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Chair

Mr. Joe Preston

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• (1205)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): I'd like to call us to order, please.

This is a meeting of the Standing Committee on Procedure and House Affairs. I'll remind the members that we are televised and in public today.

We have a bit of committee business to finish. When we last left you—it seems so long ago that I left all of you, my friends—we were on the amendment by Madam Latendresse. Our speaking list included Mr. Lamoureux, who was still speaking to the motion, and I had others on the speaking list.

Mr. Lamoureux.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Mr. Chair, because we have limited time this morning, I would like to see us defer this discussion until after we've heard from the presenters, at the very least.

Some hon. members: Agreed.

The Chair: All right. I'll have to go down the list.

Mr. Lukiwski.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): I have no problem with that.

The Chair: Mr. Christopherson, you're on the list also, but we'll defer that list the way it is, until such time as it gets brought up again.

Thank you very much.

Monsieur Saunders, it's good to have you here this morning.

You have an opening statement for us. Go ahead, please. Then we'll get to questions.

Mr. Brian J. Saunders (Director of Public Prosecutions, Office of the Director of Public Prosecutions, Public Prosecution Service of Canada): Thank you for the invitation to appear before you today as you continue your consideration of Bill C-23.

Through the clerk, I've provided all members of the committee a brief overview of the Office of the Director of Public Prosecutions. I do not propose to take up the committee's time by going over this background information now. I'll get right to the matter at hand.

The only proposal in Bill C-23 that affects the Public Prosecution Service of Canada is the transfer to the PPSC of the position of

Commissioner of Canada Elections and of the commissioner's staff. While I have concerns in respect of certain aspects of the proposed transfer, I believe that it could be made without affecting the PPSC's ability to carry out its prosecution function independently of the investigative work carried out by the commissioner.

I say this for three reasons.

First, prosecutors are bound to respect the constitutional principle of prosecutorial independence. This means that we must make our decisions to initiate or continue a prosecution independently. This fundamental principle is ingrained in and followed by all prosecutors. It is part of the culture of prosecutors and will continue to be respected by prosecutors.

[Translation]

Second, Bill C-23 keeps the investigative and prosecutorial functions separate. The bill does not in any way give the DPP the authority to conduct investigations under the Canada Elections Act. In fact, the bill is clear that the commissioner alone has that authority and that he or she is to conduct the investigations independently of the DPP. Therefore, prosecutors would not be able to initiate or direct an investigation. While prosecutors would be able to provide advice to the commissioner during an investigation, they would do so only if the commissioner asks.

[English]

Third, although the commissioner would be housed in the PPSC and the employees who work for him would become PPSC employees, the commissioner and his employees would form a separate and autonomous unit within the PPSC. The commissioner, not the DPP, is identified as the deputy head of this unit for the purposes of hiring staff and of managing all human resources.

Let me now turn to the concerns I have with respect to two aspects of the proposed transfer. The concerns flow from provisions in the bill that might create the perception that the DPP is too close to the investigative function to conduct the prosecution function independently.

The bill proposes that the DPP have the authority to hire the commissioner and to dismiss him or her for cause. This authority could be seen as giving the DPP a degree of control over the investigative function. Another concern relates to the payment of investigative expenses. The bill provides that expenses incurred by the commissioner shall be paid out of the consolidated revenue fund on the certificate of the DPP. This authority may also give rise to a perception that the DPP has a degree of control over investigations.

These two concerns must be viewed, however, in the context of the safeguards of prosecutorial independence that I mentioned at the outset and against administrative measures that could be put in place to enhance the separation of the two functions. So viewed, I believe that the perception of prosecutorial independence would mirror the reality of that independence.

Finally, I should note that I also had a concern with respect to the original proposal in Bill C-23 regarding the annual report. The proposal was to amend the DPP Act and require the DPP to report on the activities of the commissioner. This may have created a perception problem similar to the ones I mentioned just now. Among the proposed changes to Bill C-23 announced last Friday is one that would address this concern. Under it, the Commissioner of Canada Elections would prepare his or her own report.

I have no comments on the other measures proposed in the bill, as they do not affect the PPSC's operations.

Thank you. I'd be pleased to answer your questions.

The Chair: Thank you very much.

We will go to our seven-minute round of questions.

Mr. Lukiwski, you're first, please.

Mr. Tom Lukiwski: Thank you very much.

Thank you, Mr. Saunders, for being here. Thank you for your opening statement.

Just to be clear—I want to make sure that we set the table here—under the proposed legislation, as was the case with the former legislation, only the commissioner of elections can determine whether or not he wishes to recommend to your office that prosecution be engaged in. Is that correct?

Mr. Brian J. Saunders: That is correct.

Mr. Tom Lukiwski: But you make the final decision? In other words, if a recommendation were forthcoming from the commissioner of elections, could your office examine the recommendation and then determine not to proceed?

Mr. Brian J. Saunders: That is correct.

Mr. Tom Lukiwski: That has always been the case, and that remains the case under the new legislation?

Mr. Brian J. Saunders: That's always been the case, and that is the case, I might add, for all investigations under any legislation.

Mr. Tom Lukiwski: The reason I wanted to clarify it is that you mentioned that you had some concerns in a couple of different areas about the perception.

Mr. Brian J. Saunders: Yes.

Mr. Tom Lukiwski: If, however, it is clear in the legislation, both the current legislation and the proposed legislation, that the authority and decision to proceed is yours and yours alone, would that not go a long way to clearing up any misconception about the independence of both your office and that of the commissioner of elections?

Mr. Brian J. Saunders: As I mentioned in the opening statement, I'm satisfied that on balance an informed person looking at the entire bill, and at the measures that are being introduced, realistically and practically would conclude that the perception is very low. However,

the perception is important to me in that it's important to maintain the confidence of the public in the administration of justice. It's not only necessary that I act independently but that I also be seen as acting independently.

The hiring and firing provisions caused me some concern at the outset, because it might be perceived that if I'm hiring the person who is to be the commissioner, when it comes time for me to assess the results of that person's investigation in a fair, objective, and independent fashion, someone might say, well, you're going to favour someone whom you've hired. Likewise, when it comes to the firing power, there might be a perception among some that if I can fire for cause, which would include the ability to fire for incompetence, I have some power to, in a sense, oversee the type and quality of the investigations.

Now, when you take these considerations and measure them against the safeguards I mentioned at the outset, I believe this perception is not well founded. Nevertheless, I thought this committee should be aware that there is a possibility that some might have that perception.

● (1210)

Mr. Tom Lukiwski: I appreciate your candour, but again, let's be clear that it's only a perception, and you say the threshold of that perception is probably pretty low. Your appearance here today, I think, will go a long way to assuring Canadians who might have had that perception that there really, truly will be continued independence in both your office and the commissioner of elections.

Let me try to home in on something that you just mentioned, the ability to dismiss the commissioner of elections with cause. You mentioned incompetence. Obviously, I suppose in almost any job, if you were to dismiss someone on the basis of incompetence, that would be considered to be a fair and normal proceeding. But wouldn't the threshold to try to prove incompetence be extremely high in this case? The legislation proposes that the commissioner of elections be hired for a seven-year term and can only be dismissed with cause. The intent of the legislation is to assure Canadians, and to in fact give the commissioner of elections a solid measure of independence without interference from any government.

Could you explain exactly what in your mind the threshold of incompetence or cause for termination would be? How egregious would the actions of the commissioner of elections have to be before he could be dismissed?

Mr. Brian J. Saunders: Let me give you a bit of background to that.

"For cause" would include incompetence, conflict of interest, misconduct, misbehaviour, and things of that nature. The bill also proposes or states that the commissioner would conduct his investigations independently. So I won't have the ability to see what he's doing with respect to many investigations. I only get the investigations that he concludes include evidence to show reasonable grounds to believe an offence has been committed. They get referred to me. For a portion of his work, the portion that results in compliance agreements, the portion that results in no conclusion that it should be referred to me, I don't get to oversee that at all; I never see it unless one of our counsels provided advice during the course of the investigation.

So when can I exercise the power to dismiss for cause? It would have to be in relation to a case that had been brought to our attention where, for example, the investigation had not just gone totally off the rails but had been an improper investigation, in our estimation.

Mr. Tom Lukiwski: Wouldn't that even further strengthen the independence of the commissioner of elections? In other words, since you don't have the ability to see what he may be doing in his work that does not result in a recommendation to your office, would that not be even further assurance that he has complete independence in his own affairs?

Mr. Brian J. Saunders: Yes, it would, but I just want the committee to realize that in giving me the power to dismiss for cause, I will not have the ability at all to oversee the work the commissioner does in respect of his investigations.

Mr. Tom Lukiwski: But that's my point.

Mr. Brian J. Saunders: Yes.

Mr. Tom Lukiwski: That's my point, that his office therefore is completely independent, because you do not see what he is doing in the investigations that don't result in a recommendation to prosecute. If you had the ability to observe or comment on all of his investigations, even those that don't result in a recommendation to prosecute, one perhaps could then say that you have your tentacles into his office. But because you are not seeing that, but only a small portion of what he does, that has to assure Canadians that he has complete independence, does it not?

Mr. Brian J. Saunders: My point in raising this is that someone could look at the statute and say that the DPP has the authority to hire and dismiss the commissioner for cause. That would suggest to many, or to some at least, that I have some power of oversight over how investigations are conducted. Other provisions of the statute make it clear that I do not have authority over the investigations. Those are to be conducted independently of me.

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

The Chair: You are done. Thank you, Mr. Lukiwski.

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

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

Thank you, Mr. Saunders, for coming. I hope we can make my first few questions, and answers, fairly short.

First, is it usual for an investigative unit like the commissioner's to actually be physically and organizationally located in the ambit of the Office of the Director of Public Prosecutions? Is it a normal thing to have an investigative unit, and how many are there?

• (1215)

Mr. Brian J. Saunders: This will be the first time, in our experience, that this is here.

Mr. Craig Scott: Okay. Thank you.

This being the first time this has happened, were you consulted or involved in the decision-making on how that move should be structured?

Mr. Brian J. Saunders: No, I wasn't consulted.

Mr. Craig Scott: Thank you.

Are you aware of any report or ongoing discussion in sort of justice or enforcement circles where there were active recommendations from some quarter to move the Commissioner of Canada Elections to the Office of the DPP?

Mr. Brian J. Saunders: No, I'm not.

Mr. Craig Scott: Okay. Thank you.

In your 2012-13 annual report, you write with regard to the Public Prosecution Service of Canada the following:

The PPSC prosecutes charges of violating federal law laid following an investigation by a law enforcement agency. The PPSC is not an investigative agency and does not conduct investigations.

This relates to what we just talked about, that it's unusual or unheard of to have a unit within your office. You continue:

The separation of law enforcement from the prosecution function is a well-established principle of the Canadian criminal justice system.

I realize that's a functional statement. It doesn't necessarily mean you have to be physically on the other side of the city. I'm not getting at that. But the functional separation is stated very clearly in your report. Given this statement, it would seem—to me, anyway—that the movement of the commissioner to your office and subsequent DPPs' offices would need to have some kind of a special rationale or justification.

I want to start with the first one: necessity. Is there anything about how you understand how the commissioner has worked, including working with the office of the officer of Parliament, the Chief Electoral Officer, or anything that you know of that necessitates the move of the commissioner to your office? Is it a necessary move?

Mr. Brian J. Saunders: I'm not in a position to answer that. It's a policy choice of the government, and ultimately of Parliament, to decide where to place the commissioner of elections. My role in coming here today was to describe to you what operational impacts that move might have on the organization that I head.

Mr. Craig Scott: Then I presume you'd probably not be able to help me with the next question, either, on another rationale, which would be whether or not the move is a positive benefit to investigations.

Mr. Brian J. Saunders: Again, that's a policy choice.

I'd also point out that in terms of the investigations, we keep some distance from investigations. That is the responsibility and will remain the responsibility of the Commissioner of Canada Elections.

Mr. Craig Scott: I appreciate the position you're in with regard to answering questions along these lines.

I'd just remind the committee that the previous commissioner, Mr. Corbett, and current Commissioner Côté gave quite detailed testimony on what would be lost by virtue of the separation, the organic separation.

Subsequent questions will probably go into those, but I'm not sure you'll feel all that qualified to help on the answer. It's important to know that just because you're doing your best, or will be able to accommodate the move, it in no way is evidence that it's a necessary move.

Here's something that I think you probably can answer. You know that of course cooperation between investigators and prosecutors is essential even though the functions are separate. Has the kind of cooperation that has occurred between the commissioner and the DPP's office been hindered in any relevant way by the fact that the commissioner's office is not within your office? Has it ever been hindered?

Mr. Brian J. Saunders: We have provided the same type of pre-charge advice to the commissioner of elections, and we provide it to other regulatory agencies.

Mr. Craig Scott: So the short answer is that it sounds as though it is at least nothing different from your relationship with any other law enforcement agency.

Let me take you through three provisions, one of which you did mention. I'll just ask whether this isn't going to be some kind of a hindrance on your relationship with the commissioner.

First of all, Bill C-23 expressly prohibits you from consulting with the Chief Electoral Officer with respect to an appointment of the commissioner. So any knowledge the Chief Electoral Officer may have with respect to either criteria or candidates would be blocked from your view. Are you willing or able to answer on whether such a ban is helpful to your ability to appoint the DPP?

• (1220)

Mr. Brian J. Saunders: Again that's a policy choice being made by the government and ultimately by Parliament.

Mr. Craig Scott: Well, Parliament hasn't yet made that choice—

Mr. Brian J. Saunders: I can say that it will have to be made by Parliament.

Mr. Craig Scott: —but the government certainly has.

With regard to firing for cause, you've already indicated and you've been very articulate as to why perceptions matter in the administration of justice. Former Auditor General Fraser specifically talked about the perception problem as being real. It has nothing to do with either you or future DPPs actually not being independent. The dismissal procedure does allow for you to fire with cause. Would there be any problem if a policy choice were made providing for the same dismissal procedure for the commissioner as, for example, now exists for the Chief Electoral Officer, which is carried out by the Governor General at the joint request of the House and the Senate?

Mr. Brian J. Saunders: Again you're asking me policy questions that are just beyond what I can comment on.

Mr. Craig Scott: But you would have no problem if that power were taken away from you?

Mr. Brian J. Saunders: I'll live with whatever powers Parliament decides to give me.

Mr. Craig Scott: Great.

Here's one thing, though. You would be concerned about the quality of the pool that you would have to draw from. The fact of the matter is that you would be prohibited from appointing to the position of commissioner anybody who has ever temporarily or permanently worked for Elections Canada. Would you say that would narrow the pool?

Mr. Brian J. Saunders: In terms of how this would take place, I indicated that we couldn't put in place administrative measures to address that. In terms of hiring, I think we would consider adopting a procedure so that it would be very transparent. It would be open. It would be a position that would be available for all Canadians to apply for. Presumably there would be Canadians who worked for other enforcement agencies or for provincial election agencies who might express an interest in obtaining the position.

The Chair: Thank you, Mr. Scott.

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

Mr. Kevin Lamoureux: Thank you, Mr. Chair.

Mr. Saunders, welcome to the committee.

I want to pick up on the point that to the very best of your knowledge, you had no sense or understanding of being consulted in any fashion prior to the introduction of Bill C-23. Is that correct?

Mr. Brian J. Saunders: That is correct. I was not consulted.

Mr. Kevin Lamoureux: When you look at what your office is now being asked to do, you emphasize how important it is that we take into consideration the issue of perception. You made reference to the whole issue of hiring and dismissing. How would you suggest to the committee that specific aspect be best dealt with? How would you plan, if this legislation were to pass unamended, to hire a future commissioner?

Mr. Brian J. Saunders: I indicated in response to a previous question that we are at the early stages of considering how best to address this bill, but one proposal would be that we conduct a national open competition where Canadians with the experience in enforcement in elections could apply and a board selection could be struck to consider the candidates and select the candidate who best meets the criteria.

Mr. Kevin Lamoureux: In terms of the power of dismissal, would you like to add anything to the idea of what it would take for you to be able to dismiss a commissioner?

Mr. Brian J. Saunders: In terms of dismissal, again my thinking is that if we had concerns regarding the work of the commissioner of elections, we could retain respected outside authority to examine our concerns and prepare a report. We could make our decision based upon that report, and we could be transparent with Canadians by giving a public statement if our decision were to dismiss the commissioner, or, given the fact that there was something that was publicly known, to retain the commissioner.

Mr. Kevin Lamoureux: On the current process of hiring and dismissal, I for one am not all that familiar with it, but I'm wondering if you could give us any indication of whether or not you find it adequate or inadequate.

Mr. Brian J. Saunders: The existing one?

Mr. Kevin Lamoureux: Yes, if you can.

Mr. Brian J. Saunders: I'm not familiar enough with the existing procedure to be able to answer that question.

Mr. Kevin Lamoureux: All right.

When you take a look at the current commissioner, the CEO, and the former CEO, you see that everyone seemed to be of the opinion that the commissioner should stay within Elections Canada. I was really taken aback when the commissioner himself in his presentation made it very clear that he feels completely independent.

He has absolutely no problems whatsoever in terms of being able to deal with the issues that he believes are important to Canadians. What value is your office going to be able to provide the commissioner that he currently doesn't have today?

• (1225)

Mr. Brian J. Saunders: We will continue to respect the independence of the investigative function. We respect it now, and we will respect it if this bill is passed.

Mr. Kevin Lamoureux: Yes, but is there anything specific you can think of that is going to empower our commissioner to be able to do anything at all differently through your office versus the Elections Canada office?

Mr. Brian J. Saunders: I'm not familiar with all the aspects of the bill. I have focused on those provisions that touch upon our operations. I don't know if there's something in the bill that enhances his powers, he being the Commissioner of Canada Elections.

Mr. Kevin Lamoureux: My understanding is that when we had the commission originally set up—I believe it was during the seventies—it was actually outside of Elections Canada, and then it was brought into Elections Canada. It was felt that this was where it would be best held. Are you able to provide any sort of insight or opinion or a thought in regard to that?

Mr. Brian J. Saunders: No. I'm not familiar with the history of the establishment of the Office of the Commissioner of Canada Elections. I just know that when we were established in December of 2006 the DPP was given authority to initiate prosecutions under the Canada Elections Act. That was a new authority for us.

Mr. Kevin Lamoureux: Right.

You emphasize the importance of perception and how important that issue is in terms of public confidence. Do you believe that having the commissioner working out of your office is going to enhance the public perception of the independence of the commissioner?

Mr. Brian J. Saunders: Well, in my opening, I gave you the protections that I think the bill proposes and the other protections that will continue to exist. I mentioned that for the law the bill makes it very clear that the commissioner is to conduct his investigations independently of the DPP. We have our principle of prosecutorial independence that is part of our culture and is reflected in all our policy documents, which, I might add, also indicate that we should respect the independence of investigators.

In my mind, although there is the potential for a perception problem, when you look at the entire package, a well-informed person looking at this realistically and practically and thinking the matter through—which is the test for whether there is a perception

problem—would conclude that we will be able to fulfill our prosecutorial function independently of the investigative influence.

Mr. Kevin Lamoureux: Now, if the commissioner wants to be able to investigate something such as a future robocall or something of that nature, for any needs for financing would he be obligated to go through you, Mr. Saunders, or your department? How does he get funnelled those resources?

Mr. Brian J. Saunders: Under one of the provisions of the bill, he in fact has direct access to the consolidated revenue fund for certain resources he requires. The requirement that's been imposed on the DPP by the bill would be that the DPP certify that the expense is appropriate. Now, that gave rise to the perception problem that I mentioned earlier. That could be seen as giving the DPP some control over the investigations.

But when you read that clause in conjunction with the clause that says the commissioner is to conduct his investigations independently, that leads me to conclude that my role in certifying is simply to say, "Was that expense incurred in relation to an investigation?" My role is not to examine whether it was a worthwhile expense incurred in the course of the investigation, but only if it was incurred in the course of the investigation. It's up to him to conduct his investigation, which means that he has to decide how to investigate, who to investigate, and what charges to investigate for. That's not the role of the DPP.

Mr. Kevin Lamoureux: That's if he has the money for it.

The Chair: We'll go to Mr. O'Toole.

It's good to see you.

• (1230)

Mr. Erin O'Toole (Durham, CPC): Thank you, Mr. Chair. It's good to see you as well. I missed most of the committee, although Mr. Scott and I had the good fortune of seeing a lot of each other over the break, which was maybe good for me but not for him.

Mr. Saunders, thank you for appearing. I think one of the benefits of this televised proceeding is that a lot of Canadians will understand better what the Director of Public Prosecutions does and what the Public Prosecution Service of Canada does. In many ways, you're the federal prosecutor dealing with fisheries, environment, transport, finance—a range of issues. For some provinces, you handle prosecutions with respect to controlled drugs. So would it be fair to describe the overall department as a federal prosecutor?

Mr. Brian J. Saunders: Yes.

Mr. Erin O'Toole: Since 2006-07 you have been given another area of prosecutorial jurisdiction with respect to election law. You mentioned that to Mr. Lamoureux. So that's yet another area of federal jurisdiction for prosecution under your department. Since 2007 has the Attorney General interfered in any of the prosecutions related to election offences?

Mr. Brian J. Saunders: No, he has not.

Let me elaborate. As I pointed out in the background document that I provided to the committee, under the Director of Public Prosecutions Act, the attorney general does not have the authority to issue any directives in respect of Elections Act prosecutions, nor am I required to provide him with notice of Elections Act prosecutions, nor do I include reference to Elections Act prosecutions in the annual report provided to Parliament through the attorney general.

Mr. Erin O'Toole: So the concerns expressed by some with respect to the nature of that technical reporting are not serious in your opinion?

Mr. Brian J. Saunders: Under the proposal that was made last Friday, the commissioner of elections will report separately on the activities of his office. He will attach that report to my report, but it will not be something I'll be reporting on.

Mr. Erin O'Toole: You talked about perception in some detail during your opening statement, and in some of your responses to my colleagues. You raised a few areas in which you were concerned about perception in the same way that conflict of interest could be real or perceived, and you were concerned about some perceptions. Is perception itself not a bigger issue when the investigation and prosecution services are housed within a specialized agency, so that within that very agency they're looking back to investigate while part of that agency is looking forward on the administration and costs?

Mr. Brian J. Saunders: The difficulty would be if the prosecution function and the investigative function were vested in the same person.

Mr. Erin O'Toole: Prior to the changes in 2007 by our government, those the investigation and prosecution functions were housed in the same person, were they not?

Mr. Brian J. Saunders: I only know what I read. I think I read testimony from one witness who mentioned that was the case.

Mr. Erin O'Toole: In 2006 the investigation function was separated from the prosecution function, and now with the fair elections act, the investigations, which will remain separate, are going to be housed within the specialized federal prosecutors' offices, but, as you said, they will be distinct within that. Would it not be fair to say that the changes from 2006 to today actually get at the root of eliminating perception issues?

Mr. Brian J. Saunders: They don't eliminate the perception problems that I mentioned. If you look at my testimony as a whole, the perception problems I mentioned are ones that could arise, and my conclusion is that they can be addressed by the safeguards in the statute and the administrative measures we could take. In terms of what existed before 2006, as I say, I only know what I read in the testimony. I'm not really in a position to comment on it.

The Chair: Thank you very much.

We're going to go to Madame Latendresse for four minutes, please.

[Translation]

Ms. Alexandrine Latendresse (Louis-Saint-Laurent, NDP): Thank you, Mr. Chair. I want to mention that I will be sharing my speaking time with Mr. Christopherson.

Mr. Saunders, thank you for being here today to speak to us about these changes.

I would like to focus on some points that were raised previously. I will speak to you in French since it is my native language.

Can you confirm to us that you were not consulted concerning the changes that will affect your service?

Mr. Brian J. Saunders: No. We were not consulted.

Ms. Alexandrine Latendresse: Did you read the report of the commissioner when he came to speak to us about these changes?

Mr. Brian J. Saunders: I read his testimony, but not the report that he tabled. I did not know that he had tabled a report.

Ms. Alexandrine Latendresse: I was referring, rather, to Mr. Côté's testimony. When he came to testify before the committee he said this:

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

Mr. Côté talked about that disconnect quite a bit. The Chief Electoral Officer also referred to it. When the commissioner talked to the committee about it, I saw a big problem. Even the commissioner assured us that at this time he is completely independent from Elections Canada. He had some grave concerns regarding this possible disconnect.

Do you share the commissioner's concerns and those of the Chief Electoral Officer in that regard?

• (1235)

Mr. Brian J. Saunders: You are talking about the current links between the...

Ms. Alexandrine Latendresse: I am talking about the relationship between the commissioner and Elections Canada.

Mr. Brian J. Saunders: I think Mr. Côté rather than myself should answer that question, because this concerns investigations and not prosecutions.

Ms. Alexandrine Latendresse: But do you not think that this type of comment as well as the way in which it was presented and explained to us would justify our wondering why this transfer should occur? Many believe that this is not necessarily an enormous problem or a very bad change, but that its appropriateness needs to be evaluated, since this may not really affect the commissioner's independence.

Mr. Brian J. Saunders: As I mentioned earlier, it is a matter of policy that concerns the government. It will be up to Parliament to make the decision. I am only here to discuss the operational impacts such a change may have on the PPSC.

Ms. Alexandrine Latendresse: Fine. Thank you very much.

I am going to yield the rest of my speaking time to Mr. Christopherson.

[English]

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

Thank you very much for being here, sir.

Again, you were not consulted at all about this change?

Mr. Brian J. Saunders: That's right.

Mr. David Christopherson: So the Chief Electoral Officer and the previous one were not consulted, and the elections commissioner and the previous one were not consulted. Now we're now making a major structural change, and the person at the head of that department was also not consulted.

Let's underscore the fact that the only people who were consulted on this bill and had input were card-carrying members of the Conservative Party. If you didn't belong to the Conservative Party, you got no input into this law. Here's further evidence.

Who is your immediate boss, sir?

Mr. Brian J. Saunders: Pursuant to the Director of Public Prosecutions Act, I conduct prosecutions under and on behalf of the attorney general.

Mr. David Christopherson: But effectively you're a deputy minister, correct?

Mr. Brian J. Saunders: I'm a deputy head, yes.

Mr. David Christopherson: So your immediate boss is the minister. Is that fair?

Mr. Brian J. Saunders: The parameters of the relationship between my office and the attorney general's office are set out in the act—

Mr. David Christopherson: Agreed, sir, but for reporting purposes—I'm tight on time, so if I'm being a little curt, I apologize—effectively the attorney general is your reporting boss.

Mr. Brian J. Saunders: Yes, but the reporting that I do is different from the reporting that you would find in other departments.

Mr. David Christopherson: How about the CEO? Who's his boss? It's Parliament. There's the problem. The elections commissioner is going to move from a current position where the person who holds that position, their boss, is accountable to all of Parliament, to a position where their boss is one step away from the attorney general, and has all the power. That is a huge problem of perception.

The Chair: Your time is up.

Mr. David Christopherson: That's fine. It was rhetorical anyway.

The Chair: I got that.

An hon. member: [*Inaudible—Editor*]

An hon. member: But that did not escape our notice.

Some hon. members: Oh, oh!

Mr. David Christopherson: It's an ancient skill; come on.

Thanks, Chair.

The Chair: Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you very much, Chair.

I want to pick up a little bit on a misperception that unfortunately the opposition seems to be trying to promote, and that is that under the current situation the commissioner of elections has complete independence. That simply is not the case.

I'm not going to ask you to comment on policy, but let me point out for the benefit of the committee, and those Canadians who may be watching, that under the current system Elections Canada can hire, fire, and direct the commissioner of elections on which investigations to pursue. It's that latter part that shows, I believe quite clearly, that under the current system the commissioner of elections does not have complete independence.

If the CEO of Elections Canada can tell the commissioner of elections to pursue an investigation, then the commissioner of elections does not have complete independence. Under the proposed legislation, that ability of anyone to tell the commissioner of elections which investigation to pursue is gone. The ability to conduct investigations will solely be determined by the commissioner of elections.

Do you not agree that this demonstrates complete independence on the investigatory portion of the relationship between you and the commissioner of elections?

• (1240)

Mr. Brian J. Saunders: Without taking a position on the policy ramifications, let me say that under the proposed bill, the commissioner will have the right to conduct his investigation independently of the DPP. I will not have, and no one in my organization will have, the authority to direct the commissioner to conduct an investigation.

Mr. Tom Lukiwski: Thank you for supporting and underscoring my point.

Although the opposition continues to say that under the current legislation and under the current system the commissioner of elections has complete independence, he does not. If someone can instruct the commissioner of elections on what investigations to pursue, that means someone else is pulling the strings. We believe, and it's indicated in the fair elections act, the commissioner of elections should have complete independence upon what investigations to pursue. I thank you for agreeing with my assessment on that.

Finally, sir, let me just ask you this. You mentioned before that you believe the threshold of perception is fairly low. Do you not believe the most important consideration in legislation is the reality? In other words, you have indicated that the only difficulty you're bringing to the attention of this committee is one of perception. In reality, however, there is a complete distinction, a complete separation of authority between your office and the commissioner of elections, and complete independence.

Mr. Brian J. Saunders: The reality of the independence will be respected, though I hope I made it clear that perception is important to us. It's important to public confidence in the administration of justice that the perception that prosecutors exercise their discretion independently of investigators is maintained.

Mr. Tom Lukiwski: Would you simply agree that the reality is more important than the perception? I agree that perception is important, but the reality is that there is complete independence between your office and that of the commissioner of elections.

Mr. Brian J. Saunders: No. I'd have to disagree with that. I think it's very important to maintain the perception of the independence of the prosecutorial function.

The Chair: Ms. May.

Ms. Elizabeth May (Saanich—Gulf Islands, GP): Mr. Chair, might there be any time for a quick question from me at the end of the round? I'm just checking with you.

The Chair: If the group agrees, there may be a chance.

Ms. Elizabeth May: Thank you.

The Chair: I have a government slot right now. Is there anybody...?

I'll go to Mr. Christopherson.

Mr. David Christopherson: Thanks.

I want to follow up on where Mr. Lukiwski was. The Commissioner of Canada Elections said—this is his quote when he spoke before this committee—“Indeed, I must stress that, as commissioner, I have enjoyed complete and unfettered independence with respect to the conduct of investigations and the choice of enforcement action, including the decision to refer a matter to the DPP.”

Unless the government can give us one example, one concrete example, that would justify making this move, we have every reason to be suspect as to why they're doing it. The fact remains that the commissioner of elections, even if it's just checking off a box, will have to get the approval of somebody who is a deputy minister accountable to a minister—which puts it into the political realm—in order to spend money. Everybody says there's no problem, that it will just be a formality, that there will be no judgment calls and everything....

So my question would be, sir, would you see any problem, then, with an amendment that would allow the commissioner of elections to have direct access to the consolidated revenue fund to spend money on investigations without having to get your interim-step approval along the way?

Mr. Brian J. Saunders: I just want to clarify something. The Attorney General does not have authority in respect of elections matters under the Director of Public Prosecutions Act.

Mr. David Christopherson: I understand, sir. I wasn't—

Mr. Brian J. Saunders: That is not changed under the bill that is before you right now.

Mr. David Christopherson: Yes.

Mr. Brian J. Saunders: Also, I'm not a deputy minister. I'm a deputy head. There is a distinction there, because we're not a department of government; we're an agency.

In terms of your question—

Mr. David Christopherson: I'm sorry, but that's no different from a deputy minister elsewhere—

Mr. Brian J. Saunders: Yes, it is, because my relationship differs from that of a deputy minister. My relationship is set out specifically in the—

Mr. David Christopherson: But the point is that you're not independent, as the Chief Electoral Officer is. That's my point, sir. The Chief Electoral Officer is independent of the government and answerable to Parliament, to all of us. You, sir, are answerable to a politician at the end of the day.

Mr. Brian J. Saunders: That politician, though, is the Attorney General of Canada. You have to remember that when the Attorney General of Canada acts in the prosecution domain he is bound by the same principles I am. He is bound by the principle that he must exercise his discretion in a manner that is free of any partisan political motivation.

• (1245)

Mr. David Christopherson: Agreed, but nonetheless, the change is being made, and there has to be a reason. We have no example of a problem, so we have to wonder if the government prefers this kind of system. As the opposition, I'm pointing out that we now have a political line in the flow chart, whereas before we did not.

But here's my specific question, sir: would you see any problem? Would you have any comments or thoughts on the idea that the commissioner of elections could access money from the consolidated revenue fund without your okay or approval or involvement at all—just direct access? Would you think that's okay? What are your thoughts?

Mr. Brian J. Saunders: That's a question of policy for, again—

Mr. David Christopherson: Is there a problem with it in terms of a procedure?

Mr. Brian J. Saunders: It wouldn't create operational problems for me.

Mr. David Christopherson: It wouldn't be any problem for you if there were a change in that. It doesn't affect the office in any way.

Mr. Brian J. Saunders: At the end of the day, as I say, it's a policy decision that ultimately Parliament will have to make.

Mr. David Christopherson: Okay.

The Chair: You have 30 seconds.

Mr. David Christopherson: Well, I'll then refer back to the perception of this whole thing.

I would ask you what you think would be lost if we left things the way they are. What would lose? Democracy? Process? Tell me something that we would lose by virtue of going over to your office.

Mr. Brian J. Saunders: I'm not sure if I follow you. What would you lose by going over to my office...?

Mr. David Christopherson: Yes, I guess I worded that poorly. I acknowledge that.

Some hon. members: Oh, oh!

Mr. David Christopherson: My concern is—

The Chair: You worded it lengthily, which now runs you out of time.

Some hon. members: Oh, oh!

Mr. David Christopherson: I guess...[Inaudible—Editor]

The Chair: It's about exercising it....

Mr. O'Toole, for four minutes, please.

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

Following that last exchange there seemed to be some conflict between the testimony of Mr. Christopherson and the testimony of Mr. Saunders. Then I realized that you're the only one here actually giving testimony here today, and so I'm going to review some of my last questions potentially for Mr. Christopherson's benefit.

You said that since 2007 there has been absolutely zero role or interference by the attorney general in the prosecution of election offences. Is that correct?

Mr. Brian J. Saunders: That's correct. By law the attorney general cannot intervene in elections cases, and that has been respected.

Mr. Erin O'Toole: So your department or agency, which Mr. Christopherson referred to in terms of a political line in a flow chart, is independent and there is no operational flow chart. Is that correct? There is no role by the attorney general in any of your prosecutions.

Mr. Brian J. Saunders: The only roles the attorney general has with respect to prosecutions are set out in the legislation itself, our legislation. It allows the attorney general to issue a directive in respect of a particular case if he so wishes, and allows the attorney general to assume conduct of a prosecution. It also allows the attorney general to intervene in a case involving provincial prosecution, or to issue a directive with respect to prosecutions generally. Each of these measures, if taken by him, has to be done in transparent fashion. He has to publish, for example, any directive in respect of such a case in the *Canada Gazette*, the idea being that transparency is an important protection of prosecutorial independence.

Mr. Erin O'Toole: With respect to the budget, I'm sure that every department in this fine city would love to have direct access and fund themselves, but that's generally not how things work. When your teams are involved in prosecution in areas of federal jurisdiction like fisheries or transportation and more funds are needed because there is more activity happening, do they go through your agency for budgetary requests? Is that how it works currently?

Mr. Brian J. Saunders: No we have a hybrid funding formula. Most of our funding is what's called A-base funding, in that we receive an appropriation from Parliament with respect to that funding. A very small amount is what we call cost recovery funding, where agencies will fund a prosecution, but we have agreements with these agencies to ensure that mutual respect is maintained for the independent investigative function and the prosecutorial function.

Mr. Erin O'Toole: With regard to the reporting mechanism, you specified that the commissioner would have a separate report within your report, or a separate public report. If the commissioner felt that more funds were needed because more investigations were going on than in the previous five years, could he put that in his report to make sure that it were publicly available?

Mr. Brian J. Saunders: Yes.

Mr. Erin O'Toole: Would that be the same for the rest of your department if there were areas that were overtaxed? In your annual report would you talk about the areas that are incurring more expenses, and those sorts of things?

• (1250)

Mr. Brian J. Saunders: Our annual report is more about the activities of the previous year. We tend to make statements regarding our financial situation in the departmental performance report, or the report on plans and priorities. Those are the documents where you would find statements of that nature.

Mr. Erin O'Toole: Thank you.

The Chair: Thank you very much.

That finishes our rounds of questioning today. We have a request from Ms. May for unanimous consent for one small question.

Mr. David Christopherson: On a point of order, Mr. Chair, we have a few more minutes left, so can we just ask questions until our time is up? That would be after Ms. May; I wasn't going to stop her. So Ms. May would have one question and we would then just finish the round in the usual fashion.

The Chair: A round would be a government question and then the other, though there might not be enough time to do that and finish any of the committee business that was deferred.

Mr. David Christopherson: We could each take two minutes.

The Chair: Mr. Christopherson—

Mr. David Christopherson: There would be two minutes for the Green Party, two minutes for the Liberals, and then we'd be done.

The Chair: I love it when we talk through the time we once had.

Mr. David Christopherson: We still have time, Mr. Chair. Go ahead.

The Chair: We're dealing with Ms. May's question first.

Do I have consent for Ms. May to ask one question?

Mr. Tom Lukiwski: Mr. Chair, with all due respect to Ms. May, can we continue with the practice that we've established that when a member of any political party who is recognized around this table wants to give up their time to ask question to Ms. May, they can certainly do so.

Mr. David Christopherson: Let's not play games.

The Chair: On that point of order, Mr. Christopherson.

Mr. David Christopherson: On that point of order, we went out of our way to move a motion trying to make sure that those who were also impacted by this.... The government just wants to keep it so tight as to who gets a say, but the fact remains that the independents represented by Ms. May have are as important in this as anyone. We have time enough to do two minutes each, so that four of us can do two rounds and be out of here with two minutes to spare.

Stop playing games, please.

The Chair: Mr. Christopherson, you know, I am the chair, and I love the advice that you give me, because I like how you chair also, but we don't have that time. We did defer at the start of the meeting some committee business to now.

The question was asked, and Mr. Lukiwski is correct that in the past in this committee time has been given to others by somebody whose time it was. So it's not out of order to say that.

Mr. David Christopherson: I didn't say it was, Chair. I was just offering another opinion for you to consider.

The Chair: Well, I did get that. Thank you.

Do we have consent for Ms. May?

No. I don't have it.

Mr. David Christopherson: You don't have what?

The Chair: Unanimous consent.

Mr. David Christopherson: Why is that?

Mr. Tom Lukiwski: If I may interject, as I pointed out, David, if you want to give up your time to Ms. May, then please.

Mr. David Christopherson: So if I'm understanding this, the government stepped in on the unanimous consent, when we have time left, to deny a member of Parliament, who's representing the independents in our process, a chance to ask a question. Shame on you.

The official opposition will give our time to Ms. May.

Mr. Tom Lukiwski: Excellent. Then we have it settled.

The Chair: [*Inaudible—Editor*]...one question, Ms. May. Please go ahead.

I knew we'd get there.

Ms. Elizabeth May: First, I want to thank the official opposition for doing that, but I want to reaffirm that the rights of every MP in this place are in principle equal and that I do not speak here in committee solely when another party relinquishes its time. I have a right to speak if there is a decision of the chair, and it is the chair's discretion.

My question—

The Chair: But I will suggest that since it is the procedure and House affairs committee, I will follow procedures. So that is where we are.

Ms. Elizabeth May: Yes, I understand. You are a wonderful chair, and I love you.

The Chair: Oh, thank you.

Ms. Elizabeth May: Now may I just try to get whatever time is left?

The Chair: Would you read back the record on that last part?

Voices: Oh, oh!

Ms. Elizabeth May: Yes.

[*Translation*]

I could also say it in French. I love you.

[*English*]

First of all, I want to welcome Mr. Saunders. Ironically, the last time we saw each other he was questioning me on a previous court matter.

What I want to do is to clarify very specifically your concern that this change in Bill C-23 could place you, as Director of Public Prosecutions, in a situation of perceived conflict of interest,

particularly around this issue of certification of appropriate expenses. As things now stand, the Chief Electoral Officer has direct access, within budget, to the consolidated revenue funds without anyone having to certify.

I'd like to ask you if you would agree with me that the status quo presents no difficulties for your office, and the status quo allows the Chief Electoral Officer to have access to previously approved budgetary funds without anyone else in a supervisory position having to certify the appropriateness of those expenses.

Mr. Brian J. Saunders: I take it that you're more familiar with the act than I am. I'm not certain whether he can obtain funds without having anyone certify. I haven't read the existing act closely enough. I thought it was the Chief Electoral Officer who had to certify.

Ms. Elizabeth May: Yes, the Chief Electoral Officer is the one who gets to—

Mr. Brian J. Saunders: To certify those expenses.

If your question is simply whether it would be less trouble for me if I didn't have this responsibility, the answer, clearly, is yes.

• (1255)

Ms. Elizabeth May: Thank you.

Mr. Brian J. Saunders: It's one less responsibility.

The Chair: We'll stop today's testimony here. Thank you.

Mr. Saunders, thank you for coming today and sharing with us.

Team, I have a couple of questions for you. We had deferred the motion at the start of the meeting to later. Are we going back to it?

Madame Latendresse, it's your motion, so I'll let you ask a question.

Ms. Alexandrine Latendresse: I'd like to know if we can have some clarification on the agenda for tomorrow, and if they would be able to—

An hon. member: Just brief us.

Ms. Alexandrine Latendresse: Yes.

The Chair: I have one other question. As we'll be going into clause by clause, I'm trying to get all the evidentiary pieces out—

An hon. member: [*Inaudible—Editor*]

The Chair: Okay, but when Mr. Hawn was here last week, he tabled a document with us. It's a very large handwritten document, and it's only in English. I'm told it can't be translated, so in order to give it to the members, I need unanimous consent in order for it to be distributed the way it is. The document consists of a poll clerk's handwritten notes, apparently, and it's very difficult for us to have a translator sit there and go through a handwritten document to translate.

Mr. David Christopherson: You know, Chair, we run into these things all the time at all committees. It always seems like a one-off, but there are those who are concerned that it causes a whittling and a whittling.

That said, we want to make sure it's available. Is there a saw-off such that maybe we could have it in the office of the clerk if anyone wants to see it but not circulate it? I'm really not comfortable with circulating documents that are not in both languages.

The Chair: Are there any further points on that one?

Mr. Lukiwski.

Mr. Tom Lukiwski: I don't have any issues with that, although I would like to comment, in the couple of minutes we have left, regarding the motion of Ms. Latendresse and deferring it to tomorrow. I don't have difficulty with deferring it until tomorrow, although since we're supposed to be starting clause-by-clause examination tomorrow and I don't know how many clauses and amendments we have—

The Chair: The chair is going to get to that in just a second.

Mr. Tom Lukiwski:—my only caution would be that I would not want to see lengthy debate on this motion tomorrow cutting into the time for examination of the clauses. If we can put a timeline on it—

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Mr. Chair, on a point of order, with regard to the document, I can imagine what it is. It's a handwritten document, which at the time it was written was not intended for any purposes such as being submitted to the committee. I appreciate Mr. Christopherson's concern about this being the thin edge of the wedge and about more unilingual documents getting in here and so on, but my question is if it is at the clerk's office, does it form a part of the permanent record of this committee or is it effectively not going to be available to someone looking at the work of this committee?

The Chair: Hang on. I need to ask that question.

I thought the same way. If it hasn't been distributed, then no, it is not. It's another brief that wasn't distributed, so it's not part of the evidence of this committee.

I need unanimous consent on whether or not to distribute it.

Mr. Scott Reid: I guess I'll go back to Mr. Hawn. I actually think that's a misinterpretation of that provision. Effectively what happens is that any document that is not translated is unavailable to anybody ever permanently—

The Chair: That's right.

Mr. Scott Reid:—and that seems to be a departure from the long-standing practices. Somehow it has just crept in. I would suggest that is an inappropriate interpretation.

I hope you would go back and consult a little higher up and get back to us on that. Effectively making something into a confidential document in perpetuity seems to be a meaningful problem.

The Chair: The clerk and I will discuss that and tell you tomorrow.

Those were the two issues we had. There are close to 300 amendments that we will be starting on tomorrow, so I agree with what's already been said here. Let's not use up much of the time when we start tomorrow on anything but that.

Mr. David Christopherson: Point of order, just to be sure I'm clear on the process. The motion that was passed by the government said that Thursday at 5 p.m., we will be done. We have a roughly 242-page bill and we have roughly 300 pages of amendments. Common sense would dictate that we are not likely to be finished by 5 o'clock. If we're not, is the government open to the idea that we could go beyond that so we aren't limited in our discussion of the clauses and the amendments while realizing that there is an end date to all of this?

Correct me if I'm wrong, but if we're only on page 48 of 242 at 5 o'clock on Thursday, this process ends and the bill is taken from the committee and reported back to the House, and our work is over whether or not we've actually gone through a detailed line-by-line process, which is what our job is. The government motion deems that whether we have concluded that or not, all debate is over at 5 o'clock on Thursday and the bill is out of our hands.

Do I have that right or wrong, sir?

• (1300)

The Chair: Debate will end at 5 o'clock on Thursday. There would still be the voting on each as we work—

Mr. David Christopherson: Right. But I'm saying there would be no further discussion, no further debate, no matter what clause we're on or how far we are. It will just stop.

The Chair: Which tells you why it's important not to be using time on clause by clause for—

Mr. David Christopherson: Two minutes is going to matter in a 242-page bill with 300 pages of amendments. Three minutes is really going to matter.

This is more of the farce. There are 242 pages—

The Chair: Mr. Christopherson, it's not your turn for a speech.

Mr. David Christopherson:—and 300 pages of amendments, and we're going to have until 5 o'clock Friday and we're not even meeting around the clock to do it. This is insane.

The Chair: Well, some of the insanity was the two or three days taken up with a filibuster, but I see the time as 1 o'clock so the meeting is adjourned.

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