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Chair

Mr. Joe Preston

Standing Committee on Procedure and House Affairs

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• (1100)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): I call our meeting to order. This is meeting number 30 of the Standing Committee on Procedure and House Affairs.

We have a guest today, Monsieur Mayrand, from Elections Canada. It's great to have you here today. We have a reduced meeting today, so I would certainly like to get right to it.

I understand that you have an opening statement. Would you also during your opening statement introduce the guest with you today? Then we'll go to rounds of questions from the members.

Monsieur Mayrand.

[Translation]

Mr. Marc Mayrand (Chief Electoral Officer, Elections Canada): Good morning, Mr. Chair, and thank you for inviting me today.

Let me introduce my colleagues. Joining me is Mr. Stéphane Perrault, responsible for legal services, and Mr. Rennie Molnar,

[English]

who is the deputy chief electoral officer responsible for electoral events.

[Translation]

As you are aware, there have been a significant number of media reports and much debate in recent weeks concerning various allegations of wrongdoing during the 41st general election. Most of these relate to complaints made by electors regarding different forms of improper or fraudulent telephone calls. In that context, concerns have also been raised regarding the administration of the vote in certain electoral districts. This includes allegations of unusual numbers of polling day registrations, people registering improperly and voting by non-citizens. These are very serious matters that strike at the integrity of our democratic process. If they are not addressed and responded to, they risk undermining an essential ingredient of a healthy democracy, namely the trust that electors have in the electoral process.

As Chief Electoral Officer, it is my role to ensure that every effort is made to address these issues effectively, fairly and impartially, as well as to preserve the trust and, indeed, the pride that Canadians have in their electoral system. This is why I feel that it is important to be here today to explain key aspects of our administrative and investigative processes, not only for the benefit of parliamentarians but all Canadians.

Before I do so, however, I want to address more specifically the issue that has been referred to as “robocalls”.

[English]

The label “robocall” has been used in the media to refer to various types of alleged improper conduct involving telephone contact with electors during the 41st election. This includes complaints of both automated and live calls. In many cases, the complaints allege misrepresentation as to the source of the call: either calls claiming to be from Elections Canada or falsely appearing to be on behalf of a particular party or candidate.

In some cases, the complaints refer to electors being falsely informed of a last-minute change of polling place, whereas in other cases the complaints relate to harassing calls, either because of the time or recurrence of the call or because of their tone.

I will come back later to the issue of change of voting location and how we inform electors of such a change. Suffice it to say that automated calls informing electors of a change in their polling location during the 41st general election did not come from Elections Canada. Any action taken to deliberately misdirect electors and interfere with their right to vote under the constitution and the Elections Act is a serious offence. It not only denies the fundamental rights of affected electors but also diminishes our democratic institutions and the rights of all Canadians.

During or immediately after the election, we received approximately 70 complaints alleging various forms of improper telephone communications, including messages impersonating Elections Canada employees and sending electors to the wrong poll location. These complaints were treated seriously and diligently by the Commissioner of Canada Elections, who immediately undertook to investigate them.

Significant details of the investigation were included in various court documents that were revealed by the media on February 22, 2012, and since that date. These show that on May 5, 2011, only a few days after the election, a senior investigator in Ottawa communicated with some of the complainants and met with them in Guelph on May 19.

The recent media reports on details of the subsequent investigation resulted not only in sustained media coverage but also in a large number of people communicating with Elections Canada. Since then, close to 40,000 people have contacted my office to express their concern. Of these contacts, over 800 were complaints alleging specific occurrences of improper or fraudulent calls across the country.

We have added sufficient resources to deal with the inflow of communications and to contact electors who have specific factual allegations. As I indicated in my statement on March 15, I thank Canadians for their collaboration.

The office of the commissioner is pursuing its investigation, and I am confident in their ability to do so in a manner that meets the highest standards. Until the investigation is completed and the facts are established, I reiterate the importance of not drawing any premature conclusions.

I intend to submit a report to Parliament within a year about administrative as well as legislative issues around privacy and communications with electors in the context of evolving technologies. The report will examine not only issues around telephone communications but also, for example, the increasing use of social media and the new challenges they pose.

In the meantime, I believe it is important that I share with parliamentarians, as well as with Canadians, certain information regarding our administrative and investigative processes. This will help clarify the role and responsibility of my office, as well as those of all participants, in maintaining trust in our electoral process.

• (1105)

[*Translation*]

The administration of an electoral event is a massive and complex undertaking. For the purposes of this appearance, it can be simply broken down into three key activities for which my office is exclusively responsible and accountable.

The first activity is identifying and locating electors. At the last general election, we counted almost 24 million electors.

Second, we are responsible for setting up polls. Once again, at the last election, we counted over 70,000 voting stations at over 23,000 poll locations.

The third activity is administering the vote. The identification of electors is done by maintaining the National Register of Electors and updating it through revisions during the election. It includes ensuring, to the extent possible, that electors are correctly listed at their place of residence.

The second aspect of the process is setting up the polls and informing electors of their polling place. This is done locally by returning officers and their staff during the election, in accordance with guidelines provided by my office. Poll locations are confirmed early in the election calendar, so that electors can be informed of where to vote on the voter information card that is mailed to each registered elector 24 days before polling day.

Subsequent changes in poll locations are relatively rare but inevitably do occur for a variety of reasons. In the last general election, a total of 473 polls, which is less than 1%, were moved, affecting some 300,000 electors. This number also represents only 1.3%. This can be in response to feedback from electors or candidates, or because of an unforeseen event, such as a flood or power outage, resulting in the loss of a polling place. If a change of voting location occurs in the last week of the campaign, it is too late to issue a revised voter information card. In the last election, there

were late changes to 61 polls in 24 ridings, affecting 19,000 electors out of 24 million.

We do not have the electors' telephone numbers and do not call them to notify them of late polling place changes. In those cases, we ensure that a poll worker is present at the closed poll to redirect voters to the new polling place. The responsibility of communicating with electors with respect to their polling place is exclusively that of Elections Canada. We have the most authoritative and up-to-date information on the electors and their voting locations, and we are accountable for it. This is why we specifically ask political parties and candidates not to communicate with electors in this regard, but refer them to Elections Canada in order to avoid errors and confusion among electors.

[*English*]

The third key component of the electoral process for which Elections Canada is responsible is the administration of the vote. In this regard, recent media reports have suggested possible irregularities in certain electoral districts.

The administration of the vote involves the application of the voter identification rules, the handling of the ballots, and the counting of the votes. While Elections Canada is responsible for conducting the vote, candidates also play an important role. Among other things, they may appoint representatives—scrutineers—at each poll to observe the vote, challenge the qualification of electors where appropriate, and report any irregularities.

As in the case with poll locations, it is important that each participant understand his or her own role. Scrutineers who have reasonable doubts regarding the citizenship of a person may ask that the person take the prescribed oath. They cannot, however, otherwise attempt to prevent electors from voting or interfere with the application of the voter identification rules.

It should be noted that if there is information supporting a concern that persons who voted were not qualified electors, the information must be provided to my office or to the Commissioner of Canada Elections. This must be done in a timely fashion and with specific factual elements.

I find it troubling to hear sometimes sweeping and vague allegations of irregularities being made public many months after the election and not supported by specific facts. In some cases, the complaints are made to the media without any information being forwarded to Elections Canada. Such allegations cannot be verified, and merely undermine the trust of Canadians.

For example, there's been recent media coverage on allegations of a large number of unqualified electors voting in Scarborough—Rouge River and improper voter registrations in Eglinton—Lawrence during the May 2011 election. No specific actionable information has been provided to us, making any kind of review challenging, to say the least.

Regardless, in Eglinton—Lawrence we were able to determine that the forms shown in the media were in fact copies of applications to register and vote by local special ballot, and not polling day registration forms. To be diligent, we examined all 1,275 of these forms, and, with the exception of three voters who were listed at a commercial address, could not find any evidence of irregularities as claimed. The three cases that we identified are being looked into as we speak.

I will move now to the process for conducting investigations. The Commissioner of Canada Elections has the responsibility under the Canada Elections Act for the investigation and enforcement of election offences. He is appointed by me and is accountable to me, but has independent authority under the law.

The commissioner is supported by a core team of nine investigators, and is assisted by lawyers and others within Elections Canada. Under the act, all of the expenses required to pursue his investigations and carry out his duties may be drawn on the consolidated revenue fund. This can include contracting for additional resources, as required.

The commissioner's office receives complaints from the public as well as internal referrals from Elections Canada. The commissioner's office carefully and impartially reviews all complaints it receives concerning an offence under the act. This review considers whether the complaint or referral first falls within the commissioner's jurisdiction, whether the information provided is sufficient, and whether there is a basis for an investigation. If the complaint is anonymous, or if the allegations are too vague, there may be no basis to pursue an investigation. If a file is closed, the complainant is notified of the reasons in writing.

•(1110)

[Translation]

Like all law enforcement bodies, the Office of the Commissioner treats complaints and referrals in the strictest confidence. It discloses neither the sources of the information nor the information collected, except as necessary for enforcement purposes, for example, as part of court documents. Preserving the confidentiality of the investigations is critical to effectiveness, as well as to fairness. It serves to protect the privacy of individuals and the presumption of innocence. In so doing, it also prevents incomplete or inaccurate information from serving partisan purposes and undermining confidence in the fairness of the electoral process.

Following an investigation, the commissioner may refer a matter for prosecution to the director of public prosecutions, who decides whether charges should be laid. The commissioner may, alternatively, enter into a compliance agreement in which the person recognizes having contravened the act. It may be accompanied by conditions that the commissioner considers necessary to ensure compliance with the act. These agreements are published in the *Canada Gazette* and on our website. Where the public interest does not warrant formal enforcement, the commissioner may also issue a caution letter.

•(1115)

[English]

I should point out that the enforcement mechanisms in the Canada Elections Act can and should be improved. The act relies almost exclusively on offences and fines and jail terms that are not tailored to regulatory issues. On the one hand, regulatory matters that could be addressed more effectively with administrative measures and penalties are subject to the delays and costs associated with criminal investigations and prosecutions. On the other hand, serious offences carry disproportionately light penalties, including maximum fines that are very low, usually \$2,000 or \$5,000.

It is therefore my intention to carry out an overall review of the compliance and enforcement mechanisms in the act, and to submit a report to Parliament before the next general election. This will be in addition to my report on the more specific issue of robocalls.

In conclusion, Mr. Chairman, I think we can say that Canadians are proud of their electoral system, and they should be. However, recent events and media reports have shaken their confidence. As I indicated at the outset, the trust of electors in the integrity of the electoral process is an essential aspect of a healthy democracy.

Elections Canada performs a key function in this regard. When irregularities or improper conduct are brought to our attention, we have a responsibility to take action. We must look into them diligently, and we do. If the regime is inadequate and needs to be improved, it is my role to make those changes or to recommend legislative amendments.

We all have a role in preserving trust in our electoral process. This includes not only Elections Canada but also the electors themselves, the candidates, the parties, and also the media. The quality of our democracy depends on the vigilance and conduct of all players involved.

Thank you, Mr. Chair. I would be happy to take questions.

The Chair: Thank you, Monsieur Mayrand.

We'll start with a seven-minute round.

Mr. Lukiwski, are you first?

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Yes, I am.

The Chair: All right.

Mr. Tom Lukiwski: Thank you, Chair.

Thank you, Monsieur Mayrand, for appearing here today.

Let me just try to confirm something right off the top. I take it from your statement that you are confident that both your office and the Office of the Commissioner of Elections have sufficient resources to deal with the complaints that come forward on this whole issue of voter suppression. Is that correct?

Mr. Marc Mayrand: Yes.

Mr. Tom Lukiwski: Let me then also try to clarify this. You mentioned in your report that during and immediately after the election, there were about 70 complaints about misleading phone calls, that type of thing, but subsequent to all of the media attention, there were about 800 complainants about actual phone calls or representations that might have been misleading—

Mr. Marc Mayrand: Specific allegations regarding phone calls.

Mr. Tom Lukiwski: The 40,000 were mainly generated by advocacy and activist groups, and they were just contacts, not complaints. So 800 is the number we're dealing with, roughly?

Mr. Marc Mayrand: Eight hundred is the number of specific complaints—complaints with specific allegations—and 40,000 or so is the number of contacts of Canadians expressing concerns about the matter.

Mr. Tom Lukiwski: Okay. Thank you.

I think there's been some misinterpretation, either deliberately or by honest confusion, as to how many complaints there actually were. I just wanted to verify that 800 is the number we're dealing with here.

Let me turn now to what you mentioned in your report about the role of Elections Canada in providing correct information to political parties and candidates.

You mentioned, I believe in your last report, actually, that about 84% of all addresses of eligible voters were correct.

Mr. Marc Mayrand: That's the standard quality measure that applies to the list on any given day. It's better on election day.

Mr. Tom Lukiwski: Which would mean, then, by extension, that about 16% of the electors on that list had incorrect addresses. Would that be...?

Mr. Marc Mayrand: Not on election day; I just want to be clear on that.

In terms of what the 84% refers to, if you take a picture of the list on any given day, it's at around 84%. During the election campaign, as you all know, we do extensive revision activities to bring that up to date, to make sure, again, that all electors are shown against their residential address.

• (1120)

Mr. Tom Lukiwski: What would you—

Mr. Marc Mayrand: During the last election, my recollection is that over 700,000 such adjustments were made during the revision period.

Mr. Tom Lukiwski: Help me with the math, then, with the percentage. If it's not 16% of the voters on the voters list who had incorrect addresses....

If you adjusted the 700,000, that means, what, about 12%, 13%, 14% had incorrect addresses?

Mr. Marc Mayrand: It's about that.

Mr. Tom Lukiwski: So that is about two and a half to three million incorrect addresses. Is that correct?

Mr. Marc Mayrand: Yes, it's roughly that.

Mr. Tom Lukiwski: And that would mean roughly, on average, about 10,000 incorrect addresses per riding.

Mr. Marc Mayrand: I guess so.

Mr. Tom Lukiwski: Okay, again, that's rough math.

I guess the point I'm making is that all political parties and all candidates use the voters list for voter contact, to try to contact voters, to persuade them to vote for their candidate or respective party. So if they are getting incorrect information from Elections Canada, then it stands to reason that some of the information they're providing back to those voters may also be incorrect.

So I guess my question would be what plans do you have to try to increase the accuracy of the voters list itself before the next election?

Mr. Marc Mayrand: In fact, if the information is incorrect, the party would not be able to reach those electors, based on that incorrect information.

In terms of improving the register, I should point out that the quality measures for the register compare favourably with those for other jurisdictions where registration is mandatory. So again, I just want to remind everyone that registration is not mandatory in Canada, at least between elections, and I think the safety valve at the end of the day is that electors can, on election day, attend polling stations and register to vote on that day.

To improve the quality of the register, we're taking various initiatives on an ongoing basis to see how we can better reflect the correct addresses of electors.

Mr. Tom Lukiwski: Thank you for that.

I would just point out that I have to challenge you a little bit on the fact that you said that if they had an incorrect address a candidate wouldn't be able to contact the voter. That's not quite true. We contact by phone, and we could certainly track down a voter, but the address is something that—

Mr. Marc Mayrand: But we don't have phone numbers, so those phone numbers are not coming from Elections Canada.

Mr. Tom Lukiwski: I think most candidates and campaign offices are able to find those phone numbers on their own.

Mr. Marc Mayrand: I think it's an important aspect of it. I recognize that fully. I think there are always issues when you try to integrate data from different sources.

Mr. Tom Lukiwski: Thank you very much.

How much time do I have, Mr. Chairman?

The Chair: You have two minutes left, sir.

Mr. Tom Lukiwski: Since your report is saying basically that the final investigation won't be concluded for some time and you won't be able to report on your findings for some time, the one thing that we do know is that a misleading call did happen in Guelph. The Liberal candidate, Mr. Valeriote, has already reported that his campaign made some misleading phone calls to voters. A woman used a fake name, Laurie McDonald, a fake address, and fake phone number, and she didn't identify herself as a representative of Mr. Valeriote's campaign.

Now Mr. Valeriotte has made public comments saying that he had contacted your office and that in effect you had signed off on the phone calls, saying that there was really nothing unacceptable about them. To me that seems very strange. Can you confirm whether or not you had given Mr. Valeriotte a sign that those phone calls were acceptable? Because he certainly indicated publicly that he got that information from your office.

Mr. Marc Mayrand: We don't—and the Elections Act does not—really regulate the content of messages, and we certainly don't pre-approve messages by political parties.

Mr. Tom Lukiwski: I'm not talking about pre-approval. Mr. Valeriotte apparently said he contacted your office after admitting that they'd made these misleading phone calls, and he asked whether or not they were acceptable under elections law, and you said that they were.

Mr. Marc Mayrand: I'm not aware that there has been any ruling on this matter. Again, as is so publicly known, there have been two complaints lodged on this matter with the commissioner, and the commissioner is looking into it.

Mr. Tom Lukiwski: In your opinion, then, is it against elections law to make a phone call of that sort without identifying that you're representing a particular candidate?

• (1125)

Mr. Marc Mayrand: That's an interesting aspect. Again, the Elections Act does not cover these matters as such. The Elections Act deals with advertising, deals with expenses, and requires that any advertising be linked to a tag line reflecting that it has been authorized by the official agents of the candidate. Now, the question that will arise is whether a phone message such as the one that you describe constitutes advertising under the Elections Act, and if it does, it would necessarily mean that a tag line should be attached. But that's why I want to come back to the committee later on, because the act is far from clear on these matters.

Mr. Tom Lukiwski: So—

The Chair: Excuse me, Mr. Lukiwski, I'm going to have to stop you there.

Mr. Christopherson, seven minutes, please.

Mr. David Christopherson (Hamilton Centre, NDP): Thank you very much, Mr. Chair. I appreciate that.

Thank you, Mr. Mayrand, for your attendance today.

Let me say at the outset that we've had a couple of experiences where agents of Parliament have not lived up to the standard that we had hoped. I just want to commend you for your role as an agent of Parliament in reaching out and asking the committee, and asking Parliament, if you could come forward on an issue that was clearly in the public domain, very controversial. You offered to come here and said that you needed to give an update to Parliament to let us know what was going on, to give us an opportunity to ask you any questions. I just want to compliment you on your public duty in doing that. To me, that is the kind of performance we like to see from our agents of Parliament. Thank you for that.

I know you're very limited as to what you can say, which limits what we can ask, if you will, but I'll ask anyway and accept the fact that you're going to say me, "I can only tell you what time it is."

My question is this. There's a little more information in the public domain about Guelph than about any other particular location. Can you give us a sense of whether or not you see any linkages? Is this the same file to you? Are they separate files? Are the issues similar?

Can you speak to that at all, Mr. Mayrand?

Mr. Marc Mayrand: As I pointed out in my presentation, more information is available around the Guelph matter because of court documents that are public. From the point of view of the commissioner from Elections Canada, we're looking at all the complaints that are sent to us. We assess each of those complaints on their own merit.

Mr. David Christopherson: Okay. I think I've just run into the very issue I'd predicted I would run into. I accept that as a limitation of where we are.

Let me ask you about the 800 number. How does that number compare with other elections?

Mr. Marc Mayrand: Well, that's only part of the complaints we got in relation to the 41st general election. I submitted a report to Parliament earlier on, pointing out the number of complaints that we received in total. I don't have the exact number in mind right now, but it's in that earlier report.

The other thing I would caution is that a single incident... I remember that in the last GE, an interview that was done with a well-known candidate on polling day generated 700 complaints by itself. We ruled that there were no irregularities there.

So I think we have to be careful about those numbers.

Mr. David Christopherson: Okay.

Could you speak to us about the threshold you would need to pass in order to declare—or go to the courts, or recommend, whatever the process is—a new election, a byelection...the threshold for charges? And is there any circumstance in which a general election in total can be declared null and void? I mean, it's extreme, but what are the circumstances?

Are any of the issues we're dealing with anything remotely as serious as that, at this point in your investigation?

Mr. Marc Mayrand: On the threshold for investigation, there are maybe three parts to your question, as I understand it.

In terms of investigation, I must stress that these are penal investigations. They have to meet the standards of criminal law in terms of fairness, due process, and the various fundamental rights that are provided by the charter. Of course there's the burden of evidence, which is beyond reasonable doubt.

In terms of challenging election results, this is a matter for the court. Any elector can bring a matter before the court to ask for the annulment or contest the result of an election as long as it is within 30 days of when the elector became aware of the facts or reasons for disputing the election. The elector has to determine or show that the results were affected by the circumstances being brought before the court.

• (1130)

Mr. David Christopherson: Okay. Thank you.

Can you give us an indication of whether or not there are other ridings, besides Guelph specifically, you're looking at that you can mention today?

Mr. Marc Mayrand: I can tell you that the 800 or so complaints cut across pretty much the whole country. So if you ask me, it's ten provinces and one territory.

Mr. David Christopherson: And are the complaints similar in nature, sir?

Mr. Marc Mayrand: Specific allegations regarding various types of phone calls—

Mr. David Christopherson: Given that, how likely is it that it's one rogue person who would be behind this?

Mr. Marc Mayrand: I think that would be speculative. I think the commissioner has to carry out his investigation and determine all the facts.

Mr. David Christopherson: Okay.

Do you have all the tools you need? I know that you have the financial resources, because you can draw upon the consolidated revenue fund, which gives you basically unlimited resources. What about legislative tools for these specific investigations? Do you have all the tools you need?

Mr. Marc Mayrand: Well, as I said, these are penal investigations, so the commissioner can draw on the various tools that exist in the Criminal Code. For instance, some of the things that have been reported are around ITOs, which is a procedure provided in the Criminal Code to secure information. I will in due course come back with a report suggesting maybe some areas where tools can be improved.

Mr. David Christopherson: So you do have a sense that there's some improvement that could be done, and you'll come back to us with those recommendations—

Mr. Marc Mayrand: I will come back—

Mr. David Christopherson: —as you have in the past with others that hopefully we're going to make some gains on.

Do you currently have the power to compel witnesses to appear before you and to put them under oath? Can you give them any kind of immunity? When you're dealing with witnesses in your investigation, what is the extent of your powers?

Mr. Marc Mayrand: There's no power to compel an individual either to appear or to produce documents. For documents, it requires a court order. Again, the commissioner and the investigator have the same authority as investigators under the Criminal Code—no more, no less.

The Chair: Thank you, David.

Mr. David Christopherson: Does that do it? Okay. Thank you, Chair.

Thank you, sir.

The Chair: Monsieur Garneau, seven minutes for you.

[Translation]

Mr. Marc Garneau (Westmount—Ville-Marie, Lib.): Thank you, Mr. Chair.

Good morning, Mr. Mayrand, and thank you for your participation. I would also like to thank Mr. Perrault and Mr. Molnar.

You said that there were about 800 complaints among the 40,000 people who contacted you. You said those complaints came from 10 provinces and one territory.

Could you provide us with the number of ridings for those 800 complaints?

Mr. Marc Mayrand: I think it's almost 200 ridings.

Mr. Marc Garneau: The 800 complaints?

Mr. Marc Mayrand: Yes. Almost 200 ridings across the country.

[English]

Mr. Marc Garneau: I would like to ask you, with those 800 complaints, how is that funnelled down into individual cases that have been brought before the elections commissioner? I'm sure some of them deal with the same potential offence. How is that worked down into a number of specific files, if you like, that are going to be or are being investigated by Elections Canada?

Mr. Marc Mayrand: Well, that's really a matter for the commissioner. I'm not sure I fully understand the question. We've put in additional resources to deal with the intake of all the complaints and contacts we're receiving. There is a preliminary triage taking place, as you would have read in the newspapers. Many of the complainants have already been contacted by personnel from the commissioner's office. It's following its course.

Mr. Marc Garneau: Okay. Thank you.

You mentioned in your introductory remarks that you would be submitting a report within a year. I just want to be 100% clear that that's within a year of today—or is it within a year of the last election?

• (1135)

Mr. Marc Mayrand: Not a year from the last election—

Voices: Oh, oh!

Mr. Marc Mayrand: —I can assure you of that. It's within a year or as soon as possible.

Mr. Marc Garneau: As soon as possible. Okay.

As you know, there are court challenges involving eight ridings at the moment, seven of them from the Council of Canadians, and one in Etobicoke Centre. As you pointed out, an elector is free to go in front of a court and challenge the result of an election on the grounds that it was not done properly and ask that it be overturned. Does that process go forward regardless of...? Does it have to wait until your report comes out a year from now—

Mr. Marc Mayrand: That's totally independent.

Mr. Marc Garneau: —or is it an independent process?

Mr. Marc Mayrand: It's totally independent. The electors who are bringing those proceedings will have to present their own evidence.

Mr. Marc Garneau: Similarly, if there are other court challenges that arise in the days to come, they can go forward in the same fashion?

Mr. Marc Mayrand: Yes.

Mr. Marc Garneau: Okay.

In the media, of course, we have heard about the famous Monsieur Poutine and about how there was a transaction through PayPal. PayPal had provided a copy of that transaction, and RackNine, through which the calls went, provided an IP address.

Is that information going to allow the elections commissioner to identify Monsieur Poutine?

Mr. Marc Mayrand: I will not comment on the investigation. This information was publicized by the media after notice was taken of documents that were presented in court. I can only say that the investigation is following its course.

Mr. Marc Garneau: I have to admit I'm curious to know whether the IP address came from an Internet cafe and the credit card was a disposable credit card.

Mr. Marc Mayrand: Many of us are.

Mr. Marc Garneau: Yes, but at this point you're not free to share that information with us.

With respect to the court challenge that has come forward, at what point would Elections Canada become involved? Does this await the ruling of a judge before anything happens, or is Elections Canada brought in to check on whether there's any validity to the complaint?

Mr. Marc Mayrand: We were served yesterday with the proceedings there, so our counsel is looking into that.

On those matters we act very much as an amicus curiae, so we assist the court in its hearing of the matter and we provide information the court finds necessary to conduct the hearing.

Mr. Marc Garneau: As a final question, are you able to share with us how many actual specific discrete investigations are under way within the office of the elections commissioner? We all know about Guelph, of course, and we've heard about Thunder Bay and things like that, but do you know how many are...?

Mr. Marc Mayrand: The only thing I can say for our purpose today is that there are roughly 250 files open in the commissioner's office.

I would caution, however, against drawing too much from those things. Many complaints may be combined in a single file or may be combined in a single investigation.

Mr. Marc Garneau: And that was really what I was getting at in one of my earlier questions.

You mentioned that you have all the resources that are available. I have a question of interest here. Some of these investigations require people who have expertise in doing investigations. Is that a limiting factor here, or has the elections commissioner been able to identify the right people with the right experience to do this kind of investigation? It's obviously a specialized task.

Mr. Marc Mayrand: I'm confident the commissioner has the required expertise, the qualified and very experienced investigators to look into these matters. As is the case for any investigation, where there is a need for special knowledge, you can contract resources and acquire that knowledge.

Mr. Marc Garneau: I have one last question. You mentioned that there are potentially as many as 200 ridings, and that there are 250 files. If anybody in those ridings feels that, yes, there definitely was something that should not have happened, are they free to go forward and as an individual elector go to a court and challenge the result, or do they have to wait for your report?

● (1140)

Mr. Marc Mayrand: No, the mechanism provided is totally separate from my office and the commissioner's office. That's a remedy available to all electors, in accordance with the Elections Act.

[*Translation*]

Mr. Marc Garneau: So they don't need to wait.

Mr. Marc Mayrand: No.

Mr. Marc Garneau: Thank you, Mr. Mayrand.

[*English*]

The Chair: Thank you.

Mr. Williamson, go ahead for a four-minute round, please.

Mr. John Williamson (New Brunswick Southwest, CPC): Thank you, Mr. Chair.

Monsieur Mayrand, thank you for being here today.

I appreciate your comments. I'm a new member of Parliament and have just gone through an election. You have now kind of boiled this down to 800 complaints you're investigating.

When we receive information from Elections Canada in New Brunswick Southwest, there are roughly 50,000 to 60,000 voters on average in New Brunswick. But mistakes do happen. Can you talk about that briefly?

I recognize that you are constantly updating your data between the start of the election and voting day, and that you nail it down near the end, but of course we're using the data provided by your office initially. So is it possible that a name or two from another riding, from a neighbouring riding, or from another province can inadvertently get put in New Brunswick Southwest? Do mistakes like that ever happen?

Mr. Marc Mayrand: Errors could happen. It's not an error-free system. You can imagine that with 24 million electors, yes, there will be some errors from time to time, but there are mechanisms to identify them and correct them.

I would point out that candidates play a key role there. If they see errors in the list, they should bring it to our attention.

Mr. John Williamson: I agree, and I saw a lot of the work that is done by volunteers provided by the parties. But if the local campaigns themselves are taking the data provided from Elections Canada, loading it into our computers, matching those names with phone numbers, and then working off that, either communicating with live calls or autodials or mail...

In New Brunswick Southwest, for example, it's conceivable I could have contacted a number of voters, particularly in the early days of the campaign, who didn't have the right to vote for me. Is that a possibility?

Mr. Marc Mayrand: It's always a possibility. I don't know how those various databases are working and how well they're working together.

Mr. John Williamson: Okay. Fair enough.

I mean, in a campaign we're moving quite quickly as well, trying to correct data. We see errors, and I know we send it back to your office. That happens officially through Elections Canada offices that are set up in the ridings and as well from our campaigns, working together. At the same time, we're still campaigning. We're still sending out literature, making calls, identifying voters, contacting them, and urging them to get out to vote.

Now, 800 strikes me as potentially just a few errors per riding in the grand scheme of the number of potential voters. What's your sense of the number? When you look at this 800, do you think it's a...?

Mr. Marc Mayrand: Without speculating too much, there are maybe two points I would make.

We know in the case of Pierre Poutine that there were at least 6,700 calls placed. Again, if I look at the complaints received, there's quite a gap there.

The other thing is that, yes, there could be errors, and very legitimate and good-faith errors. What is troubling here is that there were definitely calls that were placed on behalf of people, falsely placed on behalf of people, including Elections Canada.

Mr. John Williamson: Sure.

Mr. Marc Mayrand: So error or not, in the addressing of the phone numbers, it's a—

Mr. John Williamson: Yes. I'm not trying to discount those isolated incidents—exactly.

As my last question—this has been put on the table a little bit—do you still stand by the certification of the election results in the ridings across the country?

Mr. Marc Mayrand: Absolutely—unless a court determines otherwise, yes. I certified those writs when they were returned, and I stand by those certifications as we speak.

• (1145)

The Chair: Thank you, Mr. Williamson.

Mr. Toone, for four minutes.

[*Translation*]

Mr. Philip Toone (Gaspésie—Îles-de-la-Madeleine, NDP): Thank you for coming to give testimony. It is very interesting. The scope of this investigation is quite extraordinary. Has there been an investigation of such magnitude recently? We are talking about 200 ridings, 250 files, 800 well-founded complaints and 40,000 Canadians expressing concerns. Is this a first?

Mr. Marc Mayrand: It is unusual, to say the least.

Mr. Philip Toone: What is the difference between a well-founded complaint and the concerns expressed by 40,000 Canadians? Where do you draw the line?

Mr. Marc Mayrand: Those 40,000 people are what we call contacts. They are people who contact Elections Canada to express

their concerns vis-à-vis the whole situation. In many cases, they are asking that the act be amended. People are making all kinds of requests and suggestions along those lines. As for the 800 complaints, they are specific allegations about calls that voters received.

Mr. Philip Toone: You said that, if there were criminal prosecutions, the reasonable doubt test and other factors would have to be considered. That is completely normal. Is there any hope that those 800 complaints will prove that there was an election fraud beyond a reasonable doubt?

Mr. Marc Mayrand: You are talking about well-founded complaints, but these are complaints that we have received and that we have to review and investigate, depending on the circumstances. For criminal convictions, the allegations have to be proven beyond a reasonable doubt.

Mr. Philip Toone: There must be criteria to determine whether a complaint is well founded. What are the criteria?

Mr. Marc Mayrand: These are offences set out in the act. We are basically talking about interference with an elector's right to vote.

Mr. Philip Toone: What would be considered evidence? We often talk about calls. So we are talking about verbal elements. In that case, what makes a complaint valid? What criteria will it be based on? Is there something written? Are there affidavits? What tools are you using?

Mr. Marc Mayrand: We have received some affidavits, which I have seen, but that is obviously all part of the investigation. It is up to the commissioner to make sure that he has all the facts he needs to conclude whether a complaint is founded or inadmissible. After the investigation, if he is convinced that he has enough facts to prove an offence, as I said, he will have to report to the director of public prosecutions who will decide whether or not criminal charges are appropriate.

Mr. Philip Toone: Have you received or seized documents from political parties?

Mr. Marc Mayrand: To my knowledge, we have not seized documents from political parties, but, once again, that is up to the commissioner.

Mr. Philip Toone: So you are handing that over to the commissioner.

Mr. Marc Mayrand: Only the commissioner can go after documents.

Mr. Philip Toone: To your knowledge, has he done so?

Mr. Marc Mayrand: As we saw in various media reports, documents have demonstrated to the court that some information came from third parties. I would like to point out that those orders don't mean that people who provide that information are under investigation. That is an important distinction. They are third parties who have information that might be valid for the investigation and that has nothing to do with whether they are under investigation or not. Actually, it is the other way around.

Mr. Philip Toone: Have you received documents from the NDP?

Mr. Marc Mayrand: We have received some letters and information from NDP representatives.

Mr. Philip Toone: Are they under investigation?

[English]

The Chair: I'm sorry, Monsieur Toone, but you're over your time. Thank you.

Mr. Albrecht, four minutes.

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

Thanks to you and your colleagues, Mr. Mayrand, for being with us today.

In your report on the 41st general election, you state, in the very first couple of pages, "...I can say with confidence that the election proceeded smoothly and that Canadians were presented with an accessible electoral framework that they could trust and use".

Today at the conclusion of your remarks you said, "We all have a role in preserving trust in our electoral process". You said, "This includes not only Elections Canada but...the electors themselves, the candidates, the [political] parties, and also the media".

I am confident that every person around this table is concerned about protecting the integrity of our electoral system. I can say with confidence that every person around this table—including those on this side—is very hopeful and is reassured to hear your comment today that Elections Canada does in fact have the resources to complete this investigation.

I just need to point out—and I know that all of us around this table know this already—that during the writ period, every candidate goes door to door: they're knocking on doors, making phone calls, identifying voters. If that contact is made early in the campaign, it's quite possible that someone will indicate overwhelming support on day two or three of the campaign. By week five of the campaign, they may have changed their mind, but that person has been identified as one of my supporters. I will contact...my office will contact that person on election day asking them to please get out and vote. In the event that they've changed their mind in that time, it's possible that they could perceive that to be harassment.

I think it's important that the Canadian public understand that all candidates, or at least most candidates, try to get door to door and phone as many supporters as possible, and that there will be mistakes made—honest mistakes—in contacting voters, who may say at the end, "Well, we weren't even supporting that candidate, and now he's harassing me".

I think that on balance the number of complaints we're dealing with here—you indicated it again today—is 800. You indicated earlier that there are 70,000 polling stations. Am I correct in that? There are roughly 70,000 polling stations...?

• (1150)

Mr. Marc Mayrand: Yes.

Mr. Harold Albrecht: That's roughly one complaint per 100 polling stations.

Now, I'm not trying to minimize the level of complaints—

Mr. Joe Comartin: Really?

Mr. Harold Albrecht: Every single complaint is important. Every single complaint is important, and we want every one of those complaints to be investigated.

My question for Elections Canada is, what is the process? When you receive that complaint, how does Elections Canada follow up? Have each of those complainants been contacted as to what is being done? At the end, is there a response they receive that's in writing? How do you close the loop, if I can use that term, in terms of those complaints that have been lodged?

Mr. Marc Mayrand: Very quickly, each and every complaint is acknowledged. An acknowledgement is sent to the complainant, and at the end of the process the complainant is advised of the outcome if there was an investigation or whatever took place. So there is a minimum of two contacts.

Mr. Harold Albrecht: I'm sorry...?

Mr. Marc Mayrand: There is a minimum of two contacts with the plaintiff.

Mr. Harold Albrecht: That's through the process of the investigation of the complaint?

Mr. Marc Mayrand: Sometimes there may be more if there is an actual investigation taking place. Again, I think we have to be careful. A complaint does not equate to an investigation. I just want to make that distinction once again.

Each and every complaint is acknowledged by Elections Canada, depending on the point of entry in Elections Canada, and it is responded to following whatever review process there is—that could be administrative or sometimes it might warrant a referral to the commissioner—and then it will take its course.

Mr. Harold Albrecht: Okay, thank you very much.

Thank you, Mr. Chair.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you very much.

Thank you once again, Monsieur Mayrand.

I want to get back, if I can, to the complaints versus contacts, because you'd mentioned there were roughly 40,000 contacts. I suspect most, or many of them at least, came from e-mail-generated form letters from groups like Leadnow and the like. But if there are only 800.... And I'm not trying to minimize it; I concur with my colleague. If we're looking at 800 reasonably founded complaints over roughly 200 ridings, that would mean the average would be about four per riding, but it could mean that one riding had as little as one complaint lodged, or there could be as many as seven complaints in another riding.

But based on the election return.... You've said to your mind the election was still valid, and you signed the writs of election for all of these candidates who were elected. Since there's a court challenge in seven ridings, and we're talking about perhaps only an average of four complaints—in other words, perhaps as few as four examples, even if they were verified—of a voter receiving a vote suppression or misleading phone call trying to get them to go to another voting station or prevent them from voting in itself, what is the level that is required, going back to what David was saying, to overturn a result?

It wouldn't seem to me that if we were talking about only four complaints per riding, even if they were legitimate, that would be enough to overturn an election result. Do you have an opinion on what it would take to actually make you look at or even consider the possibility of overturning an election result?

• (1155)

Mr. Marc Mayrand: The responsibility to overturn an election lies with the court, and the court will decide whether—

Mr. Tom Lukiwski: But what is your opinion?

Mr. Marc Mayrand: My understanding of the legislation is that there has to be a demonstration that the result of the specific riding election was affected by the irregularities that the complainant has claimed took place.

Mr. Tom Lukiwski: This is hypothetical, but based again on the information you have—since there is a court action now occurring in seven ridings—would you be defending the election results if the outcome of a court challenge was actually that there might be evidence here? What would your position be as Elections Canada?

Mr. Marc Mayrand: It would be to act as amicus curiae and to provide all the information that the court may need from us in order to assess whether or not an election should stand.

Mr. Tom Lukiwski: Would you offer an opinion?

Mr. Marc Mayrand: No.

Mr. Tom Lukiwski: So when you're saying right now that you've validated all—

Mr. Marc Mayrand: That opinion has to be one of the court.

Mr. Tom Lukiwski: I understand the decision has to be the court's, but since you are the Chief Electoral Officer of Canada, I would suspect that courts would want to hear an opinion based on why you validated the results and if you thought the evidence given was sufficient to overturn the results you had already validated.

Mr. Marc Mayrand: I would advise the court to use the information it had to determine whether it believed the results had been affected, given the evidence that was presented to the court. That's the test the court has to use. It's up to the court to make that determination.

Mr. Tom Lukiwski: Thank you.

The assumption then is—and I assume this is factual—that Elections Canada has never in the past or would never in the future recommend that an election result be overturned?

Mr. Marc Mayrand: That's not our role under the statute. If it's a role that parliamentarians want to give to Elections Canada, we can discuss it.

Mr. Tom Lukiwski: Okay. Thank you.

Finally, have you any sense whatsoever—it's an unfair question, but as David said, I'll ask it anyway—of how long the commissioner of elections might be in his current investigation?

Mr. Marc Mayrand: I think it would be highly speculative to anticipate the timing of these matters. The commissioner has been at it since May 5, as I mentioned earlier, and I think you have a good sense of what's been happening since May 5.

You also probably understand some of the challenges the commissioner is still facing in bringing this matter to full light.

The Chair: Thank you.

Mr. Comartin, four minutes, sir.

Mr. Joe Comartin (Windsor—Tecumseh, NDP): Thank you Mr. Chair.

[*Translation*]

Thank you for being here, Mr. Mayrand.

[*English*]

I just want to challenge something, because it's disturbed me from the beginning. One of the complaints you got was from my wife and another supporter. I know you did, because Mr. Mathews used it in the affidavit in Edmonton to get that material from RackNine.

We've never heard from you. We've never heard from the commissioner and we've never heard from Mr. Mathews. The first time I knew that you'd done anything with the information we gave you, which was the phone number that eventually led you to, at least as far as we've got to, Pierre Poutine, from one of those two calls that we received in my riding....

So I was quite surprised, quite frankly, when you gave the answer to Mr. Albrecht that every one of the complainants has been contacted. I can assure you that my wife has never been contacted, and neither has the other volunteer been contacted.

Mr. Marc Mayrand: Acknowledged—I didn't say contacted.

Mr. Joe Comartin: We've heard nothing.

Mr. Marc Mayrand: I said that complaints were acknowledged.

Mr. Joe Comartin: But you said in some written form...?

Mr. Marc Mayrand: In the form we normally use. So it could be e-mail, it could be a letter, it could be a phone call, it could be various....

Mr. Joe Comartin: Neither my wife nor the other person was acknowledged—at all. There was nothing. The first we heard about it was when the information came out in the press that the phone number we had given had been used.

With regard to the court action that's outstanding—I guess the eight of them—you're named, as the Chief Electoral Officer, and the Attorney General is named. In past practice, who has defended these?

You obviously do not. I understand your role is more of a resource, I can say, to the court. Is the Attorney General responsible for defending these? What's been the past practice?

• (1200)

Mr. Marc Mayrand: I should point out that it's rare that elections are contested in such a manner. I'm not aware that the Attorney General has taken an active part in.... It depends on the issues being raised, but I'm not aware that they've taken an active part in such proceedings.

Mr. Joe Comartin: Have you any indication—

Mr. Marc Mayrand: I should also point out that whatever is the role of the Attorney General, it is completely independent and separate from the role and position that Elections Canada could take on any issue.

Mr. Joe Comartin: So you've had no indication from the Attorney General on how they're going to respond to these court actions.

Mr. Marc Mayrand: I don't think so, not yet.

Mr. Joe Comartin: Monsieur Perrault.

Mr. Stéphane Perrault (Senior General Counsel and Senior Director, Legal Services Directorate, Elections Canada): I'm only aware that they've been served. We have not had any discussions with the Attorney General's office.

Mr. Joe Comartin: Mr. Mayrand, in the whole attempt on the part of Conservatives to diminish the number of calls and the significance, in the lawsuit there's a pleading that the number of calls that have come in can be scientifically measured as to how many you didn't hear from and how many calls in fact were made. Have you looked at that material, or have you ever seen a study like that?

Mr. Marc Mayrand: Not in detail; I've read about these things. Again, if it's relevant to the investigation I am sure that would be considered by the commissioner, but I'm not sure how it would be.

As I mentioned earlier, we know from court documents that 6,700 calls were placed under that famous 450 number. Again, we got 70 complaints, or a little bit less than that, from the Guelph riding. So we know that many people don't complain, obviously.

Mr. Joe Comartin: Okay, but if you're asked for that kind of information by the courts, you're not in a position to be able to give it; you haven't done that kind of study yourself, or Elections Canada hasn't done that kind of study itself.

Mr. Marc Mayrand: Correct.

Mr. Joe Comartin: With regard to the commissioner—

The Chair: Your time is up, Joe.

Mr. Joe Comartin: That can't have been four minutes.

The Chair: It was four minutes and 14 seconds, to tell you the truth.

Mr. Joe Comartin: Okay. Thank you.

The Chair: Mr. Zimmer, four minutes.

Mr. Bob Zimmer (Prince George—Peace River, CPC): Sir, thank you for coming today.

I think 30 million Canadians would agree that putting on a general election is one difficult task, to say the least. We heard that there were 70,000 polling stations, which certainly is admirable, and that errors will be made regardless of how good an effort is made—and any error is really one too many.

I would like to talk about something specific. We're hearing about deliberate acts that were attempting to dissuade voters from voting or were sending them to the wrong polling stations. I would suggest, though, moving to the non-deliberate acts. I think it was mentioned earlier that that there is 84% accuracy in terms of calling lists or voters lists, but that still leaves 16% in error. I guess most of us... I

was alarmed to see that number. You said that 700,000 were updated, but that still leaves 3.1 million in error.

Just for Canadians' confidence—and I know that's why you're here—can you relay your confidence in the system with that high an amount of error? Can you give Canadians a sense of confidence that we still have a good system? I'll go back to your numbers of four per riding in terms of calls, of complaints, of actual calls. We see quite a discrepancy in numbers there. A significant number of errors...it's 3.1 million as opposed to four per riding in terms of net complaints. There's quite a gap there, as you stated.

How can Canadians still be confident in the Elections Canada system?

Mr. Marc Mayrand: Canada's system is recognized worldwide as one of the better systems that exists—if not the best—especially in terms of registration of electors. Countries all over the world are coming to us to see how we manage the list of electors. It is a model around the world.

I'm not sure.... Again, we have to be careful with numbers here. I would point out that a single elector being misdirected from his poll is a serious offence at the end of day, and that's what investigations are about.

In terms of the impact on the system and how the system can be improved, yes, I think I've made a regular report to Parliament to suggest some improvements to the system, and I will continue to do that. I think we have to be careful not to mix the two—

Mr. Bob Zimmer: Right, and I guess I would—

Mr. Marc Mayrand: —and I'm not suggesting you are, but...
● (1205)

Mr. Bob Zimmer: No.

I would completely agree with you when you say that one is one too many. We absolutely agree that if it's done deliberately, or even non-deliberately—if it's an accident—that is unacceptable.

But I guess what I'm trying to get from you—and you've stated it—is that we can still have a high degree of confidence that our electoral system in Canada is among the best in the world.

Mr. Marc Mayrand: Yes, and we'll make sure it remains so—absolutely.

Mr. Bob Zimmer: Right.

Mr. Marc Mayrand: Again, in terms of error, there's one thing I can assure every Canadian and the committee of: that calls made on behalf of Elections Canada are not errors. I'm sorry, but this is not error. This is a deliberate attempt—

Mr. Bob Zimmer: Yes, and I—

Mr. Marc Mayrand: —to thwart the right of an elector.

Mr. Bob Zimmer: I would agree with you there, but I guess what I'm referring to is that if ridings are given incorrect data and are responding to that data, and if Canadians are responding to that data and going to the wrong polling stations as a result of incorrect data.... Simply put, again, if there's one error, there's one too many. But I think all parties would agree that if it's a deliberate act, we'd absolutely want to get to the bottom of that, and we do.

That's not what I'm saying. I guess what I would ask you—

The Chair: Thank you very much, Mr. Zimmer. I know that you would ask, but your time is up.

I have Mr. Hawn next on the list, but I know that Mr. Lukiwski wants a piece of it, Mr. Hawn. So you two work out sharing arrangements, will you?

Hon. Laurie Hawn (Edmonton Centre, CPC): Well, he's had a couple of turns, so I'll go first. I'll save us some time.

Mr. Mayrand, thank you so much for being here.

I just want to repeat something you've said, because it's my biggest concern, frankly, in all of this. You said:

I find it troubling to hear sometimes sweeping and vague allegations of irregularities being made public many months after the election and not supported by specific facts. In some cases, the complaints are made to the media without any information being forwarded to Elections Canada. Such allegations cannot be verified, and merely undermine the trust of Canadians.

That's my biggest personal concern in all of this. It's that this circus—and it's a circus—is undermining, notwithstanding the legitimacy of the processes that need to be followed to get to the bottom of it, and nobody argues with that.... But this whole process, this circus aspect of this process, has served to do nothing but unfortunately degrade the trust of Canadians in our system. I've spent some time in Afghanistan, and more recently in Haiti, and I agree with you that our system is a model.

I'll ask one question first and then another one if I have time. Do you know of previous Canadian elections where we have had such a spate of late complaints coming out so many months after an election?

Mr. Marc Mayrand: I'm not personally aware of that. We would have to do some research on that.

Hon. Laurie Hawn: Does either of your colleagues have any knowledge of that?

Mr. Marc Mayrand: No. And they have lots of experience.

Hon. Laurie Hawn: I've been involved in only four elections, and some here have been involved in many more, but this is the first time I can recall that we've had that.

Mr. Marc Mayrand: We would have to go way back in time.

Hon. Laurie Hawn: Looking forward, I would say technology is a two-edged sword. Technology is great, but if it's used for wrongful purposes by the wrong people obviously it can undermine the process.

What would be your quick view on things like suggestions that we should go to online voting, and things like those kinds of technological—I won't call them advances—changes? What would be your view of the risk or reward of some of those things?

Mr. Marc Mayrand: That's something I've indicated repeatedly that I wish to bring back to this committee over probably the next two years so that we can agree on whether or not to pursue a pilot project for online voting.

There are risks associated with it. Whatever presentation I bring to this committee, the risks will be well identified. They will have been

well assessed, and there will be measures to deal with them. It will be up to the committee to find whether or not they are satisfactory.

Hon. Laurie Hawn: I'd be concerned about that.

This is not at all meant to be disparaging, but apparently in the NDP leadership convention there was some manipulation of online voting, which would cause me concern if we applied that process to a larger election.

Mr. Marc Mayrand: Without getting into that, I'm sure the party will look into that.

I will point out, however, that here in Canada an increasing number of municipalities are running online voting. They have done it for almost a decade with no major issues. In fact they are becoming models around the world again. Other countries are looking into it.

● (1210)

Hon. Laurie Hawn: Okay, thank you.

The Chair: Mr. Lukiwski, you have five minutes.

Mr. Tom Lukiwski: I'm just trying to get straight in my mind what constitutes an election offence. In my example earlier about what happened in Guelph with Mr. Valeriote and the misleading phone calls coming out of his campaign—correct me if I'm wrong, because I don't want to put words in your mouth—I believe you said that if it could be determined that those phone calls constituted advertising, they could be in violation of the Elections Act. Is that correct?

Mr. Marc Mayrand: That's if they did not carry the proper tag line—

Mr. Tom Lukiwski: Which we know they didn't.

Mr. Marc Mayrand: —or if the expenses for them were not properly accounted for.

Mr. Tom Lukiwski: Okay. What if they were not determined to be advertising? Would that mean that type of phone call would be acceptable?

Mr. Marc Mayrand: I think that's an issue we have with the legislation. Yes, if it's not advertising, there is nothing in the legislation that governs telemarketing per se.

Mr. Tom Lukiwski: And the determination of whether or not it is advertising is yours?

Mr. Marc Mayrand: In this case specifically it will be up to the commissioner, and up to the courts eventually, if charges are laid.

The Chair: I know your friend helped you with a little bit of time.

Mr. Christopherson, go ahead for four minutes.

Mr. David Christopherson: Thank you very much, Chair.

First of all, I would say this in response to Mr. Hawn. He is concerned about the circus effect of this. He also mentioned that Canada is a role model for elections. It is that because when there is any hint of anything untoward, Canadians do react the way they do and they do create a political circus to ensure that it gets looked at. I would say to him, with great respect, that's why we're a model.

Mr. Mayrand, may I ask you to characterize, if you can, how seriously you would take proof, if there were proof, that there was an organized effort by someone to misrepresent themselves as Elections Canada during the election? How seriously would you take that? How serious an attack on our democracy is that, or is it really not a big deal and we really ought not to get upset about it?

Mr. Marc Mayrand: I think it's absolutely outrageous. Whether it was organized or bigger or whatever, the fact that electors in at least Guelph were misdirected by calls made by those misrepresenting themselves as being from Elections Canada is absolutely outrageous. It should not be tolerated. It should be sanctioned severely, and we need to look at the legislation to see whether we have the right framework there. But again, that is totally unacceptable in a modern democracy.

Mr. David Christopherson: Thank you, sir. I appreciate your saying that, because it sets the standard that Canadians expect our election process to meet.

Finally, you mentioned, if I'm paraphrasing you correctly, that there are complaints from all across Canada. Can we interpret that to mean that there are investigations, then, in virtually all the provinces across the country?

Mr. Marc Mayrand: I will not comment on that. That's with the commissioner. I've said as much as I could say on these matters.

Mr. David Christopherson: I respect that, sir. I hope you can appreciate that it's our job to push you up to the line as much as we can.

My last comment, Chair, would be a motion. I would move that Mr. Mayrand be invited back and be scheduled to appear before the House rises in June, just to give us an update on what's going on.

The Chair: Sure. I would ask Mr. Mayrand if he would be happy to do that. I know what the answer is, I think, but....

Mr. Marc Mayrand: Of course. Yes.

Mr. David Christopherson: So can I consider that to be an order of the committee, then, Chair?

The Chair: Well, it's a motion, and we know what happens with motions. They get voted on.

Mr. Lukiwski.

Mr. Tom Lukiwski: Mr. Chair, the government has absolutely no problem with that.

The Chair: Great.

Monsieur Garneau, to make it unanimous among parties...?

Mr. Marc Garneau: I'd be happy to second it.

The Chair: Then I think we need no motion.

Monsieur Mayrand, you and I will have to discuss this. The committee will ask you back before we rise for the summer, and you can give us another update as to where we've gone.

Mr. Marc Mayrand: I was hoping to extend an invitation to visit our office to discuss other matters—

Voices: Oh, oh!

The Chair: I think they would rather have you here.

Mr. Marc Mayrand: Yes, I understand.

The Chair: Mr. Reid.

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): I'm assuming that we've passed the motion.

The Chair: On unanimous consent, yes.

Mr. Scott Reid: All right. Good. So I'm not talking to that.

I wanted to ask some additional questions, if I could.

The Chair: Mr. Reid, we have finished our list, and if I give you a question, I'll need to give more.

I know that he hasn't had one—nor has Madame Latendresse—but we have gone through the full normal scope. I'm at the will of the committee. We're not at our time yet.

I'll certainly entertain Mr. Reid for four minutes, and then we'll find a way of getting one for each party.

Go ahead, Mr. Reid.

Mr. Scott Reid: Thank you. That's ideal, actually.

I think part of what has been going on here is that we're asking ourselves if what we've heard is an indication of some kind of alligator under the bed. Is there something bigger going on or not? The assertion has at least implied that there's what is either widespread fraudulent voter suppression or impersonation of Elections Canada or something of that sort.

But what strikes me is that if there's really an alligator under the bed, I wonder if the alligator under the bed isn't simply a widespread problem with trying to figure out where people actually live in order to contact them in a way that.... You can see that there's a distinct problem here.

On the normal voters list, the normal number of voters put in the wrong location is 16%. You indicated that after you go through it and issue the final voters list, it comes down, I think you said, to a 12% error rate. Is that correct?

• (1215)

Mr. Marc Mayrand: Or so.

Mr. Scott Reid: That's still millions of Canadians.

I know from experience.... In the last election I picked up that final voters list myself for my riding. First of all, I had to drive across the riding. It's a two-hour drive in each direction, so it took all day. But on top of that, it was about 48 hours or 72 hours before voting day, so you can understand that it's hard to get that data and input it and all that sort of thing. Any kind of actual.... In our case, we do more print communication. You can't get that out with the list.

As a final note, this is not something that Elections Canada has done, but I'll make the point from the last provincial election. Elections Ontario put my wife and me—we live in the same house—in two different ridings. So things like this occur all the time. It is, as a practical matter, very difficult to overcome that problem.

I think there is a widespread problem here that leads to many of the kinds of complaints you've heard. You've heard people saying, "I was asked to vote in riding X, and I don't live there". That can be explained by this ongoing database problem that we all have as a joint problem.

Mr. Marc Mayrand: The list is not perfect. I don't know that it will ever be, because the minute you produce it, it's already outdated. People move all the time, and all sorts of things happen. That being said, I still can't reconcile the idea of people pretending to be Elections Canada and trying to misdirect people.

Mr. Scott Reid: There's no doubt about that. Put simply, it's illegal. But I think I'm right in saying that the number of instances you're going to find of that, as a proportion of the total number of complaints people are raising, will be very, very small.

Mr. Marc Mayrand: Again, that's why one of my key messages today is that we need to let the investigation unfold. We shouldn't draw conclusions. There may be all sorts of reasons for the certain things that have been alleged.

That's the responsibility of the commissioner: to determine what actually has happened. As for whether it was deliberate or an unfortunate error, that's the job of the commissioner. In due course, he will complete his investigation, and I will be happy to report to the committee on the outcome.

Mr. Scott Reid: Thank you.

The Chair: Thank you, Mr. Reid. You're under your time.

Mr. Garneau.

Mr. Marc Garneau: Thank you very much.

Mr. Mayrand, can you tell us whether there are any other call centres—other than RackNine, which we've heard a lot about—mentioned in any of the 800 complaints?

Mr. Marc Mayrand: No. That's part of the investigation. That's a matter with the commissioner. I will not comment on any specifics, especially not names.

Mr. Marc Garneau: I believe Elections Canada looked into a claim in Saanich—Gulf Islands in 2008 where there was an allegation of NDP calls that were made that affected the outcome there. Can you tell us what the final ruling or report was from Elections Canada on that particular matter?

Mr. Marc Mayrand: Yes. Again, the plaintiff in that case did receive the ruling or the finding of the commissioner that basically determined that he was not able to gather enough evidence to support the allegations that were made at the time.

Mr. Marc Garneau: So the allegations of falsely claiming to be the NDP were not....? You didn't have enough—

Mr. Marc Mayrand: He couldn't find the evidence to support the allegations.

Mr. Marc Garneau: As my final question, there appears to be a bit of a disconnect. You told me that people can proceed with a court challenge and then go ahead, but in some cases, obviously, the information that the elections commissioner may be collecting over the course of the next year might be instrumental in the judge's ruling, but that judge will not necessarily have that information.

Do you automatically sort of feed into the...? If you know that a court challenge is being issued and you come up with something, do you feed that information to the judge so that it may assist him or her in their...?

• (1220)

Mr. Marc Mayrand: Again, as amicus curiae, we will provide information that the court would find useful, information that we can gather that the court would find useful in its hearing of the matter. I shouldn't speculate at this point in time. I don't know if the court will be asking for information that is under investigation.... I don't know how the court will manage that.

Mr. Marc Garneau: So the way it's done is that the court, in looking at it, will sort of automatically call Elections Canada and say, "Do you have any light to shed on this?"

Mr. Marc Mayrand: We've been served by the proceedings, but it's mainly driven by the applicants. The applicants will have to set what the evidence is to support their proceedings, and they will determine what they need in terms of information and witnesses. Again, it's a traditional court process. They will serve subpoenas and ask witnesses to bring information with them.

The Chair: Thank you.

Madame Latendresse.

[*Translation*]

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

Mr. Mayrand. I would like us to go back to Mr. Christopherson's motion tabled in the House earlier this month. You must be aware of the motion. It has three parts. The first part asks that Elections Canada be able to request documents from political parties to ensure compliance with the Elections Act.

Another part says that telecommunication companies that contact voters directly must register with Elections Canada. In addition, the clients of those telecommunication companies, who request voter contact services, must have their identity verified and registered.

We know that the Elections Act has to be amended to reflect that. Can you think of any other pieces of legislation or things like that that should be changed accordingly?

Mr. Marc Mayrand: As I said earlier, my intention is to prepare a report by next year dealing with, among other things, the fraudulent calls allegedly made during the election. There are some elements in the motion, in the resolution, that deserve our attention. There might be other items that I will want to add or specify in due course.

Ms. Alexandrine Latendresse: Do you think that might help to prevent this type of—

Mr. Marc Mayrand: Let's see if there is a bill. You can be sure that I will also have comments to make at that time.

Ms. Alexandrine Latendresse: As it stands right now—

Mr. Marc Mayrand: There are all sorts of things. We see that in what is made public. There are fake names, aliases and fake telephone numbers. All kinds of things are being camouflaged. That goes against our entire electoral system, which is founded on transparency and openness. We will have to think about all those issues and see how we can incorporate it in the Elections Act or in other pieces of legislation.

Ms. Alexandrine Latendresse: Do you think there are others that could be amended to integrate that?

Mr. Marc Mayrand: We are thinking about it. If the government consults us, we are definitely going to offer ideas. Otherwise, we are going to make suggestions to the committee if a bill is introduced.

Ms. Alexandrine Latendresse: Thank you.

[*English*]

The Chair: Thank you.

That brings us to the end of this round of questioning. We are still before our time. If it's the will of the committee, are there further questions, or shall we adjourn for the day?

I'm seeing nods, but I've asked two questions.

Are we finished? No.

Okay, we'll do a round of one-offs about two minutes long, and we'll be finished.

Mr. Comartin, would you like to go first?

Mr. Joe Comartin: Thank you, Mr. Chair.

Mr. Mayrand, you've obviously made continuous reference to the commissioner. In terms of you coming back before the summer break, do you get updates from the commissioner as to the status of the investigation? Is there that type of relationship between his office and yours?

Mr. Marc Mayrand: The commissioner and I are maintaining what I would describe as an arm's-length relationship. He will give me general information about the workload, the type of investigation they're carrying out, but at a very general level, and the resources required. But I do not ask and he does not offer specific information about specific investigations and where they are at.

• (1225)

Mr. Joe Comartin: So you get your information from Mr. Maher and Mr. McGregor just as I do, I'm assuming, as opposed to from the commissioner?

Mr. Marc Mayrand: It's interesting, because I get the ITOs only after they are filed in court.

Mr. Joe Comartin: Would there not be information in those ITOs that would have been coming from your side of the office—some of the complaints that you've had?

Mr. Marc Mayrand: Sure, but I don't know when the ITOs are prepared or when the order from the court is sought. I find that out only when there is a return on the ITOs.

Mr. Joe Comartin: Along the same lines in terms of relationships, are you aware of any police agency that has been called in to investigate, in addition to the work that the commissioner is doing?

Mr. Marc Mayrand: The commissioner has an MOU with the RCMP, so he can draw on their expertise or assistance as needed. If you're thinking about the provinces or municipalities, I'm not aware of any investigations by those other bodies.

The Chair: Mr. Garneau, do you have a quick one-off?

[*Translation*]

Mr. Marc Garneau: Mr. Mayrand, is the commissioner who is doing the analyses able to decide whether criminal charges should be laid, if he were to find that an individual is guilty, in his opinion?

Mr. Marc Mayrand: Beyond violations of the Canada Elections Act—

Mr. Marc Garneau: You mentioned violations of the Canada Elections Act, but could there be prosecutions?

Mr. Marc Mayrand: It has happened in the past.

Mr. Marc Garneau: And is it up to the commissioner to make that decision?

Mr. Marc Mayrand: Yes, the commissioner will determine whether there is an offence.

Mr. Marc Garneau: He will determine whether criminal prosecutions are appropriate.

Mr. Marc Mayrand: The commissioner will determine if there is an offence under the Canada Elections Act. He will also determine if there are violations of other acts, especially the Criminal Code.

Mr. Marc Garneau: You were kind enough to mention that there were about 200 constituencies and almost 250 files. Could you provide the committee with more details, with something more specific about the current investigations and could you name the ridings that had complaints? How many complaints is that based on? Without getting into the details of the complaints per se, could this information be available to our committee?

Mr. Marc Mayrand: In general, we don't provide specific information about our investigations. It has to do with the presumption of innocence, privacy, the quality of the investigation, and so on.

That being said, in June, I might be able to provide you with more information about the workload and the way the commissioner's office is organized, if that is of any interest to the committee.

Mr. Marc Garneau: Thank you very much.

[*English*]

The Chair: Thank you, Mr. Garneau.

Mr. Del Mastro, to finish us off, go ahead for two minutes, please.

Mr. Dean Del Mastro (Peterborough, CPC): Thank you very much.

Just to kind of tie things up here, Mr. Mayrand—again, thank you for your appearance—you've indicated that in the 308 election results, you stand behind your determination of each and every riding. That's part of your report that you've already made to this committee, and I thank you for that.

You indicated in your report that you find it troubling to hear sometimes sweeping and vague allegations of irregularities being made public many months after the election and not supported by specific facts. We find that troubling as well. We've referred to that as the unsubstantiated smear campaign.

I'd also like to point out that we have a couple of former very significant...well, a police chief and a commissioner of the OPP, who have been involved in some very significant investigations. One of the things they're concerned with is some of the leaks. And I really want to say that I appreciate your commitment and your comment specifically with respect to keeping these things in the strictest confidence.

I can tell you that there's been harm. There's been harm to individuals. There's been harm to companies. Even though, for example, the member for Winnipeg Centre has apologized for a number of the outlandish things he said, and the NDP, there has been real harm done.

Can you just confirm to the committee that you're going to work to make sure that no leaks are occurring from Elections Canada? A number of folks in the media have in fact come forward and indicated to me that they feel Elections Canada has been the source of some of these things, or folks within Elections Canada. Can you just confirm that you're going to echo your comments to this committee that things will be kept in the strictest confidence?

Mr. Marc Mayrand: There's another case of vague allegation here.

Voices: Oh, oh!

Mr. Marc Mayrand: I can assure you, there's no source leaking from Elections Canada, if that's the allegation. I can attest to that.

I think someone should be checking their sources. There was an allegation in the media yesterday that a certain call was scheduled to be placed at midnight. We don't have that information, so it's certainly not coming from Elections Canada. Okay?

• (1230)

Mr. Dean Del Mastro: I thank you very much for that. Again, I appreciate your commitment to that, sir.

The Chair: Thank you, Mr. Del Mastro.

That finishes our rounds today.

Mr. Christopherson, did you say you had something?

Mr. David Christopherson: I said I had a point of order.

The Chair: Go ahead, Mr. Christopherson.

Mr. David Christopherson: My point of order is actually by way of a question to you. Is it in order for this committee to request the commissioner of elections to appear before us?

The Chair: It's the will of the committee. We've had the commissioner of elections before us in the past; it's the will of the committee to do so, I suppose.

Mr. David Christopherson: Well, it just seems to me that Mr. Mayrand had to refer a lot of the questions back to the commissioner. If we're interested in getting whatever we can that is available in the public domain, it would make sense to invite the commissioner to come in and have a discussion with us too.

The Chair: Mr. Reid, on that point?

Mr. Scott Reid: No, it's not. He asked if it's in order, and in my opinion it is in order, but if you're going to rule that, I'd like to know.

The Chair: It is in order. On the point of order, it is in order that we do invite him.

I would refer the committee to its scheduling committee, if that's something they want to do. The committee on agenda could certainly look into having that happen.

Mr. David Christopherson: Would you not accept the motion right now, Chair, as being in order, that we invite the commissioner to come in, and then leave it to the steering committee to schedule the timing?

The Chair: Mr. Reid, on that one?

Mr. Scott Reid: Chair, I was actually going to make basically the same motion.

The Chair: Okay.

Mr. Scott Reid: I guess that means I've spoken in favour of it.

The Chair: Do I see nods that we're okay to do that, and that the chair will speak with the scheduling committee to make that happen?

Some hon. members: Agreed.

Mr. David Christopherson: Very good. Thank you, colleagues.

The Chair: Okay. Is there anything else for the good of the committee today? No? Then we are adjourned.

Thank you, Monsieur Mayrand.

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