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Commissaire aux  
élections fédérales

Commissioner of  
Canada Elections

April 19, 2017

The Honourable Bob Runciman, Senator  
Chair, Standing Senate Committee on Legal and Constitutional Affairs  
The Senate of Canada  
Ottawa, Ontario  
Canada, K1A 0A4

Dear Senator Runciman:

I am writing as a follow-up to my appearance, on April 13, 2017, before the Standing Senate Committee on Legal and Constitutional Affairs. The Senate Standing Committee was meeting as part of its review of the reports of the Chief Electoral Officer following the 42nd federal general election.

During the course of the Standing Senate Committee's meeting, its Deputy Chair, Senator Baker, asked whether the evidentiary threshold that my Office must currently meet in order for a court to issue a production order or search warrant was too elevated. He asked if the Standing Senate Committee should report to the Senate that, in order to obtain a judicial authorization, it should be sufficient for my Office to establish that it has "reasonable grounds to suspect" that an offence has been committed, instead of the more demanding evidentiary threshold of "reasonable grounds to believe."

You will recall that I answered that this was not something that I viewed as being necessary, but that rather, there were other pressing reforms that I felt would ensure a better compliance and enforcement regime under the *Canada Elections Act*. I expressly mentioned the need for Administrative Monetary Penalties as an alternative to criminal enforcement of the provisions of the Act. Further, in my opening statement, I expressly mentioned the need for courts to have the power to issue orders compelling the testimony of witnesses in the course of important investigations, in order that they may proceed efficiently and rapidly. I expressed the view that this would assist in maintaining public confidence in the integrity of the Act's compliance and enforcement regime.

Through this letter, I wish to point out to the Standing Senate Committee another reform that I feel is necessary in order to ensure that my Office is able to carry out its mandate in the most efficient manner possible. This would be to have my Office's Investigations Directorate designated as an "investigative body" for the purposes of the *Privacy Act* and of the *Access to Information Act*.

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This designation would allow my investigators, upon request and at the discretion of the other federal institution, to quickly obtain personal information held by this other federal institution, instead of having to apply to a court to obtain a production order. This would allow for a much more efficient means of obtaining personal information that may be necessary to assess whether an offence was committed under the Act, where the information is not of such a sensitive nature as to give rise to a reasonable expectation of privacy. In the latter case, judicial authorization would still be required, in order to meet constitutional requirements.

For instance, being designated as an investigative body would allow the Investigations Directorate to obtain information from Citizenship and Immigration Canada about alleged cases of non-Canadians having voted at an election. While a significant number of such files may be referred to my Office after an election, quickly obtaining information on which individuals were still permanent residents during the election period—and therefore not entitled to vote—would allow my Office to focus its investigations and potential compliance and enforcement actions to those particular cases. At present, the Office has to prepare individual production orders to a court to obtain the same data, which is time-consuming and resource intensive.

Although an agency is normally designated as an investigative body through regulation, we understand that the Department of Justice has halted the processing of all such applications, including the one made in 2015 in relation to my Office's Investigations Directorate. In my view, it would be extremely helpful if the Standing Senate Committee were to recommend to the Senate that a legislative amendment deeming my Office's Investigations Directorate to be an investigative body for the purposes of the *Privacy Act* should be adopted. Should the Standing Senate Committee require additional information on this issue, we would be happy to assist in any way we can.

It would be greatly appreciated if this letter was shared with all members of the Standing Senate Committee.

Yours truly,



Yves Côté, Q.C.

c.c.: Ms. Jessica Richardson,  
Committee Clerk