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

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**EVIDENCE**

**Tuesday, April 8, 2014**

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**Chair**

**Mr. Joe Preston**



## Standing Committee on Procedure and House Affairs

Tuesday, April 8, 2014

• (1100)

[English]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** I call to order meeting number 29 of the Standing Committee on Procedure and House Affairs, pursuant to the order of reference of Monday, February 10, 2014, for the study of Bill C-23, an act to amend the Canada Elections Act and other acts and to make consequential amendments to certain acts.

We have Monsieur Lortie with us this morning. Mr. Conacher is supposed to be joining us, but I'll let Monsieur Lortie go ahead with his opening statement and if, by then, Mr. Conacher has come, he can give his opening statement. If not, we'll proceed with questions, and put Mr. Conacher on the next panel, I think.

Monsieur Lortie, welcome. It's great to have you here today. If you have an opening statement, we'd love you to give it now.

**Mr. Pierre Lortie (Senior Business Advisor, Dentons Canada, As an Individual):** Mr. Chairman, first I'd like to thank you for the invitation to testify before your committee.

[Translation]

The Canada Elections Act is one of the few federal statutes that is consulted and used by a large number of Canadians. Whenever elections are held, thousands of Canadians must be able to understand this legislation, which sets out the procedures for the registration of voters, the administration of the vote and the conduct of election campaigns.

The scale and scope of such an operation must not be underestimated: there were 66,146 polling stations in the election of May 2, 2011, including 1,669 mobile polling stations, and approximately 350,000 volunteers and temporary election officers participated in the process.

In my opinion, any amendments to the Canada Elections Act must reflect the values upon which Canadian society is founded and must flow from the fundamental principles that characterize a sound electoral democracy. One of those key principles is guaranteeing and promoting citizens' right to vote.

During the 1980s, Canada took pride in the fact that the average proportion of citizens who participated in federal elections was 75% —a voter turnout rate far in excess of those reported in many western democracies, including the United States. Unfortunately, this is no longer the case: the average voter participation rate for the five federal elections held since the year 2000 is only 61.9%, which is not much higher than the participation rates for U.S. presidential elections. This is a shamefully low voter turnout rate. Any properly

thought out reform of our electoral statutes and regulations must, first and foremost, seek to correct this situation.

The provisions of the bill extending the voting period at advance polling stations constitute a measure that meets this fundamental objective. Unfortunately, other measures, such as those concerning the use of voter information cards as proof of identity and the practice of one elector vouching for the identity of another, are ill advised. This last provision undoubtedly contravenes the provisions of the Canadian Charter of Rights and Freedoms. The Charter is unequivocal on this issue. It says: "Every citizen of Canada has the right to vote..." It has been clearly established in case law that a right guaranteed under the Charter can only be restricted insofar as an overriding public interest is demonstrated and, in that case, only insofar as the imposed restrictions are justified within the meaning of section 1 of the Charter and have a minimal adverse effect on a fundamental right enjoyed by Canadian citizens.

Banning, for specious reasons, these practices that have not so far been the subject of widespread complaints from candidates across Canada and which the Chief Electoral Officer of Canada considers essential for allowing thousands of Canadians to exercise their right to vote, does not meet the criterion of proportionality and is not consistent with the sense of ethics that must prevail when such matters relating to the very pillars of our democracy are being considered.

The second key principle is ensuring the fair and equitable nature of the electoral process. To ensure that the electoral process remains fair and equitable, the Canada Elections Act imposes spending limits on all who participate in election campaigns, including private individuals and groups who are independent of the candidates and parties. Bill C-23 does not call into question these basic provisions, the just and reasonable nature of which has been confirmed in decisions by the Supreme Court of Canada. However, this goal is undermined when ambiguous provisions, encouraging circumvention of the rules and undermining Elections Canada's ability to verify and confirm that the practices adopted do not contravene the Act, are incorporated into the legislation. This is the case with section 376(3), which makes it possible to exclude from election expenses the commercial value of services provided to a registered party for the purpose of soliciting contributions from individuals who contributed at least \$20 in the five years preceding the date of the vote.

•(1105)

I do not deny that it would be worthwhile for a party to solicit individuals who have previously supported a party or one of its candidates. However, if the cost of this activity is too high to fit under the expenditure ceiling, transparency should be exercised and the ceiling raised by a reasonable amount, rather than undermining Canadians' confidence in our electoral system by adopting provisions that encourage reprehensible behaviour and imposing additional persnickety rules on our parties.

The third principle is that of bolstering the primacy of political parties in Canada's political system.

Political parties play a vital role in our parliamentary democracy, in particular through the profound influence they have over access to the House of Commons. The erosion of Canadians' confidence in political parties, as evinced, among other things, by how difficult it is for parties to recruit new members, does not bode well for the future. Although this phenomenon is only a partial reflection of current social trends that find expression in so many other ways, political parties are not helping their situation by refusing to conform to social standards that are perceived as normal requirements in an advanced society.

Bill C-23 would have made a useful contribution in this regard if provisions had been added to ensure that political parties were required to produce documents in support of their spending reports. Parties received more than \$30 million in public funds in 2011. Also, political parties should be subject to rules concerning the protection and use of personal information. Such requirements are imposed on businesses, and rightfully so. No legitimate reason exists to exclude political parties and their associations from a similar requirement.

The final principle is that of boosting Canadians' confidence in the integrity of the electoral process. In its work, the Royal Commission clearly identified the need for a mechanism that would allow the Chief Electoral Officer to issue interpretation notes and guidelines on the application of that act. Such a mechanism is included in the electoral legislation of many of the world's leading democracies, and the resulting benefits are well documented. Consequently, Bill C-23's establishment of such a mechanism is to be commended.

As to the detailed terms and conditions involved, I believe your committee would do well to examine how other democracies, such as the United Kingdom, for example, fared in their implementation of such provisions.

Bill C-23 fills another important gap in the existing legislation by adding provisions concerning elector calling services. Overall, the proposed measures are consistent with the recommendations of the groups of experts who studied this issue, particularly those formulated by the IRPP. You have already heard suggestions for improving the new regime, in particular with regard to the information retention period and the advisability of adding to the list information that must be kept, such as the telephone numbers that have been called. In any case, it is crucial that the mechanism concerning calling services be in force when the next election is held.

The proposed regime does not prevent a third party from signing an agreement with an elector calling service provider; it frames this activity. That being said, I think it would definitely be preferable for the cost of such a service to be expressly recognized in the definition of election advertising expenses.

In conclusion, I would like to say that Bill C-23 concerns several other fundamental aspects of our democratic regime, some of which I could not touch upon in the amount of time allotted to me. I would of course be pleased to discuss them during the question period, should you deem it appropriate to bring them up.

•(1110)

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

[*English*]

Mr. Conacher, it's great to see you again. If you have an opening statement, we'll hear from you now.

**Mr. Duff Conacher (Co-Founder and Board Member, Democracy Watch):** Thank you very much for this opportunity to testify on this very important bill. I'm especially honoured to be testifying beside Monsieur Lortie.

[*Translation*]

I really need to practice my French.

[*English*]

There are many technical terms with regard to this proposed legislation, so I will make my remarks in English. I welcome your questions afterwards.

Democracy Watch's position is that there are 10 measures in Bill C-23, the so-called fair elections act, that are of concern that will actually make federal elections more unfair. I'm going to focus on six priorities that we've identified and summarize those. I'll go through a few measures that the bill fails to include, and those measures are needed to make federal elections more fair.

The six really unfair measures in Bill C-23 are as follows.

As Monsieur Lortie highlighted, there's the prohibition of one voter vouching for the identity of one other voter, and the prohibition on the voter registration card ever being certified as a piece of valid ID. Together, these changes will make it more difficult for hundreds of thousands of voters to vote, and so they should be removed from Bill C-23.

Instead, the voter registration card should be added to the list of valid ID. To solve the problem of irregularities with vouching that has been documented, Elections Canada should be empowered and provided with adequate funding to hire and fully train all election workers well before each election, and to also make the voter registration list and ID checking even more accurate. I'm quite sure there is a compromise, as other jurisdictions have found on this issue, that will remove and not increase barriers for hundreds of thousands of people voting.

The second area of concern for Democracy Watch is the failure of the bill overall to democratize the federal political finance system by reducing the annual donation and loan limits to an amount an average voter can afford, and the failure to re-start the annual per-vote funding for parties, which was the most democratic aspect of the political finance system, given that it was based on votes received by each party.

There are still loopholes that are left by the bill on gifts and donations to certain types of candidates. The hike in the donations limit for individuals in Bill C-23 are huge hikes in some cases and hugely undemocratic. An average Canadian cannot afford \$3,000 a year. That would be the new maximum limit when you combine the donation to parties and the combined donation that's allowed to riding associations of each party.

Certainly, many candidates will not be able to afford to donate \$5,000 to their own campaign, or as a party leadership candidate, \$25,000 to their own campaign. If you're going to uphold the fundamental democratic principle of one person, one vote, donation limits must be set at a limit that an average person can afford; otherwise, you're allowing wealthy people to use money to have unethical and undemocratic influence over parties and candidates.

In the area of loans, while the loan limits on individuals are good, allowing banks to make unlimited loans to parties and candidates is dangerously undemocratic, as well. Banks are federally regulated and they will be able to pick and choose candidates to support with loans. That's a huge favour for a candidate, even though the candidate has to pay it back.

If the candidate wins, just the fact that they were boosted by a bank loan will be a favour that will put that MP, if they're elected, in a conflict of interest. It's better if all candidates have to reach out to as many voters as possible and build a democratic base of support, not a base of support from wealthy interests and banks.

The third area of concern is the change, as Monsieur Lortie also highlighted, to not count the amount spent on communications for fundraising purposes in the total amount parties are allowed to spend during election campaigns.

• (1115)

This is the first loophole that has been created in spending or donation limits since spending limits were first established in 1974. Forty years have passed and the trend through the whole 40 years has been to close loopholes. This is the first loophole that has been actually created, and like any loophole, it will very likely be abused to hide millions of dollars of unaccountable spending.

The failure to empower Elections Canada in the bill to appoint the auditors for all the parties, riding associations and candidates, and allowing these entities to choose their own auditors is the fourth area of concern, and relates to the spending loophole because Elections Canada will not have the right to all the documentation needed to ensure that loophole has not been exploited to exceed the legal campaign spending limits. This is essentially allowing the parties, candidates, and riding associations to audit themselves, and in combination with this loophole, is essentially a recipe for corruption.

The fifth area of concern is the failure to empower Elections Canada to appoint all election workers, and instead move in the other

direction by extending the dangerously unethical power of political parties and candidates who won or came second in the previous election to force returning officers to appoint even more front-line election workers.

The sixth area of concern is the failure to require that the Commissioner of Canada Elections and the Director of Public Prosecutions disclose all of their rulings on all complaints. Instead, the bill requires them to keep all of that information secret. This will make it impossible to hold the commissioner and the director accountable if they make unfair, biased, or improper rulings or enforcement decisions.

Overall, even if these six changes that we're calling for were made, there are other areas that need to be addressed to make federal elections actually fair. We need an honesty in politics law so that parties and candidates can't bait voters with false promises or break promises after elections. We need to change the voting system so that it is more fair and gives parties the number of MPs based on actual voter support, regulate nomination races, have Elections Canada run the debates, and overall give all of the watchdogs more powers, and more clear powers, to ensure compliance and investigate.

I'll leave it at that. I welcome your questions on this very important bill that, unfortunately, includes many measures to make federal elections more unfair, and only a few measures—the registration of robocalls, the limits on loans, and the increasing of fines—that will make elections more fair. There are many more measures that make elections unfair and also fail to address current flaws in our federal elections system.

Thank you very much.

• (1120)

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

We will go to a seven-minute round to start off with.

Mr. Reid, you're first.

**Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC):** I will start with a couple of questions for Mr. Lortie, if I could.

I want to start by going back to page three of your report. I think it's also page three in the French version. You cite section 3 of the Charter of Rights, which I'm going to read here. It says:

Democratic Rights

Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

There has been a debate in the Supreme Court going back to a number of decisions, as far back as the 1990s, as to what this right means and whether it should be interpreted narrowly or broadly. I think the chief justice has incorrectly tried to interpret it narrowly. The majority in the case of *Opitz v. Wrzesnewskyj* felt that it should be interpreted broadly. They didn't actually address the constitutional question overtly, but they indicated that merely technical or bookkeeping violations of the Elections Act ought not to invalidate a vote, thereby indicating that voting is a right, not a privilege, that the right cannot be restricted for bookkeeping reasons without legitimate overriding concerns. I think all of that fits in neatly with the Oakes test, the normal application of our constitutional rights as being purposive and therefore subject to a larger liberal as opposed to a narrow technical interpretation.

I say all of this because I want to set up the fundamental problem that I think exists with regard to the whole issue of vouching, and it's this. I think we suffer from a database issue here. Elections Canada has, following the law, shifted from doing an enumeration that provided it with a fairly up-to-date database of information—very few people had moved and could not be recorded when the old system was used—to a new system based on what we thought back in the 1990s would be systems that would allow us to keep up with where people are. It hasn't worked out, and we know from Elections Canada's reports that they have an error rate in excess of 20% in 10 ridings across Canada. They won't tell us which ones those are. For the country as a whole, the preliminary voters list has an error rate of 17% with regard to people's addresses. But the preliminary list is what's used for voter information cards. That indicates that they largely don't know where people live.

The question is, how do you deal with this?

They have not unreasonably said that there are going to be fewer fraudulent voters or even mistaken voters who go to a poll where they couldn't legitimately vote than legitimate voters who aren't on the list. Therefore we try to expand things as broadly as we can to allow as many people to come in to vote. We try to find ways of facilitating that, thus the long list of ID, thus the proposed use of the voter information card nationwide as an identity card that can be used. All you need to do is turn up.

It doesn't get away from the fact that the card has a 17% error rate, higher in certain ridings and it doesn't get away from the fact that vouching also has problems, one of which is that it actually can't be used in many places where people are least able to have ID, such as people in long-term residential care.

All of this makes me think that the real solution here is to move away from vouching or the use of the voter information card for identity purposes to something else. One of the ideas that has been discussed on a number of occasions in this committee by witnesses is the idea that we would move to a model that's used in a number of jurisdictions. It's been described here as the Queensland model because I gather they use it in the Australian state of Queensland. If you show up and you don't have proper ID, your ballot is treated as it would be if it was a mail-in ballot. It's placed into a blank envelope to ensure anonymity. It is then placed into a second envelope upon which some sort of declaration of identity is made. Then afterwards there's an attempt to match this up with the voter. This allows people to show up who don't have proper ID. It allows a kind of post-fact

enumeration of people who were left off the list. It essentially prevents the possibility of an invalid vote being cast, whether fraudulently or by accident.

Accidents can happen. I tell everybody the story of my ex-wife being told to go vote at a different poll from me, in a different riding, even though we lived at the same house.

What would your view be? Mr. Conacher, you can answer this as well, seeing as I've used up almost all of my time. What would your view be as to whether this system would work to resolve the problems that would exist if vouching and the voter information card were both removed as possible uses of identifying people's names and addresses?

• (1125)

**Mr. Pierre Lortie:** I think the issue of vouching and the issue of the information card or whatever are two different issues. In the case of vouching the person vouching needs to be identified as to their own identity and so on. In essence every head of an electoral commission would basically tell you that vouching is important.

The fact of the matter is candidates and parties also have people in the polling stations. To a large extent that is a safeguard that you cannot just eliminate from any discussion. There is a series of safeguards, if you want, around that.

To a large extent I don't think we have seen people in Canada coming out as we had with the robocalls and so on and saying that there is a scandal about using vouching or using the card. That's just not happening. In essence if you have a charter that tells you have the right to vote, bureaucratic measures don't trump that.

To say you have a list of 13 or whatever pieces of paper does not address that issue. If you have safeguards around, that's fine, but on the other hand you also have to ensure that the process works.

One of the issues with a lot of the paperwork being required is that it blocks the process. It is not necessarily true that all the paperwork we ask for is important. As a matter of fact in this bill you say we don't want the date of birth anymore; we want the year of birth. Does it really matter if it's November or whatever?

It's not true that everything we're requiring that is imposing issues is truly required. On the other hand, at least on the vouching, I don't think you can say you'll take it out and tough luck if you cannot vote. That ain't going to work; I'm sorry.

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

Mr. Reid you're past the time.

Mr. Scott, for seven minutes please.

**Mr. Craig Scott (Toronto—Danforth, NDP):** Thank you to both witnesses. I have several questions, and I'm just going to state them at one time, and then you can decide which ones you might like to touch on.

[Translation]

Mr. Lortie, you said that section 376(3) was problematic because it encourages the circumvention of the rules and undermines the ability of Elections Canada to verify and confirm that the practices adopted do not contravene the act. You also said that that section makes it possible to exclude from election expenses the commercial value of services provided to a registered party for the purpose of soliciting contributions from individuals who contributed at least \$20 in the five years preceding the date of the vote.

In the bill, why was the wording “at least \$20” chosen? If a donation is under \$20, it can be anonymous. The wording is not “over \$20”, but rather “\$20 or more”.

[English]

The second question is, Mr. Lortie, in your original massive and incredibly helpful report from the late 1980s, at one point it says:

The Canada Elections Act must not impede the appropriate use of new technologies in the electoral process as they become available; this will help to ensure that the voting process remains user friendly and cost effective. Specific developments in communications technologies may be difficult to anticipate, however. The Act should not freeze voting and other election procedures at the level allowed by current technologies; but at the same time the integrity of the electoral system must be maintained.

I'm not sure if you're aware, but in the bill there is a special singling out of electronic voting so that this is the sole alternative voting process that Elections Canada now cannot do without having the full agreement of the House of Commons and the Senate. For any other alternative procedure, it goes to the appropriate committee, this one in the House and a committee in the Senate. That's the current law. They're creating a huge obstacle for this one form of voting without allowing Elections Canada to engage in its own tests. I'm wondering if you have any comments on if it's appropriate to add that extra obstacle.

The last two questions will be short.

It's true that there's an extension of the politicization of appointing of election day workers, but the most serious addition is adding central poll supervisors as the first-place party or candidate from the last election's appointment. The current system ostensibly has this so-called balance, because deputy returning officers and poll clerks are appointed by the first-place and second-place parties. Is there any conceivable reason why at this point in time the first-place party should now also be given this additional appointment, apart from the fact, and I totally agree, that political parties should not be involved in the first place?

Last, Mr. Conacher, you mentioned the \$5,000 donations to one's own campaign. It in fact could end up being \$8,000. You can give \$5,000; you can give \$1,500 to your EDA; and you can give \$1,500 to the national party that one way or another might make its way back to you, although you can't make that deal in the first place.

I'm just wondering if you could each comment on any one of those points that you like.

• (1130)

**Mr. Pierre Lortie:** On the question about the exception, the exception is not about the amount; it is about the fact that an activity that is going to take place during an electoral campaign that is fundamentally about politics is being excluded. That is what is wrong. Given the almost impossibility to really narrow it only to that, what you're giving rise to is people playing games, and that in itself is wrong. If you need the money, raise the ceiling, but for Christ's sake do it straightforwardly and do not invite people to play games. That's my first point.

With respect to the second issue about the candidates or nominating people and so on, the fact of the matter is that an election is a huge undertaking that requires basically almost 200,000 people to be engaged. To think that Elections Canada can have that list alone and supply all those bodies, I don't think is reasonable. I don't think that's practical and I don't think that's true.

The other point is that it's not because somebody has participated in a party or whatever that he has no merit. It's not because you engage in politics that you don't have merit or qualities. Elections Canada chooses people on the basis of merit, and that's fine. But basically to say because a candidate recommended someone, the person doesn't have merit, I think that's wrong. Basically you need to place Elections Canada in a position where it can choose, but it is normal and I think it's right for the parties and the candidates to be able to suggest names for those positions.

**Mr. Duff Conacher:** I agree with that. In case there was a misunderstanding, when I'm saying that Elections Canada should appoint all the workers, parties could still suggest people. It's just that now the returning officer has no choice under the bill but to appoint the person if the party or candidate—

**Mr. Craig Scott:** That's not the point of the question. The question's about central poll supervisors staying on.

**Mr. Duff Conacher:** Yes, but there's no reason to add to this partisanship with this new position being appointed by the ruling party. No party should be able to force the returning officer to appoint a certain person. They should have the power, of course, to suggest anyone. There would be an application process where people would come forward, or the parties would put the people forward, but the returning officer and Elections Canada would be free to appoint whom they want, because there'd likely be several applications.

I agree also with Mr. Lortie that the problem is creating this loophole in the spending disclosure. That's the overall problem. However you structured it, it would be a problem because it's a loophole and it goes against the last four-year trend of closing loopholes.

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

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

• (1135)

**Mr. Kevin Lamoureux (Winnipeg North, Lib.):** Mr. Lortie, I must say that I'm a very passionate person when it comes to our election laws. I can only imagine, given your history with the Royal Commission on Electoral Reform and Party Financing, and so forth, that you must be a man of very strong conviction with a passion for democracy in our election laws.

What offends me the most about this legislation is the fact that the government of the day, one political entity, has decided to change the laws. No consultation was done. No other political party supports what's being done. Elections Canada's current commissioner doesn't like what he is seeing. The past commissioner has raised serious concerns with regard to this. The Commissioner for Canada Elections is saying he should be staying within Elections Canada and not be taken out.

A hundred-plus political academics from coast to coast are condemning the legislation, and this is a first. It seems to me no one is coming onside and saying this legislation should be passed.

I'm appealing to you to respond, and we'll put aside what's inside the legislation right now. When you want to change an election law, is this the way you should change it, or is there a better way to make the change? What should happen when it comes time to change an election law? In your opinion what should be done?

**Mr. Pierre Lortie:** I think historically the major changes from an ethical point of view were brought when ceilings were put on expenditures. At that time it was a minority government, so you had to have the backing of other parties to do it.

That came out of the Watergate hearings in the U.S. It was in the same period. Canada did the right thing. It basically put a ceiling on expenditures. The U.S. went the other way, trying to cap the amount of contributions. The bottom line is if you cap the amount of contributions, you're going to have runaway election expenses. The only way to have elections that are competitive and fair is to have a cap, a ceiling that represents the cost. We have to stop being naive. An election across Canada costs a lot of money, so the cap has to be reasonable in that sense, but the cap makes sure you don't have runaway expenses. In that sense Canada did the right thing. In essence it came about at that time from cooperation between the parties.

**Mr. Kevin Lamoureux:** Should one political party have the right to take it upon itself to change the election laws in complete opposition to all the other stakeholders?

**Mr. Pierre Lortie:** There is a difference between what would be preferable and what you can do. This is a law, and Parliament decides.

**Mr. Kevin Lamoureux:** Okay, what would be preferable from your experience?

**Mr. Pierre Lortie:** I think these hearings are useful in that sense. In some areas it would have been useful to have better research to back up some of the decisions. Some was done with respect to the robocalls, and I think the reports by the experts and so on have been very helpful in guiding the legislation in the right direction.

**Mr. Kevin Lamoureux:** Do you think the governing political party should have the moral authority to be able to say they're going

to change the election laws and they don't care what other political parties or the different independent organizations have to say?

**Mr. Pierre Lortie:** I think that's your problem as an MP.

**Mr. Kevin Lamoureux:** It is a problem, no doubt.

Elections Canada wanted us to have the ability to compel witnesses, believing at the end of the day if we or Elections Canada doesn't have the ability to compel a witness there will be people in Canada who will ignore our election laws because they know they don't have to testify.

Do you think this is a shortcoming? Should we have responded positively to Elections Canada's request to compel witnesses?

**Mr. Pierre Lortie:** I think I would take the question more broadly. I'm quite neutral about the issue of bringing the commissioner under the Director of Public Prosecutions. I don't think the arguments that have been made against that hold a lot of water.

There are two issues that could be corrected simply. The first one is that there have to be provisions in the law that give a flow of information between Elections Canada and the commissioner. Second, the powers of the commissioner should be the same as those that are given to other people under the Director of Public Prosecutions. It is clear and normal that the powers of inquiry of the equivalent commissioner with respect to the combines law, which is basically for economic crime, are more extensive than the ones you give for crime against our electoral system. That is wrong.

I think there's a good argument to bring them together, to bring them under the Director of Public Prosecutions, but basically it should be the same powers for everybody under that organization. It would be a simple change—

• (1140)

**Mr. Kevin Lamoureux:** I agree that compelling the witness is absolutely critical.

We only have another 40 seconds to go, so another thing is in regard to Elections Canada's ability to communicate on issues such as studies and to do outreach.

Do you have any thoughts on that particular issue?

**Mr. Pierre Lortie:** I think the legislation goes too far. It's important that Elections Canada have the ability to promote, in essence, the electoral process in schools and so on, and that it has the ability to conduct research. I would suggest to you that if you look at what the U.K. has done in their last law with respect to communications and so on, you would find a proper balance that would be useful and could serve as a good example for you.

**The Chair:** Thank you.

We go to a four-minute round.

Mr. Opitz, you're starting that one off.

**Mr. Ted Opitz (Etobicoke Centre, CPC):** Mr. Conacher, you said a couple of things that concern me.

You said Elections Canada needs to get the funding that it needs. But it has statutory authority to spend what it needs on elections. There really isn't a cap. Are you suggesting there's a budget of some sort? Can you provide me with the number?

**Mr. Duff Conacher:** With regard to election workers, they would have to wait for the suggestions to come from the parties or the candidates, because those suggestions bind the returning officer to appoint people, and that often doesn't happen until quite late.

**Mr. Ted Opitz:** What does that have to do with this funding?

**Mr. Duff Conacher:** Well, if they were empowered earlier, then they would be able to hire people and make these appointments.

**Mr. Ted Opitz:** So you're talking about the payment of electoral workers.

**Mr. Duff Conacher:** Exactly. It's a budgetary matter. They would then be able to train everybody better, and the polling station would be run better, and the voting irregularities would diminish.

**Mr. Ted Opitz:** Well, I think the CEO has brought latitude there, because that's going to be the point in running and demonstrating that.

If I may, I'll read something from my own Supreme Court case. I'll get to the second paragraph of the conclusion. The judges said:

At issue in this appeal are the principles to be applied when a federal election is challenged on the basis of "irregularities".

There was no allegation of fraud, and so forth. It goes on to say:

Given the complexity of administering a federal election, the tens of thousands of election workers involved, many of whom have no on-the-job experience, and the short time frame for hiring and training them, it is inevitable that administrative mistakes will be made. If elections can be easily annulled on the basis of administrative errors, public confidence in the finality and legitimacy of election results will be eroded. Only irregularities—

He goes on to talk about the integrity of the process and the fact that training is an issue.

I don't disagree that early training—

**Mr. Duff Conacher:** That's my exact point.

**Mr. Ted Opitz:** Yes, and that's in the judgment. But that's within his broad mandate to do.

**Mr. Duff Conacher:** But if the ruling party or the party that placed second in a riding is allowed to force the returning officer to appoint certain election workers, then the returning officer has to wait. They can't hire people early, and can't, as a result, train them early and train them fully.

**Mr. Ted Opitz:** I have to correct you. These are nominees. Nobody's forcing the individual to select.

**Mr. Duff Conacher:** No, the returning officer is required, if the party or—

**Mr. Ted Opitz:** He will make a selection out of a pool of nominees.

**Mr. Duff Conacher:** No, no. If the ruling party or second party in the previous election puts forward a candidate, the returning officer is required to appoint that person. That is the problem. That comes very late. They don't have time to train them fully. Plus, they could have partisan bias. I agree with Mr. Lortie, it doesn't mean they will; it could still be merit-based, with a qualified person. But the returning officer should not be forced to appoint them.

• (1145)

**Mr. Ted Opitz:** I have limited time, so I'm going to move on.

You talked about auditors and you suggested that auditors could be corrupted. A chartered accountant or an accounting professional is certainly not going to jeopardize their livelihood and their licence—if they're a chief financial officer or an official agent—by being corrupt. For a single election, somebody is not going to jeopardize their entire life and ability to earn—

**Mr. Duff Conacher:** We have a current instance of a certain party's supervisor contacting the auditors who were doing audits of senators, and that—

**Mr. Ted Opitz:** I'm not saying it's not—

**Mr. Duff Conacher:**—violated the firm's internal policies.

**Mr. Ted Opitz:** I'm not saying it's an individual or two. People who want to break the law will be there, but that's why we have penalties and laws in place to deal with that quite firmly.

**Mr. Duff Conacher:** When you choose your own judge, it's always dangerous, I would say. Choosing your own auditor is dangerous. Elections Canada should be appointing these people.

**Mr. Ted Opitz:** I would disagree with you on that.

How much time do I have left, Mr. Chair?

**The Chair:** In one second, none. Thank you, Mr. Opitz.

We'll move to Madam Latendresse.

[*Translation*]

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

I would like to continue to explore what Mr. Opitz just addressed, because I think it is important to really understand this point.

I would like to quote a recommendation made by the Chief Electoral Officer following the 40th general election:

Were returning officers not required to solicit the names of potential deputy returning officers, poll clerks and registration officers from candidates, they could begin recruitment earlier and would have more time to adequately train new staff.

This corresponds completely to the point Mr. Opitz raised. The main recommendation of the Chief Electoral Officer and several other people who are very familiar with the election process is to be able to hire people earlier in order to provide them with better training, which would considerably reduce the administrative errors mentioned in the Neufeld report and in general.

I think this is a much more appropriate solution in order to improve the system, rather than eliminating the vouching system entirely and using the voter information cards.

Do you agree with the CEO's recommendation?

**Mr. Pierre Lortie:** I don't think that is practical. I have seen enough elections to tell you that it is unrealistic to say that the Chief Electoral Officer or whoever is responsible for an election in a riding or municipality will be able to find enough staff within the required timeframe. I believe it is entirely natural to have a pool of individuals put forward by the candidates or the parties, and this facilitates the process.

Should those appointments be made earlier? Yes, that would facilitate the process. However, there is a difference between saying “I want to have it a little earlier” and saying “it’s not you”.

**Ms. Alexandrine Latendresse:** What the Chief Electoral Officer was asking for was to be able to hire them earlier himself. At present, he cannot hire anyone until he receives the lists from all the parties. So, all he was asking for was to continue—

**Mr. Pierre Lortie:** Are you talking about moving up the date of the list?

**Ms. Alexandrine Latendresse:** He said that, at this time, about 30% of the staff comes from that list. He wants to continue to use the lists from the parties, but he is simply asking to be able to hire people a little earlier in order to be able to give them better training.

Mr. Conacher, do you have anything you would like to say about this?

[English]

**Mr. Duff Conacher:** Democracy Watch's conclusion is that the current measure prohibiting vouching and prohibiting use of the voter information card will be found to be unconstitutional, and there is a reasonable compromise that includes empowering Elections Canada to hire people earlier, which means the parties could still put forward suggestions. I agree, they can be sources of good people who are qualified, but Elections Canada should have the discretion as to who they appoint and not be required to appoint any candidate put forward or nominated by a party or a candidate.

[Translation]

**Ms. Alexandrine Latendresse:** I have another question about Elections Canada's power.

We had the opportunity to hear from the current Commissioner of Canada Elections and the former commissioner. They said that the act as amended would prevent the Commissioner from talking about any reports he produced or any investigations he conducted. He would not have the authority to share those reports with anyone. Once an investigation was complete, he would not have the authority to say, for example, that he did not find any evidence of fraud or anything else. The Commissioner noted that that was the main problem.

What do you think?

• (1150)

[English]

**Mr. Duff Conacher:** If you're talking about the Commissioner of Canada Elections, yes, it's a clear bar on the commissioner and the Director of Public Prosecutions from disclosing anything about any investigation unless they prosecute or unless they do a compliance agreement. If they prosecute, obviously there's an open court proceeding and a compliance agreement is also disclosed. So that's very dangerous. The commissioner keeps things secret now, unfortunately, in terms of rulings, but will be required to in the future.

To be clear, the act does not prevent Elections Canada if it receives complaints.... Elections Canada under the changes will be able to disclose details about any complaints that it receives, other than what would be prohibited under the Privacy Act.

**The Chair:** We'll stop there.

We'll go to Mr. Lukiwski, for four minutes please.

**Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC):** Unfortunately, because I have only four minutes, I'm restricted in the number of questions I can ask.

I do want to engage you, Mr. Lortie, on something you said earlier, that is, on whether or not it would be appropriate to have the Commissioner of Canada Elections removed from Elections Canada and put over to the DPP's office. We obviously agree with that. To us it's a matter of independence.

The point, which I will raise with subsequent witnesses as well, is that when the Commissioner of Canada Elections was here, he maintained that he currently does have independence but under questioning from me, he admitted that the Chief Electoral Officer hires him, has the ability to fire him, and quite frankly can direct the Commissioner of Canada Elections into conducting investigations.

I don't know about you, Mr. Lortie, but in my world, if somebody can hire me, fire me, and tell me what to do, that person is my boss and therefore I'm not independent. We believe it is appropriate to remove him, give him full independence, so that he or she, depending on who becomes commissioner years hence, would have the ability to determine his or her own investigations.

They can certainly receive requests and appeals from anyone, including the Chief Electoral Officer, but the Commissioner of Canada Elections would determine himself whether it would be appropriate to go forward with an investigation. I consider that to be true independence.

I appreciate your comments and I agree with you, Mr. Lortie, when you say there still has to be close communication between administrations, in other words, the Chief Electoral Officer and Elections Canada and the commissioner. If they want to suggest an investigation take place, the Commissioner of Canada Elections has to know the background. They have to know the relevant information. Clearly that has to take place and I believe it would. But we're saying that to maintain clear independence and the perception of independence and no interference, we would remove the Commissioner of Canada Elections from his current status as being beholden, frankly, to Elections Canada and put him into a position where he's truly independent.

I'd just like you, in the few moments we have left, to add some comments on that.

**Mr. Pierre Lortie:** I'm not sure I would argue the way you argue, because at the end of the day, somebody is appointing the Director of Public Prosecutions and somebody is appointing the.... So if the appointment means you're not independent, it's just not correct. In the case of the Director of Public Prosecutions, the law puts him in an independent position and so on.

Quite clearly for me, if he's independent of the Chief Electoral Officer, that he be there or that he be basically where all prosecutions are taking place for the federal government, it shouldn't change anything as long as you have the flow of information on the cases. I think there are merits of putting everything together.

I have one caveat, which is that I think it's abnormal that the Commissioner of Canada Elections not have the same power that is given for economic crimes to the Director of Public Prosecutions. It should be the same place. If you're going to put it there and you have the argument to put them together, it should be the same powers that they have for just about any criminal investigation.

**Mr. Tom Lukiwski:** Do you agree with my contention, however, that it is appropriate for the Commissioner of Canada Elections to have the ability to determine on his own volition which investigations to pursue instead of being required to investigate complaints or suggestions or directives from Elections Canada? Should he have that independence?

• (1155)

**Mr. Pierre Lortie:** Basically at the present time, the Director of Public Prosecutions has that power.

**Mr. Tom Lukiwski:** No, I'm talking about currently the Chief Electoral Officer can direct the Commissioner of Canada Elections to conduct an investigation.

**Mr. Pierre Lortie:** That's not what Bill C-23 says.

**Mr. Tom Lukiwski:** Yes, it does. It removes the ability from Elections Canada to tell, force in other words, the Commissioner of Canada Elections to conduct an investigation. It gives the ability—

**The Chair:** I'm going to stop you, Mr. Lukiwski. Thank you.

We're past our time, so I'll thank you both today. Thank you for your input, and thank you for your words to this committee.

We'll suspend for a couple of minutes while we change witnesses.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

•  
• (1205)

**The Chair:** We are back. We are still in public, televised, and we have three great new guests with us.

From the Council of Canadians, we have Steven Shrybman.

We have Simon Rowland from Direct Leap Technologies Inc.

Leading us off today, from Institut du Nouveau Monde, we have Madam Fahmy.

Madam Fahmy, you are going to go first, please, with your opening statement, in five minutes or less.

**Ms. Miriam Fahmy (Director, Research and Publications, Institut du Nouveau Monde):** Thank you.

[Translation]

Hello everyone.

As the chair of the committee mentioned, my name is Miriam Fahmy and I am the Director of Research at the Institut du Nouveau Monde, a non-partisan, non-profit organization that is

based in Montreal. Its mission is to increase and support citizen participation in democratic life.

I would like to thank the committee for inviting us to testify about Bill C-23, the Fair Elections Act.

I will now provide you with some information about the INM.

The INM organizes public debates in which ordinary citizens are invited to participate. These activities help to strengthen citizenship skills and citizens' knowledge of social issues. The INM also organizes citizenship schools for college-aged youth and young adults in their 20s.

Since 2012, the INM has been working with the chief electoral officer of Quebec in order to develop and implement promotional campaigns to encourage young people and the general public to vote.

Finally, the INM stays abreast of research on democratic life, more specifically, voter turnout. The INM is concerned about a number of aspects of Bill C-23. However, given our practices and expertise in civic education, my speech today will focus on a single aspect of the bill and that is the amendment proposed to section 18 of the Canada Elections Act, which would take away Elections Canada's public education mandate.

As you all no doubt already know, there has been a very strong decline in voter turnout in Canada. However, an even more serious trend has emerged since the 1980s, and that is a consistent, significant drop in initial turnout or turnout among members of a new cohort of electors who are eligible to vote for the first time. This rate went from 70% in the 1960s to 50% in the 1980s and 40% in the 1990s. Since the beginning of the 2000s, this rate has stayed below 40%.

All of the studies show that voters who do not vote the first time they have the right to do so are unlikely to do so later on. Given that, today, so few new voters tend to vote when they come of age, the general rate of voter turnout is expected to continue to drop. According to experts, there is no doubt that the drop in voter turnout in federal elections is mainly due to the drop in initial turnout.

That is why the INM believes that an overall strategy, the objective of which is to reverse this trend that is threatening the legitimacy of the electoral process, should focus mainly on young people aged 16 to 24, or young people who are on the verge of acquiring the right to vote or of voting for the first time.

Like the INM, Elections Canada conducted research in order to understand why young people do not vote. The results of this research show that the main reason is that young people are not interested in politics. When young people are asked what could be done to pique their interest, they said that civic education would be the best way of doing so.

Elections Canada took note of this and began working to reverse this trend. In co-operation with civil society organizations, Elections Canada is piloting public education programs, innovative election day voting simulations in schools and campaigns to promote voter participation.

All of these initiatives seek to provide the non-partisan, civic education needed to encourage young people to vote. However, rather than strengthening Elections Canada's role as a non-partisan educator, the amendment to section 18 proposed in Bill C-23 takes that mandate away from Elections Canada.

• (1210)

[English]

In light of this information, the Institut du Nouveau Monde recommends that Bill C-23 be amended to not only maintain but reinforce the role and responsibility of Elections Canada as a provider of civic education programs and public awareness campaigns.

It is our belief that more studies should be conducted to further understand what stimulates youth voter turnout, that current education programs should be extended as much as possible, and that new initiatives should be developed targeting the issues that research results point to.

Any and all efforts that can encourage youth to go out and vote should be encouraged and strengthened, not abolished.

I am happy to answer any questions you may have.

Thank you.

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

We'll go to Mr. Shrybman.

**Mr. Steven Shrybman (Board Member, Council of Canadians):** Thank you very much, Mr. Chairman, and members of the committee.

I am here today as a board member of the Council of Canadians and also as legal counsel to eight Canadians who applied to the Federal Court in 2012 seeking orders annulling the results of the May 2011 federal election in six ridings across the country because they were the intended victims of voter fraud.

I've prepared a written statement, which I believe is translated, and which I think all of you have, so I won't take you through that. But I do want to point out some of the more significant things we want to say to this committee and to the federal government.

I want to speak to you about an aspect of the fair elections act that hasn't attracted a lot of attention, but which in our view is critical to safeguarding the integrity of the electoral process and the democratic franchise of Canadians. I am referring to section 524 of the Canada Elections Act, not the bill, which empowers any elector to defend their constitutionally protected right to vote.

I've reproduced the provisions of section 524 in our submissions, but they entitle an elector or a candidate—and only an elector or a candidate, not the Chief Electoral Officer or commissioner or anyone else—to actually bring an application to the Federal Court seeking the annulment of an election in certain circumstances. These include the circumstances set out under paragraph 524(1)(b) of the act where there are alleged to have been irregularities, fraud, corrupt or illegal practices that affected the result of the election.

While a great deal of attention in this committee has focused on the enforcement role of the Commissioner of Canada Elections to

prosecute perpetrators of voter fraud, only a candidate or an elector, as I have noted, can seek a court order annulling the result of an election that was fraudulently won.

It is this right of an individual elector to defend their democratic franchise that is arguably, in our view, the most significant deterrent to voter fraud. It's one thing to chase a fraudster, somebody like Pierre Poutine, and catch him and subject him to significant sanctions; it's another to take away the ill-gotten gain, which in certain cases is going to be a seat in Parliament that was not fairly won.

As I expect members of the committee will know, on May 23, 2013, Mr. Justice Mosley of the Federal Court rendered his decision in the applications my clients had brought and made the following findings. I set out some of the key findings of his decision in my submissions, but I just want to draw your attention to two or three of these.

He found, "there was a deliberate attempt at voter suppression during the 2011 election." He found the calls that were made misdirecting people to the wrong polling stations were "targeted towards voters who had previously expressed a preference for an opposition party, or anyone other than the government party...".

He also found there was an orchestrated effort to suppress votes during the 2011 election campaign by a person or persons with access to the CIMS database. You all know what the CIMS database is. He said he was satisfied that the CIMS database maintained and controlled by the Conservative Party of Canada "was accessed for that purpose by a person or persons currently unknown to this court" and that was the source of information used in this effort to defraud Canadian electors.

Last, he found that during the course of the litigation the Conservative MP respondents engaged in trench warfare and every other tactic to prevent the matter from coming to a hearing before the court.

To the question that remains, having regard to those conclusions, I think as a well-known national columnist pointed out, we now have a smoking gun, but we just don't know who pulled the trigger. But the people who control the CIMS database will know who downloaded lists of non-Conservative Party supporters in the days leading up to the election, and the findings of the court indicate that indeed the database was used for that purpose.

• (1215)

What does the bill before you have to say about that? Nothing. It imposes no greater measure of accountability on those maintaining these types of databases—not just the Conservative Party, but all political parties—for their misuse.

In fact the bill as before you will actually make it more difficult for an individual elector to bring the kind of applications that my clients brought, because they are unlikely to ever discover that voter fraud took place during a particular election, as both the commissioner and the Chief Electoral Officer are prevented from making public complaints about voter fraud that come to their attention.

I've also set out in our submissions the amendments to the bill that we believe would actually address the problem of voter fraud and make it less likely to occur in a future federal election.

Thank you very much for giving me the time today.

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

Mr. Rowland, please give your opening statement.

**Mr. Simon Rowland (Chief Executive Officer, Direct Leap Technologies Inc.):** I'm Simon Rowland, founder of Direct Leap Technologies, which is a telecom engineering and voter contact firm. We have developed a lot of telecom equipment over the years.

The first point I want to make is that the scope of the crime in terms of the national election fraud investigation is breathtaking, and this is an important context to keep in mind when looking at reforms to the Canada Elections Act.

I have a few points. It needs to be an offence to hire an unregistered voter contact firm so that the onus is also on clients to verify the registration. SMS, Facebook messages, and a huge list of other communications technologies aren't adequately regulated as voter communications. This list of technologies will evolve over time as communication with electors moves from in-person canvassing over time to jump from technology to technology, but SMS is essentially totally unregulated.

Elections Canada needs to have a much easier way to request telephone records. Imagine if Revenue Canada needed to put forward evidence in a 50-page brief in order to get access to the basic books and receipts to begin an audit. The current process to obtain digital phone records of an essentially public act, an essentially public communication, is the same process that detectives are required to follow in order to forcibly enter someone's home. Given that modem investigations are going to often involve the telephone, investigators need to have either the same powers as the CRTC to simply request records from carriers, or similarly, to have the right to request records of intelligence databases that match voters' complaints.

These CRTC-type tools to request calling records also make it easier to audit evidence provided by voter contact firms, simply by requesting the matching records from the carriers they send calls to. If a call centre that's subject to an investigation produces a table of calls as evidence, for example, as RMG did during the Federal Court challenge, it would be nice to be able to easily verify that there aren't any calls missing from the list. The ability to more easily cross-reference these records would add to the evidence value of these computer files.

The fact of a voter complaint must be enough to retrieve the relevant telephone records by canvassing major carriers to determine if the listed calls had transited their network. This allows the calls to be traced back to their call centre of origin using billing records. There has to be a change in the law to make it easier for Elections Canada to request telephone records. Like the CRTC, it is now in the 21st century, essentially a telecommunications regulator.

Investigations will end up requiring cooperation of international enforcement bodies, which must be facilitated in advance.

Election fraud at a sufficiently serious industrial scale may need to be declared to be at the level of priority as national security to permit international cooperation in tracing fraudulent calls to their originators, as this status is normally what is required to get other countries to process our subpoenas.

Imagine a foreign call centre distributing misinformation to influence the outcome of a foreign country's election, or simply debasing the integrity of the process. Offences that are now quite imaginable have the potential to be very serious, and require an appropriate framework for investigators.

Another point is that every piece of telecom equipment is designed to collect calling records in real time, as this is needed to do billing. These records from voter contact firms should be streamed to a secure records archiving facility at Elections Canada as a part of the voter contact registry. Contacting voters with a political message is fundamentally a public act, and making these records automatically available to Elections Canada for investigation or audit and archiving is simple transparency that would allow investigators to find a call that matches a voter's complaint with a simple search.

● (1220)

There is a great deal that can be done to facilitate the investigation into telephone voter fraud. For example, voter contact firms should essentially be auditable. What they do is a public act. Grant Elections Canada the power to audit the technical infrastructure and financial records of voter contact firms. They can start by simply auditing every firm that does voter contact and that did it in the last election.

I find it curious, after Parliament unanimously voted to provide new powers to Elections Canada following the revelations of the industrial-scale voter fraud that took place in the last election, that this bill instead would take relevant powers away.

Thanks, Mr. Chair.

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

Thank you to all of our witnesses.

Before we go to our round of questions, I want to note that some friends have joined us today. A group of parliamentarians from the United Kingdom is here watching us, so let's be on our best behaviour, please.

**Voices:** Oh, oh!

**The Chair:** Mr. Richards, you have seven minutes, please.

**Mr. Blake Richards (Wild Rose, CPC):** Most of my questions are for Ms. Fahmy, but I do want to start with just a couple of quick questions for Mr. Rowland.

Mr. Rowland, you in fact have been a political candidate in the past. Can you tell us if that's accurate or not, and if so, for which party?

**Mr. Simon Rowland:** That's correct. Direct Leap is one of the principal voter—

**Mr. Blake Richards:** Can you answer my question, first of all? Have you been a political candidate in the past?

**Mr. Simon Rowland:** Yes. I was a candidate for the federal New Democrats in 2000. My company is one of the voter contact firms that does voter contact for the New Democrats.

**Mr. Blake Richards:** Sure. So you and your company performed voter contact services—

**Mr. Simon Rowland:** Exactly.

**Mr. Blake Richards:** —for the NDP in the last election.

**Mr. Simon Rowland:** I develop telecom equipment specifically for voter contact, and I've worked on lots of different products, so I have a knowledge of both the voter contact process and the technical infrastructure of carriers.

• (1225)

**Mr. Blake Richards:** Okay. Thank you. I just always feel it's important that a witness fully disclose their connections—

**Mr. Simon Rowland:** Yes, for sure.

**Mr. Blake Richards:** —that may be potential conflicts of interest. So thank you for doing that.

Ms. Fahmy, I want to turn to you for some questions. You were here talking somewhat from the perspective of youth in terms of their participation in voting and the political process. That's something I have an interest in as well, and I'd like to ask you a few questions, if I can.

There are essentially two topics I'd like to cover, if we have the time; hopefully we will. The first is looking at the reasons that voter turnout among youth is unfortunately lower than among the general population. Obviously there are a couple of reasons that young people choose to vote or to not vote. One of them is obviously the motivation they have. There are various ways that this is created. Obviously it can be encouraged by family members. It could be political parties. I submit that it's largely political parties that should be responsible for creating that motivation.

**Ms. Miriam Fahmy:** Sorry, I can't hear you very well.

**Mr. Blake Richards:** Sorry. I submit that largely political parties should be responsible for creating that motivation. It's our job to make sure as candidates that we encourage and motivate young people to vote.

But there's another problem for young people. This comes from Elections Canada's own data. After the last election, they looked at the reasons young people didn't vote, and some of the biggest things they found were logistical problems and lack of information. For example, there was not knowing where to vote; 25% reported that as a problem. As well, 26% reported not knowing when to vote, and 19% cited not knowing how to vote as playing a role in their decision.

Obviously, I believe that the requirements of Elections Canada to better focus on ensuring that young people do have that information about where, when, and how to vote...and one of the biggest things I think we've seen through a lot of the testimony we've had is not knowing the IDs that might be required, or what might be on the list of 39....

Do you think having Elections Canada focus a little bit better on that role of letting people know that information would be helpful in encouraging more young people to get out and vote?

[*Translation*]

**Ms. Miriam Fahmy:** Thank you. I think there are a number of questions in what you just said.

First, I am in favour of having every effort made to ensure that young people know where and how to vote. If there are new, more effective strategies to be implemented, then I believe they should be. That being said, this is not my area of expertise so I am therefore not in a position to tell you which strategies should be used over others.

However, what you are saying is that you think that it is up to the parties to motivate young people to vote. The second reason why young people don't vote, which has nothing to do with logistics and more to do with motivation, must be dealt with by the parties, as you said. I share your opinion. It is the parties' responsibility to make voters and future voters interested in the ideas they want to promote in democracy. That is part of the democratic process.

That being said, I believe that Elections Canada also has a role to play. It has a different role in that it is a non-partisan agent that is at the service of Parliament and Canadians. This distinct role allows it to speak to young people in a different way and generate interest as well.

I am tempted to say that they are not mutually exclusive. Every possible effort must be made.

[*English*]

**Mr. Blake Richards:** Okay. Thank you. I do agree they have a role to play. I firmly believe that role needs to be focused better on providing the information people need to vote.

That leads me into the next question. We don't have a lot of time left, but hopefully we can get there. It really centres around students voting, and students who are away at post-secondary institutions, and not—

**Ms. Miriam Fahmy:** I'm sorry. I can't hear you.

**Mr. Blake Richards:** Sorry. The acoustics aren't great in the room, I know.

It centres around students who are away from home at post-secondary institutions. Obviously in that situation a student has the opportunity to determine where their residence is for the purposes of voting. Now, my understanding of the act is they're supposed to vote where they consider their residence to be. That's the choice they obviously make, as to where they determine their residence to be.

They have the option of choosing to vote at home, where their parents live, if they intend to return there and consider that their residence. If they choose that option, they obviously can vote by special ballot without having to return home. If they choose to vote at the university that's away from home, of course there are other options available to them such as, if they are living in a residence, having an attestation of residence from the student residence.

I'm curious if you can tell me how many students, if they choose to make the university their home residence, live in residence. Do you know the numbers or percentages of students who live in residence away from home?

• (1230)

[Translation]

**Ms. Miriam Fahmy:** Unfortunately, I cannot answer your question, as it is on technical aspects that are not part of our area of expertise. I would be happy to look up that information and provide it to you at a later date.

[English]

**The Chair:** Super. Excellent. Thank you, Mr. Richards.

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

**Mr. Craig Scott:** Thank you to our witnesses.

I did want to acknowledge the role the Council of Canadians did play in revealing publicly through the court process the little that we do know. I want to thank you for your efforts. It did produce a ruling by one of the leading judges in this country, Judge Mosley, who did find, as you indicated, that there was "an orchestrated effort to suppress votes during the 2011 election campaign by a person or persons with access to the CIMS database." We know that database is the Conservative Party's database, and he found that the most likely source of the information used for the robocall fraud across the country was that database.

It's all the more worthy of our thanks that you persevered in getting that ruling, despite the judge also noting that you had to face "trench warfare", attempts to "block these proceedings by any means", and attempts to "derail" these proceedings by the lawyers of the Conservative Party representing the MPs, who probably had no say at all in how their case was being conducted, I must add.

You also indicated here, and I think this is really important, how crucial the database is, and I'll be getting to Mr. Rowland on this. You indicated that how quickly those who have access to the database in the Conservative Party could determine who downloaded the database when and, frankly, from where. And we do know in recent days that a certain individual at the head of the Conservative Party, a Mr. Soudas, was traced back to a download that resulted in the Prime Minister releasing him from his duties. Yet somehow we cannot find who downloaded this data in the case of 2011.

Mr. Rowland, you've given some extremely powerful suggestions that indicate, if I'm right, that the robocall system put in the act is minimalist at best, and not likely to actually catch the kind of robo-fraud that occurred in 2011. Would that be your opinion?

**Mr. Simon Rowland:** That's correct.

The laws that govern requests for evidence, in the case of telephone fraud investigations, are designed around 19th century search and seizure protections to prevent people from being arbitrarily searched, but when you're accessing telephone records, it needs to be a lot easier. Accessing telephone records is the principal obstacle to identifying each of the call centre firms that were used to disseminate the fraudulent phone calls, aside from RackNine.

**Mr. Craig Scott:** My understanding is that you're saying it's not just important that, as the Chief Electoral Officer recommended, calling service providers provide the numbers to the CRTC but also that Elections Canada, through its compliance and enforcement processes, has direct access to the carriers being able to—

**Mr. Simon Rowland:** In exactly the same way as the CRTC does.

**Mr. Craig Scott:** Right.

**Mr. Simon Rowland:** It needs to be a simple process of requesting the data, just as the CRTC does.

**Mr. Craig Scott:** You also indicated that there should be a system for streaming of records to a secure archiving facility at Elections Canada from the calling service providers. Would that be an easy thing to do, technologically?

• (1235)

**Mr. Simon Rowland:** You use what's called a CDR mediation server. They're available open source. It's open source software and runs on one server. It would be able to absorb all the records. It's a really easy project to set up. I could do it myself.

**Mr. Craig Scott:** If the Minister of State for Democratic Reform, who apparently has a background in the field of voter contact, had thought to ask people who know what they're doing technologically, would he have discovered that this would be easy to do?

**Mr. Simon Rowland:** It's so easy. You ask any telecom engineer to set up a CDR mediation server, every big carrier has this kind of infrastructure.

**Mr. Craig Scott:** Great.

At the moment Bill C-23 provides that calling service providers have to keep the data they're required to keep under this new scheme for one year. Certain data goes to the CRTC. We're not yet sure how long they have to keep it, because they haven't yet replied to my question on that, but we do know that audio recordings, scripts, and the phone numbers do not get sent to the CRTC under this, so they are subject to one year, after which calling service providers can delete them.

Would it be difficult for audio recordings, scripts, and the numbers called to be sent to the CRTC for them to keep, and for us to then require the CRTC to keep all this data for seven to ten years? Would that be a problem?

**Mr. Simon Rowland:** No, absolutely not.

It used to be expensive to do a 100% recording of a big call centre. It's not anymore. You needed it 10 or 20 years ago; now it's really simple. It's a common feature in call centre equipment. You can put in an extra box that does that, and that's not expensive. Setting up to submit those recordings automatically is a one-line command. You edit one file, hit enter, and then it will copy those files every five minutes, or what have you. It's very simple to do.

**Mr. Craig Scott:** Super.

This is all presuming that people are going to use this legitimate system set-up, but to your knowledge, is it possible for people operating a combination of offshore and using their own direct servers and proxy servers, if they have access to the right data, to be able to make calls without even going into the system? Yes or no?

**Mr. Simon Rowland:** To go into which system?

**Mr. Craig Scott:** Without going into this new registry system—

**Mr. Simon Rowland:** Yes. Of course. There's nothing to stop somebody from buying an auto-dialer product, installing it in an offshore server, connecting it to some foreign long-distance provider, and sending illegal phone calls to every....

My equipment.... I can literally phone or send a text message to everybody in the country. I'm not special in that way.

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

Would you be able to provide us with any information about the extent of the robocall fraud in 2011? Is there any way to know what that was?

**Mr. Simon Rowland:** Absolutely.

I'm also the executive director of the Stop Election Fraud campaign. We've created a database of all the specific mentions, the specific allegations of fraud in public documents where the allegation of a fraudulent telephone call is tied to a specific riding.

There are 96 ridings identified in court documents with specific allegations of fraud, and an additional 78 ridings are mentioned in media reports with specific allegations of fraud. In total, from the 2011 election, there are 174 ridings where either a published media report or a court document that we processed has a specific allegation of fraud, using the telephone, attached to a riding.

**Mr. Craig Scott:** Could you supply this information?

**Mr. Simon Rowland:** Yes. I have a database of all of these complaints and I will submit it in a brief. Of course, Elections Canada released that out of the nearly 2,000 specific allegations of fraud—

**The Chair:** Mr. Rowland, Mr. Scott is well past his time.

**Mr. Simon Rowland:** Oh, sorry.

**The Chair:** I caution all of you again about asking questions with two seconds left, but we'll go to Mr. Lamoureux now, and he won't do it, I know.

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

I do want to pick up on that point. You said there were 174 ridings, and when you consider that there are 308 ridings, it's unbelievable in terms of the abuse that had taken place in the last federal election, and the degree to which Elections Canada had been

contacted by, from what I understand, in one form or another, more than 30,000 Canadians.

Of course, the driving force behind this was the robocalls. The robocalls, or what have been known as the robocalls, are what have really angered a good number of Canadians from coast to coast to coast. In fact, I would suggest to you that it's one of the primary reasons we have this legislation before us.

Mr. Shrybman, in your presentation, in trying to get justice in this whole issue, because it all goes back, from my perspective, to the data bank.... The literally tens of thousands of mischievous phone calls, everything from calling late in the evening to get voters upset and to maybe not vote for a particular political party, to calling on inappropriate days during the week, to calling on election day telling the person to vote in another location...the purpose of that was all about voter suppression.

From the court documents—and you made it a part of your presentation—it seems that the Conservative Party data bank is the one that's been tied to the data bank that has most likely been used in terms of allowing those calls to be made. We don't know who made the calls, but are you fairly confident...? You've tabled the document with the quotes from Justice Mosley. Can you provide a further comment in terms of why it's so conclusive that it was the Conservative Party data bank that appears to be the data bank that was used to make these tens of thousands of calls?

• (1240)

**Mr. Steven Shrybman:** Well, I think the conclusions with respect to the data bank and the use of CIMS are Mr. Justice Mosley's. What he had to say, in addition to finding CIMS at the source of all of this, was that the campaign that he concluded took place during 2011 was centrally organized by someone who had access to the database and the authority to use the information from the database to carry something out on a much broader scale than Mr. Poutine, whoever he might be, carried out in Guelph.

I agree with you that it's all about the database, and there are some very simple ways for requiring those who keep these databases to be accountable for their use. One of them is to simply give the Commissioner of Canada Elections the power to compel production of database records.

The other, which I think is just as important, is to allow individual electors, in a claim under section 524, to actually name a political party as a defendant and to proceed by way of action, not just application, which means that they would have the right of discovery. In other words, in our case, we could have named the Conservative Party of Canada as a defendant, in addition to the individual MPs, compelled production of their database records, and had the opportunity to cross-examine those who have carriage of them. That would have told us who pulled the trigger on the smoking gun.

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

So we have a good sense of which database was being used, the Conservative database, but you do not have the ability to find out who was responsible for that database to the degree to which you can compel them to come forward and provide names.

**Mr. Steven Shrybman:** Yes, or even if you can't identify who used it, you can identify that it was used, and that the political party involved didn't take the steps necessary in order to defend the database from misuse. There's nothing at all in the bill that addresses this.

One of the things that came to light during the case was that, during the election itself, Elections Canada officials started receiving complaints about voter suppression calls. They got on the phone and they talked to Mr. Hamilton, according to the ITOs, and to, I think, other people at the Conservative Party, and asked, "What's going on? We suspect that you're the source, or the party is the source, of these misdirecting calls."

The party knew during the election that something was amiss. It's critical that steps be taken by political parties to guard their databases against misuse. There's nothing in the act that imposes that accountability.

• (1245)

**Mr. Kevin Lamoureux:** When I think in terms of Mr. Mayrand, he indicated that if we do not change this legislation there should be no doubt that it will weaken the election law. Because without the ability to compel...and now more and more people are aware that they don't have to provide information...that, in fact, the chance of a future robocall is just as great as it is today. Now, those are somewhat my words too, but would you provide comment on that?

**Mr. Steven Shrybman:** I don't know if the chances of the robocall are greater, but I think what is true is that the likelihood of a voter fraud campaign coming to light is much less likely because the people who would know that it has taken place are muzzled under the bill.

It's not just the Chief Electoral Officer under section 18. You actually have to look at proposed subsection 510.1(1) as well, because the commissioner is precluded, arguably, from allowing an ITO filed in a court to be filed in any other way but under seal, which would mean that the discovery that Mr. Maher and Mr. McGregor made of an ITO filed in Edmonton in November 2011 would never have been known. This bill probably wouldn't be before us and no one would know that there was voter suppression during 2011 under these new rules.

**Mr. Kevin Lamoureux:** Without seeing an amendment that would allow for the compelling of a witness, do you believe that this legislation should even go forward?

**Mr. Steven Shrybman:** No we don't. That's not the only reform we would make to it. There are many other criticisms that others have offered that I think will suppress the vote in a more systematic way, rules around vouching. Others have spoken to those criticisms.

**Mr. Kevin Lamoureux:** Last, do you believe that voter ID cards should be allowed as one piece of identification?

**Mr. Steven Shrybman:** That I can't answer. I'm afraid I'm not an expert in that area.

**The Chair:** Thank you, Mr. Lamoureux, you did finish four seconds early. Very good.

We'll go to a four-minute round. We have just enough time.

Mr. Richards, for four minutes, please.

**Mr. Blake Richards:** Ms. Fahmy, I want to pick up where we left off. I ran out of time on that last part that I wanted to discuss with you.

I appreciate that you indicated specifically that university students weren't necessarily your expertise, but obviously, in encouraging people to be a part of participating in democracy and elections, I know you did have a focus on young people, so you obviously have picked up some knowledge along the way. I would like to focus on that a little bit.

Where I was going with it, basically, was when one's away at university—the reason I asked you about the numbers who live in residences—there are a couple of different options available. It all centres around where they determine their residence to be. That's where they're supposed to vote: where they determine their residence to be. Obviously, in the case where someone is away at university, if they do intend to return home to their parents' house in the summer, they may consider that as their residence, so the riding they are choosing to vote in would actually be different from where they are currently. Then there are other reasons that people would be in that situation on election day, for work or other reasons, and that could be the case.

There are provisions, of course, for people to be able to vote in their home riding, where they consider their residence to be and where they intend to return to. One of them is a special mail-in ballot that someone can ask for. I know people who have done that. It's a fairly simple process, something they can do. I also believe—and I do stand to be corrected, but I'm 99% sure I'm correct on this—that someone can go to a returning office elsewhere in the country and ask to vote by special ballot in their home riding by proving they are a resident of that riding. So there are options available.

We've had other witnesses who have appeared before us to talk specifically about the student situation, and my understanding is that it is generally not about proving their identity. That's usually not an issue. What we have had indicated to us is that it is about proving their address. Now, obviously, the reason that has been given to us is that they might have all their correspondence going to their parents' home, which would indicate to me that it would likely be what they would consider their residence to be, and likely they should be voting by one of those special ballot procedures, if that's the case.

However, if they do believe their residence is in fact where they are at school, there are options. That is one of the reasons that I asked you specifically about the idea of how many live in residence, because that's one option. They can have an attestation done as to their residence by the school. But there are also other forms of ID. If someone is considering that to be their permanent residence, obviously, this could be done. They could provide a bank or credit card statement, a utility bill, correspondence issued by the school—there is actually that information specific to a student that's given to them by the school—statements of government benefits, notices related to income tax, insurance policies, or even a residential lease or mortgage statement. Even a student who doesn't live in residence could simply provide their lease. I know there are situations where students have more than one living in a household, but they could certainly have their name added to the lease.

I guess my question is, would it be helpful for Elections Canada to be able to better communicate to people that there are these options in terms of special balloting or other forms of ID or letters they could provide? Would that be helpful if Elections Canada was to provide that information to you so they would be better able to know their options in terms of voting?

• (1250)

**Ms. Miriam Fahmy:** Thank you for the question.

I'm going to answer it the exact way I did last time you asked the question, but maybe by answering it in English it might be clearer. There are two reasons why youth don't go out to vote. One is logistical, and you've laid out the reasons and some of the solutions very well. The other is motivation and interest in political matters. This is what I've come here to testify about. As I've said, we believe that Elections Canada's mandate as a public education provider, especially to youth, should not be removed as it has been in the current bill.

**The Chair:** Thank you.

Thank you, Mr. Richards.

**Ms. Elizabeth May (Saanich—Gulf Islands, GP):** Mr. Chair, just so you know, I'd love a chance to ask one very small question before the top of the hour.

**The Chair:** Well, with the four-minute round from the other two, we're going to be at about one minute to the top of the hour at that point.

Mr. Scott, you're first on this four-minute segment.

**Mr. Craig Scott:** Mr. Rowland, I just want to make sure that what you were talking about at the end when we went into overtime, that you'll be able to provide that documentation to the committee within how long?

**Mr. Simon Rowland:** Within a week.

**Mr. Craig Scott:** Okay, thank you.

I also just want to say thank you for the services you provide, including to the NDP, and for the fact that on behalf of your own integrity and that of the profession, you want these rules tightened so that fraud will actually be found.

I also want to suggest that when you were asked questions about your background, you could well have asked the questioner whether

or not he's ever been fined for breaking robocall rules by the CRTC, something he did not reveal to you during his question.

I'll now pass it on to my colleague.

[*Translation*]

**Ms. Alexandrine Latendresse:** Thank you, Mr. Chair.

My question is specifically for Ms. Fahmy.

Over time, Elections Canada has adopted various measures and you have proposed ideas that I find very interesting to promote first-time voting.

I really liked your presentation because it is true that studies show that someone who is voting for the first time, as soon as he or she is over 18, will have many opportunities to come back and vote at all the subsequent elections.

I would like your opinion on two measures that you mentioned during your presentation. Under current legislation, Elections Canada cannot come in contact with someone who is not already a Canadian voter. That means that Elections Canada cannot communicate with someone who is under 18. Would allowing Elections Canada to do so be a good idea? In the case of fixed election dates, as is currently the case, Elections Canada knows precisely who will be 18 on election day and could ensure that those people are registered on the voter list and able to vote.

The other measure would be to encourage as much as possible the hiring of young people between 16 and 18 to work on election day. That way, by being on site and working for Elections Canada, they would have direct access to the system and that might make them more interested.

Could you share your opinion on these two specific measures?

**Ms. Miriam Fahmy:** I agree with you. As I said in my speech, all the measures are good for bringing out the youth vote. As you know, when voter turnout is low, the entire process becomes invalid. Voter turnout will continue to decrease, based on current trends. That's why it's very important to talk to young people when they reach the age of majority and are eligible to vote. I agree with you. As soon as we know their date of birth and know that they will be able to vote in an election, I think it would be logical for Elections Canada to contact them.

Furthermore, hiring young people to work elections is an excellent idea. I did that when I was 16 or 17. It's an excellent introduction to the electoral process.

• (1255)

**Ms. Alexandrine Latendresse:** Do you think that a number of the measures in the bill will suppress the youth vote or deter them from voting and the measures will make it harder for them to vote?

Our colleagues won't stop mentioning the list, but the reality is that many young people could show up to the polling station with 20 pieces of ID and still not be able to vote because they have no proof of address.

What do you think about that?

**Ms. Miriam Fahmy:** Obviously, if a young person—

[English]

**The Chair:** I'm going to have to stop you. Again, we got the question after the four minutes.

I'll go to Mr. Lukiwski, for four minutes, please.

**Mr. Tom Lukiwski:** Thank you all for being here.

I want to concentrate my observations and questions again on students voting, young people voting. We have heard from many of our witnesses the fact that some students just don't have the required identification and that's a justification in the minds of many of our witnesses to continue vouching and use of voter information cards as proper ID when confirming addresses.

I would point out to all of you, and in particular to members of this committee, that I've been a member of PROC for 10 years now, and I recall back in 2006 we had a very lengthy discussion about the use of vouching and voter information cards, and almost all—not all, but almost all—members of the committee, and particularly the Liberals, at that time were adamant in their belief that voter information cards should not be used. The national director of the Liberal Party, Mr. MacKinnon, came here and said that there should be proper ID, that vouching should not be allowed, that voter information cards should not be allowed. So it's interesting to see particularly how the Liberals have changed their tune when it's politically convenient.

My point is simply this. As you know and as you've testified, there are 39 current pieces of identification that could be used to verify who you are and where you live. That list of 39 has been developed by Elections Canada, not by the government. We're not the ones saying that these are the 39 pieces that we've come up with so you should be able to satisfy the requirements on identification.

Since it is something that Elections Canada has developed, has your organization considered sending a letter to Elections Canada suggesting additional forms of identification that might be able to capture those people who, perhaps on the student side, are falling through the cracks right now? As in 2006, our contention is that the sanctity of vote is extremely important, just as important as it is the right of every Canadian to exercise his or her franchise.

I'm looking to see if we can find a way to get both of those competing elements, it seems at times, together. Would you undertake to do some research and perhaps make recommendations to Elections Canada to expand the list of 39 eligible pieces of identification?

[Translation]

**Ms. Miriam Fahmy:** Is the question for me? The member didn't indicate if the question was for me.

[English]

**Mr. Tom Lukiwski:** Certainly. That's fine.

[Translation]

**Ms. Miriam Fahmy:** You want to know if the Institut du Nouveau Monde would like to contact Elections Canada to

recommend that it increase the number of pieces of ID? Is that correct?

[English]

**Mr. Tom Lukiwski:** Yes.

[Translation]

**Ms. Miriam Fahmy:** As I said earlier, Institut du Nouveau Monde makes recommendations about civic and public education and tries to get young people and the general public interested in voting. Institut du Nouveau Monde does not deal with technical issues associated with identification. I did not talk about that in my speech, so I cannot answer your question.

[English]

**Mr. Tom Lukiwski:** Yes, and I appreciate that.

My only point is, I think in your role of trying to encourage people to vote, you should, I would suggest, also get involved with trying to overcome obstacles to voting. That's why I asked you whether or not your organization would extend itself a little bit and perhaps do some research and maybe recommend some additional ways in which young people can vote and overcome those obstacles, if there are any, on lack of identification.

[Translation]

**Ms. Miriam Fahmy:** Thank you for the recommendation.

[English]

**The Chair:** I have a request from Ms. May for unanimous consent for her to have one minute. Do I have unanimous consent?

**Some hon. members:** Agreed.

**The Chair:** Ms. May, for one minute, please.

• (1300)

**Ms. Elizabeth May:** I thank my colleagues from the bottom of my heart.

Mr. Shrybman, I don't think you've had adequate time to explain the benefit of amending section 524 as you suggest. Could you use any seconds remaining to explain it?

**Mr. Steven Shrybman:** It's just to give electors the right to bring an action so they would have the right to discover the database of a political party and to name the political party as the defendant. That would empower electors to defend their democratic franchise in a meaningful way, a way that wasn't fully available to the clients I represented in the cases we brought.

**Ms. Elizabeth May:** In your opinion, could what occurred in the 2011 election campaign occur again if there are no changes?

**Mr. Steven Shrybman:** Yes, I expect that it will occur again and it will be harder to detect.

**The Chair:** Thank you, Ms. May.

Thank you all today. We will gather again later as good friends at about seven o'clock tonight. I believe we're at 1 Wellington.

We are adjourned.





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