

Elections Canada

**Commissioner of Canada Elections
Commissaire aux élections fédérales**

March 15, 2006

File 2000-001-E06-10-E-44

Mr. Dan Fass
Vancouver BC

Dear Mr. Fass:

On behalf of the Commissioner of Canada Elections, I acknowledge receipt of your emails of February 20, March 2, March 7, and your letter of March 7, 2006, with the attached affidavits alleging a violation of ss. 482(b) of the *Canada Elections Act*.

The Commissioner of Canada Elections is responsible for ensuring that the *Canada Elections Act* is complied with and enforced. This responsibility is only exercised if there are sufficient grounds to suspect that a violation of the Act has occurred.

Since the Courts strictly construe the penal provisions of the Act, the conduct, which is the subject of a complaint, must fall squarely within the specific terms of the applicable provision for an infraction to be considered. In this circumstance, the prosecution would have to prove that a representation of a matter of fact made by words or otherwise, that is known to the person who makes it to be false and that is made with a fraudulent intent to induce the person to whom it is made to act on it.

The available information concerning Mr. Emerson's decision to change party affiliation indicates that his decision was made after the federal election of January 23, 2006.

In this circumstance, a violation of para 482(b) of the Act cannot have occurred. Since you have not provided this Office with information of false representations made by or on behalf of the candidate before the voting took place and which the candidate knew to be false, there is no basis to conclude that a breach of the Act has been committed, and the Commissioner has no alternative but to close his file on this matter.

Please note that the *Canada Elections Act*, which sets up the framework for Canadian federal election does not provide for processes such as recall procedure in case constituents are not pleased with decisions of their Member of Parliament.

Thank you for your interest in the integrity of the electoral process.

Yours truly,

Senior Counsel to the Commissioner