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Chair

Mr. Gary Goodyear

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● (1110)

[*English*]

The Chair (Mr. Gary Goodyear (Cambridge, CPC)): Colleagues, let's begin our meeting. Welcome back after the break.

This is our 17th meeting, and we have had a request pursuant to Standing Order 106(4). As members know, that's a meeting requested by four members of the committee, so today's meeting has been set aside for that.

I'll read this and then ask somebody to move it. There is a motion that the committee meet to discuss their request to consider holding additional meetings every Wednesday when the House is in session, starting on February 27, 2008, in order to hear from individuals concerning the Conservative Party of Canada's 2006 election campaign expenses, commencing with the following: (a) Mr. Marc Mayrand, Chief Electoral Officer; (b) Gary Caldwell, former Conservative candidate in Compton Stanstead; and (c) Liberato Martelli, former Conservative candidate in Bourassa.

It is moved by Madam Redman. Thank you.

We will go to debate.

Madam Redman, please.

Hon. Karen Redman (Kitchener Centre, Lib.): Thank you very much, Chair. I see that we're back at the same issue yet again. We have made several attempts to cover this subject matter off, and it has been habitually filibustered by government members. So this is again an attempt to express the wish of the majority of the committee that we move forward with this piece of information.

In a minority government we're all at the ready for an election that could happen at any time. In order that Canadians can hear the fullest part of this issue, this systematic in-and-out scheme that was done by only one party in the 2006 election, it is appropriate to hear from the Chief Electoral Officer as well as Mr. Caldwell and Mr. Martelli. They have been in the media expressing their unhappiness with the fact that in some instances former Conservative candidates felt they were actually compelled or coerced into going along with this scheme against their better judgment.

Clearly Elections Canada agrees that was not a good process, which is why they have refused to allow those expenses. As a result of that, the Conservative Party is overspending the national advertising campaign by about $1.2 million. Because we are in a minority government, we feel that time is of the essence. This gives us a reasonable start to this issue and we should begin forthwith.

So it would be a nice change of affairs if we actually got to vote on this today.

The Chair: Mr. Preston.

Mr. Joe Preston (Elgin—Middlesex—London, CPC): On a point of order, perhaps Madam Redman and the Liberals don't understand, but in order to have an election, they're going to actually have to do some voting of their own—

The Chair: That's debate. Thank you. Let's stay within the rules.

Mr. Reid, you're next, please.

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

This is something of a novelty in that we actually have a somewhat different motion before us today than the one we had... well, my goodness...from August to February, and what can I say upon the demise of that motion but, “Motion, we hardly knew you.” It was such a long period of time over this same motion. I have to assume that the other side of the table has finally accepted that there were some inappropriate elements to the motion in the way it was worded. I'm referring to the previous motion, of course, but the changes are relevant to the discussion here.

The previous motion had, of course, made a direct presupposition of guilt. It talked about the illegitimate—that was the word that was used—actions of the Conservative Party in the 2006 election. And some of us objected—I'm projecting once for a couple of hours—to the use of the word “illegitimate”, which I thought was, frankly, a word that is meant to convey an impression of guilt without actually stating it in a precise manner.

That could have been dealt with by saying when Elections Canada “asserts” our illegitimate expenses or, better yet, “asserts our expenses that are not in conformity with the law”. Or one could have said, better yet, “election expenses that are in dispute because Elections Canada thinks this kind of expense is okay when the Liberals do it but not when the Conservatives do it”. And I think that raises the fundamental problem that continues to exist with the motion as it is currently worded.

Although it is substantially different in some respects, in its essence it's the same thing. It makes an assumption that we should be hearing about Conservative Party election expenses and not about the election expenses of other parties. It makes the assumption that only the 2006 election expenses should be looked into, not expenses from previous elections, particularly the 2004 election. The important point to be made, of course, in the absence of the 2004 election is that in the 2004 election the Liberal Party of Canada was considerably better financed than it was in 2006. Hence it was better able to engage in practices involving the transfer of money between various local campaigns and also local campaigns to the national campaign in a way that was less feasible in 2006. I think that fact is amply documented in the affidavits that have been submitted in the ongoing court action between the Conservative Party of Canada and Elections Canada, in which a demonstration is made in these documents that these practices—although the Liberals did engage in some and so did the other parties in the 2006 election—were quite widespread in 2004.

I'm going to go on and talk a little bit about some of these things, but I did want to dwell a little bit on these two basic elements still absent—or still present by their absence—in the currently proposed motion. That is to say they focus on a single election and a single party in an effort, Mr. Speaker, to take a snapshot that doesn't tell the whole story.

You may have seen these ads for *The Globe and Mail* on television, which I think serve as a useful analogy. For example, you see one photo that is of two little boys, kind of cute little boys. The photo has been cropped, and as the camera draws back to the full picture, it's two little boys holding Kalashnikovs. So it gives a kind of different perspective of what's gone on here, and this is, in essence, what's going on here. It is an attempt to crop the photo so as to produce a version of reality—

● (1115)

Mr. Pierre Lemieux (Glengarry—Prescott—Russell, CPC): That's a great analogy.

Mr. Scott Reid: Thank you. I got that because I just got one of these camera phones, and you can zoom in and take out little bits from the photo that make it look better—by leaving out the inconveniently placed in-law who might be in the background and that kind of thing.

Mr. Yvon Godin (Acadie—Bathurst, NDP): On a point of order, does this have to do with $1 million to buy a vote?

The Chair: I'm not even sure what that is.

Mr. Yvon Godin: If you're not sure, Mr. Chair, you could read today's newspaper. The Conservative Party was ready to buy a vote for $1 million.

The Chair: I don't read that newspaper, thank you.

Mr. Yvon Godin: We'll produce it for you, Mr. Chair.

The Chair: Please, Mr. Reid, you have the floor.

Mr. Scott Reid: I think I know what's being referred to. I'm sorry, Mr. Chairman, it took a while to get the connection. But I think the subject matter to which the honourable member is referring is not actually contained either in this motion, the way Madam Redman has put it forward, or in any alternative wording that I've seen. So perhaps it's not germane to the discussion of this motion. However, I imagine that this or anything else could be dealt with by means of an amendment to the motion if the member chooses to go in the speaking order and propose such a motion. So he might want to consider that at some point in time.

In her opening remarks, Mrs. Redman used the terms “compelled or coerced” in reference to two former Conservative candidates, Mr. Gary Caldwell, from Compton—Stanstead, and Liberato Martelli, from Bourassa.

I'm not 100% sure if she's aware of what the legal meaning of these words is. “Compelled or coerced” involves some form of threat to an individual, either physical violence to themselves or to somebody else, or blackmail. In their legal meaning, compelling and coercion are criminal actions. I'm pretty certain that she didn't actually mean that, because that would not only be a violation of the Elections Act, it would be a violation of the Criminal Code. Had such assertions been made by either of these candidates, I feel pretty confident that we would be dealing with a very different situation. There would presumably be a criminal action before the criminal courts.

So once again we see the unwise use of language, which on its surface seems reasonable, but which is in fact excessive and misleading. I think it's unintentionally misleading, but nevertheless, it's misleading in that it leaves the impression of a crisis of a very different nature than the problem we are facing here.

I definitely think there is a very real problem here. And I think the problem that's at work here is that the nominally impartial adjudicator of our elections, the administrator of our elections—that is to say, Elections Canada—is in fact not acting impartially. It is in fact treating different parties differently. That can't be seen in the cropped snapshot that is proposed in the motion submitted to the committee today. In fact, the purpose of this is to take the inappropriate activity of Elections Canada in treating different parties differently and to sanctify it, legitimize it, and cause the impression that there's a scandal here, when in fact there's an unequal administration of the law by Elections Canada vis-à-vis the different parties.

I think the fact that this is self-evident is revealed by the fact that the court action that is under way right now is not a court action by Elections Canada against the Conservative Party or any of its official agents. It is in fact a legal action by two official agents of former Conservative Party campaigns against Elections Canada. It's very important to remember that.

We all know that we shouldn't be discussing this at all because of the *sub judice* convention. We know you made a ruling. We know it was overruled. We know, however, that in the overruling there was no reason given. It was simply an assertion—we have more votes than you guys do and we're just asserting it. Now, that's not entirely the fault of the members opposite. When anyone challenges the chair, the nature of the vote is that it is a vote that takes place without debate or discussion. But they have had about eight months, seven months anyway, to explain their reasons, and I haven't heard a convincing reason from the members on the opposite side as to why the *sub judice* convention doesn't apply in this case.

● (1120)

Certainly, they've had many opportunities in this committee, in debate, and in the media and elsewhere, to explain an action before the courts in this particular case. The *sub judice* convention does not apply. Presumably, there must be a profound logic to it or else they would not make such an assertion, but the *sub judice* convention is designed to ensure the law can operate impartially and fairly for all concerned. It ought not to be prejudiced by the actions that take place here. That remains in effect.

Of course, by trying to steer the discussions in a certain direction I assume the intention is certainly to get the court of public opinion to come down on one side of things before an election. I'm guessing here, but a reasonable guess is the reason the dates in the motion were chosen was that the first meeting would occur on February 27, which would have been yesterday. This would have timed things nicely so there would be the appearance of a make-believe scandal right before a writ that could have been dropped as a result of a vote occurring as early as today. Thanks to our friends in the Liberal Party, that seems to be an unlikely occurrence. We understand they are enthusiastic in their support of the budget, and therefore the election is not likely to happen.

I don't know if that means we're now going to face a situation in which they're going to try to keep this make-believe scandal alive until we eventually go to an election, at the rate things are going, in October of 2009. It will certainly make for a tedious year and a half for all of us. The positive side of this is that the actual court action will presumably have been dealt with by that point. The real courts will have ruled. The various Conservative Party campaigns will have received the moneys they are owed by Elections Canada for their legal and permissible election expenses. Perhaps that will end what I think is essentially a farce, Mr. Chairman, that we are somehow on course that it is somehow appropriate for us to prejudge courts, to hold parallel hearings, and to have a very selective list of witnesses designed to produce a foregone conclusion.

I would draw to the attention of members on the other side of the table the fact that it is going to be a little bit embarrassing, having pursued this thing relentlessly, and then to have it revealed that everything you were doing was, in the minds of the real courts, wrong.

This brings me back to a point we keep hearing every time Madam Redman reintroduces her motion. She makes the point that Elections Canada has found us wrong. Elections Canada, I can only point out, is not a court. It's not a legal body. Even courts gets things wrong sometimes. That's why we have courts of appeal. We have a court of first instance where an initial hearing takes place, a trial if it's a criminal matter. Then you have a court of appeal. Depending on the province, we call it a Court of Queen's Bench, a court of appeal, the Superior Court, and then it moves on from there to the Supreme Court. You have the recognition that lower courts get it wrong. Even supreme courts get it wrong sometimes and later on go back and say that back then they didn't get it right. That happens less frequently—in fact infrequently. Nonetheless, even courts get it wrong. But for goodness' sake, this is not a court. It's not a quasi-judicial body. It's a body that administers the law, and that is why the commissioner of elections is a separate official from the Chief Electoral Officer.

Bringing in the Chief Electoral Officer, who is one of the parties to this dispute, to have him, the respondent—right here, I've got the front page of the Federal Court action:

> Court File No. T-838-07
>
> L.G. Callaghan in his capacity as official agent for Robert Campbell and David Pallet in his capacity as official agent for Dan Mailer

So Mr. Callaghan and Mr. Pallet were official agents for, respectively, Mr. Campbell and Mr. Mailer. They're the applicants. The respondent—that's the guy who's defending himself against an argument, a charge that he has violated the law—is the Chief Electoral Officer of Canada. So you can see the problem of inviting the very first witness, Mr. Mayrand, who is a party to this.

● (1125)

In fact, I would hazard a guess that if he were invited here, Mr. Mayrand would have to respond by saying, "I cannot attend this without prejudicing a matter for which I myself am before the courts. I therefore have to turn down your invitation." I don't know if it's the intention of the Liberals to bring him here in leg irons, like Karlheinz Schreiber—get a Speaker's warrant for him—but the fact is that it would be inappropriate to call him here. I would have thought they would recognize that. Their former proposal had presuppositions of guilt and so on, but for goodness' sake, at least it didn't have a witness list that involved a man who is the respondent in a case before the courts. This is a really fundamental error.

If we work on the thesis I was putting out there a little earlier, that the real goal was to just have a motion passed in the committee stating that we're going to have hearings, but not to actually execute these things, then the embarrassment of having him turn down this offer would not ever have taken place, and then they'd be off and running. It's an election. You can make all kinds of accusations during elections. For that matter, you can make all kinds of ads, and you can say anything you want as long as you say at the end of it, "We aren't making this up; they won't let us make this up." Troops in the streets, and the Conservative Party is guilty of all kinds of crazy things we dreamed up—but "We aren't making this up; they won't let us make this up."

Anyway, those were ads, and that's what I think is going on here. I don't know. There may be a plausible explanation, and perhaps when I finish my remarks, one of the Liberal members here will want to straighten me out and explain what the real motivations were. But at any rate, if this is to go through, if Mr. Mayrand is to be summoned here as a witness, a real problem will have been created, and a real embarrassment will be delivered to this committee when Mr. Mayrand says, as he inevitably will have to say, "I can't come because I am a party to this dispute before the Federal Court of Canada."

So all of this comes back to the idea that the Chief Electoral Officer administers the law, and he does this, of course, in a variety of ways. We've had him in here as a witness on other matters, on many occasions, and he explains how he administers it. One of the things he does is he puts out interpretative bulletins, and they are posted on his website. The interpretative bulletins explain how he understands various sections of the law to operate—when there might be some confusion as to how the law works—and in this, he's following a practice that's widely used, not by judicial bodies but by administrative bodies that are responsible for administering a complex piece of legislation and, when necessary, pursuing prosecutions under that act.

So he is an administrator, and he can serve in a prosecutorial capacity when he sees the law that he's administering being, as he thinks, violated. He never, at any point, actually renders a judgment. So if you like, in a certain specialized way, he is, in one of his roles, operating a bit like a crown attorney. He has more than one role. He is administering the law and he has to go out and appoint all these returning officers, who in turn appoint the DROs and the poll clerks across the country in 308 ridings, and that's a very substantial administrative task, which is why he has such a large budget, in the tens of millions of dollars.

But then he also, separately from that, has his staff review the activities of various participants in elections, and then, where he deems it appropriate, he proceeds to pursue certain administrative actions, which can take the form of prosecutions, when somebody actually violates the law.

● (1130)

By way of example, there was recently a man in Toronto named James Di Fiore who, in either the 2004 or 2006 election—I can't honestly remember which—went down to a polling station and asked for a ballot on three different occasions. I'm told he only voted once but returned two of the ballots spoiled. Nevertheless, he was trying to demonstrate that Elections Canada doesn't do a very good job of checking the identity of potential voters and preventing vote fraud, or multiple votes. His argument was that this could lead to some ridings being won by a candidate other than the candidate with the majority of legitimate votes—a very serious problem, I think. In that particular riding, it's worth noting that the former Liberal candidate and Liberal MP, Tony Ianno, actually argued that the New Democrat now representing the riding won it as a result of voter fraud, and there was an investigation that took place after the fact.

Anyway, all of this is within the Chief Electoral Officer's prosecutorial function, and he argued that Mr. Di Fiore had violated a section of the act. I apologize, but I hadn't anticipated going along this particular line of argument or using this particular analogy, so I don't have the relevant section of the act, but there is a section of the act that states that in addition to not voting more than once, you can't seek a ballot more than once. The argument is that he violated that part of the act. So prosecution was sought. The court ruled in the Chief Electoral Officer's favour and against Mr. Di Fiore, who has now received a fairly minor punishment.

That's one thing the Chief Electoral Officer does, when an active wrong has been done, in his mind, or when he asserts so and the courts then rule on it. There are different situations where he deems that something has been done that is not an active wrong, but which is different from the administrative interpretation of the law he would give—for example, someone seeking a rebate for an expense that he deems not to be legitimate. I'll bet everybody in this room has claimed items that have then been disallowed by the Chief Electoral Officer. I'm not sure there's a winning candidate in Canada who hasn't had some claim for an expense disallowed; it's just in the nature of things, particularly given the enormous complexity of trying to figure out what qualifies and what doesn't. In fact, to some degree, I know that in my own case we have submitted expenses because we didn't want to engage in the alternative practice—also forbidden by law—of making expenses and then not recording them. That itself is an offence. So you include things and say to yourself, I think this qualifies. They say yes to some of them, and to others they say no, they're taking that one out.

You'll see what I'm getting at when I point to the fact that in this case, what started this whole process was that the Chief Electoral Officer in his capacity as an administrator of the law—I won't say in his prosecutorial capacity, as I'm taking a step back from that—who also tries to interpret the law and determine whether the interpretation a candidate has given to the law is valid, has said that some expenses, some advertising expenses to be more specific, claimed by Conservative candidates were disallowed because he deemed them not to be actual election expenses for the purpose of electing the candidate in that riding, but that they were expenses of another nature. This is where the whole thing started. A series of Conservative candidates in local campaigns engaged in expenses known as regional ad buys, which the Chief Electoral Officer, or his minions, deemed not to be legitimate election expenses and simply disallowed.

I think I'm right in saying they did something else—and I stand to be corrected on this point—that is hard to regard as legitimate. I think they also withheld the entire rebate amount from the candidates —

Mr. Pierre Lemieux: That's true.

Mr. Scott Reid: —not just the disputed amount. This is very significant, and it goes to the argument I will be making a bit later on about partiality here.

Mr. Pierre Lemieux: That's my understanding.

Mr. Scott Reid: I'm getting some confirmation from my colleague that that was the case.

● (1135)

So here you have a situation in which some expenses are deemed not to be campaign expenses, amounting to some amount of money —$10,000 or $20,000 in a riding. I don't know what the exact amounts are; they vary. But an entire rebate of what could be, depending on the riding and the number of expenses made, up to $80,000 is disallowed. Now, you only get 60% of that back. So let's say it was $10,000 in ad buying expenses being disallowed. That's $6,000 that wouldn't come back. If it's out of a total of $50,000 that's claimed, one could expect $30,000 back. The difference between getting this money and not getting this money in an environment where everybody else is getting their money back can make the difference between being able to contest the election next time and not being able to contest it, having the funds to do it.

So as a further problem, we have Elections Canada creating a situation in which it is potentially deciding the outcome of future elections in those ridings. That is the gravest possible breach Elections Canada can make.

Mr. Mayrand always sends an observer along to these meetings. I hope this observer is taking notes.

In doing this, Elections Canada is acting in a manner that could potentially decide the outcome of future elections. That is a breach of its mandate and is something that needs to be corrected.

So that's a big problem. It's a really big problem if it's happening to one party only. So we're talking about a problem in which he's not just—

Mr. Pierre Lemieux: A point of clarification?

The Chair: Mr. Lemieux.

Mr. Pierre Lemieux: I am just wondering, based on what Mr. Reid has just said, whether Elections Canada ever gave a reason.

Mr. Marcel Proulx (Hull—Aylmer, Lib.): Is this question period?

The Chair: That's debate.

Mr. Pierre Lemieux: No. I am getting him to clarify his point.

The Chair: Order.

I can't allow that, Mr. Lemieux.

Mr. Reid.

Mr. Scott Reid: What I wanted to say here is I don't know the answer to that question. I don't know if this is a practice that is universal or if it has only taken place in certain cases. I can tell you that the next time we get Mr. Mayrand before the committee—obviously I don't think he should come before it in the context of this particular proposed motion and in the context of this proposed case —I actually would like to ask him for a record of how they've decided, what their internal policy is, and how they've applied it, and then have some kind of breakdown as to how this has been dealt with in the past.

I think it is appropriate to keep track of the administrative practices of Elections Canada and to ensure that they are in full conformity with the law and with the rule of law, the concept that underlies our entire legal system, which, as one of its foundation stones, has the principle that laws are applied impartially, that laws are applied to all parties, not just political parties, in whatever activity is going on in society, on an impartial basis and equally.

I don't know if that's the case. I do not want to suggest, by the way, that it is not the case because I simply have no evidence one way or the other. But in the particular case of any individual riding withholding all rebates, it is a very, very significant problem. If—and I believe I'm right in this—the other non-disputed portions of the rebates hadn't been made and we had gone into an election, which we would have done if it were not for the help of our Liberal colleagues, who now support the government apparently on basically everything—or at least Rick Mercer says so—his actions, the Chief Electoral Officer's actions, and those of his agency could have affected the outcome of some elections, potentially the outcome of the election itself, as to who forms the largest block of seats in the House of Commons. That is a very, very serious problem, and I invite the Chief Electoral Officer to reconsider that practice, which I would argue is in violation of his charge, his obligations, and is also in violation of the Canada Elections Act.

I will come back from all of this to the theme I've been developing, which is that the Chief Electoral Officer engages in an administrative and prosecutorial function. He's not a court of law, and certainly final judgment has not been rendered. Even if he were in some kind of adjudicative capacity, this wouldn't be the final situation. There are the courts out there.

Let me now turn, because I started to develop this theme a bit, to the question of how Elections Canada has played its role or has failed to play its role in being an impartial administrator of the law.

Now, I talked a bit about how the Chief Electoral Officer and, in its administration of the tax laws of this country, the Canada Revenue Agency both issue interpretive bulletins as to how they will interpret sections of the law. The way an interpretive bulletin ought to work is this. It ought to give the section of the law, to say here's the clause in question. We understand that it forbids this kind of practice but not that kind of practice. The wording may not be clear to the average person. Our understanding as an administrative body is that this particular practice will be allowed, that particular practice will not be allowed.

Therefore, what you can learn from reading this is, if you do actions in column A that are forbidden in our interpretation, you have a reasonable expectation that if we audit you and catch you doing it we're going to prosecute you for it. If you're in column B—the things that we aren't saying—we aren't going to prosecute you. That effectively is your assurance that we aren't going to come after you.

● (1140)

Some of the members of this committee were present when Mr. Mayrand arrived for his first appearance before this committee. I raised the point that I found there was a problem with the bulletins that his agency puts out, that they don't express things quite that way.

First of all, they make it clear that this is not a legal interpretation, that this is not a court of law. In fact, I have one right here. It has a disclaimer on the front of it.

By the way, I was calling these information bulletins, but they call them information sheets. You can find them online at Elections Canada. I do want to give Elections Canada credit; the sheets are very easy to find on their website. The way they're written is commendable in certain ways. They're very clear. They're printable only as PDF, so people can't print them off and fiddle with them in order to cause someone to make the mistake of thinking Elections Canada says A when it actually says B.

So there are some good things about these, but here's the disclaimer at the top of "Information Sheet 2", which was revised on January 1 of last year:

> These information sheets set out Elections Canada's current interpretation of the Canada Elections Act and are issued to assist the public in understanding the Act. The views expressed in information sheets are not law and are not intended to replace the official text of the Act. How the Act applies to any particular case will depend on the individual circumstances of that case. Elections Canada reserves the right to reconsider any interpretations expressed in information sheets,

—this is the important part here—

> either generally or in light of the actual circumstances of any case, and in accordance with continuing legislative and judicial developments.

By that they mean, I have to assume, that they can do this retrospectively, that they can go back and say, "Well, you've read this before, and we meant this by our interpretation...but we don't mean it any more. We now are taking a more restrictive interpretation. That which in a previous interpretation bulletin we said was permissible we now say is impermissible. And the fact that we said it to you, and you acted because of what we said, ought not to count in our current actions."

I will submit to you that this is a preposterous position. It's not Mr. Mayrand's position. These disclaimers have been up here since before he took office. They were a problem that dates back to Mr. Kingsley's tenure as Chief Electoral Officer. I haven't gone back and done the historical research, so it's possible they were there when his predecessor was around, but that doesn't change the fact that this is preposterous.

The idea that you can effectively say, "We're going to have, after the fact, reinterpretations that cancel anything we've said before" renders every single thing they say, in every single one of these things, absolutely meaningless, because who knows what they're going to say tomorrow?

Now, they could have said, "Look, this isn't law, this doesn't replace the law. A court is going to interpret this in a different way, but because we're the only ones who can initiate a prosecution, you know that we will not initiate anything that we've deemed in here or in any previous bulletin to be acceptable."

They could have said, "We will not proceed with anything unless a court, in its ruling, determines the law should be interpreted differently than we've interpreted it, and more restrictively."

They could have said, "This was revised January 1, 2007. We had a more permissive interpretation back in 2006. We've tightened it up now. Any future action we'll interpret this way."

I'm not actually sure that last one is legitimate, but at least it says they're not going to get into this nonsense of reinterpreting the past by means of some present bulletin, where it's now you see it, now you don't, as in, "Here's a rule. But it's not a rule any more. It doesn't suit us any more. We've changed the rule on you because it suits us."

● (1145)

Can you think of a more arbitrary way of conducting the administration of an important law, let alone the law that governs how elections will occur, and—if it's not administered impartially—the law that determines to some degree who will govern the country? As I'm pointing out, the Chief Electoral Officer, through his arbitrary actions, through his arbitrary and changing interpretations, effectively is deciding who gets to rule the country—notwithstanding what the voters may want, notwithstanding what a fair and an impartial election might produce.

Unfortunately, the opposition parties, who would be the beneficiaries, of course, of any such abuse of the Chief Electoral Officer's role, are not really enthusiastic supporters. They want to sanctify it through the various shenanigans they've been up to over the course of the past half year. So it's a very serious problem.

It's not a problem that's new to us in this committee. People are free to go back and check the committee Hansards. They'll see that when Mr. Mayrand came before us the very first time as a witness—I can't remember whether he'd been sworn in yet; I think he was just up for consideration at that time actually, and we had to nominate him and pass him on. I raised the issue of these bulletins. I said I found the way in which the disclaimers were written was very problematic. You can go back and examine exactly what I said. These things should be changed.

Now, they weren't, and obviously he's under no obligation to take my advice. But I think it ought to be an item of business for this committee to instruct him to act differently—we do oversee his actions—and make sure this disclaimer is adjusted and made more professional and less subject to abuse. If this committee won't take that action, then it would be an appropriate thing for Parliament to amend the Elections Act to mandate him to give information sheets that do not allow this kind of nonsense, these *ex post facto* reinterpretations of the law, to take place.

Our Constitution actually forbids, when it comes to laws themselves.... It is unconstitutional for any person to be found guilty of an offence that was not an offence at the time the action was committed. I'll give you an example.

The Senate has just approved, finally—I think mainly because the Liberals just couldn't figure out a way of stopping the law without triggering an election—a package of Criminal Code amendments that will include a provision that says the age of consent will rise from 14 to 16. This means, assuming royal assent is given in the next few days, that by the end of the month of March it will be finally—and thank goodness—a criminal act for an adult to engage in sexual intercourse and other sexual acts with a minor who is under the age of 16, between the ages of 14 and 16. But if it turns out that at some point prior to that time, prior to the granting of royal assent, someone had engaged in such an action, we may disapprove of it, find it morally repugnant, but it actually would not be a criminal act because it was not a criminal act at the time it was committed. And there's nothing you can do to prosecute that in the future.

By exactly the same token, the Constitution also states that if there is an offence for which the penalty is increased at some point through an Act of Parliament, the lesser penalty that was in place when the act was committed is the one that is put in place rather than the harsher penalty that was imposed later on, even if the actual court action, the actual criminal prosecution and trial and sentencing and conviction, takes place after the date on which the new harsher penalty went into effect.

The way the American Constitution, the American Bill of Rights, states it is that Congress shall make no *ex post facto* law, no after-the-fact law. This is one of the most critical foundation stones of law-making in a civilized society. The Americans constitutionalized it in 1789, I guess it was, or 1790. We did so, after a considerable delay, in 1982.

● (1150)

But you go back and look at British jurisprudence or English jurisprudence from before that time and this concept was clearly incorporated going back to Blackstone and Sir Edward Coke. It is a foundation stone of civilized action, and not just in the British and British-derived system, but you'd see it in the continental systems. You see it anywhere the rule of law prevails. In fact, without this, there can be no rule of law. It's just one of the things that is essential to the rule of law functioning.

Anyway, that, unfortunately, is not how the Chief Electoral Officer has been acting in his role as administrator of the law and prosecutor of offences under the law, and that does need to be changed. Now this is very pertinent because this is exactly the circumstance under which the argument is being made that the Conservative Party is in breach of the law. The argument is that actions were taken with regard to advertising that were not in breach of the law as defined by Elections Canada in its administrative bulletins, which are what we would have relied upon in order to make our decisions at the time the decisions were made in the 2006 election.

After the fact of the election, the Chief Elector Officer revised the relevant information sheet so that these actions that had occurred in the past were no longer acceptable, and he has argued that his current interpretation—not his previous interpretation, not the one he made at the time, not the one you followed at the time—is the one that should be applicable. He has enacted an *ex post facto*, not a law but a regulation that has the force of law. Therefore, not only is he withholding the money, but better than that, he's withholding the money and has now dreamed up an offence that you're guilty of: the offence of spending, on a national campaign to promote a national party, moneys that were meant to be used for local promotion.

I have to say that in looking at that interpretation, I find the interpretation nonsensical, frankly. Unlike the Americans and unlike other countries that have congressional systems, countries with parliamentary systems do not have separate elections for different offices. We don't have a separate prime ministerial election as they have separate presidential elections. We don't even have separate elections for members of the upper house, although hopefully that will be changing at some point in the future.

But the idea that you're promoting a national campaign...I don't know what that means. Everybody in Canada who participated in the last election had to vote for a member of Parliament in a riding. It's unavoidable. Some of them voted based on the qualities of the individual member of Parliament. The pollsters tell us that a much larger number voted based on what they thought of the relevant parties and leaders. And I can tell you—anybody can go back and check my campaign literature—that while I certainly like to promote the idea in my riding that Scott Reid is a stand-up guy, I don't suffer from the illusion that that's why most people vote for me. I get correspondence from people who say things like, “You could elect a fence post in Lanark County if it ran as a Conservative”. Some would say that's been tried, but at any rate, the point is that people vote for the party to a large extent. That's the history of the riding. It hasn't always been the history in every election, but it is the majority of the history of the riding.

We know that people vote on the basis of leader more often than on the basis of candidate. That is why in the 2004 election, an election that is of course excluded from the motion proposed by Madam Redman, you saw one riding after another with signs saying, “So and so, your Paul Martin candidate”, with a picture of Paul Martin on it, because the belief was that Paul Martin's brand was stronger than the brand of the individual candidate.

To take a provincial example, from the just recent provincial election in my province of Ontario—

● (1155)

The Chair: A point of order, please.

Mr. Proulx.

Mr. Marcel Proulx (Hull—Aylmer, Lib.): Mr. Chair, if I may, I would like the honourable member to tell me what relevance there is. I appreciate his publicizing the Paul Martin brand, but I'm wondering what the relevance is between a brand, a provincial election, and what we are discussing here this morning, if you think it's okay for him to explain that.

The Chair: I think he's getting to the point. I have listened to him very carefully. He has used other analogies and has brought it around, so let's see if we can get this one brought around too.

Mr. Reid.

● (1200)

Mr. Scott Reid: Thank you, Mr. Chairman.

The chairman is quite right that I normally argue by means of analogy.

As Mr. Proulx no doubt knows, I'm the author of a couple of books on different aspects of Canadian public policy. In those books I tried to look for analogies from other jurisdictions where, both successfully and unsuccessfully, policies of a similar vein have been attempted. When I wrote my book on official languages policy, for example, I thought the model used in Finland for its official languages policy—the official languages there are Finnish and Swedish—was one that could be successfully used here to decide where minority language services ought to be offered. Of the available examples, I thought it was the best one. But I looked at many examples from other jurisdictions before arriving at that one.

I'm doing the same thing here—I am arguing by means of analogies. I'm trying to provide evidence that people vote on the basis of leaders and parties more frequently or in greater numbers than they do for individual candidates. I mentioned the example of the Paul Martin brand. This brand began to sour partway through the election, to the point where it was less of a selling point than the Liberal name, which historically had a very considerable selling power and loyalty. When the leader's brand, which had initially been calculated to be higher than the party's, dropped to the point where it was lower than the party's, some candidates—I remember seeing this on a Richard Mahoney sign—cut off the "your Paul Martin candidate" parts of their signs. Something similar occurred in the provincial election.

The Chair: Here's where I think this is going—and I'm trying to respect the previous point of order.

I think the member is suggesting that because voters tend to vote for the parties in some cases, and a little bit for the candidates in some cases, parties tend to spend money on national advertising because it works to the benefit of the local candidates.

Mr. Scott Reid: That's nicely summed up. I hadn't realized I was missing summing that up so clearly. That's it precisely.

The Chair: That's perfect. Thank you.

Mr. Scott Reid: Indeed, that's exactly the case. This explains the logic of regional or group ad buys. You are trying to seek out and find items that will appeal to voters in multiple ridings. You're also confronted with the same basic realities of how media markets operate.

In very large geographic ridings with thinly spread populations, there are small local media markets that actually can be smaller than the riding. That is not the normal pattern. I have a very large riding that fits that description. As I like to point out to American friends, it's the same size as the state of Connecticut, but they have three million people and I have 115,000. It's large and spread out. We have the *The Napanee Beaver*, and it gets read in Napanee. *The Perth Courier* gets read in Perth. The *Carleton Place Canadian* gets read in Carleton Place. *The Record News* gets read in Smiths Falls. All of these are within my riding. Smiths Falls overlaps another riding a little bit, but essentially its circulation area is in my riding. *The Lanark Era* is read in the Lanark highlands, the *Frontenac Gazette* gets read in south Frontenac, and the *Frontenac News* in north Frontenac. I could give you some other examples, but I suspect you're probably starting to get the point.

There are, however, media markets, as a rule, in cities, that overlap multiple ridings. The *Ottawa Citizen* would go into a number of constituencies. To take the more obvious example, the *Toronto Star* would cover—how many ridings are there in the *Toronto Star's* circulation area? There must be 50 of them. It not only includes the ridings in metro Toronto and the 905 belt, but I know the *Star* has circulation boxes extending up into my constituency. Part of my riding is along the Lake Ontario shoreline, and indeed if you go down Highway 7, I know the exact gas station, which is the last one where the *Toronto Star* is delivered. That's the eastern-most extent of the *Toronto Star*. It's in Kaladar. If you go up the highway further east to Sharbot Lake, it's the *Ottawa Citizen*. That's sort of where the two of them butt heads. It's also more or less where the dividing line is between the Ottawa Senators' fans and the Toronto Maple Leafs' fans, which is a divide, I can tell you, Mr. Chairman, that we MPs have to take very seriously if we know what's good for us.

I could go on about that, but I suspect there might be a relevance problem with it, so I won't do that.

Media markets extend beyond individual ridings, so grouping ads is a necessary thing. If you're grouping ads, and all parties do, and all parties have done this for a very long time—not just for newspapers, or even especially for newspapers, but also for radio ads and television ads—because these media markets extend out beyond individual riding boundaries, you're faced with some fundamental problems.

Giving a list of candidates and saying, as we would have had to do if we were doing something for eastern Ontario—Scott Reid, Gordon O'Connor, Pierre Lemieux, Dean Del Mastro, John Baird, Pierre Poilievre, Cheryl Gallant, Daryl Kramp, Blair MacLean, Royal Galipeau, and Gord Brown are all great guys—is just giving a laundry list. I think I've just demonstrated that. It doesn't mean anything. It's just this long list of names. It's not going to cause anybody to switch their vote, which is the point of election advertising. Trying to list the accomplishments of these people is difficult. Some of them are candidates who haven't yet been elected, as my colleague, Pierre, was in the last election. Some of us are grizzled veterans with years of experience and many battle scars, as I am. It was hard to package us as a single entity, so the tendency was to promote the party or to promote the leader, or some combination of both. It kind of depends whether your party brand is higher than your leader's brand is. I think that explains why the Elections Act actually states that you are allowed to promote in local advertising, in any advertising, the party, the leader, the brand, and the policies.

I hope I have a copy of the Elections Act here with me. No, I think I left it in my office, so I'll have to ask my assistant to trot upstairs and get me a copy of the Elections Act.

● (1205)

I'll carry on with the general argument and come back to it when she has the Elections Act for me.

I want to make a point about the Elections Act in this regard. The Elections Act is actually quite specific in saying that you're allowed to promote the party, the leader, and so on. There's no other way of interpreting it.

While I'm waiting, I do want to draw people's attention to the constitutional principle I referred to earlier of not being guilty of something that wasn't an offence at the time the person engaged in that action. I mentioned the American example, the Bill of Rights, no *ex post facto* laws.

The Canadian Charter of Rights, section 11, deals with legal rights. It's one of a number of sections dealing with legal rights. Paragraph 11(g) states:

> 11. Any person charged with an offence has the right
>
> (g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations;

The reason that those bits about international law, "the general principles of law recognized by the community of nations", are in there is that we're trying to deal with war crimes. That's what it's about.

I don't think any party in this dispute is saying that this principle of our Constitution has any relevance to what's going on here. There are no war crimes under way.

Certainly you can't be found guilty on account of any act or omission to act unless at the time of the act or omission it constituted an offence under Canadian law. That applies to prosecution under the law.

Some people suffer from the misapprehension that what is not permitted by law can be done by regulation or by an administrative act. This is absolutely false. The fact that regulations are enacted more informally does not change that they're enacted under provisions of the law.

Normally a bill on, say, prohibited substances, drugs, will have a long list of items, and then it says, "and any others that are placed on this list by the relevant minister by means of ministerial order or by the Governor in Council". These are effectively parts of the law that are being administered by those charged with administering the law, and they are subject to the very same restrictions of constitutionality that is found under the law.

Likewise, the Chief Electoral Officer doesn't have regulatory powers per se. In fact, there are no regulations under the Elections Act. He has administrative roles. He has the capacity to make up a kind of regulation in his administrative actions and through his interpretations by saying that he is going to pursue what he regards as an offence under the relevant section of the law or he's not. So he has some powers there.

But those, too, are governed by the basic principles of the rule of law and by the Constitution—all of the Constitution, including paragraph 11(g). There's no escaping that.

That includes, and prohibits, of course, the practice for which there is an attempted justification in the disclaimers for all these interpretation bulletins. It certainly precludes the practice that he undertook of passing an interpretation after an election and then applying it retrospectively. There's just no way of escaping that.

The other thing that I think is worth mentioning with regard to the charter is that there is actually a requirement under the charter, subsection 15(1), that the law be applied impartially. Laws must be of general application. You can't have a law that is applied differently for different people, on any basis.

● (1210)

Everybody knows that there are restrictions on the government acting to apply its laws differently based on the enumerated elements in section 15. I may not remember them all—age, race, sex, religion, ethnicity. As well, the application of the law differently for one party versus another by someone who is given the specific obligation in the law to apply it equally would be unconstitutional. It would also be illegal under the Canada Elections Act. It's certainly unlawful under the Canada Elections Act, but it's definitely not permitted under subsection 15(1) of the charter.

I'll turn back to what the law actually says. Subsection 407(1) of the Canada Elections Act says the following, and I'll read it. It's a little confusing the way it's put here:

> An election expense includes any cost incurred, or non-monetary contribution received, by a registered party or a candidate, to the extent that the property or service for which the cost was incurred, or the non-monetary contribution received, is used to directly promote or oppose a registered party, its leader or a candidate during an election period.

Of course, nobody disputes these words about an expense made during an election period. Similarly, nobody disputes the part about promoting candidates. So it's really about promoting a party or a leader.

You'll notice that there's nothing in this section, or indeed in the other section, that deals with distinguishing expenses incurred by a local campaign, a national campaign, and so on.

We, of course, have established spending limits for local campaigns and national campaigns. But we did not—and when I say "we", I mean Parliament—rewrite this part of the law dealing with allowable uses of election expenses to exclude these things. And there would be a fundamental problem if we had, Mr. Chairman.

I just wonder, Mr. Chairman, actually, if I might.... Can you call a point of order on yourself? I'm just finding it hard to concentrate with all the background noise, and I wonder if you could maybe quiet people down.

● (1215)

The Chair: Thank you.

My apologies. I am trying to allow a little bit of discussion to go on, but the member is quite right. It's getting a bit noisy. It's hard for the member to concentrate, and it is approaching my inability to hear, and he's just about right beside me.

Again, I don't mind discussions going on. I understand the necessity of that. But if we could just step away from the table and keep it quiet, that would be great. Thank you.

Go on, Mr. Reid, please.

Mr. Scott Reid: Thank you, Mr. Chairman.

I just made the point that an election expense includes anything that is used for directly promoting or opposing a party, its leader, or a candidate—promoting or opposing, so it can be either way—during an election period. We parliamentarians did not distinguish, when we wrote this provision, between local and national campaigns. We didn't even say "promoting the candidate" or "that particular candidate". We didn't say that.

I was just about to point out that this is a section that goes both ways. Remember, on the one hand you're not allowed to spend more than a certain amount. The other side of the coin is if you expend these moneys, you expect to get a rebate for them. I think in the ideal world what everybody wants to do is to spend a pretty substantial amount to benefit from that rebate.

If you try to divide these things, I think you're starting to see the problems you're getting with rebating the costs. How do we figure out what this particular expense is for? And that is the netherworld or wonderland or just unimaginable and impractical universe into which the Chief Electoral Officer is pushing us through his reinterpretation of the law, to say there are now things you are permitted to say and do and promote and legitimate electoral objectives you're not allowed to do and say and promote in the course of an election.

I don't know if we're going to face prosecutions in the future if this line of interpretation is pursued by him: “You say this was a good way of getting votes for yourself; I say you weren't trying to get votes for yourself, you had some other objective. That's illegitimate. I won't reimburse you. Who knows, maybe I'll prosecute you.”

If I spend money and it's deemed not to be for the purpose of electing Scott Reid in his riding but for the purpose of promoting the national campaign—which, as I pointed out, is an artificial distinction given the fact there is no actual national office to which anybody is elected—but if I do this or if I'm accused of doing this, am I going to face a situation where it's said I wasn't really promoting myself, or it's been discovered I was actually promoting someone else, maybe one of the candidates in an adjoining riding?

If we all throw money into an ad buy together, and it doesn't make much difference in my riding but it makes a big difference in the one next door, but I threw in more money and he threw in less, what happens then? Is that an offence? This is a surreal interpretation of the law that has been given by the Chief Electoral Officer.

It just bears no resemblance to what subsection 407(1), which is the governing section of the law, actually says.

Elections Canada's argument, then, is something like this: subsection 407(1) says what it says. We're not going to dispute that, but you have to read subsection 407(1) in light of the rest of the act, number one, and number two, in light of our interpretation bulletins.

There are a number of problems with this way of interpreting it. I've already said I think it's just a surreal situation that's being pursued, and indeed unconstitutional. There are problems with constitutionality.

In addition to that, there are some other problems. I'd like to go through three of them.

● (1220)

The first of these is that subsection 407(1) does not say what legal provisions normally say when there is an expectation they will be read in light of what is said elsewhere. Typically what is said is something like this: “Subject to something, an election expense includes”, and you go on and read it. It doesn't say that here.

That language of “subject to” is all over the place in this act. There are so many spots where, as long as you don't forget the limitation somewhere else in some other section, you can do this. In the absence of that, there is no way this section was meant to be read as being limited by or hedged in by other provisions of the act. There is just no way. And when the courts finally deal with this, that is what they are going to find, because that is the only logical interpretation. It is the only legislatively consistent interpretation. To be honest, if you have to take every section of the act that has a specific provision and say it can be interpreted subject to other provisions of the act that are of a more general nature, then none of the specifics in the law have any weight. Only the general principles do, which then must be adjudicated after the fact. And that turns the whole law into mush. Indeed, it would turn any law into mush, and that is why there is a fundamental principle in law that general principles do not trump specific provisions. The entire common law system is based on this.

I was just reading about this yesterday, actually, stare decisis, the legal principle that in courts, judges adjudicate new cases based on specific decisions and precedents, not on the principles behind the decisions. They do it in light of the facts only.

All of this is to make the specific trump the general, except when Parliament decides to make the general trump the specific or when our Constitution says that the general shall trump the specific, as it did in that section that I read that talked about the principles of international law. If it doesn't say that, then the general does not trump the specific. And that is clearly not the case here. It is a very important point, and one that essentially undermines Elections Canada's entire case, even if other points did not undermine their entire case.

What about other parts of the act? There is section 319 of the act. Let me turn to that now. It deals with the definition of election advertising. You can see the significance of bringing this. Actually, it is a definition section. Everything in the act is interpreted in light of the definitions that are provided when you have an act that has a definitions section. So this part actually is relevant. In fact, that's what it says here in section 319: “The definitions in this section apply in this Part.” This part includes everything all the way through to section 407 and beyond.

Election advertising is one of the definitions:

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

Then they actually put the things that won't be permitted, not the subject matter, but the types of transmission. There are four such subheadings here. There is “the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter”. That's not going to count as an election expense. There is also the distribution of a book, transmission of a document directly to members of a group by the head of a group, and transmission on a non-commercial basis via the Internet. Those things are excluded.

But going back to the section and election advertising expenses, this is all about election advertising and what the opposition has decided is illegitimate election advertising. I just want to be clear about it, because they are arguing, and the Chief Electoral Officer is arguing, that there is some subject matter that is prohibited.

● (1225)

Just to recap, "election advertising", and this is not said to be election advertising by a riding, by a party, just election advertising, full stop:

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

This would seem to be a pretty broad swath. So to make the argument that these are expenses that are illegitimate because they didn't promote the candidates, they promoted the party, that we've deemed they were being read or heard or watched by people who weren't target voters in that riding—these are nonsensical arguments, and the law itself just doesn't support that interpretation.

I do have a third argument I want to come to in a second as a I deal with what's wrong with Elections Canada's overall argument. Before I do that, I want to just make a further point with regard to deciding who is the right person to be transmitting a message to, to having Elections Canada decide that candidate A over here contributed to an advertisement buy that took place geographically over there.

I have a very large riding, as I mentioned, which consists of an area that is just west of the city of Ottawa. Carleton Place, Smiths Falls, and Perth are the largest towns, and Lanark county...and then it continues as a sort of giant upside-down L, north of Kingston and then to the west of Kingston. There's a lot of very lightly inhabited forest land, wilderness, and this is an area that is fairly heavily populated along the Highway 401 corridor. The largest town down there is Napanee. The town itself has 5,000 people. The extended rural area has around 15,000.

Here's my point. Fifteen thousand people. How many people drive along Highway 401, through my riding, every day. I just recently heard it's 50,000 people a day—50,000. That's half the population of the riding, certainly far larger than the population of Napanee through which they pass. A billboard goes up there. Maybe it's at the intersection of Highway 401 and Highway 41. Highway 41 runs north-south; it's the north-south backbone of Lennox and Addington county, but it's visible from the highway. It also gets seen by people on the 401. It promotes Stephen Harper, because I think it will help to get me re-elected if people are reminded that Stephen Harper is the leader of my party. I bill it to my campaign.

I'm now in a position where I have to worry about whether Elections Canada is going to come along and say, "The people on the 401—almost none of them live in your riding—are seeing that sign. There are people who are not even from Ontario. There are people from Quebec seeing it. My goodness, they might be affected to vote in a Quebec riding because they like Stephen Harper and they're reminded he's the leader of the Conservative Party of Canada."

This is the level we're reaching. I have to worry that I'm going to affect or influence, with local moneys, votes that occur outside the riding. The fact that this kind of thing is not meant to be understood as election advertising for expense purposes or indeed for any purposes is indicated by the following fact. Going back to section 319, the definition section applies to advertising, and therefore the expensing of election advertising does include any means except that list of exceptions, one of which is:

> (d) the transmission by an individual on a non-commercial basis on what is commonly known as the Internet, of his or her personal political views.

Documents get out there; the transmission of documents is being passed on from one person to the next.

On the idea that there's what would be known by economists as an externality, an external effect of something intended for an internal purpose, that's considered legitimate under the law as it's now written. I would contend, moreover, that while I don't think this was the case with these advertisements, if I put a billboard sign up on Highway 41 and people on Highway 401 can see it and it causes them to switch their votes, that's legitimate. Sure, it's an externality, it's beyond my local campaign, but why shouldn't it be? Am I prohibited from advocating nationally?

If that's the case, then presumably we need some kind of rule that candidates for public office, in a local riding, like myself, ought not to ever get engaged in doing a nationally seen or broadcast interview with someone like Don Newman. Horror of horrors, it might influence votes outside our riding.

● (1230)

I don't know how you would conduct any national publicity at that point, because presumably, since we're all candidates for public office in local ridings, we'd all be violating this rule—if the rule existed, which it doesn't, because it's nonsensical. I think that ought to make the point pretty thoroughly.

I said there were three problems with Elections Canada's argument on how you ought to interpret subsection 407(1) of the act, which clearly allows all the advertising conducted by the Conservative Party, clearly permits it. But they say, "Well, remember, there are other parts of the act. You have to interpret the act in the light of other parts of the act, and you have to interpret it in light of our interpretation bulletins."

I said there are three problems in this. I've gone through the first and the second problem. Let me now turn to the third of these problems. That is, of course, Elections Canada's own interpretations, which have not really backed up our practices, but have backed them up pretty clearly. I want to spend some time looking at their interpretation bulletins. You can look at the one that is the source of our current disagreement with them, and also their previous bulletins. It will just take me a moment to find that.

I've mentioned the ones on the website, but the bulletins also take the form of candidate handbooks. These are handbooks in which Elections Canada explains how elections work so candidates and their agents will be better able to follow the election law. Putting these things out is, of course, entirely within Elections Canada's mandate. It would be very difficult for the average person to try to go through this very large and complex law, which has grown over time organically and hence is not really in a very user- or reader-friendly format. It would be unfair to ask everybody to go through that, so the handbooks for candidates and official agents are put out, and have been for a considerable amount of time.

I'm aware of handbooks going back as far as 1988. They may go back further than that, but certainly they go back 20 years. Dating back to 1988 they were very consistent with regard to candidate advertising, until a sudden and dramatic change occurred in 2007, which is to say over a year after the 2006 election, and, equally significantly, indeed one would argue more significantly, after it became clear that the Conservative Party was not going to accept Elections Canada's—I will simply say—mistaken decision to withhold funds from candidates, and, I might add, its illegal decision to withhold additional funds that were not in dispute.

The guidelines were very clear about this in saying that it was entirely legitimate for local campaigns to promote the candidate locally or with the national party. Let me give you some examples.

To start with, the Elections Canada guidelines and procedures respecting election expenses of candidates, the 1988 version, provides as follows:

> ...adherence to these guidelines will be considered by the Chief Electoral Officer as meeting the statutory requirements for issuing certificates for reimbursement purposes.... ... Compliance with these guidelines will ensure no prosecution will be initiated by the Commissioner on matters related to the guidelines.

I'll go on from there in a second to read the rest, but I want to stop and make a point about this. This is the language that should go into the disclaimer at the top of the information sheets online—a clear statement that if you follow the guidelines you will not be prosecuted. If you don't follow them, well, it's open season, right? We warned you.

● (1235)

It's very different from the statement being made here that we'll reserve the right to go back and reinterpret these things after the fact. But as you go along and listen to Elections Canada's argument that it's okay to reconsider its interpretations after the fact and find you guilty and prosecute you for things that it said it wasn't going to prosecute you for, remember how clear the language was previously: no prosecution will be initiated on matters relating to the guidelines if you adhere to the guidelines as they are written.

Having said that, section 1.5, entitled *Elections Expenses*, on pages 10 and 11 of that particular handbook, says:

> ...all material used and services provided to directly promote a candidate are election expenses....

This part I'm going to emphasize now:

> ...costs...must be considered an election expense if this material directly promotes or opposes a registered party or the election of a candidate.

So “costs...must be considered an election expense”. You must submit it to us. You are required to do so. If you do not do so, it is an offence. We will prosecute you if you don't do it.

For all the fuss that the other parties are making, I want to be clear about this. The official agents were acting, not really in good faith but under the belief that they were under an injunction from Elections Canada to do what they did, to claim those expenses as local campaign expenses. They were under the belief that if they did not do so, they would be in violation of the law. They were under the belief that they would be prosecuted if they did not do so. And to hear that rigorous compliance with the law twisted into an accusation that they were part of, to borrow Hillary Clinton's expression, a massive right-wing conspiracy to defraud the taxpayers of money is just outrageous.

Moving a little bit closer to the present, we have a revised version of the *Election Handbook for Candidates, their official agents and auditors*, published in 1997. Let's hear what it has to say. Again, this is also published by Elections Canada.

> ...the Chief Electoral Officer will consider adherence to this handbook as meeting the statutory handbook requirements for issuing certificates for reimbursement purposes.

Now let me read what he says about advertising on page 18:

> Although the term “advertisement” is not specifically defined in the Act, it should be interpreted to include any type of publicity which promotes or opposes a registered party or the election of a candidate.... ...material...that promote[s] or oppose[s] a candidate or a registered party should indicate that it is authorized by the official agent of the candidate.

You may remember that one of the complaints is that these things are marked down as indicating “authorized by official agent for so and so”, but the election expense takes place somewhere else. Geographically, this is a problem. The problem with putting something out that is not authorized in an area where it's being run is I think a legitimate problem. The suggestion that you can't have additional people authorizing as well is not a problem.

I notice that the first of these is not at any point part of what Elections Canada is arguing, or indeed what the Liberals are arguing, the legitimate one. The illegitimate one is that, well, so and so from this riding over here, east of a certain imaginary line, has got his name authorized by...therefore, it can't appear in some other market. It's not permitted. Effectively the reverse. How come some of those copies got into this area where it wasn't authorized by the official agent, would be a more convincing argument.

Overcompliance with a part of the law or with Elections Canada's interpretation of the law is not an offence.

Then we've got the report of the Chief Electoral Officer on the 36th general election. The Chief Electoral Officer submits a report following every election to Parliament. This committee reviews those reports.

● (1240)

I've done this committee a long time, and it actually doesn't always review these reports as conscientiously or as quickly as it should. That, however, is a matter for another day.

One might speculate—

The Chair: Excuse me, Mr. Reid, could you repeat the date of that report? I couldn't hear it.

Mr. Scott Reid: This particular one is from the Chief Electoral Officer on the 36th general election, the 1997 general election.

I'm trying to demonstrate—to pre-empt Monsieur Proulx, who no doubt will be raising a point of order—that there is a long period of consistent interpretation of the law by Elections Canada. That is also consistent with what the Conservative Party and its official agents were doing in the 2006 election.

Mr. Marcel Proulx: I have so much respect for Giant Tiger. I shop there all the time.

A voice: It's a great place.

The Chair: Order, please.

Mr. Reid, please.

Mr. Scott Reid: I'd have to call Mr. Proulx on relevance that time.

A voice: Do you get your ties there? I'm just asking.

A voice: Yes, of course.

A voice: Is it just a clip-on?

A voice: Does it come in another model?

A voice: I'm proud to get my ties at Giant Tiger. I want you to know that.

Mr. Scott Reid: I'm a little upset by that, Mr. Chair.

The Chair: I love the salmon there.

A voice: I'm proud of my ties.

The Chair: Mr. Reid.

Mr. Scott Reid: Before I was interrupted by the very well-dressed member from Hull—Aylmer, I was about to say that the report of the Chief Electoral Officer on the 1997 election—the 36th general election—gave the same interpretation, in the context of the fact that in the 1997 election, national parties weren't allowed to conduct advertising on June 1, which is the day before polling day, and June 2, the day of polling, under section 48 of the act. On the other hand, other candidates were allowed to do so when a similar restriction on them, contained in a different section of the act, had been struck down by the courts. These are all blackout provisions that don't apply any longer, but the interpretation of the relevant section of the act continues on and is consistent.

Here's how the Chief Electoral Officer expresses this. He says:

> The criteria applied to determine whether specific advertisements were to be accepted for broadcast were the identity of the sponsor and that of the body or person invoiced. The content of the advertisements accepted was subject only to the freedom of expression guaranteed by the Charter. As a result, a number of individual candidates purchased time on the day before polling and on the actual day of the election. Since the time purchased was often used to run a national advertisement with a local tag line, this rendered the prohibition in section 48 somewhat ineffectual.

This wasn't just put out in the report to Parliament; it was also put out in a press release as well as in a notice to the media. These were issued by Elections Canada on May 24 and May 29, 1997, respectively.

So, once again, Elections Canada was asserting at that time, very clearly, that it was their position that there is no restriction on the content of advertising by candidates ever. Indeed, we believe that there can't be, because the charter allows it.

The man who was then Chief Electoral Officer, Mr. Kingsley, explicitly recognized that the act allowed candidates to pay for national advertising. It actually spelled it out, that the time purchased was often used to run a national advertisement with a local tag line. He had no problem with that. Money was rebated, as long as the appropriate tag line was included, and no one disputes the appropriate tag lines, authorized by the official agent for so and so, was included. That's not in dispute.

So we now turn to the year 2000. Once again we see a consistent interpretation in the *Elections Canada Election Handbook for Candidates, their official agents and auditors*, the 2000 edition, which provides the following, in section 4.4.5, under the heading of "Election advertising":

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

Section 4.4.5.1, "Identification of election advertising", reads as follows:

> All election advertising that promotes or opposes a registered political party or the election of a candidate, including taking a position on an issue with which a registered party or candidate is associated, must indicate that it is authorized by the official agent of the candidate.

So once again, in case anybody was thinking, "Oh, that injunction, you've got do this because it dates back to 1988, and back then you had to register these things, and the rules have changed..."—although it was still that way in the year 2000.

● (1245)

Let's move a little closer to the present and consider the December 2005 *Election Handbook for Candidates, their official agents and auditors*. Now we are into the realm of the 2006 election, because this is the one that would have been used in the 2006 election. This is the one that would have been followed by all those official agents who the Liberal MPs over there are claiming were in violation of the law for claiming illegitimate expenses and were putting their.... The imagination trembles; they were putting their tag line—their tag line—on ads that were used elsewhere and that were promoting their candidate. Children are going to wake up screaming at night when they hear about this.

Mr. Yvon Godin: Mr. Chair, I have a point of order. I think they should address the chair rather than talk to each other, especially on a speech.

The Chair: Thank you. I agree. That's a good point of order, and I will ask the member to speak through the chair.

Go ahead, Mr. Reid.

Mr. Scott Reid: I think in all fairness, on the same point of order, Mr. Chairman, I want to make it clear. This is important because of the record that of course will be widely read, and I was speaking through you. I did have my head turned in another direction at that point, but as you know, there's quite a bit of background chatter in the room. I have a quiet voice, and some people might not have heard me. So I was speaking through you in terms of whom I was addressing, to the other members of the committee, but I was doing so in a manner that caused me to turn my head momentarily in the direction...and certainly that was all that was intended.

I understand that point of order was made with the very best of intentions by Mr. Godin, but then, as now, I was talking through you, even though I was facing him and the other colleagues. I want you and all of us to understand that, but I say these remarks entirely through you, Mr. Chairman. That concludes my part of the point of order.

The *Election Handbook for Candidates, their official agents and auditors* from December 2005 makes the following provision, under the heading “election advertising”:

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

It's the same language. *Quelle surprise*: “an advertising message that promotes or opposes a registered party or the election of a candidate”. We're working up to those famous tag lines, and guess what it says? I quote again: all election advertising that “promotes or opposes a registered party or the election of a candidate” including a position on an issue with which a registered party or a candidate is associated—drum roll, please—must “indicate that it is authorized by the official agent of the candidate”.

Just to be clear, the drum roll was not part of the quote; I did that.

The above text is from 2005. It's unchanged from 2000, and it is the wording that would have applied to the election conducted between December 2005 and January 2006, including election day, January 23, 2006. There you are.

When Elections Canada says we must interpret the law in conformity with our interpretation bulletins, I assume it means the interpretation bulletins we used over an 18-year span of time without any changes. There was no other literature out there that said anything different. At any point, they were as consistent as could be. And there is no violation of the law as it was written. There is no violation of the law as interpreted by Elections Canada. There is no violation of anything. Indeed, what we see is zealous compliance with the law over and over again.

Once I get into the affidavits that deal with the similar practices of the Liberals, I notice that zealous compliance is not an appropriate characterization of what went on there. We had shoddy reporting in one case after another, so sometimes it's simply impossible to tell how money was spent, whether transfers in and out of ridings were intended for the purpose of promoting the candidate, the national campaign, etc. If this is true in 2006, it is equally true in 2004 for the Liberal Party, and also, I should mention, for the Bloc and the New Democrats, but especially the Liberals, where I think the word “sloppy” is simply the best available word to describe the reporting practices of far too many campaigns.

All right. So that's the situation.

Guess what? There is a sudden change in the *Election Handbook for Candidates, their official agents and auditors* as published by Elections Canada in—guess when—March 2007. This one is different. This one is consistent with their current interpretation. It says the following, and I quote, under the heading “Election advertising”:

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

● (1250)

So it doesn't say a candidate or party any more, right? The words, “a registered party or the election of a candidate”, were there before. I don't know why they were left out. I can speculate that it was done for nefarious reasons, or I can speculate that it was done as a result of a typographical error. No. What I do know is that it was not what was in force in 2006 during the election.

Okay. The identification of election advertising is the next heading they've got. I'm now quoting again from the March 2007 *Election Handbook for Candidates, their official agents and auditors*, published by Elections Canada.

Mr. Yvon Godin: I have a point of order.

The Chair: Really?

A point of order, Monsieur Godin.

Mr. Yvon Godin: Mr. Chair, could we have your intention as to whether or not we will continue until the vote tonight? We can see this is filibustering, and according to the rules we should continue.

● (1255)

The Chair: Let's see what happens.

Mr. Reid, please.

Mr. Scott Reid: Thank you.

With regard to identification of election advertising, all election advertising that....

I'm sorry, I was just interrupted there, and I know that Monsieur Godin will want me to be clear on this.

I'm quoting again from the March 2007 version of the *Handbook for Candidates, their official agents and auditors*:

> All election advertising that promotes or opposes a candidate, including taking a position on an issue with which a registered party or candidate is associated, must indicate who authorized it (e.g. if promoting or opposing a candidate in his or her own electoral district, it must be authorized by the official agent of the candidate).

There again, “party” has changed, although, oddly enough, “an issue with which a registered party or candidate is associated” is permitted.

So I guess this interpretation says something like...and I do have to guess here. It's no longer a straightforward interpretation. It's now somewhat baroque, or maybe even rococo.

An hon. member: Rococo?

Mr. Scott Reid: Rococo is like baroque, only more baroque than baroque....

Count Chocula? Oh, the McGuintys always provide interesting interventions.

I think what we have here is that they're now saying that if I promote a candidate....and let's continue to take my riding as an example. If we are promoting Scott Reid—"Vote for Scott Reid, he's a stand-up guy"—that's okay. But this talks about "taking a position on an issue with which a registered party or candidate is associated".

By way of example, I'm associated with the widespread dissemination of defibrillators to local hockey rinks. We put them into the trunks of police cars in two of our independent police forces. I've had a fair bit to do with that, and I'm quite proud of it. I have multiple constituency offices, three of them throughout the riding.

If I promote that stuff, that's okay. If we promote the side I'm on with regard to an issue like the long gun registry—which, I assure you, everybody in the riding knows I oppose—that's cool.

But it mentions here "a position on an issue with which a registered party or candidate is associated". So if we promote the position taken by my party on the GST, which we've cut from 7% to 5%, or if we draw attention to the fact that the Liberal Party of Canada wants to raise the GST back up to 7%, then that's okay, I assume.

However, if I promote the party itself, that's a no-no. I guess I have to mention the GST in a party-free environment. It's okay to say, "There's another group out there, we can't say who they are, led by a guy, we can't say who he is, and they want to raise the GST back up." But if I say, "It's Stéphane Dion and the Liberals"...? Oh, can't do that.

I have to assume that this is what the interpretation means. It's a nonsensical interpretation, and I would hazard a guess that it's also an unconstitutional interpretation, quite frankly. It's certainly nonsensical.

Even if it weren't nonsensical, it's still an after-the-fact interpretation. It doesn't apply to the 2006 election. It wasn't in force then.

This is the original wording going back to 1988:

> Compliance with these guidelines will ensure no prosecution will be initiated by the Commissioner on matters related to the guidelines.

I guess this is saying, "We didn't really mean that. What we meant is no prosecution unless we feel like it, unless we start feeling like it tomorrow, or ten or twenty years from now."

I actually don't know—I'm not a lawyer—to what degree words like this would be found to be binding.

● (1300)

They're issued by someone who presumably has administrative control over his agency. The Chief Electoral Officer has a legitimate and realistic expectation that he will comply in his administration of the law with what he says he'll do.

It may be the case that these words actually are binding on the Chief Electoral Officer, in which case the whole thing is over right now, on that basis. I'm not sure that's actually a legal case that can be made. That's something I assume is going to be argued in court.

Certainly, if we're talking about the equal application of the law and the impartial application of the law, changing your interpretation after the fact has clearly been established. To say that this is a bad administrative practice is the least of the things we could say.

The deletion of the references to promotion of the party are, frankly, the main changes. As I say, it's almost as though a typographical error occurred. To make that point, you can repeat the entire text over again putting the words "registered party" in, and you'll see it's as though it's been popped out. You could read it this way: "election advertising means the transmission to the public by any means during an election period of an advertising message that promotes or opposes"—

The Chair: Colleagues, the reason for the Standing Order 106(4) meeting and the timing for that meeting have now expired.

This meeting is adjourned.

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