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Chair

Mr. Joe Preston

Standing Committee on Procedure and House Affairs

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•(1230)

[English]

The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)): Let's go ahead and call the meeting to order. We're here on the motion of privilege.

Monsieur Mayrand, I apologize for the delay in getting started this morning. We had some members of the House who wanted to call it a day very early today.

Monsieur Mayrand, I take it you have an opening statement?

Mr. Marc Mayrand (Chief Electoral Officer, Elections Canada): A very brief one.

The Chair: A brief one? Great. Let's start with that.

And then, committee members, we'll try to get as much in as we can.

[Translation]

Mr. Marc Mayrand: Mr. Chair, thank you for inviting me back once again to appear before the committee today.

I am accompanied by Mr. Stéphane Perrault, Deputy Chief Electoral Officer for Legal Services, Compliance and Investigations.

[English]

I believe I clearly made my position on the privilege motion you are considering when I appeared before you in December. I will not repeat myself, other than to remind you that I take no specific position on the question of privilege that you are debating.

As I noted in my previous appearance, when I write to the Speaker pursuant to subsection 463(2), it is simply to inform him of a situation in which an elected candidate has either not submitted a document as required under the act or has failed to make correction as requested or authorized.

Subsection 463(2) of the act provides that in either of these situations, a member shall not continue to sit or vote as a member.

As I indicated in December, I take no position on whether a member of Parliament should continue to sit in the House of Commons despite the wording of subsection 463(2). This is a matter of parliamentary privilege.

My aim in writing to the Speaker is to acquaint him with the relevant provision of the Canada Elections Act in order that he may do whatever he deems best in the situation.

As you know, I wrote again to the Speaker with respect to subsection 463(2) in the case of the member of Selkirk—Interlake, Mr. James Bezan, and informed the Speaker that subsection 463(2) no longer applies in the case of Mr. Bezan since he has now filed corrections under the act and I have accepted them.

In addition, further to the request made by a member during my last appearance, I have submitted to the committee the letters that were sent to the Speaker after previous elections, pursuant to subsection 463(2).

These letters demonstrate a consistent approach on the part of the agency, including by my predecessor, to inform the Speaker in situations where there has been non-compliance with the filing requirement of the act on the part of a candidate from various parties.

It has been the practice of the chief electoral officer since at least 2001 to inform the Speaker in this manner.

That concludes my remarks, Mr. Chair, and I will be happy to answer any questions.

The Chair: Thank you so much. We will go right to questioning. I think we'll start with a five-minute round and then see if we can get our second questions in.

Mr. Lukiwski, please.

Mr. Tom Lukiwski (Regina—Lumsden—Lake Centre, CPC): Thank you very much, Mr. Chair.

Thank you, Monsieur Mayrand, for being here.

Mr. Mayrand, I'm glad you're back here, because clearly we're here because of the letter you originally sent to Speaker Scheer invoking subsection 463(2).

That letter, in regard to subsection 463(2), indicated that a member shall not "sit or vote" if he has not complied with your request to file either a return or a corrected return, but in examining the Elections Act, Monsieur Mayrand, with all the greatest of respect, I believe you did not have to send that letter. I believe that we do not have to be in this position right now, that you had choices, and that you chose to send the letter when you did not have to.

I point out to you—as I'm sure you're well aware—that under Elections Act section 457, you and you alone make the decision as to when a member of Parliament, or a candidate, for that matter, will have to comply with a corrected return. You chose originally the date of May 6. My understanding is that Mr. Bezan filed a return on May 5. You examined that return, you disputed it, and then gave a further deadline of May 17 by which to file a corrected return. You pointed out what you considered to be inaccuracies in his previous return.

Although Monsieur Bezan did not file a corrected return as per your request by May 17, he did inform your office that he would be seeking a court-ordered injunction. Under section 459, the candidate—or the member of Parliament, in this case—has a perfect right to do so.

Now, the sanction that you suggested or pointed out to the Speaker is, quite frankly, the most serious sanction, or least one of the most serious, that could possibly be invoked upon any candidate or, in this case, a sitting member of Parliament: that a sitting member of Parliament would not be able to sit and vote. It's not just the embarrassment and the tarnishing of the reputation; it's the fact that tens of thousands of voters who have voted for that member to be their representative are now disenfranchised or would have been disenfranchised had Mr. Bezan been removed from his seat.

My point is, sir, that according to my interpretation of elections law, you did not have to do that. It was your choice. Because, under paragraph 459(2)(a), it says that even though, in this case, Mr. Bezan did not comply with your request to have a corrected return in your hands by May 17, he could have up to two weeks to file a request to a judge, who would then be able to either authorize an extension or relieve the candidate of his obligation.

Mr. Bezan had informed your office that he would indeed be seeking that relief from the courts. You had two weeks in which to grant that to him, but yet you sent the letter to Speaker Scheer a week after the May 17 deadline, or in other words, a week prior to the deadline by which Mr. Bezan had to file a court injunction. I'm just wondering why you chose to do that, because as I mentioned at the outset, this is what has transpired because of your letter. My interpretation, sir, is, quite frankly, that you didn't have to do that but you chose to do so, and I'd just like to know why.

•(1235)

Mr. Marc Mayrand: I think the correspondence I've provided to the committee indicates that it has been a consistent practice since at least 2001 from the office to inform the Speaker of any situation that occurs under subsection 463(2).

We are in a difficult position whether we do one thing or another, and I think this matter is truly a matter of privilege. All I'm doing, or all my predecessors were doing in issuing those letters, was advising the Speaker of the matter for him to consider under the rules that govern Parliament.

Mr. Tom Lukiwski: Would you not agree that it was your choice? You could have waited at least until the two-week deadline was up.

Mr. Marc Mayrand: Waiting or not, either case could have triggered the issue of privilege, and I still think it's more appropriate that matters of privilege be left with the House.

Mr. Tom Lukiwski: I understand that the situation has been—

Mr. Marc Mayrand: Otherwise, I would have been accused of not informing the House properly, as it should be—

Mr. Tom Lukiwski: I don't think you would have been accused—

Mr. Marc Mayrand: —and violating the privilege.

Mr. Tom Lukiwski: I doubt very much, sir, that you would have been accused of anything, because my understanding is that the discussions were going on between your office and Mr. Bezan's campaign team. In fact, now that it's resolved, the amount we're talking about is less than \$500.

So for a figure of less than \$500, Mr. Bezan has been vilified, in some cases, by members of the opposition. Certainly his reputation has been tarnished and, quite frankly, had subsection 463(2) been enacted and had he been removed from sitting and voting, his constituents would have been disenfranchised.

The Chair: Thank you, Mr. Lukiwski.

Mr. Christopherson, you have five minutes, please.

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

Monsieur Mayrand, as you see it, are there any unresolved issues before this committee, before your office, or before the House?

Mr. Marc Mayrand: Under subsection 463(2)?

Mr. David Christopherson: In terms of Mr. Bezan's case.

Mr. Marc Mayrand: The matter has been resolved out of court. I received a corrected return pursuant to the agreement that intervened, and as far as I know, the matter is resolved and is no longer before Parliament. I advised the Speaker accordingly.

Mr. David Christopherson: Thank you.

Chair, my contention to you is that we have done exactly what has been asked of us. The Speaker found a prima facie case, referred it to this committee, and asked us to resolve it. Prior to our concluding our deliberations, the matter has been resolved out of court.

Mr. Lukiwski had advised us of that himself and further—

•(1240)

Mr. Tom Lukiwski: In camera discussions.

Mr. David Christopherson: —Mr. Mayrand has now confirmed that indeed the government's contention that the matter's resolved is true. Because it was Mr. Mayrand's letter that started all this, I've asked Monsieur Mayrand if are there any outstanding issues, and I'm advised by him that the matter is resolved. Therefore, as far as I can see, Chair, unless someone can point out to me what unresolved work we have, the instant case in front of us is resolved and we can put “done” on that file.

Then what's left is the question of any potential changes that we might want to make to the legislation as a result of this, and we need to determine whether we're going to do that on our own and continue, and offer a resolve to the Speaker or recognize that these matters are touched on in Bill C-23, and let this be subsumed by that discussion.

To me, what's left to be resolved, Chair, is the issue of any recommendations or changes and when we might look at those. But as to the case that's in front of us, it's old.

The Chair: I could answer that and I'll stop the time while I do.

Mr. Christopherson, you're absolutely right, but there are two parts to this motion of privilege. One was the resolution of Monsieur Bezan's issue. The second one was the question from the Speaker, "What do I do if it happens again?" And you're right, you've hit on that, so this committee is still faced with the second part.

Mr. David Christopherson: Thank you, Chair, I appreciate your intervention. I think it helps clarify the point I was making, and that is that, since the only thing left of the two pieces is any changes, the question for us is whether we should take the time of this committee, recognizing we've got other work, to look at a part of a bill that is being overhauled in a major way under Bill C-23 that either will or could capture that issue there. That's why I'm suggesting we should fold it into Bill C-23, but we can have that discussion.

But the issue about Mr. Bezan is over. We've heard from the person who raised the first concern that it's now concluded. I don't know what more there would be for us to do. We have met the Speaker's request, and I'll say again, on the second point, the only thing left for us to determine is whether we, as PROC, want to continue reviewing that legislation in light of this case and make any recommendations, or whether we want to then just say that this matter will be subsumed by Bill C-23, which, coincidentally, is coming to this committee anyway.

The Chair: Thank you, Mr. Christopherson.

It's absolutely true that this committee is the master of its own destiny as to how it wants to study the rest of the issue, so we'll ask the whole committee. Your opinion is noted. It is this committee's normal practice at the end of a motion of privilege to write a report back to the Speaker, especially in this case since he's asked for that report. So that would likely be where I suggest we go. Okay?

Mr. David Christopherson: I don't think anything I said was inconsistent with what you just said, correct?

The Chair: Correct.

Mr. David Christopherson: That's good, thank you.

The Chair: Monsieur Lamoureux, for five minutes.

Mr. Kevin Lamoureux (Winnipeg North, Lib.): Thank you.

Mr. Chair, I think that there is an outstanding issue.

It would be wonderful to have your opinions and thoughts on this, Mr. Mayrand. I see that we have two issues. One is that we had a letter that came from your office to the Speaker. What I'm interested in knowing is, by forwarding it to the Speaker, was it your intention that the House itself would have been made aware of it, or how do members of the House of Commons become aware? Or is it the 100% responsibility of the Speaker to do whatever he or she in the future might want to do with that letter?

Mr. Marc Mayrand: That's a matter for the House to resolve. I'm required to communicate with parliamentarians through the Speaker. That's what I do in all circumstances.

Mr. Kevin Lamoureux: So as far as we're concerned, there could have been more than two letters that you have sent. We don't know. We just found out about those other two from media reports and so forth. Have you sent any other letters to the Speaker's office?

Mr. Marc Mayrand: I did provide the committee with all the letters that have been issued since 2001, I believe.

Mr. Kevin Lamoureux: Okay. Can you indicate how many letters have been sent to the Speaker's office since the last federal election?

• (1245)

Mr. Marc Mayrand: Only two.

Mr. Kevin Lamoureux: Two.

When we take a look at the timeframe, can you explain to us why it is that.... The issue that the matter has been resolved is, quite frankly, secondary. The real issue for me is, why does it take so long—the election was almost three years ago—before the Speaker is actually made aware of a situation where you ultimately have the authority, or the power, to try to draw something to a conclusion? It seems to me that it is not a timely process.

Would it be your opinion that we need to make changes? When candidates are not doing what is expected of them, do we need to change the system so that there is a more timely process put into place, as opposed to having to wait three years? Can you provide comment on that?

Mr. Marc Mayrand: I think that would have to be considered very carefully.

I can point out that in some cases there's a genuine difficulty in gathering all the facts. It takes quite a bit of time. We have to appreciate that often the auditors at Elections Canada deal with the official agents, who are often volunteers who are not always available. It—

Mr. Kevin Lamoureux: Mr. Mayrand, I'm just concerned about my time.

Do you have the resources in order to allow for a quicker response in a more timely fashion? Or does it require legislation in order to get that timely response?

Mr. Marc Mayrand: The process involves an extensive exchange between the official agent and the auditor. In terms of resources, I think we have the resources that are required to handle it at our end. Sometimes there are delays, for all sorts of reasons. Sometimes it's quite difficult for the agents to gather all the information that's needed, and that takes time. But again—

Mr. Kevin Lamoureux: So it's fair to say—

Mr. Marc Mayrand: —it's an ongoing discussion, process, exchange with the official agents.

Mr. Kevin Lamoureux: Absolutely, but three years is far too long. If you have the resources—and that's what I'm hearing—then the issue is that you need to have the power in order to enforce.

Mr. Marc Mayrand: You should know that when returns are filed four months after the election, our service standard is to complete the compliance audits of those returns within nine months from when they are received. We're already at 13 months. Again, there are some issues that arise from time to time, and I think that in fairness we need to give a full opportunity to official agents doing this—

Mr. Kevin Lamoureux: Were you afforded the opportunity to express your concerns before we had the substantial changes that are being proposed by the government today with regard to this issue?

Mr. Marc Mayrand: No.

Mr. Kevin Lamoureux: No?

Mr. Marc Mayrand: No.

Mr. Kevin Lamoureux: When was the last time you had the opportunity to talk to the government in regard to election reform?

The Chair: Mr. Lamoureux, today we're here on a motion of privilege. We'll have a lot of time on Bill C-23.

Mr. Kevin Lamoureux: You can't blame me for trying, Mr. Chair.

The Chair: I know, but I did warn you ahead of time. It's nice that you listen.

We're going to go to a real quick round for a couple of minutes, at two minutes each.

Mr. Lukiwski.

Mr. Tom Lukiwski: Thank you.

I want to go back to one of the points I was trying to make before.

I certainly hope, Monsieur Mayrand, that you would agree with me when I say that to remove a member from his seat and remove his ability to vote is probably one of the most serious sanctions that could be invoked upon a sitting member of Parliament. In fact, I would suggest to you, and I again hope you would agree, that it should be absolutely the last resort instead of trying to find a settlement, a resolution to a dispute. In this case, it was an accounting dispute.

I go back to the fact that Mr. Bezan had a two-week window in which to file a court application that would have relieved the imposition that you had set yourself on the filing of a corrected return. You didn't wait for that two weeks. You didn't allow him the two weeks to file a court injunction. You sent the letter to Speaker Scheer a week prior to the deadline.

I'm wondering why, knowing as you do that it's such a serious sanction. Rather than putting Mr. Bezan and his constituents through that, why not just wait until he files the court application to see whether that in fact is accepted? Then you wouldn't have the need to send the letter to Speaker Scheer. We wouldn't be here today. Mr. Bezan wouldn't have been portrayed in the press—by some—as a cheater.

Mr. Marc Mayrand: I understand your concern and agree that it's an extreme measure. I have to rely on the legislation. The provision could have provided...“subject to an application to the court”. That's not what the provision says at this point in time. Historically, it was very clear in previous parliamentary debate that the action we're following is consistent with the intention of the legislator.

• (1250)

Mr. Tom Lukiwski: With all due respect, I have the act in front of me, and I disagree with your interpretation. It says quite clearly that a candidate can make application to the courts. You were informed by Mr. Bezan that he was going to do that. You sent the letter to Speaker Scheer anyway. I just don't know why. I'd like to know why.

Mr. Marc Mayrand: I'm not disputing that as a remedy to the court. What I'm saying is that the provision does not provide for a delay, even though there's a remedy to the court.

The Chair: Thank you, Mr. Lukiwski.

Mr. Christopherson, are you taking this?

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

Now having the floor, duly and properly, I'd like to exercise my right to introduce a notice of motion.

That the Standing Committee on Procedure and House Affairs, upon receiving an order of reference from the House concerning C-23 amendment to the elections act, initiate a study on this legislation which will include the following:

Hearing witnesses from, but not limited to, Elections Canada, Political Parties as defined under the Canada Elections Act, the Minister of State who introduced the bill, representatives of first nations, anti-poverty groups, groups representing persons with disabilities, groups representing youth advocates and students, as well as specific groups which have been active in society on election rules, including Fair Vote Canada, SAMARA, Democracy Watch and the BC Civil Liberties Union;

And that the committee request to travel to all regions of Canada (Atlantic Canada, Quebec, Ontario, Northern Ontario, the Prairies, British Columbia and the North), as well as downtown urban settings (such as the Downtown Eastside of Vancouver) and rural and remote settings, and that the committee request that this travel take place in March and April 2014;

And that the committee shall only proceed to clause-by-clause consideration of this bill after these hearings have been completed, with a goal to commence clause-by-clause consideration for May 1, 2014.

I will duly deposit that with the clerk.

The only thing I would then have is to afford Monsieur Mayrand an opportunity to say anything that he hasn't yet had a chance to say.

The Chair: Perfect, except I have a point of order from Mr. Lamoureux.

Mr. Kevin Lamoureux: Thank you, Mr. Chairperson. I guess I would look to you for clarification. I had posed a question to Mr. Mayrand in regard to something that was somewhat remotely close to the legislation that we had, which was directly linked to the report that we have. There was a direct link to it, right?

The Chair: Yes.

Mr. Kevin Lamoureux: Even when I did that, you said that it was borderline.

The Chair: Yes.

Mr. Kevin Lamoureux: There was an agreement, from what I understand, on Bill C-23. Because I am exceptionally opinionated, as all members are on that particular piece of legislation. We all have things we would like to see done with that piece of legislation. Even though on the surface it sounds like a good motion. I would look to you for some guidance to the committee as to whether or not it's appropriate for us to be dealing with that, or sticking with the agenda, because I do have some more questions on the agenda items.

The Chair: Thank you.

We've pretty much used time by doing this, but I'll certainly give you my answer.

We've noted Mr. Christopherson's motion. It's noted. Again, he was at the meeting where I suggested we don't talk too much about this new bill while we're still dealing with the old, but it's nice to see all my friends are listening today.

Mr. Lukiwski, on a point of order.

Mr. David Christopherson: Just a moment, Chair.

I don't know what you're going on about here, but all I did was submit a notice of motion that I'm entitled to do on any subject without expecting to be editorialized and attacked by the chair for exercising my right. I am honouring our commitment on Bill C-23 totally, and my notice—

The Chair: Sorry to hurt your feelings, Mr. Christopherson.

Mr. Lukiwski has the floor.

Thank you.

Mr. David Christopherson: It's a matter of wronging me, not my feelings.

Mr. Tom Lukiwski: It's just a question on a point of order. Is David's motion in both official languages?

The Chair: It's here to be noted today. It wouldn't be brought up again until our next meeting. By then, hopefully it would be, or the clerk will have taken care of that.

Mr. Kevin Lamoureux: I have a point of order, Mr. Chair.

The Chair: Sure, let's go a round on this.

Mr. Kevin Lamoureux: Absolutely.

My colleague beside me says that people don't understand procedures. I understand agreements. I understand that on this particular piece of legislation...and as I say, I have some very strong thoughts. I would have loved to have brought forward motions and be able to debate that bill today. Trust me, I'd love to debate it. I was under the understanding that there was an all-party consensus that we wouldn't be doing something of this nature. Having said that, if we are going to be doing things of this nature, I would have liked to have been forewarned for the simple reason that I too would have liked to have been able to bring forth some motions in regard to Bill C-23.

• (1255)

The Chair: Okay.

An hon. member: The question's out of order here.

Mr. Brian Masse: Be prepared when you come to a meeting.

The Chair: I did not rule—

Mr. Kevin Lamoureux: We are prepared. You should be prepared.

The Chair: —Mr. Christopherson out of order for doing so, and his motion is noted.

I think at this moment, folks, we're using up our clock very quickly. We had expected to use some time at the end of this meeting to talk about our next steps, and what we might do.

I guess the point is: can we use five minutes, folks? Can we excuse our witnesses and move on or...?

Mr. David Christopherson: Yes, I'm okay with that.

The Chair: Mr. Lamoureux.

Mr. Kevin Lamoureux: Just one quick issue, then.

What should the House do with the members about whom these letters are received? Is that something we could get an answer on from Mr. Mayrand before he leaves?

The Chair: Monsieur Mayrand, do you want to give us a quick one on that, on what the House should do when a letter's received, or do you want us to carry on with our thing? That was the question.

Mr. Marc Mayrand: It's a matter for the House. I don't think it would be appropriate for me to suggest how the House should be dealing with those matters.

Mr. Kevin Lamoureux: Okay. Thank you.

The Chair: Thank you. I gave you the shot.

Thank you very much for coming today. I apologize on behalf of... yes?

Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC): Sorry. On a point of order, Mr. Chair.

The Chair: Yes, of course.

Mr. Scott Reid: You said, "Should we", so I took that as—

The Chair: And I looked for agreement among the groups. But, go ahead, yes.

Mr. Scott Reid: Yes.

I actually would prefer to have the questioning continue, if it's okay. We've got this witness for less time than we thought. I note that there's an important follow-up question from this side, so...

The Chair: Okay, I'm game. You've got a minute.

Go ahead. One more round of a minute.

Mr. Tom Lukiwski: Thank you.

I just want to go to the last intervention I had with you, Mr. Mayrand, because we certainly have a difference of opinion on what section 459 says, and I will quote:

(1) A candidate or his or her official agent may apply to a judge who is competent to conduct a recount for an order (a) relieving the candidate or official agent from complying with a request referred to in subsection 457(2)....

Section 457 means when you ask for a corrected return.

Then it goes on to say, an application may be made (a) within two weeks after the expiration of the period. In other words, you gave Mr. Bezan until May 17 to file a corrected return. He did not. He informed you he would be filing an application with a judge to relieve him of that obligation before the two-week period had ended. Knowing that he was going to file the application with the judge, you sent the letter to Speaker Scheer.

I simply want to know why. You had to have known that he would have sent that application to the judge within the two weeks. He stated he would. If the judge had come back and said, continue the discussions, the letter would never have been sent. It was your choice, and I just don't know why.

The Chair: Thank you, Mr. Lukiwski.

Mr. Christopherson, one minute, please.

Mr. David Christopherson: I would just try to get back to where I was before, Chair.

The Chair: Sure.

Mr. David Christopherson: I don't have any more questions. I would just afford Mr. Mayrand an opportunity to use any of the time that I have to say anything he'd like to that he hasn't yet had a chance to, if you wish, sir.

Mr. Marc Mayrand: Maybe these discussions will clarify matters, but I'm of the view that the very question of whether an MP could sit while a matter is pending before the court is a matter of privilege that should be decided by the House. I leave it to you to advise otherwise.

Mr. David Christopherson: *Merci beaucoup.*

Thank you, Chair.

The Chair: All right.

Seeing that, and seeing the absence of Mr. Lamoureux, we will adjourn.

Thank you very much, Monsieur Mayrand, for coming and staying as long as you could.

We will be sending a notice of motion on Tuesday's meeting. Private members was to meet in one hour. We may now add a piece to that second hour about steering, and where we're heading with the rest, and your motion.

We are adjourned.

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