the fact that you can invoke that and not answer all the questions?

**Mr. Marc Mayrand:** Maybe as a few points under this matter, I have made representation to the committee, through the chair, about some of the limits I would like to see apply with regard to my testimony. I invoked the fact that there are proceedings before the court or an investigation going on, and at times, as I did today, I refused to comment on matters that were still open at our office.

**Mr. Pierre Lemieux:** Right. And sir, I understand.

**Mr. Marc Mayrand:** That's as a matter of fairness and due process for everyone involved.

That said, I think it's up to the committee to tell me, or push me, or direct me to answer specific questions.

**Mr. Pierre Lemieux:** Okay, I understand what you're coming to, and I think what you're saying is that it's an important issue to you.

Let me just ask another question. Do you feel that it's a legitimate concern you have? In the fact that you're asking for this position to be taken, is that legitimate and valid, in your mind?

I'm not trying to set you up. I think it is.

**Mr. Marc Mayrand:** I wouldn't put it forward if I didn't think it was a legitimate one.

**Mr. Pierre Lemieux:** Right, I agree, and I think the chair in fact has informed the committee as such. He said basically—and I'm not putting words in your mouth, I'm saying what the chair said—that you would not appear in front of the committee unless you had this assurance that you in fact could not comment on matters or questions that pertain to the Federal Court case.

Actually, can I confirm that? Would you have appeared? If the chair had said no, you cannot invoke *sub judice*; you must answer all questions asked, no matter what they are, would you have come in front of the committee?

**Mr. Marc Mayrand:** Again, it's a bit hypothetical because we didn't get there. I would have had to consider whether I required the committee to issue a summons. I would have had to seek legal advice on how to respond to this in my position as an officer of Parliament. If I came to the decision to appear, I would have certainly asked specific direction for questions.

My concern is that my answers could have been quite frustrating for members, if I just showed up here and didn't answer the questions. That was part of my concern. I want to be helpful to the committee.

**Mr. Pierre Lemieux:** Yes, I understand that.

There are other witnesses who have not been treated the same, who have not been given the same deference to their requests in this matter. They have very valid concerns too. They have the same valid concerns that things they say could reflect upon the Federal Court case.

I think one of the points I'm trying to bring out here, particularly when it comes to this.... I'll start with *sub judice*. The chair basically cut you a deal. It's not a reflection on you; it's a reflection on the chair. He cut you a deal that was not offered to other witnesses. Other witnesses had no ability to take advantage of *sub judice*—only you. Oh, and then we found out today that the Public Prosecution Service of Canada could as well.

I don't know if you've been watching the proceedings. Have you been watching what's been going on this week?

• (1240)

**Mr. Marc Mayrand:** Not full time.

**Mr. Pierre Lemieux:** Not full time. All right.

You may or may not have noticed that the rules changed. When we started this week the rules all changed. You appeared in July. The *sub judice* that applied to you didn't apply this week. We ended up getting an opinion from Rob Walsh, the law clerk, which the chair tabled. It completely changed the rules for all of this week—except that today we reverted back to the old rules.

I know you are concerned about Elections Canada. Elections Canada must appear to be neutral and unbiased. I'm wondering if it causes you any concern that the chair has cut a side deal—I've even heard it referred to by others as a sweetheart deal. Is it of concern to you, as the Chief Electoral Officer, that the chair has cut this deal for you, for Elections Canada?

**Mr. Marc Mayrand:** Again, it's a matter of opinion and a matter for discussion for the committee. It's not for me to comment on the activities of the committee.

**Mr. Pierre Lemieux:** I'm asking your opinion. It's just your opinion.

**Mr. Marc Mayrand:** Again, I put forward some of the reasons, and I advised the chair in advance as to some of the limitations I would be facing in responding to various questions. That was found to be acceptable.

**The Chair:** Okay. We're into the second round. I have Mr. Proulx and Mr. Del Mastro.

Mr. Mayrand, I very much appreciate our relationship, which I believe has been very good from the first time I met you. When I advised you the committee had authorized me to make arrangements to have you appear before the committee pursuant to the motion adopted by the committee, at that time you raised with me, I believe—and you may want to confirm—that you had some concerns about whether some questions could arise that might potentially prejudice or compromise either the investigation or other ongoing proceedings.

Is that your recollection, sir?

**Mr. Marc Mayrand:** That's correct, and I think it's reflected in the correspondence.

**The Chair:** And is it your recollection that I wrote to you—and I believe it was carbon-copied to all members of the committee—to affirm we understood there would potentially be questions you would be able to indicate you may not be able to answer, but that this was understood?

**Mr. Marc Mayrand:** I'm not sure which letter that is.

**The Chair:** That's the first letter I sent you, pursuant to our very first telephone conversation.

**Mr. Marc Mayrand:** Yes, is that the letter dated June 25?

**The Chair:** Yes, sir.

**Mr. Marc Mayrand:** It refers to the mandate of the committee regarding technical considerations for public office-holders. I guess it would be helpful for understanding such items as what transpired, how it relates to the Canada Elections Act, how you conducted your work, and the status of the matter, which are matters that were covered on July 15 and 16.

**The Chair:** Do you believe that you and I cut a deal?

**Mr. Marc Mayrand:** We had a discussion, which was confirmed in writing, that determined the parameters under which I was agreeable.

**The Chair:** Are you familiar—

•(1245)

**Mr. Gary Goodyear:** On a point of order, Mr. Chair—

**The Chair:** No, I'm in the middle of questioning. I'm sorry.

Mr. Mayrand, are you familiar with the *sub judice* convention?

**Mr. Marc Mayrand:** I'm not an expert, but I'm aware of it.

**The Chair:** Is it your understanding that it is a voluntarily imposed convention, which means that you would have an opportunity to say before another proceeding, "I can't answer this question"?

**Mr. Marc Mayrand:** Yes.

**The Chair:** So it's self-imposed.

Did Mr. Mayrand get a copy of Mr. Walsh's opinion? It is basically confirming that it is self-imposed, and that should someone claim the *sub judice* convention before a committee of Parliament, that is not a reason not to answer the question, but the person has an opportunity to make the case as to why he or she cannot. It could be solicitor-client privilege. It could be developments in an investigation. The chair, and in fact the committee, ultimately decides whether the question should be answered.

Is that your understanding of the process?

**Mr. Marc Mayrand:** It is my understanding.

**The Chair:** Is that process applicable to all persons who appear before us?

**Mr. Marc Mayrand:** I can't comment on that.

**The Chair:** In fact, according to Mr. Walsh's letter, which all members have received, these are precisely the terms and conditions that apply to all witnesses who have a judicial proceeding going on that's relevant to this matter. Therefore, any deal that Mr. Lemieux has referred to is in fact not a deal. These are in fact the rules of Parliament as they exist and as they have been articulated by Mr. Walsh, the law clerk. So all of this nonsense and waste of the committee's time about cutting deals with people is simply to delay, deny, and deceive by the member.

Now I want to move to Mr. Proulx on the second—

**Mr. Gary Goodyear:** I have a point of order, sir.

**The Chair:** Yes.

**An hon. member:** Order.

**Mr. Gary Goodyear:** No, no, you're not the chair, but I appreciate.... You're a very kind man, sir, but the chair has that authority.

I have a point of order, Mr. Chair.

**The Chair:** Mr. Goodyear, on a point of order.

**Mr. Gary Goodyear:** Could I ask that the clerk, perhaps, supply us with any documentation, in the history of mankind, on when a—

**The Chair:** No.

**Mr. Gary Goodyear:** —chairman conducted his own trial during a committee meeting?

**The Chair:** That's not a point of order, sir.

Mr.—

**Mr. Pierre Lemieux:** Chair, I have a point of order.

**The Chair:** We'll have Mr. Lemieux on a point of order.

**Mr. Pierre Lemieux:** Yes, it just has to do with your comments regarding my questioning.

**The Chair:** That's debate, sir, not a point of order.

We'll have Mr. Proulx, please, for five minutes.

[*Translation*]

**Mr. Marcel Proulx:** Thank you, Mr. Chair.

Good afternoon, Mr. Mayrand and Mr. Bernier. Thank you for being with us this afternoon. I will be quick.

Yesterday, we heard witnesses from Retail Media. They explained the kind of invoicing they had used for the Conservative Party. At one point, there were questions about how taxes...

[*English*]

**Mr. Pierre Lemieux:** [*Inaudible—Editor*]

**Mr. Marcel Proulx:** I listened to you. Would you mind listening to me, Pierre? Thank you.

[*Translation*]

... both federal and provincial, were invoiced. On one invoice that you are certainly familiar with, dated January 1, 2006, there was a whole list of ridings all across the country, except Quebec, because in Quebec, it was explained, the invoicing was done differently. That invoice showed a figure of \$591,411, with federal tax in the amount of \$41,398.77 added, under number 886334549. We wondered how the various provincial taxes could be distinguished, since they are not necessarily uniform across the country, and they are also not collected uniformly. For example, in the Maritimes, they do it differently.

Overnight, I examined the documents and I found charges of \$7,385.50 in the invoice, that would apply to the riding of Cardigan in Prince Edward Island.

The people from Retail Media told us yesterday that, in their view, the provincial taxes were included in the amounts billed before the GST, the federal tax, was applied. However, when I examine the return by the official agent in Cardigan, there are no charges that apply to Retail Media. I assume, Mr. Mayrand, that that part of the \$7,385.50 invoice was paid somewhere else.

If that amount was paid somewhere other than in Prince Edward Island, how can you connect the credits that may have been given and the taxes that may have been billed in other parts of the country? In other words, what I am asking you is how you were able to consolidate these various amounts without having the individual invoices, particularly in the case of this \$7,385.50, which were not reported in the return by the official agent in Cardigan?

• (1250)

**Mr. Marc Mayrand:** I can simply talk about it in general terms. First, I am not intimately familiar with each of the cases. Tax questions, normally, are of more interest to Revenue Canada or the relevant tax authorities. In the cases that concern us, obviously, that question was less important because the expenses were rejected, refused. All sorts of other questions come up in a particular case, but it did not seem to us to be essential in this case, as we dealt with it.

**Mr. Marcel Proulx:** Okay. Before halting the refunds, you accepted some returns and you even issued some 60 percent refunds. I assume that some of them were in Quebec. The invoicing in Quebec, according to what Retail Media told us, was done by individual county. At the bottom of the invoice, there is a different allocation, as I was saying; that is, there is the amount of the invoice, and the federal tax and provincial tax are added, and a number is given, both for the federal tax and for the provincial tax, which is always the same one.

I assume, but perhaps you can give me an answer, that the tax number is Retail Media's tax number. You can't answer?

**Mr. Marc Mayrand:** I couldn't answer.

**Mr. Marcel Proulx:** Okay. I have just one brief question to ask you. If memory serves, you undertook to provide the committee... You had said that the refunds, the famous 60 percent, had been paid to some candidates and MPs before you put a halt to it. You gave us a list of MPs, ones who were elected, but you didn't provide us... You had told us you gave refunds to 17 Conservative Party candidates.

Do you recall providing that list to the committee?

**Mr. Marc Mayrand:** I think it is in the letter I sent the committee last week. The table on page 8 shows the 17 candidates, and we put an asterisk beside the ones who were identified by the committee as being public office-holders.

**Mr. Marcel Proulx:** So it wasn't just elected members, but also candidates who were not elected.

**Mr. Marc Mayrand:** Yes.

[*English*]

**The Chair:** Mr. Del Mastro, you have five minutes.

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

Mr. Mayrand, first I want to go back to something Mr. Martin had indicated. He was basically saying we've done something other

parties haven't. And I just want to refer to an article written by Mr. Robin Sears. He's the former NDP campaign director. He wrote an article entitled "Elections Canada is the real scandal", which ran in *The Globe and Mail*.

He said a number of things. For one, he said:

For 30 years, parties have transferred money to candidates. Then they take some of it from everyone to support central campaign costs. Look at any party's filings and the flows are recorded for all to see. Stéphane Dion's 2006 campaign filing shows money moving in and out on the same day. Various New Democrats' filings reveal that in their more centralist structure, more money flows up than down, but they too mix national and local spending freely.

He goes on to write:

...Elections Canada's very un-Canadian behaviour is unacceptable in a democracy. Without a better argument and evidence, Elections Canada will lose the legal battle, and then we will all pay the cost politically. The bad blood caused by its storm-trooper tactics has infected the political system. Many Liberals and New Democrats are horrified by all of this. They know it could be their turn next.

Are you concerned about how many Canadians are right now questioning the impartiality of Elections Canada? Does the reputation of Elections Canada in this concern you, and that an NDP campaign manager would write that? This isn't us saying that.

We have a point of order.

• (1255)

**The Chair:** No, I have indicated I want to hear it after. I don't want it to interfere with your question or the answer.

Carry on.

**Mr. Marc Mayrand:** Well, I generally don't comment on media or reports. I will simply point out that before forming an opinion, I think everyone should be sure of looking at all the facts and circumstances. And again, the courts will decide regarding this matter in due course.

**Mr. Dean Del Mastro:** That doesn't have anything to do with whether or not you're concerned about the perception of Elections Canada. We've read numerous examples of the NDP that back up exactly what Mr. Sears has said. He also says that Elections Canada decided last year to retroactively change its interpretation to try to force a separation between a party and its candidate's spending.

Now, based on his commentary and his being a former NDP campaign director, are you going to look into the practices of the NDP, the ones we have come out and spoken about—for example, with Libby Davies or Olivia Chow? Are you going to look into their actions? It has nothing to do with this case. Surely you can comment on that.

**Mr. Marc Mayrand:** What tells you we're not looking into it?

**Mr. Dean Del Mastro:** Well, you've never indicated you were.

**Mr. Marc Mayrand:** I do not comment specifically on specific files.

**Mr. Dean Del Mastro:** Okay, so I can assume by your comment that you are looking at those.

**Mr. Marc Mayrand:** I think if you were to look at our website, you would see that the report of the individual you mentioned has not been posted as reviewed, which shows that it is still under review.

**Mr. Dean Del Mastro:** Thank you, Mr. Mayrand.

Mr. Mayrand, I notice, for example, that the return of Mr. Hubbard, who is part of this committee, at one point was not finalized through Elections Canada, and I can't confirm that it is as of today.

Can you confirm that you may be looking at some of the election filings of the Liberal Party, as well, for having exercised the same practice?

**Mr. Marc Mayrand:** Again, I don't comment on files.

**Mr. Dean Del Mastro:** But there are a number that you are reviewing.

**Mr. Marc Mayrand:** Unless directed by the committee, I'm not inclined to comment, if you're referring to the four situations I mentioned in my letter. I'm not inclined to comment on those four files or situations that are still under review.

**Mr. Dean Del Mastro:** I'd like to ask the committee to direct Mr. Mayrand to respond to the question.

**The Chair:** The question is in regard to a specific candidate or candidates. I'm pretty sure that every party has candidates from the past election who have not been settled and who have nothing to do with the in-and-out issue.

• (1300)

**Mr. Dean Del Mastro:** I have a motion on the floor.

**The Chair:** I understand that.

I want members to understand. Mr. Mayrand has sworn testimony that he looked at both the 2004 and 2006 elections and found that no other party, other than the Conservative Party, participated in this.

The question for the committee is that Mr. Del Mastro would like to direct Mr. Mayrand to answer the question about Mr. Hubbard and other files that seem to have nothing to do with the motion before us. But that's his request.

**Mr. Marcel Proulx:** What has happened to my point of order, Mr. Chair?

**Mr. Dean Del Mastro:** I put a motion on the floor.

**The Chair:** At this point I'm going to rule that it's out of order with regard to the mandate of the committee. Thank you.

**An hon. member:** I challenge the chair's ruling.

**The Chair:** Okay. We'll call that vote now.

(Ruling of the chair sustained: yeas 6; nays 5)

**The Chair:** We'll move now to Mr. Nadeau.

I apologize. Mr. Proulx had a point of order that I deferred until Mr. Del Mastro had completed his intervention so we wouldn't interfere with him.

Mr. Proulx is next, on a point of order.

**Mr. Marcel Proulx:** To my knowledge, Mr. Sears is a spokesperson for Mr. Brian Mulroney. So Mr. Del Mastro is misleading the committee.

**The Chair:** Mr. Proulx, that's a matter of debate, not a point of order.

Now we'll go to Mr. Nadeau, *s'il vous plaît*, for five minutes.

[Translation]

**Mr. Richard Nadeau:** Thank you, Mr. Chair.

Mr. Mayrand, Mr. Bernier, good afternoon.

From the standpoint of the spending mechanism, if Conservative candidates from a region like Quebec City for example—think about a particular election—want to band together to pay for an ad, what do they have to do so that it will be recognized as local advertising?

**Mr. Marc Mayrand:** That is a little hypothetical. Again, you have to be sure, and this is fundamental, that each candidate incurs and pays a fair share of the costs associated with the arrangement they want to make, whether for advertising or for other services. The same rule still applies.

**Mr. Richard Nadeau:** This is when they want to arrange it as a group. So if I understand correctly, that is what was not done, by your analysis, in the Quebec City region in the last election.

**Mr. Marc Mayrand:** I have said several times at this point: I am not satisfied that the expenses claimed were actually incurred by the candidates, in the amounts claimed.

**Mr. Richard Nadeau:** That answers my question.

To take another tack, some people have been brave enough to appear before the committee. In fact, they were not merely brave, they did their duty by coming to answer questions from the members of this committee.

Personally, I saw that at some point, and this was also the opinion of some candidates and official agents, in terms of the orders they had received from their party for handling certain cases that included transfers of funds, etc., they were not given any explanation. They were told that it was fine, not to worry, everything would be spic and span, there would not be any problems, it will be a piece of cake.

So in my opinion the Conservative Party used these people, by exploiting their naiveté, or their lack of familiarity with all of the laws.

My question is for Elections Canada. Would it be possible for you to allow official agents... We know there are a lot, because there are a number of parties, and so a number of candidates, including some independents. Would it be possible for you to ensure—perhaps that is too strong a word—or at least to allow, to be democratic and in the sense that everybody is given an equal opportunity, to offer training throughout Quebec and Canada so that these people can get as good a grasp as possible, particularly of the important aspects—and I know that the law is important in itself—so that all official agents and candidates, if indeed they wanted to attend, could get non-partisan training from Elections Canada?

Would it be possible to reach all these people? You are doing it at present. Would it be possible to extend that process, to avoid finding ourselves in situations like the ones we are talking about this week?

• (1305)

**Mr. Marc Mayrand:** We are already making efforts to do this, but there are various problems, the geographic problem being one, in the sense that we have huge areas to cover.

The other problem relates specifically to candidates' agents. Often, they are only appointed right before or right after the election campaign begins. Right there, in terms of the things they have to prioritize, it is more difficult for them to free up time. Some of them are appointed at the last minute.

That being said, we hold sessions regularly in places across the country. We mainly, but not exclusively, target them at agents in riding associations that have some permanence. In addition to the training sessions offered regularly across Canada, we also offer the parties an opportunity when they have meetings to hold a training session at the meeting.

[English]

**The Chair:** *Merci.*

Mr. Goodyear, please.

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

Welcome, Monsieur Mayrand.

I'm going to read something from an affidavit, and this is based on some documents from Elections Canada.

According to the records from Elections Canada and this signed court document, almost all Liberal Party candidates' expense reports obtained from Elections Canada "included significant invoices to local campaigns for goods and services provided by the...national party". Rarely did any of these invoices have itemization, rarely did they set out the content—

**Hon. Karen Redman:** I have a point of order.

**Mr. Gary Goodyear:** —of the advertising in terms of whether they were national or local, although sometimes the invoices actually admitted they were national expenses.

Now, of the names on the list, the one that pops out right away is Stéphane Dion.

I want to suggest too, however, that in another part of this same court document, Elections Canada's records of invoices of local campaigns from various forms of publicity material and advertising—radio and television, etc.—all were accepted by Elections Canada. The invoices and related documentation for such advertising rarely set out the content of the advertising, in terms of whether it was national or local, although sometimes, as I've indicated, it did indicate that it was national.

The documentation indicates that Elections Canada never suggested, let alone took a position, that the local campaigns of this party, despite the fact that there was a lack of information about the content, or despite the fact that it even indicated straight up that it was national in extent but expensed at the local level....

It further goes on to say that there was absence of full documentation, that some of the ads had no tag lines on them, that official agents did not preauthorize verbally or in writing any of this stuff. And the names that stand out on that list are Stéphane Dion, Mark Holland, Ralph Goodale.... I could keep reading, but my time's limited.

These are examples of parties transferring expenses, which you have said is not allowed, and for doing which you have singled out one party. And of course, this is the essence of the interpretive challenge before the court.

Can you tell me if there are any files still open? Without maybe naming the names—I'm going to ask you that in a minute—are there any files still open? You mentioned the NDP. You didn't say they were being investigated, but you certainly implied that you haven't shut that door yet. Have you shut the door on these Liberals? Have you shut the door on the Bloc entirely?

• (1310)

**Mr. Marc Mayrand:** First of all, I'm not sure what document you're referring to. I don't have it in front of me. I'm not sure it seems to be—

**Mr. Gary Goodyear:** Please keep going or stop my clock.

**The Chair:** No, Mr. Mayrand has indicated that he doesn't have the information he needs to answer further to your question. I believe that is where we've left it.

**Mr. Gary Goodyear:** The witness hasn't answered my question, Chair.

**The Chair:** Madam Redman, is this an urgent point of order that we should deal with right now?

**Hon. Karen Redman:** It is.

**The Chair:** Okay, stop the clock for Mr. Goodyear.

I prefer not to interrupt questioning and answering, but...

Madam Redman.

**Hon. Karen Redman:** I believe it's procedural.

I would ask Mr. Goodyear to say who is the author of the affidavit and what he's referring to, for the edification not only of Mr. Mayrand but of the rest of the committee.

**The Chair:** Okay. I think it's a good point. It's not a point of order, but it is a good point.

Maybe Mr. Goodyear can assist Mr. Mayrand first of all, so that if he's going to give an answer to a matter, he is absolutely sure what document, what facts. It's only fair. Otherwise, I think he'll have to indicate that he'll undertake to provide an answer to you, sir, if you would provide him with copies of the relevant document.

**Mr. Gary Goodyear:** Without using up my time, I'd be happy to do that.

**Mr. Paul Szabo:** No, I haven't even started your clock again, yet.

**Mr. Gary Goodyear:** I'd be happy to do that.

I'll move to another question.

**The Chair:** Okay.

**Mr. Gary Goodyear:** Can you tell us the names of the Liberals whose files are still open, on your website?

**Mr. Marc Mayrand:** It's on the website.

**Mr. Gary Goodyear:** I have one minute left, Monsieur Mayrand. Please, let me just ask you a straightforward question.

I can show you evidence that the NDP did exactly the same thing by transferring expenses—Libby Davies, for example, a witness who we asked be here; we were denied that. If I show you a series of e-mails, will you agree to investigate the NDP, the Bloc, and the Liberals as you are doing now with just one party?

**Mr. Marc Mayrand:** Again, there's a process for that. Complaints can be filed with the office at any time, by anyone. We will review the complaints, review the facts that are alleged, and determine what is the proper course of action to be taken.

**Mr. Gary Goodyear:** So if I show you the evidence you will investigate?

**The Chair:** Mr. Goodyear, unfortunately your time has expired for this round.

**Mr. Gary Goodyear:** Thank you.

**The Chair:** Mr. Martin, please. You have five minutes.

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

I think it's useful at this late hour—even though it's a quarter after one, we're all hungry, and some people are getting grumpy—that we try to cut through the smoke screen that's been put up by Darwin's waiting room over here and we try to establish the real salient points here. The Conservatives spent \$1.3 million more than they were allowed to under the Canada Elections Act's spending limits. Then they hid those expenses by trying to transfer the expenses to the books of local riding associations. That act in itself is a fraudulent effort to hide a contravention of the Canada Elections Act.

Do you agree?

•(1315)

**Mr. Marc Mayrand:** Again, as I've testified before this committee before, the only decision made this far is to refuse reimbursement of those claims as I did not find them having been incurred by the candidate. As to whom those expenses should be attributed to, no decision has been made.

**Mr. Pat Martin:** I understand.

To compound the offence, then they had the gall to claim a rebate on 60% of those fraudulent expenses, getting a bonus on the proceeds of the crime, so to speak. I think that's where most Canadians would really find fault.

Our election system is funded in a number of very generous ways. In the first place, if I make a donation to a political campaign, I get 75% of the first \$400 given back to me; second, we subsidize elections to the tune of \$1.75 per vote received in the election campaign given to the party; and third, there's a rebate on the legitimate local expenses of campaigns of 60% of their actual cash outlay—not of in-kind expenses, but of legitimate cash outlays, at fair market commercial value, spent locally. We're very generous.

The Conservatives have developed what they call, what their candidates call, a “creative fundraising scheme” to prop up the bank

accounts of ridings—in one witnesses' testimony—in a low-income area because they are pleading poverty and therefore that justifies bilking the taxpayer out of 60% of this phantom money that was dipped into a bank account for about 30 seconds and yarded right back out again.

That scenario would not be allowed. Well, obviously I don't have to ask you, sir, because you disallowed those claims, and I thank you for catching it.

Other than that, all candidates in all 308 ridings had their books scrutinized, and fault was only found with 67 Conservative Party ridings. So the rest is self-evident.

At this point in time, Mr. Chairman, I would like to make a motion that we suspend the proceedings after the next Liberal speaker for a two-hour break so that we can get some business done before the end of business day, because I anticipate we're going to have a long evening getting through the other orders of business today.

**The Chair:** Mr. Martin, we're coming to the end of the second round. In fact, the end of the second round is not actually Madam Redman, but the person after her, who is Mr. Tilson. And I think it's only fair that—

**Mr. Pat Martin:** Well, you don't get to editorialize on my motions, Mr. Chairman.

**The Chair:** I just raise it for you that our practice has been to cut it off at an end of a round. You've made a motion.

**Mr. Pat Martin:** I've made a motion, and I'm quite serious about it. We've gone on way beyond a reasonable timeframe to be sitting here without a break and without any food.

**The Chair:** The motion is in order.

Now we have a point of order here. Please don't debate the motion, though. It had better be a point of order.

**Mr. Pierre Lemieux:** It's a point of order.

Why are you accepting a motion in the middle of questioning? We are questioning.

**The Chair:** Sir, it's because it's permitted under the rules. I would be happy, sir, to show you that.

**Mr. Pierre Lemieux:** You are changing the rules as we go—again. This preferential treatment for the opposition is unacceptable. You've been doing this the whole time.

**The Chair:** That's a very serious allegation, that I've been changing the rules. I just indicated to you that under the rules of Parliament a member can make a motion during the time in which he is addressing a...[*Inaudible—Editor*]. It is in the rules.

You've called me a liar. So I'm going to look it up for you, and we're going to take the time to get you the reference.

**Mr. Pierre Lemieux:** To correct the record, I did not call you a liar. Correct the record.

**The Chair:** You're saying I'm changing the rules. I'm not changing the rules. You're saying I changed the rules. That's a lie.

**An hon. member:** You just said it yourself.

**The Chair:** You said I'm changing the rules.

The issue is whether or not a motion can be made, and he's challenged that. I said it's permitted, and he's saying, no, that I'm changing the rules.

Let's get the answers again to correct Mr. Lemieux.

**Mr. Pierre Lemieux:** What time was on the clock when he dropped this?

**An hon. member:** I have a point of order.

**The Chair:** We are already on a point of order.

What I'm going to do, once we get the reference, is provide it to Mr. Lemieux so that he won't have to raise this point of order ever again about when you can ask questions. There are guidelines available for members of Parliament, and I hope you will have your office get them for you.

Mr. Martin has made a motion, and I think the motion is fairly... Okay, we'll have a speakers list.

Mr. Dykstra? Yes.

Is there anyone else who wanted to speak to this motion of Mr. Martin?

I have to let Mr. Martin speak first on his motion. The mover does speak. I interrupted because there was this point of order that came. I interrupted him.

Mr. Goodyear would like to give us his words of wisdom. Is there anyone else? Okay, we have that.

Mr. Martin, your motion was that we suspend after Madam Redman for two hours. Is that everybody's understanding of his motion?

Mr. Martin, do you have anything further on your motion?

•(1320)

**Mr. Pat Martin:** May I add, as a point of clarification, that my intention was "at the end of this round", and I understood that the end of the round was Madam Redman. If Mr. Tilson—

**The Chair:** And I said to you it actually was Mr. Tilson.

**Mr. Pat Martin:** If Mr. Tilson is actually the last one, then with the permission of the committee I think the motion should be that we have a two-hour break.

The salient point here is that I want a full two-hour block of time so that I can do some work in my office during this lunch-break period before the end of the business day. I need to do that, and I'd ask the indulgence of the committee, if we could perhaps amend this or put a different motion, that at the end of this round of questioning we have a two-hour break before we resume.

**The Chair:** I had understood that, and that's why I raised with you that the end was Mr. Tilson and not Madam Redman.

I think everybody understands it. There are members who have asked to speak on this, but if they understand now that we will take his motion as being that he intended, at the end of the second round, that we suspend for two hours, then that is the motion before us.

Mr. Dykstra was the first member I had on the list for debating this.

**Mr. Rick Dykstra:** Thank you. The clarification helps. I had intended to question the procedure around suspending before a round has been completed. That's actually contrary to what this committee would have agreed to at the beginning of the session, so it would not have been in order.

I'm not going to be supporting the motion, but certainly the motion to suspend after the round is completed is a motion that can be tabled.

**The Chair:** Mr. Goodyear, please.

**Mr. Gary Goodyear:** I would like to have clarification from you, Mr. Chair. If this motion is adopted, will the same witnesses be here after the suspension? Will they still be available to us for more questioning?

**The Chair:** The committee could do that if it so wished. We invited Mr. Mayrand to be here this morning. He is an officer of Parliament and he wants to provide service to this committee. If the committee feels it's essential that he be here to carry on, I think the committee should make that specific request.

I would suggest, since many members really question why he should be here at all, and the committee may want to call him back at a later date... I'm not sure what the committee's view is, but if the committee wants to have Mr...

Mr. Mayrand, I apologize. The committee had invited you to be here from 10 o'clock to noon. It's 1:30 already. I didn't anticipate this. Are you available, sir, to come back later—I don't know exactly when—to continue, or would you...?

**Mr. Marc Mayrand:** Would it be after 3:30?

**The Chair:** We are already on a point of order. Hold it for a moment.

I simply want to make sure the members understand whether or not there are any commitments of the Chief Electoral Officer. We are now asking him for more time here, which I'm sure he wants to give, provided he has not made other commitments.

**Mr. Marc Mayrand:** I had other commitments, but depending on the needs of the committee, I could make some changes for after 3:30.

•(1325)

**The Chair:** Maybe I can assist. Right now I have, after Mr. Martin finishes his time period with his motion, Madam Redman and Mr. Tilson, for five minutes. That is the end of the second round.

I guess the real question is, do the members want a third round?

**Some hon. members:** Yes.

**Some hon. members:** No.

**The Chair:** The members do?

We'll not be able to give you an answer for a second, because we're going to deal with Mr. Martin's motion that the committee suspend at the end of the second round for two hours.

Is that correct, Mr. Martin?

**Mr. Massimo Pacetti:** To get to committee business?

**The Chair:** No, he did not say that. He said suspend at the end of the second round, which is Mr. Tilson, for two hours. That is the motion.

Is that correct, sir?

**Mr. Pat Martin:** It was certainly my intention that we move on to other agenda items. I have no interest in a third round with Mr. Mayrand.

**The Chair:** Sir, your motion, as written by the clerk, was just that we—

**Mr. Pat Martin:** I thought I did say so that we could proceed with other agenda items.

**An hon. member:** I think cue cards should be held up here.

**Mr. Pat Martin:** I'd like to vote on the motion.

**The Chair:** There could be an amendment made by another speaker. Could someone get on the list and make that...? Okay.

We have Mr. Dykstra, then we had Mr. Goodyear, and.... You're not done?

**An hon. member:** No.

**The Chair:** We have a speakers list. If anybody has points of order, they should be points of order that are urgent and relate to the now. Let's otherwise allow people who are in the middle of speaking to complete their turn.

Mr. Goodyear, we want to complete your intervention.

**Mr. Gary Goodyear:** Could I possibly have some quiet from the opposition first, Mr. Chair?

**The Chair:** Order, please, colleagues.

**Mr. Gary Goodyear:** Thank you very much, Mr. Chair. Thank you very much for getting an answer from Monsieur Mayrand on whether he'll be able to attend this afternoon or not.

Obviously, at the outset I am going to vehemently oppose this motion. This is another attempt to shut down access to a witness who is an absolute expert and at the centre of this entire process. We've seen all of the witnesses we need, and it would be nice to have two hours. Some of the members have indicated they want to spend a few hours to do some preparatory work. I'd like to suspend for 12 hours and get Libby Davis here as a witness. Yes, I know it's Davies. My apology to the member.

I have great concerns about this. I know full well that we don't have the numbers to win this vote. I know full well that it doesn't matter what words come out of my mouth; I will not convince you to allow us to question this witness. There can be no harm in getting at the truth, unless you have something to hide.

We had every single one of our witnesses denied. We asked at the original meeting if we could have eight additional rounds with Monsieur Mayrand. This committee—not this side of this committee, but the opposition side—voted this down and basically shut down our ability to generate questions from Monsieur Mayrand. So knowing that the numbers, the tyranny of the majority, would dictate the outcome, we asked for a number of documents from Monsieur Mayrand. Some of them were just provided this morning—taken back because there was something wrong with them. That's fair. We agreed to give them back, because that stuff happens. We just got them back.

My point is that we've asked for 12 pieces of documentation so we can move forward with our side. Until two hours ago, the Liberals had all the documentation they had asked for; we had absolutely nothing. All of the witnesses we've asked for have been denied their right to appear here to present our side and prove to Canadians that all parties do this in every extent, in every fashion. The only good news behind this is that the witnesses who did show, the witnesses called by the opposition, actually did support our case.

Now we're going to shut down this thing. In some ways it's good to see that this partisan, illegitimate forum is done. We know that when and if any report from this committee hits the House it will be dead on arrival. But we have the opportunity to get more information from this witness. This witness is here before other witnesses.

I really don't know what else to say. We came here in good faith to play by the rules. It's been difficult every day to learn the new rules and how they might change. We've heard you defend yourself and make changes in how you perceive talking to a witness as not talking to a witness. We've seen you backtrack on statements about summonses. This has been a farce. It's a joke. I don't understand how we can now vote to not give us more opportunity to question this witness. I just can't believe this.

One of the witnesses that the opposition called was the chairman for the national party. Did you learn something that he was going to say that would help our case? Is that why you voted to get him out of here? Just this morning we had a gentleman who was summonsed and showed up—

**An hon. member:** Wrong day.

**Mr. Gary Goodyear:** It's not relevant. The gentleman's here right now doing his civic duty as an honest Canadian, and do you know what? He's denied, when there's an open chair here.

• (1330)

It has been suggested by an opposite member...

I'm not debating you, Mr. Chair. If you want to have a conversation, then why don't you get on the speakers list?

**The Chair:** He was not denied, sir. He is going to be heard by the committee. The committee voted to hear him. He was not denied.

**Mr. Gary Goodyear:** Really. Well, you've helped my case, Mr. Chair. And thank you for interrupting me.

Mr. Chair, the motion is to move to committee business, so despite what you're trying to say at this point—

**An hon. member:** What a phenomenal waste of time.

**Mr. Gary Goodyear:** Then we should withdraw the motion, because there's no way we can hear from this witness if we adopt this motion.

**The Chair:** Order. I'm going to interfere. Order.

I think everyone should be reminded that the vote that passed is that the witness Mr. Goldstein will be heard after we complete all other business scheduled for today. He will be heard. That was the vote of the committee.

And please, Mr. Goodyear, you should not say that he has been denied. We want to hear him, but it would appear that there's—

**An hon. member:** Throw that guy out of here.

**An hon. member:** We'll subpoena you for Monday at 4:30.

**The Chair:** I'm going to suspend for two hours.

•(1330) \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1540)

**The Chair:** We're resuming our hearing.

I won't reread the motion before us; I believe the members are familiar with it. But I would like to start by recapping where we are.

Colleagues, I need to explain that, as is permitted under the rules, when a meeting becomes a bit animated—and, someone told me, when you start having audience participation—the chair has two recourses. One is simply to sit back and wait for the committee to bring itself to order; the other is to suspend. As you know, I did suspend for the two hours. I thought it was in the public interest and the committee interest.

We're going to resume. If I may be permitted, I'll finish my statement to the committee.

As the chair—and this is where the chair's job comes into some importance other than that of just being a timekeeper—we obviously want the proceedings to achieve our objectives: to hear our witnesses, or to debate motions, or whatever the order of business is before us. When I suspended the committee, we were in the middle of debating a motion, and Mr. Goodyear had the floor and was in the middle of debate.

The clerk's note shows “That the committee will suspend for two hours after completion of this round of questioning”, which would be after Mr. Tilson. Mr. Martin had finished, so there would be two more speakers, Madam Redman and Mr. Tilson. So the effect of the motion would be that we would hear from those two and then suspend for two hours.

Now you see where I'm going. I knew that a former chair of a committee would understand that we're heading into a problem here, and I think the members will agree that we should resolve this. If this motion passes, we will hear from two people, and then I'm going to have to suspend for two hours, and I don't think that is the wish. We in fact had our two-hour suspension.

We could go through a series of amendments and other good things. I am going to suggest to all honourable members that maybe

the best course of action—maybe the one possibility—would be to ask Mr. Martin to withdraw his motion, and we'd just continue where we were. We were in the second round, and if there are people who want to go to the third round, we'd continue. I think that gets us to our witnesses.

We have before us an officer of Parliament who was invited to be here until noon. Most of his day has been spent here. I think we want to respect his time, but members have rights. The chair does not decide these things. This is a chair offering advice to the committee.

So I would seek to know from Mr. Martin whether or not he would find that acceptable and to know whether the committee would be prepared to permit Mr. Martin to withdraw his motion should he wish to do so.

Mr. Martin, please.

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

Had I had the opportunity earlier, I would have asked to withdraw my motion. In fact, I don't think I need to ask; it's my right to withdraw the motion with the recommendation that we excuse these witnesses and get back to the other agenda items that we've been eagerly awaiting.

•(1545)

**The Chair:** Well, that's a separate item, Mr. Martin.

**Mr. Pat Martin:** It's a separate item technically. I withdraw the motion.

**The Chair:** Okay. Would it be acceptable to the committee that Mr. Martin's motion be withdrawn?

**Some hon. members:** Agreed.

(Motion withdrawn)

**The Chair:** Okay, that's done.

Now Mr. Del Mastro has a point of order, but I want to indicate where we are.

Mr. Martin has withdrawn the motion. After the point of order, we are going back to the questioning of the witness. Our next speaker will be Madam Redman, then Mr. Tilson. I have no other speakers after that, but I'm sure the members will want to put their names on, and I'm encouraging those who wish to further question to advise the clerk, so that there are no surprises.

Is everyone comfortable with that?

**Some hon. members:** Agreed.

**The Chair:** It looks good.

Now Mr. Del Mastro has a point of order.

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

I'm not looking to impugn anybody in saying this, but from the moment the motion was moved, I was asking to be put on a speakers list. The point I wanted to raise in asking to be put on the speakers list was to ask whether we could revisit the earlier motion, given that we were suddenly going to break and then come back to work all night, and allow the witness who had come to testify to provide witness as per the summons he had been provided. Unfortunately that hasn't happened, and a witness who went out of his way to come here to respect that summons....

Mr. Proulx, we have heard that there were all kinds of considerations given to other witnesses so that they could pick the days they were coming.

**A voice:** That's not a point of order.

**Mr. Dean Del Mastro:** It is so a point of order. I was not recognized to speak to your motion, because you attacked a person in the audience, Mr. Martin.

**The Chair:** Order, please.

Mr. Del Mastro, with all due respect, sir, you are making a proposition. It is not a point of order, sir. You can't make a motion, in fact, on a point of order.

But I appreciate your thoughts. I know where you're going. As you know, a member who has the floor in debate or while asking questions has an opportunity to make a motion. If the motion should come before us to revisit a decision, the committee can do it. But we'll do it in accordance with the rules.

I want to resume. I don't want to take any more of Mr. Mayrand's time than is absolutely necessary, but I want the committee members to have an opportunity to ask all of their questions. I'm sure that if everybody cooperates, if we keep to the time and keep the interruptions to a bare minimum, we will be productive and deal with this matter.

Madam Redman, you have five minutes.

**Hon. Karen Redman:** Thank you.

Thank you, Mr. Mayrand and Monsieur Bernier, for returning to the committee.

I just want to clarify a couple of things, and I believe my colleague Massimo Pacetti has a short question too.

I want to confirm that the relevant legislation emanates from Bill C-24, which came into effect in January 2004, and that it's what impacts the Elections Act regime, and that the violations we're dealing with, the in-and-out scheme, occurred under that legislation.

**Mr. Marc Mayrand:** The laws under which the transactions have been examined are the ones that existed as of 2004.

**Hon. Karen Redman:** So anything that happened previous to 2004 was under a different regime?

**Mr. Marc Mayrand:** Legislation is changed regularly. We have to look at the facts in light of the legislation applicable at the particular time.

**Hon. Karen Redman:** I have one more short question. Can you clarify this for me: is it admissible—is it legal—for a candidate or a

campaign to assign expenses to a local riding association before the candidate is actually in place?

**Mr. Marc Mayrand:** Assign expenses?

**Hon. Karen Redman:** Yes.

**Mr. Marc Mayrand:** I'm not sure.... Again, you can't transfer expenses.

• (1550)

**Hon. Karen Redman:** Kitchener Centre is my riding. Could the local riding association incur expenses or have a transaction with the central party before there was a nominated candidate in that riding?

**Mr. Marc Mayrand:** It would have to be reflected as a transfer of goods and services to the local campaign, or the candidate's campaign, if it's for the benefit of the campaign. It would have to be represented as an expense. If it's an expense for the benefit of the candidate, it would have to be represented as a transfer of goods and shown as an expense for the candidate. It would count against the cap for spending.

**Hon. Karen Redman:** And notwithstanding the timing.... Say that in this past campaign something might have been contracted in December, and we've heard from Conservative candidates that they didn't actually become nominated candidates until some time in January, would the timing of it break any Elections Canada rules, in and of itself?

**Mr. Marc Mayrand:** Again, expenses that are covered by the act have to be for goods and services used during a campaign.

**Hon. Karen Redman:** So it's not pivotal whether or not you actually have somebody nominated in that period of time?

**Mr. Marc Mayrand:** Again, the goods use and transfer would occur after the nomination of the candidate. I'm not sure who's running a campaign, if there's no candidate. Maybe I'm missing—

**Hon. Karen Redman:** No, that's exactly my point. It appears that the Conservative Party of Canada undertook contractual obligations, which they say they did on behalf of candidates who were not nominated at that point in time.

**Mr. Marc Mayrand:** In that case, there would have been no agent. If there's no candidate, there's no agent. I'm not sure who would have authorized anyone to contract expenditures on behalf of somebody who's not there.

**Hon. Karen Redman:** Thank you. That's my point exactly.

I will turn it over to Mr. Pacetti.

[Translation]

**Mr. Massimo Pacetti:** Thank you, Mr. Chair.

Mr. Mayrand, thank you for appearing this afternoon.

You have said several times that expenses are not transferable from a party to a candidate. However, we have seen the evidence that some expenses were incurred by the Conservative Party. Some expenses were transferred, like advertising expenses, on which we are all in agreement, and polling and office expenses. Are there other expenses that have not been mentioned so far that were transferred from the Conservative Party to candidates? When we look at the returns... There has been mention of advertising, polling and office expenses.

**Mr. Marc Mayrand:** I am not in a position to give a general answer. Perhaps I am not understanding your question properly, but again, you can't transfer...

**Mr. Massimo Pacetti:** You are currently reviewing some candidate expenses...

[English]

**The Chair:** Order, order.

Mr. Pacetti, I'm sorry. You actually have your own time slot coming up. The five-minute period for Madam Redman is now finished—just to be fair to all members.

However, if the witness has anything further to the point...

[Translation]

**Mr. Marc Mayrand:** As I have repeatedly said, you cannot transfer expenses.

[English]

**The Chair:** Thank you.

Now we have Mr. Tilson for five minutes.

**Mr. David Tilson:** Thank you.

Mr. Mayrand, I'm going to read some names to you: Brenda Chamberlain, a former Liberal member of Parliament; Olivia Chow, New Democratic Party; Colleen Beaumier, Liberal; Libby Davies, New Democratic Party; Glen Pearson, Liberal; Sid Ryan, NDP; Diane Marleau, Liberal; Yvon Godin, NDP; Raymond Bonin, Liberal; Nathan Cullen, NDP. None of these names, Mr. Mayrand, is posted on your website.

I have additional names—25 names at least—from the New Democratic Party and the Liberals whose returns are also not posted on your website. This is pursuant to the discussion we had earlier with you, prior to the break. Some of the names are Dan Smith, Allyce Herle, Mario Lévesque, Verona Jackson, Isabelle Maguire, Anne Levesque, Stéphane Ricard. I don't think any of those are of members of Parliament. The other names—with the exception of Mr. Ryan, I believe—are, and of course Brenda Chamberlain is no longer a member of Parliament.

This is the testimony we heard from you before the break: you have indicated to us that you're not prepared to talk today about anyone whose returns you haven't posted on your website, because your review is ongoing. Some if not all of these reviews, we believe, relate to advertising expenses claimed by the local candidate, whether a current member of Parliament or a candidate.

My concern, Mr. Mayrand, is that we have made allegations that the other parties are involved in this issue that's before this committee and before the different investigations that are going on.

The opposition parties have said no, that's not true. Why? Because you haven't said they're true. And yet their names appear to be still under investigation, for some reason. I understand; you say you can't talk about it. But it certainly would appear that these names relate to advertising expenses claimed by the local candidate.

There are other names that I'd like to refer to. This is from Mississauga—Brampton South.

Mr. Chairman, I know you may not like my doing this.

But I think it's important to show the volume of names that are probably under investigation by you. I believe this committee needs to hear these witnesses. Either the Liberals and the New Democrats and the Bloc.... I haven't given any Bloc names, so you're safe for the moment, but those two parties clearly are under review by you. How can we honestly proceed in these hearings without hearing those people as witnesses?

I'm going to read some of the ridings: Mississauga—Brampton South, New Democratic Party, Nirvan Balkissoon; Ed Chudak, New Democratic Party, Newmarket—Aurora; Crispin Colvin, Elgin—Middlesex—London; Verona Jackson, Bruce—Grey—Owen Sound; Joe Fontana—I remember him—from London North Centre; Gary Burroughs, Niagara Falls. This is just Ontario, sir.

**An hon. member:** [*Inaudible—Editor*]...Quebec?

**Mr. David Tilson:** Well, I haven't gotten to those, because I'm probably going to run out of time. Maybe someone else can read them in the next round.

In New Westminster—Coquitlam, there's Joyce Murray.

• (1555)

**The Chair:** Could you stop the clock?

**Mr. David Tilson:** Mr. Chairman, you are interrupting my time, and I have every right to put these names forward. I have a question in mind, and you're stopping me from proceeding with my question. You're interrupting my time. You have no right to do that.

**The Chair:** If I may, respectfully, sir, we are in the second round. It is a five-minute round. Already, four minutes and 38 seconds have expired. The five-minute timeframe should be for the question and for the answer, as you know, sir.

**Mr. David Tilson:** I can use my time however I want to use it, and don't you dare say I can't. Don't you tell me how to ask my questions. I'll ask my questions the way I see fit, and you just sit there and listen.

I'm going to continue, Mr. Chairman. I'm going to proceed with the names: Alice Finnamore, New Democratic Party, from Tobique—Mactaquac; Jennifer Pollack, Calgary West; Duff Stewart from Vegreville—Wainwright. There are a whole bunch of names from the New Democratic Party—

**The Chair:** Order, please.

I'm sorry. Respectfully, your time has expired, sir.

I'm going to move over to Mr. Pacetti, please.

**Mr. Massimo Pacetti:** Thank you, Mr. Chairman,

I'll try to ask a question.

[*Translation*]

Mr. Mayrand, I am going to go ahead with my last question.

Everyone agrees: the Conservative Party transferred expenses to candidates. We also know that this involves advertising, polling and office expenses, as Ms. Lavallée said this morning.

Are there other expenses that you are currently reviewing that we are not aware of? I am talking about advertising, polling and office expenses. I am not asking you the name of the candidate.

• (1600)

**Mr. Marc Mayrand:** To date, I have refused to refund certain expenses. I have not allocated those expenses. I stress this because there is an investigation that will determine whether offences have been committed under the Act. The only decision that has been made, which is in the public domain, is to reject the claims as they were submitted, because they were not incurred by the people who made them.

**Mr. Massimo Pacetti:** Right, I have no problem with that.

Apart from the advertising, surveys and office expenses that were refused, what other expenses were refused, for example accommodations, telephone or other things?

**Mr. Marc Mayrand:** Some cases relate to office expenses, including rent.

**Mr. Massimo Pacetti:** Were transfers of expenses used?

**Mr. Marc Mayrand:** I am not able to confirm or deny that at present.

**Mr. Massimo Pacetti:** Does nothing come to mind? Surely there were expenses used that were transferred.

Certainly the Conservative Party exceeded its limit, and we are not talking about just \$1.1 or \$1.3 million. Surely we are talking about \$2 to \$3 million.

I know there are several kinds of expenses. I am not asking you to state the names of the candidates.

**Mr. Marc Mayrand:** Once again, with some regret, I have to say, as I said in my letter to the committee, that there are four situations currently being reviewed.

I do not believe it would be appropriate to comment on this until the review has been completed. Something that might be there today may not be there tomorrow.

**Mr. Massimo Pacetti:** Are the four situations you are talking about public?

**Mr. Marc Mayrand:** The four situations are not public.

**Mr. Massimo Pacetti:** We understand that they involve advertising, survey and office expenses, but something is missing.

**Mr. Marc Mayrand:** On the question of surveys, that is a complaint that the media have covered and that was sent to one of the committee members. Following the usual procedure, that complaint has been referred to the Commissioner.

**Mr. Massimo Pacetti:** Thank you.

You told the committee today and at other meetings that there are no situations in which expenses could be transferred.

Are there cases where the central party may transfer expenses to candidates?

**Mr. Marc Mayrand:** Expenses, no. Property, services and funds may be transferred, but not expenses. It has to be the party's expense or a candidate's expense.

**Mr. Massimo Pacetti:** So that has never happened.

**Mr. Marc Mayrand:** To my knowledge, no.

**Mr. Massimo Pacetti:** That is the answer I wanted to here. Perfect. Thank you.

[*English*]

In terms of legal counsel.... You have a legal department, I would imagine?

**Mr. Marc Mayrand:** Yes.

**Mr. Massimo Pacetti:** How many people would be in the legal department, more or less?

**Mr. Marc Mayrand:** About 10, 8 or 10.

**Mr. Massimo Pacetti:** Are they people with experience? They would have experience. They're all professionals, I would imagine; they have law degrees. Right?

**Mr. Marc Mayrand:** Yes.

**Mr. Massimo Pacetti:** So the question is this—and I'm trying to tie it in with the previous witnesses. When do you deem it necessary to consult with the Public Prosecution Service of Canada?

**Mr. Marc Mayrand:** I should point out that there's a legal department at Elections Canada that consists of about 8 to 10 lawyers. As well, the commissioner's office has its own legal counsel separate from Elections Canada.

**Mr. Massimo Pacetti:** Okay, when does your office deem it necessary to consult with the Public Prosecution Service of Canada?

**Mr. Marc Mayrand:** Elections Canada does not consult with the DPP; it would be the commissioner's office.

• (1605)

**The Chair:** Order, sir.

Mr. Pacetti, unfortunately your time has expired. I gave you one minute and you just kept going. I understand, but you can get on the list again.

Mr. Del Mastro, please.

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

Mr. Mayrand, this morning we uncovered a number of what I'd call inconvenient truths at this committee. We weren't supposed to be able to uncover any inconvenient truths at this committee because none of our witnesses were allowed, and it's really been a forum that's been largely stacked against the Conservative Party, but we did.

I want to go back to what Mr. Tilson was talking about—and we pulled this together in a few minutes. There are 40 Liberal and NDP candidates or members—there are 10 members on this list—whose returns have been flagged. That's the word that's been used by the members of the jury. Their returns have been flagged. Now, none of these people—and I'm not asking you to refer to any one of them.... But if you haven't posted the return, then Elections Canada has not provided any of these ridings with rebates, have they?

**Mr. Marc Mayrand:** Not necessarily. Again, I'm not familiar with the list you're referring to, but what I would like to point out is that, according to the act, when a return is sent after the election by the campaign, it has to be posted as presented. After that, there's a review that takes place. It takes various periods of time depending on the issue, the circumstances, etc.

Again, I could not attest to that list, but yes, there are returns still under review.

**Mr. Dean Del Mastro:** They're under review and they haven't received their rebate.

**Mr. Marc Mayrand:** I want to make another point. You have to distinguish between a review and an investigation. You cannot assume that because something is under review it is necessarily under investigation by the commissioner's office.

**Mr. Dean Del Mastro:** No, I realize that, but also you're not prepared to comment. But you told me not to assume that any of these names aren't under investigation. You said that to the committee this morning.

**Mr. Marc Mayrand:** I think there's no conclusion to be drawn except the fact that the review is not completed.

**Mr. Dean Del Mastro:** Exactly. Well, I think that's a truth we've been stating for days, which the opposition members would not acknowledge, but in fact we now have evidence that it is true.

Now, yesterday Retail Media was here and they presented us with this exhibit. Maybe you're not familiar with it, but I want to talk to you a little bit about it, because this is something that was presented when Elections Canada went to get its search warrant. It claimed falsification of documents; it cited it in the affidavits.

I want to ask you this. I gave an example yesterday of my own personal.... For example, as I said yesterday, if I were to personally submit a bill I incur for my hotel this week, when I submit that I may claim it with my Visa statement—I will. If I block out items on that Visa statement that are not in any way related to the hotel charge, things like my account number, maybe other purchases that I've made, and then I copy that and send that into the House of Commons, could the House of Commons say I've falsified that document? Because for their purpose it is materially what they're looking for. I haven't altered that document as far as they're concerned. For their purpose it is exactly what's required.

**Mr. Marc Mayrand:** I'm not familiar with the document you're referring to, and I will point out that this is part of the investigation by the commissioner.

**Mr. Dean Del Mastro:** I gave you an example not even related to the document. Have I materially changed my Visa statement for the purpose of the House if I'm just trying to show an expense that I've incurred on my statement? I'm isolating an expense for their purpose.

Maybe I didn't want to show them, as I said yesterday, that I bought ceramic tiles at Home Depot for my bathroom—and I'm not doing that again any time soon. But if I want to block that out because I don't think it's of any consequence to my return to them, have I falsified that document?

**Mr. Marc Mayrand:** I can't comment on that.

**Mr. Dean Del Mastro:** Why not?

**Mr. Marc Mayrand:** Well, depending who you're presenting your claim to and for what purpose, I don't know.... Whether it's an appropriate claim or not is for whoever is looking at the claim to determine.

**Mr. Dean Del Mastro:** But is it falsification? Have I materially altered that for their purpose?

●(1610)

**Mr. Marc Mayrand:** I don't want to comment on that.

**Mr. Dean Del Mastro:** Sir, you know it; the answer is obvious. I haven't changed that claim.

**Mr. Marc Mayrand:** Again, that's not for me to comment on.

**The Chair:** Thank you, sir. Your time is up.

Let me ask a very quick question.

Mr. Mayrand, if during the election campaign I went out to Home Depot and bought some stakes for my lawn signs and I submitted, as part of my election expenses return, a Visa statement that had a line on it for Home Depot for \$542, would that be acceptable for Canada elections expenses purposes?

That's facetious. Obviously it's not, because it does not identify the nature of the purchase or the taxes or whether I purchased other things. A Visa bill is not an invoice.

**Mr. Marc Mayrand:** If it's done by the agent, again—

**An hon. member:** I have a point of order.

**The Chair:** I can ask questions.

**Mr. Gary Goodyear:** You asked the question and answered the question. I want to know if you're working for Elections Canada, or ever did? Where would you get this authority to know?

But thank you for providing the answer.

**The Chair:** At least there was an answer.

Now we're going to move on here.

Madame Lavallée, *s'il vous plaît*. Madame Lavallée, you're on for five minutes. Or did you want to have...?

Okay. Now we're back to Mr. Goodyear.

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

There is a point of order. Would you either recognize it or break the rules?

**The Chair:** Order, order.

Mr. Del Mastro has a point of order.

**Mr. Dean Del Mastro:** Mr. Chair, you just deliberately changed a statement that I had made, once again demonstrating that you're anything but unbiased. I was specifically asking a question: whether that would constitute falsification of a document. Is it your argument that it would constitute falsification of a document?

**The Chair:** I was not commenting on your—

**Mr. Dean Del Mastro:** Then why are you deciding to debate with me, sir? Why did you decide to make that point?

You asked and answered your own question. You're once again entering evidence before the panel, which is completely misdirected.

That is not what the question was. I was specifically asking a question—whether that would constitute falsification—and you know it does not.

**The Chair:** Thank you. That's not a point of order; it's debate.

We'll go to Mr. Goodyear now.

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

Monsieur Mayrand, it's a pleasure to see you again.

Monsieur Mayrand, I was on the committee that had the pleasure of bringing your name forward to the House as the new Chief Electoral Officer. As a result, I know full well that you were not the Chief Electoral Officer during the 2006 election campaign. So I'm going to ask you if you were aware that Jean-Pierre Kingsley, the Chief Electoral Officer who was in charge at the time, has indicated very clearly that the law determines an advertisement to be locally based, based on the tag line and not the content. If the Chief Electoral Officer at the time has that interpretation, then that interpretation should apply to the 2006 election, but I guess that's the issue before the court.

So I'm going to ask you a different question.

I already know you don't have this document, because you've stated you know of no cases where expenses have been transferred, as indicated by an answer. So I'm going to introduce you to a case. Here is a letter from Elections Canada's own documents again. This letter I'm going to read from, sir, is from Elections Canada documents. And I don't suspect you have read every letter in all 308; I'm not expecting that. I appreciate that. But here's my question to you, sir, and here's what the letter says.

This letter is from the director general of the Liberal Party of Canada in Alberta; that's a national party:

During the past election campaign the Liberal Party of Canada in Alberta transferred funds and/or paid for services in kind directly to the candidate on whose behalf you were acting as an official agent.

The letter goes on to refer to an expense incurred by the national party "for Northern Alberta candidates' ads placed in the Edmonton Journal", which should be claimed at the local level.

Now, I just want to ask you this. Simply, in your opinion, is that a transfer of expense? How could that possibly be?

• (1615)

**Mr. Marc Mayrand:** My understanding of that transaction is that goods, services, were purchased and transferred to the candidate, the candidate registered these as probably a non-monetary transfer—we

would have to look at it—accounted for the amount as against the ceiling, and did not claim reimbursement for those amounts.

**Mr. Gary Goodyear:** Can we ask you, then, to look into this? This is Anne McLellan's election campaign.

We have another case here too, Monsieur Mayrand, where expenses were transferred. I certainly don't understand your explanation. These are obviously services provided by the national campaign and told to be expensed at the local level.

Now, Dominic LeBlanc, the local campaign of Monsieur LeBlanc.... This is a confusing one because—guess what?—not all the documents are at Elections Canada. The file appears to me to be incomplete, but it went straight through anyway. Apparently he participated in a regional media buy organized by the national party. Records at Elections Canada indicate there's a copy provided by Elections Canada of a cheque from the local official agent in payment of the ad and it's made out to the Liberal Party of Canada.

Now, this one goes on to say...and I'm not going to read all the names involved, but the bottom line is that in fact in this case the content of the ad says it's entirely national. Now, the content of the ad is national. Now, Mr. Kingsley said that doesn't really matter as long as there's a tag line there. But this was a national ad where the expenses were transferred down to the local campaign.

Now, in fairness to Mr. LeBlanc, there's actually no evidence in the filing that he ever paid this. Do you understand? There's no evidence in there. Perhaps he did, perhaps he didn't; the file is incomplete. But it was accepted by Elections Canada and it was put through. There's no prior direct contract, no written contract. The invoicing was processed by the national party, the buy was organized completely through the national Liberal Party, but they were told to expense it locally.

Am I out of time?

**The Chair:** Your time has run out.

**Mr. Gary Goodyear:** My apologies.

**The Chair:** We have to move to Mr. Martin now.

**Mr. Pat Martin:** Thank you. I wasn't quite ready, but I will take my time, then. Thank you, Mr. Chairman.

Mr. Mayrand, to recap what happened, it seems that sometime mid-campaign, maybe mid-December of 2005, the Conservative Party could see they were going to reach their national spending limit. But their pockets were bursting with money. They had an abundance of riches—an embarrassment of riches—in terms of dough they were sitting on, and it looked as though they were within striking distance of winning this election. It looked like they could actually beat the Liberals.

The Liberals were still reeling with the impact of embarrassing scenes of their humiliation on TV stations across the country, about their involvement with their advertising scam, the sponsorship scandal. There was this parade of rogues being perp-walked across TV screens across the country that was embarrassing the Liberals regularly, so the Conservatives wanted to strike while the iron was hot. They had all this money and they'd hit their ceiling. They couldn't spend any more, so they devised a scheme to divert some of those expenses and list them as local instead of national expenses.

That's just to summarize where we are, because I think the smokescreen being thrown up here confuses people, as it is meant to.

The irony is that the Conservative Party won the last federal election in large part due to their promise to take big money out of politics. They wanted to create an atmosphere, they said, where the party with the deepest pockets shouldn't necessarily be the party that wins; it should be the party with the most popular support. But ironically, they couldn't resist the temptation. At the very first opportunity to put that commitment to the test, they themselves chose deep pockets to win the election—achieving power at all costs, even at the expense of their own ethical standards on which they were elected.

Mr. Chair, I think that summarizes things more to the point.

Let me quickly ask a few questions about the exhibition we saw here this afternoon. They had a professional agitator brought in from Toronto, and they briefed him with speaking notes to come here and disrupt the committee.

**An hon. member:** I have a point of order, Mr. Chair.

**Mr. Pat Martin:** My reading of the affidavit here, Mr. Chair, is—

**The Chair:** Let him finish. Not in the middle of a question. I will deal with it.

• (1620)

**Mr. Pat Martin:** —that Mr. Goldstein was interviewed first on September 11, 2007, by S. Neville, the investigator for the elections commissioner. He wouldn't cooperate with them. He would not confirm or deny whether his campaign took part in the media funding program. Then he said he would not answer any questions of the elections commissioner unless they were put in writing. So the elections commissioner put them in writing and waited eight months. He wouldn't answer any of the questions put to him by the elections commissioner—hostile to the nth degree.

In the meantime, his official agent did cooperate, and he stated clearly that they took part in the practice. Mr. Lowry, who was a witness at our committee, said they took part in it. He was the one who justified it by saying they are a very low-income riding and it's very difficult to raise money. They saw this as an opportunity to get the rebate, to increase their election spending amount by the reimbursement of \$30,000 they would glean by having this money walked past their bank account long enough for them to claim the in-and-out scam.

For the record, Mr. Goldstein has been hostile since September 11, 2007. He came here to disrupt the proceedings. He had no intention of cooperating. In fact, when time was made available for him later today, he chose to have a little fit and storm out of the meeting.

Maybe it's a comment more than a question, but I think it should be duly noted what really took place here today.

That's all I have, Mr. Chairman. Thank you.

**The Chair:** There is nothing further for the witness. Okay, thank you.

Mr. Dykstra, thank you for being here and for supporting the committee.

We have had a number of points of order. I've tried not to interrupt in the middle of a question and to find a more logical point—and this is for all members to remember—unless it's clearly a matter that has to be dealt now; it's so urgent that we have to stop everything. I'd prefer not to interfere with the cadence of a question or whatever, but I heard you, sir.

If you still wish, I will now recognize you on a point of order.

**Mr. Rick Dykstra:** Thank you, Mr. Chair. I understand your point, when there was a question.... Actually, it never got to a question.

But my point of order is this. Mr. Martin is alleging that the potential witness who left was put up to what he did and was brought forward by us to do that. I want him to withdraw those comments. There is no foundation whatsoever in truth to what he's saying, and he needs to withdraw those comments because they are completely untrue.

**The Chair:** Thank you, Mr. Dykstra, for expressing your opinion. Respectfully, sir, it is not a point of order.

So we're going to move on to Ms. Redman for five minutes, and then Mr. Tilson.

**Hon. Karen Redman:** Thank you, Chair.

Not that any of us are keeping tally, but I believe there were 27 points of order on Wednesday, so I can understand how you're trying to do traffic control.

I actually was going to raise this on a point of order earlier, even before our break, but we didn't seem to get to that juncture. Mr. Goodyear initially started asking questions and he was referring to documents as court documents. He's gone back and referred to them and called them Elections Canada documents, but they're actually affidavits submitted by a Geoff Donald on behalf of the Conservative Party.

I'm just wondering, Mr. Mayrand, if you can confirm my understanding that this documentation was actually rejected as irrelevant by the prothonotary in the proceedings. Is that correct?

**Mr. Marc Mayrand:** No, that document is an affidavit for the applicants. It was filed on behalf of the applicants in the Federal Court. It's part of the record there. And again, I provided to the committee the transcription of various examinations that had taken place on these matters.

Among other things, Mrs. Vézina, from my office, has been examined on the matter and has responded through an affidavit and through questions before the court as to some of the allegations contained in what we refer to as the Donald affidavit. You have all that information with the committee now.

• (1625)

**Hon. Karen Redman:** So you are confirming...or we have the documentation that it was rejected by the court?

**Mr. François Bernier:** No. An affidavit, Madame Redman, cannot be rejected. They are the applicants' affidavits. However, I believe that some of the errors, from our point of view, in terms of interpreting the facts or certain returns posted on the website have been highlighted in Mrs. Vézina's affidavit.

**Hon. Karen Redman:** Thank you very much.

**The Chair:** Mr. Tilson, please.

**Mr. David Tilson:** Mr. Mayrand, I have a couple of questions on areas that we've covered before, but I want clarification on them. The first of two areas has to do with what has become commonly known as the Mayrand accommodation. I'm sure you know what I mean—in other words, the conditions as to your appearing at these proceedings.

Just so I'm clear, the chairman of the committee, Mr. Szabo, and you had a discussion about these conditions as to your appearing.

**Mr. Marc Mayrand:** I was contacted by Mr. Szabo about my availability in anticipation of the July 15 and 16 appearance. I had indicated to Mr. Szabo some reservations that I would have regarding possible questions that could be put before me and indicated to him what my approach would be in handling those questions. I did not seek special accommodation or anything like that.

**Mr. David Tilson:** No, but he said he'd protect you.

**Mr. Marc Mayrand:** Sorry?

**Mr. David Tilson:** Did he say he'd protect you?

**Mr. Marc Mayrand:** No. Those are not the words that I remember.

**Mr. David Tilson:** They may not be the precise words, but were you given the impression that when you made statements that you weren't prepared to answer certain questions, the chairman would undertake to....

I appreciate that. I wasn't there. I didn't hear the conversation either, but I got the impression, from testimony that has been given, that he would protect you.

**Mr. Marc Mayrand:** No.

**Mr. David Tilson:** So he didn't give any undertaking to protect you.

**Mr. Marc Mayrand:** To protect me?

**Mr. David Tilson:** Yes.

**Mr. Marc Mayrand:** No.

**Mr. David Tilson:** So he didn't agree that you would be given certain rights with respect to questions that you weren't prepared to answer.

**Mr. Marc Mayrand:** I indicated to him some of my reservations. He indicated that they were acceptable. And if you look at the correspondence, which I believe has been shared with all members, that's where we agreed on the outlines for the appearance.

**Mr. David Tilson:** Absolutely. I understand that. I just want to be clear that he agreed that you would be able to make those statements, that you didn't feel it would be appropriate to answer those questions—or, your counsel has said, any questions.

**Mr. Marc Mayrand:** Yes.

**Mr. David Tilson:** As well, the chairman and you picked a date as to when you'd appear—I guess July 14 and July 15. I can't remember whether it's July...there are two dates, July 15 and—

**Mr. Marc Mayrand:** There were several dates discussed. He asked about my availability. I pointed out that week of July 15 was suitable.

**Mr. David Tilson:** So the two of you worked out a date that you could appear?

**Mr. Marc Mayrand:** I think we agreed, given the schedule that was being put together for the committee, that these are dates I would be available.

**Mr. David Tilson:** I think my time has expired, Mr. Chairman. I'd like to be put down on the list again for more questions.

**The Chair:** Sure.

Mr. Dykstra.

**Mr. Rick Dykstra:** I'll pass. I'll let Mr. Tilson take my time. I'm giving my time to Mr. Tilson.

**The Chair:** Fine.

**Mr. David Tilson:** That's the first area, Mr. Mayrand, and the second area I'd like to get clear in my own mind about what you meant is this. I

in your testimony on July 15, in the specific transcript, you gave five factors that were helping you make the decision you did. I'm not going to go through those. You said them, and we've talked about them. What I am interested in is that towards the end of that particular segment of your testimony, you said, and I quote you:

I still have decisions to make in relation to this file. New information has emerged that is in the public record. In due course I will need to take all the available information into consideration in making further decisions required to bring closure to this matter.

I guess you've indicated that new information is in the public record. My question is this. Does this mean you're prepared to reconsider your decision? I don't know what you mean when you make that statement. That's why I'm asking for clarification.

• (1630)

**Mr. Marc Mayrand:** What I meant there is that at the time there was a range of decisions that could have been made. The only one I took was to refuse the reimbursement. One of the decisions that remain to be made is to require those candidates to amend their returns to reflect the proper expense.

Another decision that will have to be made in due course is to attribute those expenses. That decision has not been made. It was not made on purpose, because shortly after I made my decision known to the candidate, there was a court proceedings file. I decided it was more appropriate to wait for the outcome of those court proceedings before finalizing the decision on the matter, so we don't have to revisit a whole series of things a year and a half from now, depending on the outcome.

**Mr. David Tilson:** Thank you, Mr. Chairman. Those are my questions.

[Translation]

**The Chair:** Mrs. Lavallée, you have the floor.

**Mrs. Carole Lavallée:** Thank you, Mr. Chair.

We have asked just about all the questions we wanted to ask the witnesses. The questions being asked again are repetitive, because they have already been answered at an earlier meeting or this morning. I would like to move on to the second part of the meeting as quickly as possible. If necessary, I will make a motion immediately.

[English]

**The Chair:** Madame, I can't do that. A motion would have to be made and submitted, etc., for that. If you want to carry on, you may want to discuss it with your colleagues.

**An hon. member:** I have a point of order.

[Translation]

**Mrs. Carole Lavallée:** I am going to make my motion.

[English]

**The Chair:** You will table a motion?

[Translation]

**Mrs. Carole Lavallée:** I am prepared to introduce a motion to move on to the second part of the agenda.

[English]

**Mr. Gary Goodyear:** She has the right.

**The Chair:** Oh, I know, I know, but she said "I would like to do this". That's not a motion.

[Translation]

**Mrs. Carole Lavallée:** Mr. Chair, I move that the committee...

[English]

**Mr. Gary Goodyear:** Mr. Chair, she has the floor and she can table a motion with the floor. She's allowed to do that.

[Translation]

**Mrs. Carole Lavallée:** Mr. Goodyear, I have the floor. Be quiet, it's my turn. Take your time, raise your hand and request the floor. Do as I have been doing for four days, Mr. Goodyear, and for longer than that even.

[English]

**Mr. Gary Goodyear:** I'm defending you.

[Translation]

**Mrs. Carole Lavallée:** Be quiet and listen.

[English]

**The Chair:** Order, order.

**An hon. member:** He's defending you.

**The Chair:** Order.

Now, let's understand. The way Madame Lavallée expressed her desire was almost like a suggestion. The issue is whether it's a motion. Mr. Goodyear reminded me that she can make a motion, and she can.

I simply want to clarify, Madame Lavallée. I apologize. I was listening through my earpiece, but the translation was that maybe we should move to some other business. If you want to make that motion, it is "I therefore move that we move to some other...". If I could get the proper wording... I think we just had it here. The proper motion is that the committee proceed to another order of business, or the next order of business, if that is your wish.

On our order paper, the next one is committee business, which is going to deal with the selection of witnesses, Mr. Martin's arrangement, etc. Is your intent to move the motion to move to the next order of business?

●(1635)

[Translation]

**Mrs. Carole Lavallée:** You are quite right, Mr. Chair. Yes, that is my intention.

[English]

**The Chair:** That's it. Okay, as long as everyone understands.

This is not debatable, and I have to put the question.

Madam Clerk, would you please put the question to the members that the committee move to the next order of business and call the roll.

(Motion agreed to)

**The Chair:** The committee has decided to move forward on our work agenda for the day.

Mr. Mayrand, as with all other witnesses, I'll offer you an opportunity to make any final statement or comment to the committee, if you wish, sir. Otherwise, you are excused.

**Mr. Marc Mayrand:** I have no comments.

**The Chair:** Thank you.

I need some direction from the committee. If I may, I need to get something clear.

On August 12 Mr. Goodyear went through a list of matters he wanted answered or documents to be provided. They're all available. Most of them have been put out. But I want to go through and make sure the points raised by Mr. Goodyear have all been properly answered so my undertaking to do that as soon possible can be fulfilled. It will take a few minutes, unless you want me to delay this until some other time.

I do want to report and answer questions you raised in your intervention of August 12.

**Mr. Gary Goodyear:** Well, Mr. Chair, I appreciate the efforts you put forward on this issue and I will ask you to continue with your efforts. However, it's clearly too late to be looking over new evidence at this point. Those documents should have been provided to us a long time ago. Please continue with the effort, but it's too little, too late.

**The Chair:** Then what I will do, very simply, is for your edification.

Members will know that the documents provided by Elections Canada pursuant to a request by Madame Jennings, the 1,000 pages, have been photocopied. They are only in English. Rather than circulate them to you on your desks, which are already full, they are here on this table.

Those are the O'Grady testimony, the Vézina testimony—

• (1640)

**Mr. David Tilson:** Oh, the testimony.

**The Chair:** Yes.

I'm going to quickly go through this. I'm going to give the executive summary version as opposed to the detailed version, so if Mr. Goodyear wants any further effort on my behalf...

The first item I'm going to forget.

As for the second item, with the combination of Mr. Mayrand, I think we've had a good talk about that one.

Concerning the third item, it states here, "a new procedure", and you wanted to know if the witnesses were informed that they would in fact be sworn in. I checked the record. In fact, the committee asked that all witnesses be sworn in, starting on that date. I asked members if they wanted that, I asked around the room, and they said yes. So they were all discreetly sworn in. That was not my decision; I asked.

**Mr. Gary Goodyear:** Mr. Chair, just to clarify that, I'm not asking about whose decision.

**The Chair:** And you can ask me at the end here.

Regarding item four, you were asking about Mr. Finley. The simple answer is that in fact there was a vote at committee not to hear Mr. Finley. Therefore, it was the committee's decision that he not be there. So I'm not going to carry that further.

There was a point about chairs making every effort to accommodate witnesses, which has come up a number of times. But you stated here, "You did not allow Mr. Finley to do that". Well sir, with due respect, I did, when I spoke to him before the meeting started. I offered to hear him in the afternoon, to which he said no. I also had offered to hear him on Thursday, and he said that was inconvenient. However, I don't think there was anybody around this table who didn't agree that he was a very important witness and that we should hear him. I hope we get that opportunity.

I want to move forward quickly. I don't want to take up too much time.

Number six was the witnesses.... No, that would bring debate. I don't want to do that.

Number seven says, "All of the Conservative witnesses were deemed to be irrelevant by you, sir." I think the transcripts are fairly clear.

For the edification of those who aren't aware, when the committee considered doing this study, there was an amendment and a subamendment. The amendment was to broaden it to cover all parties. The subsequent subamendment was to extend it to any previous election year. Both the amendment and the subamendment were defeated by the committee—a decision of the committee not to look at other parties or other years.

Therefore, when the proposed witness list came from the Conservative Party, as I explained—and in the transcript it's clear that it related to other parties or other election years, except for Mr. Sears. I had instructed members to provide a rationalization as to the relevance of a witness. All that was submitted with regard to Mr. Sears was a name. As a consequence, I rejected it simply because there was no apparent reason he was relevant to the committee's business.

That decision to eliminate those witnesses was not challenged by the committee. It was accepted by the committee and we moved on. Had it been a problem.... Now, I don't want to carry this any further, but those are the facts.

Number eight was with regard to the fact that we never have closing statements. Well, we had closing statements in this committee for each one of the witnesses of the Mulroney-Schreiber hearings. Yes, and you remember that. You were there.

In number nine, the point raised was, "You have not provided this committee or at least this side of the room with all the documentation." It is true that no committee member has all the documentation yet. They should before I finish. But in terms of the reference to this side of the room, again I have to assure all honourable members that if one member has it, all members have it. It's not distributed by me; it's distributed by the clerk. I have full trust that the clerk has discharged her responsibilities in the best interests of the entire committee.

Point number 10 is that you would like a list of all the summonses. That was distributed to the members on August 5, more than a week before we started our hearings. Yes, you did, because.... I prepared it myself, in terms of typing it up. It is the one that shows the word "summons" as one column, and it shows the days of our hearings and the witnesses, morning and afternoon. It shows summons, yes or no. That was circulated in both official languages to committee members by e-mail on August 5. So you do have the list of all the summonses that were issued; that was on August 5. We have extra copies, if you'd like to have one.

Copies of all of the summonses have been distributed to the members already? You asked for copies of all the summonses I signed. I believe those have been circulated to members, so we'll discharge that.

•(1645)

You also wanted the script the clerk has given, and I think you've been provided with the letter we would send. The information in that letter of instruction or request is the same information as would be communicated by phone. They don't have a separate telephone script from the letter script; we should actually communicate the same.

So that letter you've received has been represented to me by the clerk as the information they use for purposes of a script. They've been doing it so long that they don't even read it anymore; they know it by heart.

With respect to phone logs or similar records, which is basically the daily report the chair was receiving to monitor their progress... Again, I did not make any of the phone calls to any witnesses myself.

Just as an aside, the proposed witness from the public prosecutor's office was Brian Saunders. I may have received a phone call from Chantal Proulx, but she was never a proposed witness.

You now have this. We've taken out all the private phone numbers, e-mails, addresses, so should this get in the public domain we will not be causing hardship to cabinet ministers and members of Parliament by putting out their private contact information.

All the other information is up to date as of yesterday.

With regard to the comments of calls, when they were made, what answers were given, etc., that is verbatim from this master copy. You have that in your package. That's called the call log.

You wanted the names of the clerks who made these calls. Of course Miriam Burke and Erica Pereira were two of the four clerks, and they had a number of colleagues. I don't think it was just four people; I think there were more. On Fridays they only have one person there, who is called a duty clerk. And to keep busy, because it is not busy, the duty clerk was probably also making calls.

Whoever made the calls, they're aware of who contacted whom. All the calls were made by employees of the committees directorate, and they work for Parliament. I'm very comfortable with the directorate having made the calls.

You wanted copies of the affidavits of service. You have received those. You also wanted the content of discussions between the clerks and the witnesses, which are actually on the call sheet—the document you received. You have it as two items, but it's all covered by one document.

You also wanted copies of correspondence where accommodations or other arrangements for witnesses were discussed, suggested, or agreed upon. The only one is Mr. Mayrand. There is the letter you have, which was July 28, I believe.

On June 25, I wrote to Marc Mayrand—all members got this letter—advising him of the timeframe and that I wished to confirm that July 15 and 16 were convenient dates for his appearance. He ultimately got back to us. He did indicate in his letter that there may be questions he can't answer. I indicated to him that I doubted the committee wanted to put him in a position where he may prejudice

or compromise any other proceeding. I undertook that this would certainly be the case.

As it turns out, the letter from Mr. Walsh, giving the official law clerk's version of how the *sub judice* convention works, etc., really applies to everybody. When we have a witness before us, we may not even know they are party to a proceeding.

•(1650)

In any event, Mr. Mayrand is the only one who had any discussion, and of course that was our very first witness. His letter was sent to all members on July 3 by e-mail, the Mayrand letter.

I agree with you that the chair shouldn't be spending much time talking to the media.

As to the adjournment, I'm not going to go there.

As to this proceeding denigrating parliamentary procedures, okay, thank you, I accept your thing.

If you'd like to discuss any of these finer points with me, I'd be happy to do it at any time.

**Mr. Gary Goodyear:** Thank you for telling me this.

There are a couple of things that were not on the list, and I'll mention that, but I'd like to correct the facts—

**Mr. Pat Martin:** Mr. Chairman, I have a point of order.

**The Chair:** No, excuse me.

**Mr. Pat Martin:** Listen, Mr. Chairman, you do not have to go through every musing of one member of the committee—well, he's not even a member of the committee.

**Mr. Gary Goodyear:** What are you saying, Pat?

**Mr. Pat Martin:** One member of the opposition bench put forward a bunch of objections. That doesn't mean you have to spend days, hours—

**Mr. Gary Goodyear:** Are you the leader of the No Democracy Party again?

**Mr. Pat Martin:** Well, I'm the vice-chair of this committee—

**Mr. Gary Goodyear:** Really?

**Mr. Pat Martin:** —and I object to and I resent the time we're spending—

**Mr. Gary Goodyear:** Your behaviour will have to change.

**Mr. Pat Martin:** —on your interference of the committee's work.

**Mr. Gary Goodyear:** Even the chair doesn't use your language.

**Mr. Pat Martin:** You've tied the chairman in a knot. He's seen fit to answer every one of your petty little grievances that you've filed over the last three days—

**Mr. Gary Goodyear:** I know, you just want to get to the verdict.

**Mr. Pat Martin:** —he's finished with that now, and now we have agenda items that we want to get back to.

**The Chair:** Okay, and I agree with you—

**Mr. Pat Martin:** Don't humour him. He sits there at the front bench and you engage him in these one-on-one conversations while 14 of us are tied up watching you. It's ridiculous.

**The Chair:** Sometimes we get a lot of venting happening.

Thank you. Please bear with me just for a moment. Mr. Goodyear took a fair bit of time—

**Mr. Pat Martin:** So what?

**The Chair:** —to go through and provide the chair with what he listed as undertakings that were important to complete so that all members were up to speed—

**Mr. Pat Martin:** After the meeting you should meet with him.

**The Chair:** I understand that.

I have answered, I believe, the substantive points and questions and provided the material. He asked if he could make just a couple of

**Mr. Pat Martin:** Say no. Just say no.

**The Chair:** Okay, I will next time, but I want to finish this off, and then I want to go to the point that you raised, sir, the substantive point, which was with regard to the summoning issue.

**Mr. Pat Martin:** And the agenda after?

**The Chair:** Yes.

Mr. Goodyear, I know I went through it very quickly, but if you have anything else for me that you want me to respond to, please let me know now.

**Mr. Gary Goodyear:** Yes, thank you. And thank you for the opportunity to be dignified.

Sir, there are two things that I think remain outstanding. One, I would like to say that my records indicate that Robin Sears was not a point of order, it was a motion moved by Mr. Martin. Also, the witness list you stroked off, and Madame Jennings challenged your ruling, which ended debate, and then there was no debate, there was a vote by the committee.

One of the things that I believe we're still missing is that there was a reference made by one of our Bloc colleagues about the need for a contract in the Canada Elections Act. I don't believe that exists. I asked for proof for that. I'm not sure if you have the authority to ask a Bloc member to provide documents, but I did ask for that.

You can tell me if you don't. That's fine.

And I did ask for the dates from Monsieur Mayrand when he created the four or five factors that he spoke about at our last meeting.

That's my short response.

•(1655)

**The Chair:** Okay. I will undertake to try to get the answers to those for you, sir.

**Mr. Gary Goodyear:** *Merci beaucoup.*

**The Chair:** Colleagues, it's almost five o'clock, but we've had some diversions. I guess we have to take a list, but Madame Lavallée has been very patient with me.

[Translation]

Please, Mrs. Lavallée.

**Mrs. Carole Lavallée:** I think it is understandable, Mr. Chair, that I would be impatient after four days.

[English]

**The Chair:** I give the floor to you. I don't know whether you had a point of order or just wanted the floor, but right now, with your patience, I will give you the floor or a point of order, whichever is your preference.

[Translation]

**Mrs. Carole Lavallée:** Thank you.

First, Mr. Chair, I am going to ask my Conservative colleagues to show a little respect when I speak, that is, to listen to me as attentively as I do when they speak. If they should ever happen not to like something I say, I suggest that they get up, go and get some air and come back, but do not interrupt me. I think that is completely disrespectful. If they are not polite, I am going to read the email we have just received from Mr. Fisher, in Alberta, in which he has some questions about the mental health of the Conservative members.

There are two ways to get reluctant witnesses to testify. I have made a motion, which you have all received, to ask that the Speaker of the House issue the necessary warrants to secure the attendance of the witnesses.

I would say that this approach is the stick, but there is another approach, which I would call the carrot. I want the stick to become a sword of Damocles over the heads of the witnesses, so they will be fully aware that that motion is still possible. I do not want to make it now, but I want to keep it on hold so it can be made today, or tomorrow, or another day.

First and foremost, I invite the people we have summoned to the committee to think about the consequences of their actions. The carrot I am proposing as an incentive for Conservative party workers to appear is the motion I want to make, which consists of asking the Speaker to take all necessary action to set an appearance date, between September 15 and 30, 2008, for all of the people whose names appear on the witness list approved by this committee who have not yet appeared. I am also asking that you, Mr. Chair, provide committee members with a weekly report on the action taken.

Among the people who have not responded to our invitation there are senior officers, Conservative party workers and a number of candidates and official agents. Obviously there are Conservative M. P.s and ministers, but you know that we have no way of compelling them to testify. I want to keep my motion on hold so that the Conservative party workers and senior officers will have to reconsider their decision not to appear this week.

Mr. Del Mastro, could you go out and get some air? Thank you.

This week, in light of the testimony we have heard, we saw that Conservative officials abused the trust of party workers and their media placement agency. The official agents, among others, were misled by their party, and that is a very serious offence. The Conservative Party is the party in power, the party that forms the government and makes the laws. It enforces the law and it has to obey the law itself. Well, it has failed to obey the Elections Act and failed to provide correct information to its workers, by encouraging them not to appear. We know that this is a contempt of Parliament, a violation of parliamentary privilege, but we will come back to that another time.

The Conservative party workers have got to respect the institutions and standing orders of the House, even though their officials seem to be quite lawless themselves and devoid of principles or ethics, and most importantly to believe they are above the law. We know and we are aware that the Conservative party workers, as is to be expected, are being loyal to their party. No one is asking them to be disloyal in any way. Myself, I want to appeal to their sense of duty and ask them to obey the law. Law and order are so dear to the hearts of the Conservatives, so let them come and prove it to the committee.

From September 15 to 30, that is less than a month from now. Using the motion they all have in hand, I want to tell the Conservative party workers to take the time to think about it and get information. No one is accusing you of anything. No one wants to accuse you of anything; we simply want information. Consult a lawyer—not the Conservatives' lawyer, someone who is non-partisan, someone you know and trust. With that person, read the Elections Act, read the Standing Orders of the House. It is clear that at present, the people in the Conservative Party are afraid of the consequences of what they have done and they may be giving bad advice.

•(1700)

As well, take the time to get organized. That is in one month, between September 15 and 30. People will be able to change things in their lives. They may be able to make reservations on the train, or a plane, or whatever. They will be able to request leave from work. They have over a month to make arrangements to come to Ottawa.

I also want the Conservative party workers to think about the effects of their actions and the actual consequences. A motion could be made in the House to compel reluctant witnesses to appear at this committee by force. The Conservative officials who are giving them advice are not the ones who might ultimately find themselves in handcuffs in front of the TV cameras. It's easy for them to advise witnesses not to appear.

I would like the Conservative party workers and organizers to demonstrate that sense of duty that is so dear to their hearts, and do their duty as citizens and appear before the committee. This motion is to give them a month to think about it and make arrangements with you, Mr. Chair.

[English]

**The Chair:** Before I go to Mr. Tilson on a point of order, I should indicate that this motion does not require notice. It is receivable.

It calls for me to schedule all the persons. I will read that as “all the persons possible”. If there are some people who still do not want to appear, you put me into a situation where I have to issue summonses again. However, maybe we can hear some debate and get some clarity, but all the members have the precise wording of the motion.

Before I go to Mr. Del Mastro.... Mr. Tilson, I'm sorry I didn't recognize you immediately before. She was kind of winding down and still in the middle of her presentation on her motion.

**Mr. David Tilson:** You have commented that this motion is in order. I just raise the issue that I received the notice of motion yesterday—

**The Chair:** No, you don't need notice for this.

**Mr. David Tilson:** Well, I gather it's the topic that's under discussion. But sir, I submit that you do need notice, because before you get to the topic of discussion, you have to have a motion. So she made this motion without the topic being on the agenda.

The topic that was on the agenda was her notice of motion from yesterday and that's what I have in my hand. The first time I see this document is right now. So all of a sudden she's changed everything, and I submit, with due respect to you, sir, that this document she's speaking on now—she seems to have ignored the one she filed yesterday and someone has told her to do this one. I would submit, sir, that you reconsider what you say, that this does have to have notice.

•(1705)

**The Chair:** Okay, if I may, Madame Lavallée submitted the first one to the clerk, saying she was putting this in because she wanted to give notice, and the clerk actually advised her that she didn't need to have notice because it's related to the business we are currently working on.

But the clerk also says that the first one mechanically was not a good, tight motion and that she should consider an alternative. So on that advice—and I have to take some blame too—the clerk and I collaborated and suggested that if we just gave her the assurance that no 24-hour notice is required, that would give her a chance to tighten it up and make sure she gets a good motion.

So my ruling, sir, was that it is in order.

**Mr. David Tilson:** The motion...I don't think she even moved it. She started talking about it, but I don't recall an actual motion being made.

**The Chair:** That's why it was circulated to us right now, because this is what she was moving.

**Mr. David Tilson:** All right, I understand what you're saying, although I don't even think she's made the motion yet. She simply chatted with us.

**The Chair:** Well, it was tabled with the committee and circulated. This is the motion, and that's why—

[Translation]

**Mrs. Carole Lavallée:** Mr. Chair, consider that I have tabled my motion in proper form.

**The Chair:** I understand and I accept it.

[English]

I believe the intent here is that we need to work a little bit harder to see if there are others who would like to come before us, if we could provide the accommodation.

I have a list of speakers, and if anybody wants to make... otherwise, when the that list is exhausted, I will put the question.

I believe Mr. Del Mastro was first, then I have Mr. Pacetti, then Mr. Martin.

**Mr. Gary Goodyear:** I have a point of order on that, Mr. Chair. I think I misheard you, so I'm asking, only for clarification. I think you suggested that Madame Lavallée's motion is asking for any witnesses that we might think we need to hear from, but I think it says "committee-approved witness list". Am I wrong?

**An hon. member:** That's what it says.

**Mr. Gary Goodyear:** It says "committee-approved". It's actually the witnesses—

**The Chair:** I'm sorry. It is those that we haven't seen yet, of the 79.

**Mr. Gary Goodyear:** Right, but not new ones.

**The Chair:** Oh no, no. We're not talking about new ones, no. That still could come up if the committee wishes to propose that, but she's saying we need to work a little harder on the ones we didn't get. By making a little more effort, we might be able to accommodate their attendance. Is that okay?

Does everybody understand that the intent of this motion is not new witnesses? It's the unheard witnesses of the original 79. All right.

Mr. Del Mastro.

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

The motion we did receive from Madame Lavallée yesterday asked that the following be reported to the House. Now, there's a stark contrast between what she has done today and what she indicated yesterday she was going to do. We would have actually welcomed that. It says "That the following be reported to the House:", which is substantive. It goes on:

That the Speaker of the House issue any necessary warrants for the appearance of witnesses who received a summons but who, for no reason, failed to appear before the Committee to testify in connection...

blah, blah, blah, blah.

With that in mind, we would very much like to see that happen, so I do have an amendment, since these are her words and not mine. I'd like to suggest an amendment to her motion that says that the chair take all necessary actions to report to the House on September 15 all of the persons on the committee-approved witness list who have not yet appeared before the committee, and that the chair consult the Speaker of the House for direction.

The reason I feel that is necessary is that I do believe—

**The Chair:** Do you have this written out? Could the clerk... because sometimes you drop a word.

• (1710)

**Mr. Dean Del Mastro:** You can pass it around.

**The Chair:** Okay.

The motion basically says to report to the House the list of the witnesses who haven't appeared before the committee and consult with the Speaker of the House for direction. That is very vague, and I don't know exactly... Well, that is my read: effectively, to give the Speaker a list of those people who haven't appeared and ask for direction.

**An hon. member:** Yes.

**The Chair:** Okay. I think we'll write it up. Probably the simplest thing to do is just to delete all the words after the words "to" and "replace by"; otherwise you're going to get...

All right, the amendment is in order. You had the floor on debate and you moved an amendment. Okay.

Madame Lavallée, on a point of order.

[Translation]

**Mrs. Carole Lavallée:** Is this amendment in order? I am asking that you make a decision on this point because it completely changes the spirit of my motion, which is the carrot after the stick I presented yesterday. I do not recognize either the spirit or the letter of my motion in this amendment, which is in no way supplementary to it.

[English]

**The Chair:** Madame, I understand your point. It still deals with the list of witnesses. The change is that rather than our continuing to try to squeeze these witnesses out, maybe we'd better check with the Speaker first for any consideration before we actually go that far. So it somewhat limits what your original proposal is. It still may occur that we would try to schedule them after consulting with the Speaker. I would think that would be our...

I raise, sort of as a precedent, the fact that when we debated the original motion, there was an amendment to extend it to all other parties. That's a fairly substantive thing and that was in order.

So as you can see, yes, there could be a lot of differences.

I believe my ruling is correct that we are still dealing with the witnesses and moving that forward. It just happens to be a slightly amended route on how we address some of the problems. It's debatable; it's an amendment. It has to have its own vote. If that vote does not carry, we obviously are still back at your motion as was originally proposed, as you're aware.

Mr. Del Mastro, on debate on this matter, because you can't sever witnesses and speak...but you can speak to this matter for the edification and we will eventually have a vote on the amendment.

• (1715)

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

There is a reason why this is substantively different, why it is in fact much more powerful than the original motion.

We have maintained on this side of the table that this committee is in fact not authorized to be conducting this investigation. We've in fact had our witnesses rejected. But the members opposite have always maintained that this is a legitimate process, that they were within their right to summarily end debate and to vote against us last June to cause these hearings to occur this August.

We did voice displeasure with the Speaker at that time, and the Speaker did not give any indication one way or the other, except to say that until there is a report from the committee, he could not rule whether any of these hearings were in order.

The committee has gone to an extraordinary degree by issuing summonses to individuals, asking them to come to something that we, the five of us, certainly have been arguing all week is illegitimate. We've referred to it as a kangaroo court. We've talked about the limitations that were placed on us and how this was really framed. The opposition members clearly worked together as a tyranny of the majority to try to force their will upon this committee.

That said, if they believe that everything they have done is justified—and I hope the people with the pens in the back are paying attention—then they should have no hesitation whatsoever to report this to the Speaker and to have the Speaker rule on their side, that people have in fact ignored summonses and that there should be an action that follows that.

In fact, that's what Ms. Lavallée asked yesterday. But then she spoke to you, Mr. Chair, and I don't know who else, and suddenly she doesn't want anything reported to the House anymore.

**An hon. member:** Shame.

**Mr. Dean Del Mastro:** That's kind of ironic. Why wouldn't we want something reported to the House from this committee? I came here and spent this whole week here. Why aren't we reporting it to the House? Mr. Martin was jumping out of his chair yesterday that it was so outrageous that these people have ignored these summonses. Then why in the world would you not want to report that at the earliest possible time?

Pat, you know yesterday you were beside yourself with anger.

Through the Chair, Mr. Martin was beside himself with anger yesterday that he wanted these people here—yes, the cussing cowboy, him.

But in any event, if he believes that, if he really believes it—goodness, I hope people in the back are paying attention—then submit this to the chair, vote in favour of this motion, and demonstrate that this is not a kangaroo court. Prove us wrong; vote in favour of this amendment.

That's what I submit to you. And if you don't want to report it to the Speaker, then guess what? What you've proven by extension is that everything we have been saying is true, everything we have been maintaining is correct, that this is nothing but a kangaroo court and you are afraid to have this sent back to the Speaker for him to adjudicate.

Thank you.

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

Mr. Pacetti, please.

**Mr. Massimo Pacetti:** I'm amazed at this committee. It takes forever to debate a motion, something so simple. I even forget what I was going to say.

My point is very simple, Mr. Chairman. This makes it very clear. All it does is.... Ms. Lavallée, out of respect for you, I think, has put it in writing, but I think you already have all these powers as the committee chair. As a former chair, I think these powers are nothing additional. It just means that you should go ahead and perform your duty.

I am in favour of this motion, and I will be voting against Mr. Del Mastro's amendment. I think we should go ahead and call the question and vote on it, because we still have Mr. Goldstein to deal with.

Thank you, Mr. Chairman.

**The Chair:** We now have Mr. Martin, please.

**Mr. Pat Martin:** Mr. Chair, my first instinct is that we have to send a message to those who willingly and knowingly defy a summons to a parliamentary committee. There have to be sanctions associated with thumbing your nose at Parliament or this committee and, by extension, Parliament and the people of Canada. We're representing the people of Canada here.

There is a list of people who defied this, by conspiracy, by design: Nelson Bouffard, Pierre Coulombe, Michael Donison, Doug Finley, Irving Gerstein, Byng Giraud, Susan Kehoe, Benoit Larocque, Patrick Muttart, and Michel Rivard. At least those 11 were scheduled to be here.

I believe they got some advice from their lawyer, probably Mr. Hamilton sitting right over there—"You don't have to come. Don't bother coming. It's just a parliamentary committee. They'll lose their steam. They'll run out of gas. They won't have the guts to come after you. We'll buy some time, and either there'll be an election or Parliament will prorogue, or something will happen so we can avoid this embarrassing testimony."

These people have insulted me personally, they've insulted the committee, and they've insulted Parliament. There have to be consequences, because I'm concerned about the precedent. I've made this point. I'm very concerned that all future committees will be neutered, rendered impotent, in terms of enforcing any kind of summons in the future.

We can't allow this to happen. We have an obligation to uphold the integrity and the effectiveness of Parliament, as committee members. We're at the front lines here. We're at the vanguard. Parliament is being attacked by these people. I don't think they're fit to govern. I don't think they're fit to manage a national political party in this country, and they're certainly not fit to be the government of the day. This is the brain trust, the think tank behind the Conservative Party of Canada. If they have that little respect for Parliament, we should find people who do respect Parliament to govern this country, not this gang, not the Darwin's waiting room over here and their bosses.

We've heard Mr. Del Mastro's idea that we report to the House. I sympathize with Madame Lavallée's point of view that we should keep our eye on the ball here.

The real objective is to get these witnesses before this committee. Maybe that will take some humility; maybe we're going to have to swallow our pride a bit. They've insulted us profoundly. We will never forget that. They will answer for that, and there will be consequences, I hope. If our objective is to get those witnesses before our committee where they have to swear under oath what they did or did not do, then I think we should take the path of least resistance towards achieving that objective. Therefore, I support Madame Lavallée's recommendation.

I oppose Mr. Del Mastro's latest mischief, whatever he's up to here. He's a modest man, who has much to be modest about. I understand what he is trying to do here today, but we're not going to be diverted. We're not going to be knocked off our game. The slippery slope that's established by ignoring these people's reprehensible insult to Parliament cannot be forgiven. It cannot be ignored.

We want them here. We want bums in those seats. I want Mike Donison and Doug Finley right in that seat, so we can grill them properly with the fullness of time and do a thorough job of it. So I'm going to vote against Del Mastro and for Madame Lavallée.

• (1720)

**The Chair:** Thank you.

Did you want to go to Karen and then you?

**Mr. Gary Goodyear:** Well, I was going to inform the committee that Mr. Martin is misleading the committee again. None of those people were summonsed. But I realize that's not a point of order, so I'll pass.

**The Chair:** All right. I won't mark that one against you.

Madam Redman.

**Hon. Karen Redman:** Thank you, Mr. Chair.

It's not my wish to prolong this debate. I, too, take the summons to this committee very seriously, but I look across at my five colleagues, and they've had other representatives of the Conservative Party. I think there is some validity to say it is summer and some people are on vacation and some people may or may not have gotten the summons; and I think this is a very reasonable next step. I think it's respectful of people who are on the list that this committee agreed to have come to testify.

I have found this a very enlightening week. I think we've all learned things and I do believe a lot of light has been shed on a very important issue. And this committee is charged with a very important issue, which is dealing with the ethics for public office-holders. Because of that, I believe Madame Lavallée has brought forward a very cogent, supportable next step. If at the end of September we haven't heard from these people and it's very obvious that they're either resisting or refusing to come, I think there is a next step.

Many of us are parents, all of us deal with process, and there are some logical steps to be taken. This is the middle of summer; the timeline was fairly short. It was one week of four days of meetings, and perhaps it didn't work with some people's schedules. I think Madame Lavallée has chosen a very supportable step, so because of that. I will support her motion and not the amendment, because I

think that is merely an attempt to truncate the very important work of this committee.

• (1725)

**The Chair:** Mr. Goodyear.

**Mr. Gary Goodyear:** Well, I'm going to appeal to members to support the amendment, because I don't think it takes away from the actual motion. In fact, I think what it does do is exactly what the committee wants. Certainly, through you, Mr. Chair, I think it does what Mr. Martin wants. Ultimately these folks have ignored this committee, and Parliament has an additional set of powers and authorities to sanction them.

Now, through you, Mr. Chair, Mr. Martin continues to speak of having to sanction these people. He's insulted. What can the committee do? We're certainly not going to suggest we send Mr. Martin out to swear at these people until they get here. So I think we should ask the committee to invite these witnesses again or summons them again, which is the extent of the committee's authority, and if we have indication that they're not going to honour that, then we should absolutely report that to the House. The House would be sitting by then. We need to report that to the Speaker of the House, and the Speaker of the House can throw another level of sanctions, another level of authority.

I hope I'm not interpreting and I very much respect what Madam Redman said. She's absolutely correct. These folks deserve a second chance; maybe there are legitimate reasons. But I think if we try to summons them again and they don't show up, guess who's delaying the process? It's been indicated that somehow there's this conspiracy, that we don't want to get this done before some election that we all know isn't happening. But if that's the argument, then I think we need to move, and as Madam Redman said, no, this isn't a bad first step, and then this other thing could be the second step.

I think the amendment simply says we're doing steps one and two at the same time. That's absolutely reasonable. Without a report to the House, I see this thing dragging out and dragging out, and I just don't think that is the intention of what we need to do here. We've got formidable business going on. I support the amendment, but unless we're going to report it to the House, it basically falls back to the same kind of authority the committee has, and Mr. Martin yelling at people and cussing at them isn't working. These folks actually are getting scared away, in my opinion, by the behaviour of this committee.

So without reporting to the House, I don't see that we would have the additional authority to seriously sanction, and any suggestion otherwise is absolutely false and misleading. I will not support the motion, because it's impotent. I will support the amended motion, where we actually go to the House of Commons and ask the Speaker of the House to step in and lay the hammer down on these folks, and it's as simple as that.

So without the amendment, I won't support this motion, because it's purposeless. It's a political stunt, chapter 13, and I won't continue to do that. We have work to do here. If you're serious about getting to the truth, then the amendment makes sense because it's the double hammer and it happens all at the same time. It speeds things up; it's exactly what you've been saying you wanted. Let's see whether or not that is true or false.

**The Chair:** Mr. Del Mastro.

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

I want to go back—

**Mr. Massimo Pacetti:** Mr. Chairman, I have a point of order.

**The Chair:** Mr. Pacetti, on a point of order.

**Mr. Massimo Pacetti:** I want to remind the committee that we still have Mr. Goldstein to interview, so perhaps we could go to the question. We've committed to Mr. Goldstein, and he's supposed to appear before us at the end of our work.

**The Chair:** That is not a point of order, Mr. Pacetti; it's an opinion. And your opinion is always valued, but points of order should be protected as well because sometimes...it's like crying wolf. Eventually when you really need to use one....

I think we have to be very careful about thinking, "I want to talk so I'm going to say point of order." No, don't do that. It's not a good idea.

Mr. Del Mastro, please.

• (1730)

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

We've made a number of very strong contentions on this side of the table. We've referred to the tyranny of the majority, and we've referred to this as a kangaroo court.

Mr. Martin, in his statement—which is why I'm back on the speakers list—spoke about how he believes people have disrespected Parliament and therefore, by extension, they've disrespected Canadians. If he believes that, if he truly believes that, I can't see any reason possible, I can't see any reason in the world why he would vote in favour of a motion that he knows in his heart is utterly and completely impotent. It is impotent.

You went to an extraordinary measure, Mr. Chair, by issuing summonses. Now, I would argue that the committee was never authorized to look at this study in the first place. In fact, if you recall, we were moving amendments to the motion that brought us here today. I was one of the members who was doing that when the debate was cut off. We would argue it was done utilizing procedure that was not valid.

But that said, here we are. Here we are. The members on that side of the table, whom you continually refer to as the committee, since they continue to vote as a block against us, have continually suggested that everything they have done has been okay. They are Parliament; that's really what they're saying.

Mr. Martin indicates that they've insulted Parliament. Clearly, by extension, he is therefore indicating that he is Parliament, or that the members on that side are Parliament—because I'm not insulted. I don't think anybody on this side of the table is insulted.

What I would suggest, because there's a number of reasons—for example, we've discussed the special Mayrand deal, the special conditions under which he appeared, and we know that those conditions were not extended to other witnesses, irrespective of what Mr. Walsh's letter says. We also know there may well be other reasons why those witnesses did not appear.

That said, we have gone to an extraordinary extent. We are here in August. We have incurred significant expenses to the taxpayers of Canada in a process that I believe is illegitimate. If it is not illegitimate, if you are that certain, if you're that certain on your—

**Mr. Pat Martin:** I have a point of order.

**The Chair:** Is this an absolutely urgent and pressing necessity?

I'm sorry, Mr. Del Mastro, I have to take this point of order by Mr. Martin.

**Mr. Pat Martin:** I'd ask you to enforce the repetition rule under points of order that you yourself cited, where if one member or even any of the members keep repeating the same point over and over again, it's a matter of filibustering and repetition, not adding to the quality of the debate.

In fact, all Mr. Del Mastro has been doing is reading through the talking points he's been given with the same buzzwords over and over and over again. It is not material to the debate or to the merits of the amendment.

• (1735)

**Mr. Dean Del Mastro:** I have no talking points, Pat.

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

A claim of either relevance or repetition, certainly with examples, is a valid point of order.

I know it's getting late. I have a feeling that members are going to get a little antsy after a while.

I believe there's a proper debate going on. I'm sure members are going to try to make their best argument. I always keep track of the arguments made, the pluses and minuses, or the for and against arguments. With the little tick marks beside them, it becomes pretty clear once we hit that point where it's not just a little repetition, it is a major point of repetition. I'll deal with that if, as, and when it happens. We're not there yet, sir.

But I have a feeling that the members do want to express themselves, to make sure their points are on the table in terms of how they feel and what they believe. That's why we're here. We will have a vote on the amendment in not too long a time. So I want to let members express themselves.

Mr. Del Mastro, have you finished?

**Mr. Dean Del Mastro:** No, I've not.

**The Chair:** That's right. I interrupted you to take the point of order. So I'll go back to you, sir.

We all heard the word about repetition. Members are aware of that.

**Mr. Dean Del Mastro:** I promise I won't repeat myself.

**The Chair:** Please be judicious.

**Mr. Dean Del Mastro:** Thank you, Mr. Chair.

Mr. Martin, in his statement, which is what I'm addressing—which is why it's difficult to be repetitive when I'm responding to something that he was talking about—listed a number of names. Indeed, he has been vilifying those individuals for a couple of days. They were vilified by extension of the comments you made Monday morning.

I'm simply saying to this committee, if you are confident in your position, then report it to the Speaker. If this is a valid process, report it to the Speaker. Why bring forward another impotent motion? If people, for whatever reason, didn't respond to the first set of summonses that were issued, why would they do it the second time? It's like standing around the corner, and when somebody walks up, you jump out and say “Boo”, but you don't frighten them, so you try it again to see if it will work.

Look, folks, if you're confident in your position, then you should be voting in favour of this amendment. And I will support it. I will support this being reported back to the Speaker. I will support whatever comes of that. But clearly, the motion that was originally brought is substantively different from the one brought today. And I would suggest to you, Mr. Chair, that is done with a specific design in mind.

**The Chair:** I now have Mr. Lemieux.

**Mr. Pierre Lemieux:** Chair, I'm just going to speak very briefly.

My concern is that the opposition—the Liberal Party, the Bloc Québécois, and the NDP—don't want this reported back to the House because they fear the repercussions of the Speaker. The Speaker has already made comments from the chair on anarchy within the committees. These last four days have been a wonderful, wonderful example of anarchy of the majority, totalitarianism of the majority. I'm looking at six MPs who consistently out-vote five MPs. They make up the rules as they go, Chair. They don't want the Speaker of the House to have a look at this. They don't want that kind of overview. This is what this little debate is all about. That's why Madame Lavallée doesn't want this reported back to the Speaker.

For the last two days, Mr. Martin has been chomping at the bit to get to this part of the business where we can issue sanctions against the people you have summoned, Chair. Now he backs off. Even earlier this morning he was lecturing this committee on points of order and how time was being wasted because we must get at the committee business—“I've got things to say about wanting to sanction those whom you have summoned”. Now he doesn't want to sanction those whom you have summoned. The reason is that he doesn't want overview or oversight of this committee or a ruling from the Speaker.

There have been many problems with this committee, and one of them is that we are operating outside the mandate. This has come up many times during testimony with the witnesses. We have constantly echoed what the chair himself has said on this matter: that we are not authorized as a committee and it is not within our mandate to determine any ethical standards of any party. This has to do only with public office-holders and their duties with regard to ethical standards. These are words from the chair's mouth.

We are not authorized whatsoever to opine on a political party and its activities, yet that's exactly what's happened in these last four days. As I put forward to the committee, chair, through you, the opposition are afraid that the Speaker will rule against them, rule against you, and rule against the committee on the kangaroo court that has basically taken place over the summer.

Mr. Del Mastro made an excellent point. There has been tremendous expense to the taxpayer in our having met over the summer, both in terms of bringing witnesses in front of us and even just the cost of our sitting. In fact, we had to vote on another budget you presented during this session of the committee. It hasn't been free; it's been expensive. There's a cost to this, yet look at the manner in which this committee has been conducted. I think all the grievances are on record as we've raised them throughout these past four days.

I wanted to highlight that point, that there is a fear here, and I see it in the opposition's eyes. That's why they don't want this referred back to the House.

• (1740)

**The Chair:** Okay.

Now I have no further speakers on the list, so I'm going to put the

[*Translation*]

**Mrs. Carole Lavallée:** My name was on the list.

[*English*]

**The Chair:** I thought it was Lemieux, but it's actually Lavallée. I'm sorry.

[*Translation*]

I'm sorry, Mrs. Lavallée.

**Mrs. Carole Lavallée:** Mr. Chair, the two motions I have made, the one yesterday and the one I have not made today but that is still on hold, meant something very specific. I explained it at the outset: they are the carrot and the stick.

The purpose of the one I am making today is to ask the Chair to do everything necessary to secure the appearance of as many witnesses as possible, not necessarily all the witnesses, but all of the ones who may want to appear, to give them a second chance. In life, we ordinarily give people a second chance. As we have seen this week, they have been given bad advice by their party. We saw this on several occasions and I don't want to go back over all the times when people told us that the Conservative Party had told them not to appear.

[*English*]

**The Chair:** Madame, I'm going to have to ask you to please address the motion as opposed to reflecting on what we've done over the last four days. Please, let's deal with the motion.

[*Translation*]

**Mrs. Carole Lavallée:** Mr. Chair, the motion comes out of our discussions over the last four days. So I will continue my arguments.

The purpose of the carrot is to say to them: think about it some more, think again, consult the people around you, your lawyers or people you trust. But do not consult the Conservatives, because you have done that already and they gave you bad advice. Go somewhere else. That is my motion.

The Conservative Party can easily tell its workers not to appear, but Mr. Tilson and Mr. Del Mastro and Mr. Dykstra are not the ones who will find themselves in handcuffs and who will be appearing on the news every night. It's easy for them to give advice like that and it costs them nothing. The people directly affected have to think about their own situation and their futures.

I find Mr. Del Mastro's subamendment very difficult to understand. In fact, I don't understand it at all. If he wants to know what to do about the Conservative party workers and organizers who have not appeared at the committee, he doesn't need to report to the Speaker of the House, he needs to ask Mr. Hamilton to phone all those people and tell them to appear here. That is the only thing the Conservatives should be doing. But they have done the opposite.

His motion is completely null and void. My second motion, that one I am going to keep because it is what I called the stick, the sword of Damocles. I do want a report made to the House, but let's do things in order, one after the other. Let's give the party workers, the people acting in good faith, and the volunteers, who gave their time and energy to a cause they believe in, the time to think about the consequences.

The only purpose of this subamendment is to stall for time. Mr. Del Mastro is making a motion solely to stall for time. I would suggest that he instead...

Mr. Chair, why is Mr. Tilson waving his handkerchief in my face? I do not understand his attitude, he is being mischievous but completely contemptuous. I would ask that you call him to order.

[English]

**The Chair:** Madame, thank you very much.

[Translation]

**Mrs. Carole Lavallée:** I have not finished, but I would first like you to call him to order. Do that and I will continue.

• (1745)

[English]

**The Chair:** Colleagues, we're getting close to the end. It has been a very long day, but we should respect all honourable members to have an opportunity to express themselves fully until they've completed their argument. I know all members would like to hear what other members have to say.

[Translation]

Continue please, Mrs. Lavallée.

**Mrs. Carole Lavallée:** I would like to conclude my arguments regarding Mr. Del Mastro's amendment.

I prefer to appeal to the Conservative party workers' sense of duty as citizens. I am certain they are acting in good faith.

Lastly, Mr. Chair, a few minutes ago, Mr. Lemieux said again that the committee was a circus. The committee is not a circus, but it has five clowns.

[English]

**The Chair:** We've certainly have had some good debate. Are there any more members who have sought to speak?

Okay, there being no further members to speak, I want to put the question on the amendment. Colleagues, do you understand what the amendment is? Would you like me to try to read it? Everybody is aware of what we're voting on? Read the amendment? Mr. Del Mastro would like that.

The motion, as amended, is that the chair take all necessary actions to report to the House on September 15, 2008, all of the persons on the committee-approved witness list who have not yet appeared before the committee, and that the chair consult the Speaker of the House for direction.

So that is Madame Lavallée's motion with the Del Mastro amendment overlaid, so you have the motion as it would read, with the amendment concurred in.

We're going to vote on the changes that Mr. Del Mastro proposed to the committee. Please call the roll.

(Amendment negatived: nays 6; yeas 5)

**The Chair:** The amendment is defeated.

Now I'll put the question on the unamended motion of Madame Lavallée. Please call the roll.

(Motion agreed to: yeas 6; nays 5)

**The Chair:** Colleagues, the Lavallée motion is adopted. Thank you for the additional work for the rest of the summer, but the good news is that I will be spending some time with Speaker and I am very, very interested. Well, I'm reporting to the Speaker because I'll be travelling with him for 10 days.

We've now finished our scheduled business. There was a motion passed that at the end of our scheduled business we would then hear Mr. Goldstein.

• (1750)

Is Mr. Goldstein in the room, ready to appear?

**A voice:** [Inaudible—Editor]

**The Chair:** All right. Well, since the committee has passed this resolution, I'll have an opportunity to speak to him to see if I can arrange another opportunity for him to appear. Would that be all right?

**Some hon. members:** Agreed.

**The Chair:** We are adjourned.







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