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Jeudi 11 août 2016

Standing Committee on General Government

Election Finances Statute Law Amendment Act, 2016

Comité permanent des affaires gouvernementales

Loi de 2016 modifiant des lois en ce qui concerne le financement électoral

Chair: Grant Crack
Clerk: Sylwia Przezdziecki

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Thursday 11 August 2016

Jeudi 11 août 2016

The committee met at 0900 in room 151.

ELECTION FINANCES STATUTE LAW AMENDMENT ACT, 2016

LOI DE 2016 MODIFIANT DES LOIS EN CE QUI CONCERNE LE FINANCEMENT ÉLECTORAL

Consideration of the following bill:

Bill 201, An Act to amend the Election Finances Act and the Taxation Act, 2007 / Projet de loi 201, Loi visant à modifier la Loi sur le financement des élections et la Loi de 2007 sur les impôts.

The Chair (Mr. Grant Crack): Good morning, everyone. I'd like to call the Standing Committee on General Government to order. Welcome. I hope everyone is summering well. We have a full agenda today. We're here to deal with Bill 201, An Act to amend the Election Finances Act and the Taxation Act, 2007, and we'll continue public hearings.

OFFICE OF THE AUDITOR GENERAL OF ONTARIO

The Chair (Mr. Grant Crack): It gives me great pleasure to welcome our first guest, the Auditor General for the province of Ontario, Bonnie Lysyk. As well, she has a guest.

I will turn the floor over to you. You have 20 minutes for your presentation, followed by up to 40 minutes of questioning from the three parties. Welcome. The floor is yours.

Ms. Bonnie Lysyk: Thank you, Mr. Chair. With me, I have Christine Pedias. Christine Pedias is our manager of communications and is responsible for government advertising as well.

Thank you for having us at the committee. I appreciate the opportunity to appear before you about Bill 201, the Election Finances Statute Law Amendment Act.

I understand that the committee has been quite active this summer, holding hearings in various locations across Ontario on this significant piece of legislation.

Among its many changes, this legislation would fundamentally alter Ontario's campaign financing rules by banning corporate and union donations to political parties, setting limits for individual contributions, and imposing restrictions and rules on political advertising by political parties and third parties in the six months prior to an election period. My interest in this proposed legislation is focused on the latter point.

By way of background, in 2004 the Legislature passed the Government Advertising Act, or, for short, I may alternatively refer to it as the GAA. When the legislation was introduced in 2003, it was in response to concerns that taxpayer dollars were paying for government ads that did little more than deliver glowing accounts of the government's successes or criticism of its opponents.

For the past 12 years, my office has been responsible for reviewing advertising done by the government across a variety of mediums such as TV, print, radio, and, more recently, online.

The objective of the Government Advertising Act of 2004 was to ensure that government advertising was not partisan. The Government Advertising Act applies to most advertising done by government offices; specifically, government ministries, Cabinet Office and the Office of the Premier. It requires these offices to submit proposed advertisements to my office for review and approval before they can run. Specifically, my office was charged with ensuring that government advertising was not partisan and that it met other legislated standards.

I believe the 2004 Government Advertising Act was an ideal precedent-setting piece of legislation that served as an effective means of promoting transparency and accountability in government advertising.

Since that time, my office has reviewed more than 8,500 government advertisements in a variety of languages, which cost the government about $500 million to create and run. Although the vast majority of ads passed our review, about 1% were not approved because we found them to be partisan or they failed to meet one or more of the other legislated standards.

This legislation received significant attention in this country and others as groundbreaking because it ensured that advertising paid for with taxpayer dollars was not used by the sitting government party to promote its partisan interests.

However, the GAA's effectiveness was largely eliminated when the government included amendments to the GAA in last year's Budget Measures Act. The standards that required government ads to serve a legitimate purpose by providing useful information to the public and not inappropriately praising the governing party or criticizing those who oppose the government were removed.

As well, a very narrow and limited definition of what constitutes partisan advertising was introduced. The amendments repealed two critical subsections, 6(3) and 6(4), in the previous version of the GAA. These subsections allowed the Auditor General discretion in considering additional factors beyond the GAA's specific standards to assess whether a primary objective of a government ad was to promote the partisan interests of the governing party. For example, in the earlier version of the GAA, we could look at the ad and ask ourselves some reasonable questions such as: Is the message fair, balanced and objectively presented? Are the factual and numerical data accurate and supportable? Is the tone overly self-congratulatory? Is the timing of the ad likely to net significant political gains for the government?

This discretion to consider these questions has effectively been removed. In its place is now a very narrow definition of what constitutes partisan advertising. The Auditor General can now only deem a government advertisement as partisan if it includes the name, voice or image of a member of the executive council or a member of the assembly; or it includes the name or logo of a recognized party in the assembly; or it directly identifies and criticizes a recognized party or member of the assembly; or it includes, to a significant degree, a colour associated with the governing party.

In my view, these significant changes weakened the Government Advertising Act so much that my oversight can no longer ensure that government ads are prevented from promoting partisan interests.

I outlined this position in a special report tabled in the Legislature in May 2015 and advised that my office may be put in a position where we are required to approve a government ad because it conforms to the narrow requirements of the amended GAA, even though it could be partisan by any objective, reasonable standard.

I outlined how the amendments would fundamentally and significantly alter my office's role in reviewing advertising and how this new role would be of little value to the taxpayers bearing the costs of government advertising.

The amendments to the GAA were put into force on June 16, 2015. As a direct result, the government has much more latitude to run ads that the amended GAA would define as non-partisan but that could be considered partisan by any reasonable measure. And in the year since these changes took effect, the amended GAA required my office to approve certain ads in the areas of pensions, climate change, infrastructure and health that we believe had as their primary objective the intention of fostering a positive impression of the government. For example, ORPP ads would not have been approved under the 2004 Advertising Act, as they would have been viewed by my office and our advertising committee of experts as promoting partisan interests.

But how does this tie into the proposed changes in the Election Finances Act regarding third-party advertising, you might ask?

Well, it is undisputed that third-party advertising plays a significant and influential role in Ontario elections. While one may not readily think that government ministries are third-party advertisers, Bill 201 redefines what constitutes political advertising.

Bill 201 proposes to redefine political advertising to include not only ads that support or oppose candidates or parties, but also advertising about an issue that is associated with a candidate or a party. So if the government runs an ad, say, on government investments in infrastructure or its action plan on climate change, would this ad be captured under the third-party advertising rules because the ad is about an issue that is very likely associated with a political party?

I echo what Greg Essensa, Ontario's Chief Electoral Officer, asked of this committee in his presentation on June 6. He asked for clear direction about whether or not government-sponsored advertising would now be covered by Bill 201. He said he was concerned about how this rule would apply in practice, and so am I.

Bill 201 proposes to limit third-party political advertising spending to $100,000 during the election campaign period and to $600,000 in the six months prior to a scheduled election. Bill 201 does not address whether there would be any limitations on government advertising in that same period.

Last fiscal year, from April 1, 2015, to March 31, 2016, the government spent more than $40 million running more than 1,200 advertisements, with the top 10 advertising campaigns amounting to a total of more than $30 million.

As for political parties, under the proposed legislation, they would be limited to spending $1 million. On the other hand, the government would be able to spend millions of dollars ensuring their multiple advertising campaigns reach as many viewers as possible, without any limits.

Given the recent changes to the Government Advertising Act that, in my opinion, now allow partisan ads to be defined as non-partisan, I wanted to highlight this issue for this committee and the Legislature.

It is worth noting that in May 2016, the government of Canada updated its communication policy so that federal government advertising cannot take place in the 90 days before a fixed general election date. In Ontario, no similar rule exists, and the changes the government made to the Government Advertising Act in 2015 have effectively removed the safeguards, a key one being the Auditor General's discretion.

0910

I exercised this discretion regarding government advertising during the by-elections in 2014 for the ridings of Thornhill and Niagara. The government already had our approval for four TV spots about tuition rebates and one TV spot on cancer screening. We became concerned, however, when we received two additional TV ads for approval.

Individually, these ads met the standards of the GAA. However, in the context of the upcoming by-elections, I

was concerned that the sheer volume of the ads could have given the governing party a political advantage. We therefore chose to make our approval for these two campaigns conditional on their starting to run the day after the by-elections. I no longer have this discretion.

As I have said publicly in the past, the changes made to the act last year have opened the door to the return of taxpayer-funded partisan government ads. These ads may very well be running, or even ramped up, in the six months prior to an election, to the governing party's advantage.

As for during the election period itself, the amended GAA includes a listing of the types of government ads that would be permitted to run during a general election campaign. These include ads involving a revenue-generating activity, messages that are time-sensitive and other types that could be added by government through regulations.

Under the previous version of the GAA, one of the factors within the discretion of the Auditor General was whether an advertisement could run during an election period. Over the last three general elections in Ontario—2007, 2011 and 2014—the government ran advertising that my office approved while fully aware that they would run during the election campaign. These ads dealt with, for example, Ontario savings bonds, Foodland Ontario and international advertising designed to attract investment in the province.

It has also been a long-standing practice for the government to self-limit its advertising during election campaigns to only those ads dealing with urgent matters or revenue-generating activities.

While I am supportive of these guidelines now being included in the current GAA, I do draw your attention to the fact that the period of time the governing party can run government advertisements before an election campaign or by-election is not restricted in any way.

So, if the intention of Bill 201 is to level the playing field, the influence of government advertising must be considered. There is an advantage to the governing party if it is able to advertise on any issue at any time prior to an election, and at any cost, in the guise of government advertising, especially now that the 2015 changes to the Government Advertising Act allow partisan ads to be deemed non-partisan in nature.

If Bill 201 is passed as is and not changed, the governing party, through its use of taxpayer-funded advertising prior to an election, might very well have a political advantage, especially since political parties and third parties will be much more limited in their spending during the same time.

Therefore, I respectfully recommend that the previous version of the Government Advertising Act, of 2004, be reinstated, including digital advertising as a reviewable medium. Alternatively, the discretionary powers of the Auditor General that were removed could be inserted in the current Government Advertising Act. As well, the review standards which guided my work under the previous act should be reinstated. Implementing either would give my office the authority it needs to ensure that government advertising, especially prior to and during an election campaign, does not give the governing party any partisan advantage.

In closing, I thank the committee members for your attention. I ask that you seriously consider the points I have made and the recommendation or the alternative recommendation that I have put forward. I would now be pleased to answer any questions you may have.

The Chair (Mr. Grant Crack): Thank you very much, Ms. Lysyk. We appreciate your comments.

I just remind members of the committee that we have up to 40 minutes. I shall do my utmost to ensure equal opportunity to speak. We're going to start with the official opposition, and we'll go this way. Mr. Hillier.

Mr. Randy Hillier: Thank you, Auditor General, for being here. It's a pleasure to hear your presentation and your thoughts on this. I've got a number of questions; hopefully, we can get through a few of them.

It's clear that in 2004 the government had a stated objective in the Government Advertising Act, and it appears that in 2015 that objective has been altered, has been changed. We haven't really seen much justification, or any justification, for the change in objective. But part of our discussions here—and third-party advertising and government advertising have taken up a large part of our discussions—is trying to find the right balance that ensures freedom of speech, encourages freedom of speech, but also ensures that government advertising is done for the benefit of taxpayers, not for the benefit of the party who is in power at the time.

So my question—and I'm hopeful that this committee will amend the legislation to reinstate your authorities under the GAA—is, do you believe that your office would also be a suitable mechanism to define what is partisan advertising and what is not for third-party advertisers? Do you think that scope would be appropriate within the Auditor General's office?

Ms. Bonnie Lysyk: That's a good question. I can't say that, as an office, we've given considerable thought to having our responsibilities expanded to that review, but I do believe that the practice that has existed in the office over the last number of years, over 10 years, is a good one in looking at ads and determining whether or not they would be perceived as partisan. So I think we have the skill set in the office. We use an expert advisory committee that is well versed in defining partisanship. When the office was initially given the responsibility for advertising, there was a lot of consultation with, I believe, the advertising council of Canada, and so we do have the knowledge that could be applied.

Mr. Randy Hillier: So you would not be averse to that expanded role at the present time?

Ms. Bonnie Lysyk: It's interesting because, initially, when one thinks of the audit office—years ago when this legislation was coming into place, it was a surprise to the Auditor General at the time that this would be the ask of the office. But I think there was an acknowledgement that the credibility of the office, put behind the approval

of legislation, provided comfort to both the public and perhaps all the parties. The office geared up and did the work.

Interestingly enough, professors from Western University have done a paper that is not yet public where they went through the history and they tried to understand why this would end up in the Office of the Auditor General. They recognize that it was because of public appreciation and trust of the office.

Going back, if you had said that probably 10 or 12 years ago, the response would be different. I think now, if there is a home needed for the look of all of it, we would be fine, working in partnership with the Chief Electoral Officer. I think that relationship is very important because he has an oversight mandate for elections and that, but with respect to advertising, we could probably do something there.

Mr. Randy Hillier: Okay. Because I'm not confident that we can find the proper legal language to protect freedom of speech and limit inappropriate use of taxpayer dollars just with a legal code, I think we need to find some other body that has exceptional credibility and integrity, that can exercise judgment along with the codification of our requests.

One of the things that I've seen as well, and maybe if you just can comment, from what we've seen with some of the loopholes or some of the clauses in this bill which are not consistent with the stated objectives—one of them is the bundling of group contributions by organizations that are otherwise not able to contribute to the political process under Bill 201. When I look at those clauses and at what has happened with the Auditor General's office with respect to government advertising, the comments this week and the report this week by the Integrity Commissioner, I see a pattern and a trend that is purposeful, or at least appears to me may be purposeful, that our oversight bodies are being diminished in not having the proper level of mechanisms to do their job well. We saw it with the Financial Accountability Office not getting the data and the information that they need.

0920

I just wonder what else you see in this bill, or if you have looked at this bill in other avenues or other regard other than just government and third-party advertising. Does it meet the threshold of giving the independent bodies of the Legislature that oversight that I think we're all thirsting for?

Ms. Bonnie Lysyk: Maybe just to put on record, in terms of my office's Auditor General role, as an office, we receive co-operation and we don't have significant access-to-information problems. I want to put that on record, that I do believe we operate with quite good co-operation from both the government and the broader public sector.

On the advertising, that's obviously a different thing. I think the changes that were made to the Government Advertising Act make us—I think it's a joke, what we're doing. We receive ads, we look for colour, we look for logo, we look where there's a picture of a minister or a voice, and we just stamp "it's okay."

I was not comfortable in suggesting that the ads that are being put out are non-partisan, so what we do when we approve an ad is we say it's in compliance with the legislation. We've reverted it back to a quasi kind of auditor opinion, that we reviewed the ad and it's in compliance with the rules.

Do I think we're accomplishing anything by participating in this exercise? Absolutely not. It's a paper flow issue. The government ministries and staff know well not to have something with a government—you know, it has to have a government logo. The simplicity of this is obvious.

We definitely have diminished responsibility—

Mr. Randy Hillier: That's where I see the similarities, especially with the Integrity Commissioner's report this week as well: in compliance but—

Ms. Bonnie Lysyk: There's no substance to our work here.

Mr. Randy Hillier: Yes.

Ms. Bonnie Lysyk: There is no substance, and so that's why I'm here commenting. If there is a view that we're looking at government ads the way we did a year ago, that's not the case. During by-elections and elections, the office has been very cognizant of how to look at those ads and the volume of ads and the timing of the ads. But under the new legislation that we work under, we can't do that anymore, so there is that huge void.

Regarding anything else in the act, I'm probably not the right one to comment. I think you're getting good advice from your Chief Electoral Officer, so I think I'd leave that at that.

Mr. Randy Hillier: Thank you very much. I don't think anybody here wants to see our oversight bodies diminish into a rubber stamp organization where the laws are such that you just have to pass it, unless there is such a blatant use of party logos. That's not what we're expecting out of this legislation.

Ms. Bonnie Lysyk: We do have in the submission to the committee, after the proposed amendments to the advertising act, examples of the campaigns. There are three major ones here that we had to approve in compliance with the act, but under the old act, they would have been viewed as in violation of the old act.

Mr. Randy Hillier: Right.

Ms. Bonnie Lysyk: And that relates to the ORPP, climate change and investments in infrastructure.

Mr. Randy Hillier: Right. Well, listen, thank you very much. I'll turn it over. I do hope that we see your office have some reinstated authorities at the end of this committee process. Thank you.

The Chair (Mr. Grant Crack): Ms. Fife.

Ms. Catherine Fife: Thank you, Auditor General, for coming in and sharing some of your concerns. I do want to tell you that the delegations that we have heard from echo the same concerns that you've brought forward to this committee. I do think we have a responsibility to address the limitations that are currently going to be on

issue-based advocacy groups and find that balance between the Government Advertising Act and their ability to use a governing position to their advantage, regardless of what party it would be.

But I do want to dig down a little bit on the changes to the GAA. As you mentioned, in 2004, the then McGuinty government did strengthen the GAA, and you speak very highly about it, about the integrity of that act. Then in 2015, through the Budget Measures Act, there were significant changes.

You mentioned in your report that issues like climate change, health care and pensions have recently come to your attention as the AG. It's funny that you mentioned the health care piece, because I happened to be in a hospital waiting room not that long ago, and one of the ads came on talking about the reductions in wait times. The waiting room was packed. The anger in that waiting room was palpable, because they were watching a government ad and they were having a very different experience. That's the sort of imbalance that I want to get to.

I am curious. You were very vocal when these changes happened in 2015. You said that the changes essentially gutted the restrictions on partisan advertising. You said at the time, and you warned us, that it would allow the government to run partisan ads.

What was the rationale? You're having these conversations with the government, with the ministries, if you will. What was the rationale that was given to you for the changes that they made and for changing your authority as the AG? What underpinned this significant departure from the 2004 act?

Ms. Bonnie Lysyk: It's interesting, because there was no communication with us that the changes were coming. I did get a call on the day the budget bill was going to be tabled, indicating that there would be something changing the advertising act. Up to that point, I was not aware that the changes were being made.

I know that what has played out in the press is that, "Oh, it's because some of the ads had red, and the auditor rejected them," or there was a focus on apples. None of that is based in reality. We keep files on every single ad that has been reviewed. Minimal ads have been rejected. The basis of what was put on YouTube—I think there was a whole thing put on YouTube of all these ads that apparently we hadn't approved. They were way before my time, and they're very old ads. The explanation behind the ad was incorrect.

Ms. Catherine Fife: Okay. Has your office ever stopped the government from advertising a program from which people could benefit?

Ms. Bonnie Lysyk: In the view of my team, my office, we believe that we work with the ministries and highlight where they could tweak ads to actually make them compliant and make them more beneficial—in the past—to taxpayers. So I would say there was discussion before an ad was rejected, which is why the rejection rate was so low.

Ms. Catherine Fife: Yes. In your presentation, you mentioned that the federal government, just this past May, really strengthened their advertising act. Do you want to speak a little bit to those changes and how they differ from what is happening in the province?

Ms. Bonnie Lysyk: You know, it's probably—

Ms. Catherine Fife: Can you please put your mike down a little bit so we can hear? Thank you.

Ms. Bonnie Lysyk: I think the only thing I commented on was that they updated their communication policies so that the federal government advertising couldn't take place in the 90 days before a fixed general election date.

Right now in Ontario, and even in the past—government advertising could continue throughout a period of time, but we were always there as the eyes to look at it, and the Auditor General had the discretion to determine whether or not something could affect an election or a by-election. We were already performing this, which is why the 90-day requirement wouldn't have been necessary in Ontario. I would say that with the old act, it wouldn't have been necessary, because we were doing this work already.

Without us having the discretion anymore, or the standards that were in the act having been removed, then there is no restriction like this that is in the act.

Ms. Catherine Fife: When you described the process that your office goes through, that yourself and Christine go through when you're looking at ads that come your way, you described that as a bit of a joke, because it has been watered down, your ability to look at a piece of advertising through a partisan lens, and a very narrow partisan lens.

0930

We've been hearing a lot—and I'll just build on what Mr. Hillier had mentioned—that there appear to be systemic loopholes as a continued theme, be it through the Integrity Commissioner's report on cash for access. For us, this is an ability for the government to use their influence and their power to put out messages prior to an election, at the same time limiting the voices of the public on those issue-based advocacy groups.

For instance, we had members of the Tarion group here. They're so frustrated, because they would never have the kind of money to put forward their concerns and would be very limited, actually, in that six-month period prior to and then during an election. They recognize that there's this built-in systemic imbalance in power between the voices of the citizens in this province and those who have money.

I think that everyone on this committee is very supportive of removing the union and corporate donations, although big money still will be at play.

Can you speak to systemic loopholes, if you will, or to the way that your office has been limited in your ability to protect the public and to follow the money, where money is being spent? Because that's obviously a big part of your job.

Ms. Bonnie Lysyk: Okay. To the first point, I think I would have to refer the committee back to figure 2 in the special report that was issued. Figure 2 really does

highlight what was in the advertising act before and what is in there now.

Basically, the Auditor General's office had discretion to determine whether an ad would be run during a by-election or an election, and could comment on that and restrict an ad that would be considered partisan running during that time, or restrict the volume of ads being run during that time.

If the primary objective of an ad was to foster a positive impression of the governing party, or a negative impression of a person or entity critical of the government, we could refuse that ad. We cannot refuse that ad today.

Ms. Catherine Fife: Okay.

Ms. Bonnie Lysyk: We can't refuse an ad that conveys a positive impression of the governing party.

If you're talking in an election-period context, there is the loophole that an ad could be run that would foster a positive impression of the government and, the government being a party as well, at the disadvantage of other parties.

Ms. Catherine Fife: In some of your examples also, you give the example around the climate change commercial that ran extensively, depicting that the government had a plan. It depicted animals that an announcer addressed as "fellow Ontarians" and who responded enthusiastically. Yet the Legislature had not received that act at that point in time, when the advertising was released. Under the former 2004 act, would you have had the ability to say to the government, "You can't advertise that an act is in play before it actually comes to the Legislature"?

Ms. Bonnie Lysyk: It's not necessarily always black and white, but that's pretty close to being correct. I think an easier example is the ORPP, in the sense that there wasn't a pension plan yet, and there was advertising happening, trying to convince people it was a good thing. That would have been a reason that we would have interpreted as being done to get support from the public for a government initiative. There are no details on it. There's no need to know that, on a certain date, this is what will happen with your employer or, as an employee, this will be the impact on you.

We looked at whether the information that would have been presented in the ad was something that a taxpayer needed to know, to benefit them directly.

Ms. Catherine Fife: And we're finding out how much money was actually spent on that as well.

I want to give the next line of questioning, because I think we have enough time to perhaps have another go-round. But I do want to thank you for raising very valid issues around government advertising. We share those concerns, and we will certainly be trying to address them at clause-by-clause.

Thank you, Chair.

The Chair (Mr. Grant Crack): Thank you.

Mr. Rinaldi.

Mr. Lou Rinaldi: Good morning again, Bonnie. It's good for you to be here this morning to share some insight on Bill 201. I think the opposition touched on your main theme of being here this morning about, I guess, the governance or the oversight on government advertising. Also, I think Mr. Hillier talked to you about some of the other things in this bill. It's not just about government advertising, but you really focus on government advertising, so I'm not sure you're prepared to comment on other issues of the bill.

Ms. Bonnie Lysyk: I think it depends on what the question is. If I have the knowledge, I will. If I don't, I'll indicate it to you.

Mr. Lou Rinaldi: We talked about the pre-writs. I'm not going to—I got the message. In light of that, then, you talked about the restriction of federal government advertising prior to an election of 90 days in your comments, I believe. Can you share with us what other provinces are doing when it comes to government advertising control?

Ms. Bonnie Lysyk: The piece of legislation in Ontario—the original one—was groundbreaking. At that point in Canada, it was groundbreaking. Nobody else was doing anything. Australians came and they viewed the legislation and they based a lot of their legislation on advertising on the Ontario piece of legislation, so we know that internationally, it was picked up.

Other provinces, up until the recent change the federal government was looking at—I think the federal government in power now, the Liberal government, has been speaking about government advertising, monitoring it. I don't believe that to date, anything has occurred there. We know we've had information requests from Manitoba. I think they were looking at it. But you're correct in the sense that there isn't firm legislation, I don't believe, in other provinces.

Do you want to comment, Christine?

Ms. Christine Pedias: I believe the federal government has changed their policy, although not enshrined in legislation yet, that any advertising campaign over $500,000 would go before Advertising Standards Canada. Now, that's a fairly recent process, so I'm not even sure if that's started, but they would be looking at things similar to what our current act—

The Chair (Mr. Grant Crack): Excuse me. Could you pull your microphone down for Hansard? It's hard to hear. Thank you very much.

Ms. Christine Pedias: They would be looking at things such as what we're looking at under the current definition of "partisan": a name, a voice, an image of an MP or a senator.

Mr. Lou Rinaldi: So then it would be fair to say that Ontario, in a sense, however we want to describe what the end result is, is the only jurisdiction in Canada that has some oversight. And I respect your views; I don't want you to misunderstand that.

Ms. Bonnie Lysyk: No, you're correct, I think. But you have to, too, look at the culture of every province, because when I went back to try and understand this and the history of why this occurred, Ontario experienced and has continued to experience more advertising than any

other province in Canada. This bill, when I look back in the Hansards from years ago—I'm quoting McGuinty here: a "bill that says you cannot run an ad paid for by the public unless it's first vetted by the provincial auditor who will tell us whether it truly serves the public interest or whether it serves the political party that happens to form the government of the day" is a good bill. When I look in the history, the history in Ontario brought this act to the table and asked us, as an office, to do the work because of the culture. So I think that has to be kept in mind in terms of, what are the requirements around the review of government advertising?

Mr. Lou Rinaldi: Good. Thank you, folks.

The Chair (Mr. Grant Crack): Thank you very much.

Mr. Berardinetti had some questions.

Mr. Lorenzo Berardinetti: Thank you and good morning. I just had a question to do with the issue of collusion.

The Chair (Mr. Grant Crack): Closer to your microphone, please.

Mr. Lorenzo Berardinetti: Okay, sorry about that. I think I've got a lot of space here. I guess the current definition of "collusion" is too hard to prove, requiring a party to have knowledge and have consented to a third-party advertisement. I just want to know what your thoughts are on the current definition of "collusion"—whether there's agreement from both sides.

Ms. Bonnie Lysyk: If I put on an audit hat and what's collusion, the word triggers people working together for the disadvantage of some purpose or for an illegal action. That's when I think of collusion. We look at it as auditors in the area of purchasing, accounting: Is there collusion? It's an example of fraud, right?

Mr. Lorenzo Berardinetti: Just continuing on with that question, there are some American jurisdictions that would create a presumption of coordination between third parties and campaigns where former political staff, party officials or party consultants are involved with third-party activity. This presumption could be rebutted.

0940

I'm just wondering what your thoughts are about amending this definition of collusion like they have in the States.

Ms. Bonnie Lysyk: I think that's a very good question, and it's a very good thing that the committee is doing in looking at that. I'm probably not prepared enough to offer a hit-or-miss comment on it. I would probably need to sit back and reflect on that more. I apologize for that, but that's not simple.

Mr. Lorenzo Berardinetti: Yes, I understand it's a bit harder to comment on it because it's a hard thing to prove, actually.

Ms. Bonnie Lysyk: Collusion? Yes. I mean, I probably encountered it—in Manitoba, I think we did one audit of Manitoba Housing years ago where there were painters—and this was not the election—who colluded together on different bids under contract. But from an election advertising perspective, I don't want to comment on what your definition should be as a committee. I think that's probably something I would need to study more.

Mr. Lorenzo Berardinetti: Okay. Thank you.

The Chair (Mr. Grant Crack): Thank you. Mr. Qaadri.

Mr. Shafiq Qaadri: Thank you to our Auditor General and to colleagues.

You mentioned, Ms. Lysyk, the issue of history. I think perhaps the most historic prime mover in all of this was the excellent advertising brought forth by the opposition party which, as you've rightly cited, actually featured the Premier of the day—the "Your Tax Dollars at Work" ads that were inflicted upon us on highways and in mailings and so on. As you'll perhaps agree, much of this legislation is essentially in response to that level of advertising.

My question is with regard to third-party real-time disclosure. As you're aware, political parties have to disclose their sources of funding in real time, with constituency associations reporting, as I understand it, annually. Meanwhile, third parties have no requirement, as I understand it, to disclose donations outside of a 29-day period every four years.

The question is, do you support disclosure requirements for third parties year-round, and why or why not?

Ms. Bonnie Lysyk: That's an interesting question. Given the situation in Ontario, where the magnitude of money that has been spent is huge, and the influence that subtle advertising and direct advertising can have on people in the province, I think there is value for disclosure of that information. That would be my opinion.

Mr. Shafiq Qaadri: Would you like to see legislation brought forth to that effect? And you'd support that?

Ms. Bonnie Lysyk: Now you're going to ask me—as a taxpayer and as a citizen, I think that would be good.

I'm an Auditor General. The Chief Electoral Officer is the expert in terms of dealing with your particular bill, but I think that makes sense, given what I've seen in Ontario.

Mr. Shafiq Qaadri: Thank you.

The Chair (Mr. Grant Crack): Thank you. Mr. Milczyn.

Mr. Peter Z. Milczyn: Good morning, Ms. Lysyk.

Just to sort of continue on this theme of third-party advertising and how it relates to perceptions and influence on the political process, currently in the legislation there isn't a proposed limit on donations made to individuals or organizations for third-party advertising outside of campaigns. Do you think, around the issue of transparency and accountability, that there should be some limits imposed on the amount of contributions that could be made to third-party advertising, and if so, what should those limits be? Should they mirror the other contribution limits that are in this legislation for candidates and parties? Should they be different? What are your views?

Ms. Bonnie Lysyk: You know what? I think disclosure is a good idea. I'm probably not the one to say what the limits should be. There are probably a lot of

heads around this table, along with your Chief Electoral Officer, to determine that. But I think disclosure is appropriate.

I can draw your attention, in our special report, and this is not relating to the standards, we do talk about—sorry. In chapter 2 in our annual report, we talk about third-party advertising because sometimes we have an agreement with government—sometimes government is able to provide money to a third party who then runs an ad. Under our previous legislation, that ad would come to us to review. There weren't many of them. For instance, the Heart and Stroke Foundation—it was a good ad. This was years ago. The government gave the Heart and Stroke Foundation money to advertise, and there were certain rules. The office approved the ad, and the Heart and Stroke Foundation ran the ad with the support of government funding. So there's an example of where disclosure makes sense and disclosure, I think, for another third party, a group that affects people's perceptions of government-related issues, is a good thing.

Mr. Peter Z. Milczyn: That further raises the issue about spending limits. If it were government providing funding to a third party—a social service agency or a health promotion agency etc.—I assume, if there are no limits, there are no limits and the government just funds it. If we impose limits on other types of third-party advertising, there wouldn't be a level playing field necessarily. That's why I was asking your view on whether there should be contribution limits on donations to third-party advertising campaigns.

Related to that, also, is if the legislation, as proposed, puts a ban on corporate and union donations for donations to parties and candidates, should a similar ban be imposed on donations to third-party advertising campaigns?

Ms. Bonnie Lysyk: I think the disclosure is a good thing because I think that in itself then creates discussion around whether there should be limits or not. It could be a two-step process or it could be a one-step process by the committee. One step is to ask for disclosure and then you see what happens in an environment. The next step is to put a limit if it's abused.

I can't comment on what would happen with or without a limit. All I can I say is, in the past, if it was the government providing the money to an outside agency, that ad would come to us and we were able to say whether it was partisan; we can't now.

Those three aspects—disclosure of it occurring, the amount that has occurred, and why it's happening—are good to me and transparent.

The Chair (Mr. Grant Crack): Mr. Hillier.

Mr. Randy Hillier: We know that this bill is a result of what appeared to be some unsavoury practices with regard to fundraising and stakeholder access and quotas etc. I think there is a discrepancy or a chasm or a gulf between the responsibilities of the Chief Electoral Officer and the Office of the Auditor General that I think this bill needs to close, as well.

I'll give you an example. We've been trying to find out if there's any connection between political fundraising and government development funds, which are not disclosed. We've been trying for a period of time to have the government release economic development funding that has gone out, but it's black. It's dark. We don't know who is getting that funding and we cannot see if there's any connection between political fundraising and corporate handouts, for lack of a better word. Maybe you can just comment on that.

Are there other elements of public disclosure—financial disclosures—that we ought to be considering to include in this legislation, as well, for the benefit of the Auditor General's office and the benefit of people, to correlate actions and outcomes?

0950

Ms. Bonnie Lysyk: I can't really comment as to an inclusion of that type of issue in the existing bill because I probably haven't studied the bill in enough depth to see how that would fit in.

I will say, though, that we did do an audit of economic development in the province of Ontario, and one of the recommendations that we have in the report is that—the funding in the last number of years to organizations through economic development funds, the process for awarding those monies, hasn't been as transparent as we, as the audit office, would like to see. So we did recommend in that report, which was issued in December 2015, that there be more disclosure of that information. We looked at it from the audit side and the taxpayer's right to know.

Mr. Randy Hillier: I don't know if there's any good justification to not have those economic development dollars disclosed and be transparent.

Again, this is where the two bills intersect. We're considering an amendment that would make it mandatory, for example, if they were an officer or a director of a company receiving those funds, that their personal contributions be included in the application process, and that there be disclosure and openness for the public to see if personal contributions are still funnelling in some—

Ms. Bonnie Lysyk: That sounds reasonable to me. If people want to contribute to a party and receive taxpayer money, I think full disclosure of that is good. I think it keeps everybody aware that it happens. It's going to happen. People are going to donate money, so why not disclose it? That would be my view on that particular point.

Mr. Randy Hillier: I'll turn it over to my colleague.

The Chair (Mr. Grant Crack): One quick question, Mr. Walker.

Mr. Bill Walker: Thank you very much, Bonnie. I found your report very insightful.

When I read words like "changes weakened the Government Advertising Act so much that my oversight can no longer ensure that government ads are prevented from promoting partisan interests," and "fundamentally and significantly alter my office's role in reviewing advertising and how this new role would be of little value to the taxpayers bearing the costs of government advertising"—ads would not be approved under the old act, and yet

we're talking about "accountability" and "transparency" all the time. The government continually uses those words.

The public expects effectiveness and objective, non-partisan actions by the government at any one time.

My concern, to summarize, is that if the discretionary powers of the Auditor General's office or the previous GAA are not reinstated, would you suggest that there is an ability for the government of the day to realize political advantage?

Ms. Bonnie Lysyk: Yes.

The Chair (Mr. Grant Crack): Ms. Fife.

Ms. Catherine Fife: As you mentioned at the beginning, our work as a committee over the last six weeks—we were supposed to put the elector at the centre. We were supposed to look at this piece of legislation in a way that would, hopefully, level the playing field for all parties but also instill confidence in the electoral process, because there is, I think, a crisis of confidence in the province of Ontario, based on some of the cash-for-access policy decisions that have happened across the province.

When I look at your examples, Auditor, around government advertising, especially this investment in infrastructure, you point out that these TV advertisements that are currently running mention this $160 billion, but this investment would occur over 12 years, and there could be at least three provincial elections that could alter these plans, as well as a number of other unanticipated economic developments. You mentioned that the goal of that particular ad was to have the government look very positive, even though there are no checks and balances to make sure that this investment is actually happening.

As Bill 201 is crafted, as you read it, do you feel that these ads could potentially continue to run prior to an election and during an election?

Ms. Bonnie Lysyk: Yes.

Ms. Catherine Fife: As it is. So you would want this committee to significantly alter the way that government advertising is monitored and filtered prior to an election and during an election period of time.

Ms. Bonnie Lysyk: I do believe that the solution is to reinstate the discretionary powers of the Auditor General in the advertising act, and reincorporate the standards that we had in there. In this particular case, in investment in infrastructure, we would have looked at the factual accuracy of the communication. So we would have gone back and said, "You're saying that a nearly $160-billion investment is being made in infrastructure, but for the public to understand that, you need to say, 'Over a 12-year period.'"

Ms. Catherine Fife: Yes. So you need to be honest about where the money is being spent in what time period.

Ms. Bonnie Lysyk: Yes. So we would critique—and we did in the past, the office did in the past—8,500 ads, and critique them for factual accuracy, whether or not they were patting government on the back, whether or not there was a useful purpose to the ad, and whether citizens had a right to know.

Ms. Catherine Fife: Other jurisdictions, though, do ban government advertising during elections, with the exception of health or revenue or time-sensitive—public safety—advertisements. For the province to move ahead and for this committee to complete its work and still have the government have that upper hand, if you will, around government advertising would really, from our perspective, undermine the entire work of this committee if you're trying to instill confidence.

Ms. Bonnie Lysyk: I agree. You can't anticipate what the ads would be, or whether there would be ads or not, but I would say that the gap is there, the loophole is there; there is a void right now that would enable that to happen.

Ms. Catherine Fife: But the government isn't going to run an ad saying, "We sold off Hydro One. This is going to reduce our revenues until 2018, and then we're going to start running a deficit again." The government is not going to do that, right? So I think when I hear some of the government members talking about banning third-party or limiting third-party—because "third party," as Bill 201 is crafted, captures issue-based advocacy groups, like autism, for instance. I don't think that these groups would be able to spend $100,000 during an election, but one never knows. You shouldn't underestimate an enraged electorate, because they could raise some money.

I think we are treading on very dangerous ground with limiting the voices of citizens, and I hope that there would be a constitutional challenge to freedom of speech for the people of this province, because they have the right, regardless of the government of the day, to voice their concerns and their issues with any government. Do you agree?

Ms. Bonnie Lysyk: I agree. I can comment on the cost part, just to give you some insight.

Ms. Catherine Fife: Yes, that would be good.

Ms. Bonnie Lysyk: I wouldn't mind if Christine commented on this as well. It is very expensive to run television campaigns. Some of these campaigns could be over $1 million. I think that's important, to recognize the cost of advertising these days.

Ms. Catherine Fife: Do you have real-time disclosure on those costs? Does the government have a responsibility to let you know as they spend this money?

Ms. Bonnie Lysyk: Every year in our annual report we put a chapter—Christine crafts a chapter—on government advertising. We put it out there, and we put the costs that have been spent on government advertising over the years and by which ad and—

Ms. Christine Pedias: Medium.

Ms. Bonnie Lysyk: —which medium and that.

Ms. Catherine Fife: And how did you come to the stat that Ontario has the most government advertising in the entire country?

Ms. Bonnie Lysyk: Part of it was just looking across the land. I think that when we did some work on union payments, my staff had just gotten a sense when they talked to other jurisdictions.

Ms. Catherine Fife: Okay. Thank you very much.

The Chair (Mr. Grant Crack): Thank you very much. We have one minute. Mr. Colle: a final wrap-up. I will shut it down at exactly 10 o'clock.

Mr. Mike Colle: I'm just wondering: Have you looked at legislation in the United States in regard to controlling advertising and money spent on elections—the US Supreme Court decision which allows unfettered spending, with no limits by anybody?

Ms. Bonnie Lysyk: I have not looked at US legislation at all on this. Again, operating in Ontario, the act was crafted based on the culture and the need of the province at the time. That, to us, is the most important issue: What's happening in your own jurisdiction and how do you deal with it? The professors from Western University gave kudos to the Liberal Party when this act was implemented in 2004 because it was a very, very intellectual piece of legislation, and it was solid. For our office, it was disappointing to see that the key essence of it and the history of it are lost with those amendments through the Budget Measures Act.

Mr. Mike Colle: I think there are a couple of provinces that have an oversight role by the Auditor General, aren't there, that have followed Ontario's lead?

Ms. Bonnie Lysyk: No, I don't think so. This is unique.

Mr. Mike Colle: We're the only province that has done this?

Ms. Bonnie Lysyk: Absolutely. I do believe the profile of it came about—I think it was initially a bill by the Liberal Party when McGuinty was in opposition. It became an act when the government was elected. That act was crafted, I believe, directly through the Premier's office and they worked with my predecessor, the Auditor General, to put out an act that I think has gotten accolades over the years.

Mr. Mike Colle: I wonder why other provinces have not copied it—

The Chair (Mr. Grant Crack): Thank you very much, Mr. Colle. I'd like to thank Ms. Lysyk and—your name again?

Ms. Christine Pedias: Christine Pedias.

The Chair (Mr. Grant Crack): —Christine for coming before committee and sharing your thoughts this morning. Thank you very much.

Ms. Bonnie Lysyk: Thank you so much.

The Chair (Mr. Grant Crack): This committee will be recessed immediately, as we have one cancellation this morning, and we will reconvene at 10:25 a.m.

The committee recessed from 1001 to 1025.

The Chair (Mr. Grant Crack): Good morning again, everyone. The recess is now concluded. We are back to order.

ONTARIO FEDERATION OF LABOUR
UNIFOR

The Chair (Mr. Grant Crack): Next on the agenda, from the Ontario Federation of Labour, we have a number of individuals: Patty Coates, Rob Halpin, Naureen Rizvi and Roland Kiehne. We welcome you. You have 10 minutes for your presentation before committee this morning, followed by up to 15 minutes of questions and comments from members of the committee.

The floor is yours. If you would like to do the introductions, feel free. If you want to just start, that's up to you as well.

Ms. Patty Coates: Great. Thank you. My name is Patty Coates and I'm the secretary-treasurer of the Ontario Federation of Labour. Thank you very much for allowing me the time today. I will speak first, followed by Naureen Rizvi, Unifor Toronto area director. Also joining us today is Roland Kiehne, Unifor's political action director, and Rob Halpin, the director of research and education at the Ontario Federation of Labour.

The OFL represents approximately 54 unions and one million workers here in Ontario. We advocate on behalf of all working people. Part of this advocacy involves pushing for better working conditions in regard to safe workplaces, access to permanent full-time work with good wages and benefits, and creating an economy built on decent jobs.

In response to the Ontario government's Changing Workplaces Review, the OFL launched the Make It Fair advocacy campaign to mobilize union members for changes to outdated employment laws. With this campaign, as with all of our campaigns, we work closely with community partners and coalitions. We're deeply concerned about the rapid and unhindered growth of precarious work over the last several decades. Almost a third of Ontario workers, 1.7 million people, now earn low or minimum wages. Women, in particular, make up 60% of minimum-wage earners. I tell you this because these are the facts that shape the lives of Ontarians today.

Our Make It Fair campaign, while focused on union members, does involve aspects of public outreach and advertising, which is why we are here to speak with you today. The OFL applauds the Ontario government in turning its eye toward election reform. We do, however, have serious concerns about what this legislative proposal will mean for the democratic right to freedom of expression. We have four main concerns about the proposed legislation.

Number 1: the six-month pre-writ period during which political advertising is restricted. Six months prior to an election is a very long time to limit public advocacy campaigns, particularly when coupled with the fact that the proposed legislation contains no similar limits on government advertising. Issue-based advocacy campaigns play an important role in fostering public discussion and debate, and are part of a healthy, vibrant democracy.

Along with the very problematic change to the definition of political advertising which would encapsulate any issue associated with a candidate or a political party, this limitation would severely reduce the ability of the OFL to continue our Make It Fair campaign in the 16 different communities across Ontario. We therefore ask

that the third-party advertising limit for the six-month pre-writ period be removed and the current definition of what constitutes third-party advertising stay intact.

Number 2: pre-writ spending limits on parties. The OFL believes that there should be limits on government advertising in the pre-writ period and during the election period, as seen in other Canadian jurisdictions.

In Manitoba, government and crown agencies are prohibited from advertising in the 90 days leading into an election and throughout the campaign where there is a fixed date, and during the election when the election date is not fixed. Manitoba also places restrictions on the use of government resources to promote government messaging and announcements in the 90 days prior to a campaign. In Saskatchewan, the Legislative Assembly and Executive Council Act prohibits ministries from advertising their activities during a general election, by-election or in the 30 days prior to an election period.

1030

If pre-writ spending limits are to be added for both third parties and political parties, we believe it should follow that there is also a limit on government advertising. The OFL would also recommend provisions which restrict ministries from increasing their advertising budgets in the four months leading up to an election.

Number 3: the introduction of public funding for all political parties. The OFL believes that public funding for elections is a positive step for the province and promoting a strong democracy and greater transparency in election financing. We support this idea as a concept. However, a gradual decrease over the course of the term will always favour the party that is best resourced going into the election—frequently the governing party. The OFL therefore recommends consistent and evenly applied funding over the term of office, and therefore asks for the removal of the gradual-decrease model.

Number 4: the lack of provisions curtailing cash-for-access fundraisers. Our final concern is regarding the absence of any new guidelines or restrictions on cash-for-access fundraisers for political parties. Remember that the public outcry that led to the introduction of this legislation came from the media stories about the $500,000 fundraising targets set by the governing party for cabinet ministers. The public, including the OFL, was expecting draft legislation that arose from this story to include limits on cash-for-access fundraisers. This is a serious omission from the current legislation, and we would recommend that an addition be made.

I thank you for your consideration. Now I will pass this over to Naureen.

Ms. Naureen Rizvi: Good morning. My name is Naureen Rizvi. I'm the Toronto area director for Unifor.

As the largest private sector union in Canada, Unifor represents 305,000 members across the country. In Ontario alone, we have over 158,000 members. On their behalf, we thank you for the opportunity to provide feedback on Bill 201.

Given the very brief period of time that has been allotted to us this morning, we will focus our remarks on the section of the bill that is of the greatest concern to the union, and that is the manner in which overly broad third-party advertising restrictions stifle public debate.

This government should share our concern. When legislation undermines discourse and the public discussion of issues, it threatens the very lifeblood of democracy. In its current form, this bill does exactly that. The definition of political advertising in this bill includes a ban on the discussion of issues with which a candidate or party is associated, both during the election period and in the six months preceding the election.

You will undoubtedly hear many organizations involved in efforts to extend social and economic justice raise similar alarm bells about these provisions. That is because we must, because if we do not, there is a tremendous potential for our voices to be silenced entirely. We will lose the opportunity to engage in an exchange of ideas with our membership and with the broader public at a critical moment: the time when they may actually be attuned to public policy issues which could have very real implications on their lives.

We understand that government decisions, proposed policy and legislation can rapidly undo everything we work for on behalf of our members. We also appreciate that if we don't demand more just and fairer systems, we never get them. So we don't just advocate at bargaining tables; we engage in the political arena. We do things like push government to adopt an auto strategy or advocate for changes to antiquated labour laws and for those that create safer working conditions. This is what unions do, and it's our inherent and democratic right to do so, especially during election periods.

This legislation, in this current form, does not permit the union to engage in the political arena on issues that will matter to our 300,000-plus members and to the public. It therefore unnecessarily impinges on constitutionally protected expressive rights. In that regard, we adopt in their entirety the submissions of the OFL. We do so because political expression is vital to everything that social justice actors do, because it is so important in creating an informed electorate and a robust democracy.

It is our reasonable expectation that, should amendments not be made to this portion of the bill, complex, costly charter litigations will ensue because there will be many who will not sit passively by while fundamental rights are violated. Therefore, Unifor must strongly recommend that the definition of political advertising in subsection 1(1) of the current act be retained.

Thank you for your time. We're happy to take any questions that you may have.

The Chair (Mr. Grant Crack): Thank you very much. Ms. Fife, would you like to start—or Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you for being here today and taking part, hopefully in a positive gesture, to deal with Bill 201. This is the finale today of public consultation after first reading, which, as you know, is not something that normally happens. We wanted to make sure we got input at the forefront.

Some of the committee witnesses have suggested that the current proposal to limit spending on third-party-

associated ads pre-writ be removed while maintaining the spending limit on pre-writ partisan ads. This will lead to third parties being able to spend unlimited funds pre-writ on associated issues while political parties will be unable to defend themselves, as party advertising will be subject to strict spending limits.

Can you share your thoughts on this potential uneven playing field that might be created? If we can get some insight into that.

Ms. Patty Coates: I'm going to defer to Rob.

Mr. Lou Rinaldi: Sure.

Mr. Rob Halpin: Thank you very much for the question. This committee has been tasked with putting the electorate at the centre of its deliberations, and I think that's extremely important.

With respect to the level playing field, I think we may have a difference of opinion on what a level playing field is. Certainly you could suggest that those well-heeled political parties with large coffers are well above what would be considered a level playing field at the moment.

That said, with respect to union donations—and I should make the distinction that unions and corporations are definitively different organizations in their own right. One is for profit and the other is for advocacy on behalf of their members; I'll let you figure out which is which. We know, for example, that putting a cap on the amount of spending in the pre-writ period or during the writ period will provide, I think, more opportunity for our organization, the organizations and the affiliates that we represent, to engage in the issues that affect our membership and indeed affect the broader public. Corporations don't vote; our members do.

So I think it's important to note that the ability for third-party organizations to advocate on behalf of issues that are important to Ontarians is paramount. We're not doing it for a profit motive; we're doing it for the betterment of the province.

Mr. Lou Rinaldi: Following that, it has been suggested that the current definition of collusion is too hard to prove—requiring a party to have knowledge and consent to third-party advertising. What are your thoughts on the current definition of collusion?

Mr. Rob Halpin: Again, I think the Auditor General spoke very intelligently on the notion earlier. I've read many of the deputants that have been before this committee. It's certainly extremely hard to prove the notion of collusion. I think any of your lawyers would tell you that. I don't know if any of you are lawyers, but I'm sure you'd jump at that opportunity to try one of those cases. It's very hard to prove.

Certain considerations should be made when putting in restrictions in this legislation on things that you think can be policed, can be managed, can be taken to task if people interfere with that process. The current way that it's described in the legislation might be problematic in that it would be an onerous task, and I'm not sure how successful you would be in establishing it.

Mr. Lou Rinaldi: You would have no suggestions?

Mr. Rob Halpin: Semantically, "coordination" is probably another word that speaks to that notion, which might perhaps be something to explore, but again, that's something for the lawyers to figure out, I would think.

Mr. Lou Rinaldi: Thank you, Chair.

The Chair (Mr. Grant Crack): Thank you. One minute: Mr. Colle.

Mr. Mike Colle: One minute? Why is time always so truncated when I'm—anyway, first of all, I'd like to mention that Unifor represents so many workers here. I think they should be given more time to come back if they wish. I'm sure the committee agrees with that. I think you've got some very divergent points of view that are refreshing to hear.

Generally speaking, the knee-jerk reaction by people is: Yes, ban corporate and union contributions—as if they're the same entities. I think that you raised a very, very thoughtful point there that this committee should look deeper into before we proceed—painting corporate Canada along with labour Canada with the same brush. I'm glad you raised that, and hopefully you can expand on that if we ever get any more time around here.

1040

The Chair (Mr. Grant Crack): Thank you very much. Ms. Fife.

Ms. Catherine Fife: I appreciate the distinction you made, obviously, between the corporations and unions. We, of course, agree with you.

I hope that you will find some comfort in that the electoral officer is in agreement. He recommends that the definition of "political advertising" proposed in the bill apply only during writ periods; in other words, that it not apply to the six months preceding the call of the scheduled general election.

That speaks to process, really. As Bill 201 was crafted by the Premier without informed voices adding some facts and credibility, we're left right now with a very flawed piece of legislation which will undermine the voices of citizens across the province. So unless it is substantively amended during clause-by-clause, this is the reality of what we'll be facing in the province of Ontario.

Can you speak to how, if those limitations stay, it will impact your ability to represent the voices of workers who, as Mr. Colle has said, otherwise will not have an opportunity to weigh in on the substantive issues of workplace safety, health and safety and job security? Naureen?

Ms. Naureen Rizvi: I am very happy that you're asking us that, so thank you for that. I think it's really important because, when we advocate, we look towards the people that we put into these representative positions, such as yourself, to work with us.

Right now, as you probably know from the news and media, we're in auto bargaining, and we're asking for an auto strategy. We're calling on the government to come and put together an auto strategy that works for us because it's not just so needed for the sector but it's also a huge part of the economy. It would stifle us from being

able to work with you when our members that are in the auto sector are the experts that provide us the information that they need in order for the sector to grow—you would be missing a huge part of what we can share with you as experts in that subject matter, in terms of the auto sector, the challenges and anything to do with their employment. We're looking towards being able to put together a strategy with you, and I think that would just stop us from doing that.

Ms. Catherine Fife: Any strategy going forward would have to be involved in the budget, and budgets are political documents. It's interesting because the Ontario Nurses' Association raised an issue with us during committee. They said, "As one example, assuming Ontario elections may take place in the summer period, the six-month pre-election period may overlap with issue campaigns related to an Ontario budget." Can you imagine having a budget and not being able to voice your concerns in an organized way, as opposed to a disorganized way, if you will?

The Auditor General—I know some of you were here for that. Can you speak to the importance of seeing these commercials that you're paying for, where she says she has very little control over the partisanship of those commercials, and how that impacts the confidence of your members in the electoral process which we're supposed to be strengthening throughout this committee?

Ms. Patty Coates: Thank you for that.

I think it's really important to understand the dynamics of a union and an organization that represents members because that's exactly what they do. It's a democratic process. Those members provide their elected officers with the vision that they want to see going forward. Part of that vision could be lobbying and it could be advertising, and it could be specifics-based or general-based.

For example, many of the unions that are affiliated with the OFL are—I shouldn't say many; I think all are—part of the $15 and Fairness coalition. So they do put funds into that, and there is advertising. That's really important for not only their members but all working people because they do deserve a decent job and they do deserve minimum wage. To have that curtailed—we would not be able to carry out the mandate of our members and carry out what we need to do as a union to make this the Ontario we want, and a better Ontario.

Ms. Catherine Fife: Thank you. Do I have any more time? No?

The Chair (Mr. Grant Crack): No, sorry. Thank you. Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here today. I've got a question for both groups here, Unifor and OFL, and it's with respect to third-party advertising. We've heard much about the restrictions on third-party advertising. I want to ask this question.

We've heard from the Auditor General earlier this morning about how her responsibilities and her jurisdiction have been limited. I think there's agreement—at least on the opposition side—that we want to see that reinstated. Because we've seen issues advocacy get so severely blurred with partisan advertising from trade unions and from other groups, I'm of the view that we need to have a strong, robust, independent body to make the determinations of the difference between issues advocacy and partisan advertising.

Would both your groups or either of your groups be averse or be willing to limit the restrictions on third-party advertising but then have an independent third party, such as the Auditor General's office, vet advertising to ensure that it was issues advocacy and not partisan?

Ms. Patty Coates: Rob, do you want to take that one?

Mr. Rob Halpin: Yes. Thank you very much for the question. I think that you have a very fine line that you're balancing here between the notion of transparency and, in certain respects, what comes with transparency, the notion of privacy.

I think that from a perspective of blurred lines, if you will, certainly what comes to mind most strikingly is the prior federal election when the campaign advertisements for the action plan changed drastically. The colours of them changed. It became about Harper's government, not the government of Canada—

Mr. Randy Hillier: Yes, I'm talking more about third-party advertising: trade union advertising or other agencies who want to promote their issue and advocate for their issue, which I think we need to protect and defend as much as possible.

Mr. Rob Halpin: I would agree.

Mr. Randy Hillier: However, we have seen that blurred in very vicious partisan attacks by trade unions, as well, mostly directed against the Progressive Conservative Party, but that can change on a dime.

Mr. Rob Halpin: When you look at the transcripts—and I've read many of the deputations before us—I think that you, in fact, asked this same question of those individuals, who told you that, in fact, they are non-partisan, those organizations.

Interjection.

Mr. Rob Halpin: I know that you got a bit of a chuckle out of that. Perhaps you don't take the stance of reducing 100,000 jobs, for example, in the public service before you begin the campaign. That's one way to ensure that the issues that matter to union members aren't taken into consideration.

Mr. Randy Hillier: My question, though, is this: Would you be willing to subject your advertising campaigns to an independent third party, such as the Auditor General's office, to ensure that they are issues advocacy and not partisan? That is the problem facing this committee that we're dealing with. We know that, in issues advocacy, an issue today may be very partisan tomorrow. We've heard from the Chief Electoral Officer that it's a line in the sand on a windy day. How are we going to overcome the inherent complexities of this and achieve, or get as close as possible to, that level playing field?

Mr. Rob Halpin: I think, again, that the notion of public debate and public discourse that often these third

parties bring to the fore with their advertising needs to be protected. The notion of stifling any of that debate, which could potentially be the end result, is problematic, particularly during the pre-writ period, I think. I can understand during the writ period, perhaps. But in the pre-writ period, this is becoming more to the extent of a censorship mechanism.

Mr. Randy Hillier: I'm still not getting an answer. Would you be averse to or would you be willing to accept greater abilities and fewer restrictions on issues advocacy in exchange for having your advertising campaigns vetted by an independent third party?

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Mr. Rob Halpin: I would certainly welcome the opportunity to consult in that process further.

Mr. Randy Hillier: Okay, because I see shaking of the heads on the other side. Thank you.

The Chair (Mr. Grant Crack): Thank you very much. The time is up. I apologize, Mr. Walker.

Thank you all for coming before committee this morning and sharing your thoughts.

ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

The Chair (Mr. Grant Crack): Next on the agenda, from the Elementary Teachers' Federation of Ontario, better known as ETFO, we have the president, Mr. Sam Hammond; we have the coordinator of communications and political action, Vivian McCaffrey; and we also have Sharon O'Halloran, incoming general secretary.

We welcome the three of you to committee this morning. You have up to 10 minutes for your presentation, followed by 15 minutes of questioning from the three party members.

Welcome, Mr. Hammond.

Mr. Sam Hammond: Good morning. We're glad to be here. For the record, I'm Sam Hammond, president of the Elementary Teachers' Federation of Ontario. With me today, as the Chair has said, is our incoming general secretary, Sharon O'Halloran, and our very capable government relations person, Vivian McCaffrey.

I think we'd all agree that it's important to ensure there is public confidence in Ontario's elections finance system. ETFO believes that Bill 201 is a timely review of election finance laws and appreciates the opportunity to participate in these hearings.

ETFO has a long history of being involved, and encouraging our members to be involved, in the political process. Over the years, the organization's involvement has grown to include making donations to political parties and participating in public campaigns. We have done so to bring forward issues and concerns of the members that we represent, issues and concerns that should also be viewed as of interest to the public.

This morning I'd like to speak to three issues related to Bill 201: the banning of corporate and union political donations; reducing individual contributions; and limiting third-party advertising.

ETFO views making donations to political parties as a way to contribute to the viability of those parties in the democratic process, and to support political parties that promote positive education policies and union rights. The federation is focused on promoting its issues through lobbying at Queen's Park and provincial-level discussions with the government related to negotiating collective agreements.

ETFO does not view political donations as a vehicle to ensure access to political parties. We focus on promoting our issues through meetings with MPPs, political staff and ministry staff, and through our public advocacy work.

ETFO is not opposed to the banning of corporate and union political contributions as long as Bill 201's proposals provide an alternative that ensures political parties remain viable as they transition to greater reliance on individual donations.

In years where there is more than one election period, an individual donor could contribute up to $10,850 per registered party annually. Even with the tax credits available for political donations, not many Ontarians likely have the financial capacity to donate up to the limit set forth in Bill 201. This means that political parties could become overly reliant on donations from Ontario's most affluent citizens. This is not in the overall best interests of Ontarians.

As long as the proposed per-vote quarterly subsidy allowance is in place, there should be a lower donation limit for individual donations. ETFO recommends adopting the donation levels set forth at the federal level: a limit of $1,500 to a registered political party, and an additional $1,500 limit on donations to riding associations, contestants and party candidates.

We do not oppose the establishment of expenditure limits on third-party advertising during elections. ETFO does, however, have serious concerns regarding the legislation's proposals to limit third-party advertising outside of the election campaign period. The definition of "political advertising," which includes the phrase "and includes advertising that takes a position on an issue with which a registered party or candidate is associated," is highly problematic. It threatens to infringe the right of third parties to engage in public advocacy campaigns that contribute to the public discourse on important issues.

Leading up to the 2004 provincial election, within six months prior to the writ being issued, ETFO sponsored a public campaign on the importance of smaller classes and increasing support for children with special needs. These issues are central to the Building Better Schools education agenda that ETFO launched in 2010 and that we have been promoting ever since. Under the proposed definition of political advertising, such a campaign could be considered to fall within the definition if one or more political parties were to take any position on the issue of smaller classes or greater support for students with special needs. This would mean the campaign would be subject to the proposed $600,000 total expenditure limit during the six-month pre-writ period. Such a limitation is

an unreasonable infringement on the right of organizations like ETFO to freedom of expression. The right of citizens to discuss and debate ideas is a cornerstone of any democratic society, and this right extends to third parties such as ETFO.

A 2004 Supreme Court of Canada decision upheld the constitutionality of changes to the Canada Elections Act that placed limits on third-party advertising during the election period. However, the majority ruling justified the limits by pointing to the opportunity for third parties to wage public advocacy campaigns unimpeded prior to the election campaign period. I refer you to page 6 of our submission for the relevant excerpt from the 2004 court decision. ETFO believes that the discussion in this court decision would support a charter challenge to Bill 201.

We recommend that subsection 1(4) be amended by adopting the Canada Elections Act terminology of election advertising. ETFO is seeking clarification as to whether the bill's definition of political advertising is designed to prevent member-based organizations from communicating with their members during elections through an email or from communicating election messages and content through their website or Facebook and Twitter accounts.

During the 2015 federal election, Elections Canada determined that such electronic communication was not considered election advertising. ETFO therefore recommends that subsection 1(4) be amended to explicitly exclude such communications from the definition of political advertising. The subsection 1(4) list of communications that do not fall within a definition of political advertising includes making telephone calls to electors only to encourage them to vote. If this means that ETFO and similar organizations can only contact their members by telephone during an election to encourage their members to vote but not encourage them to consider voting for a particular candidate, we have further concerns about the bill's impact on our right to communicate freely with our members. ETFO recommends that subsection 1(4) be amended to stipulate that the making of telephone calls by third parties to their members during the election period is not included in the definition of election advertising.

Bill 201 proposes to limit third-party expenditures during any election period to spending $4,000 in a specific riding and $100,000 in total. These limits are lower than the provisions of the Canada Elections Act, which limit third-party advertisers to a total expenditure of $150,000 during a federal election campaign. ETFO does not object to the principle of spending limits for election advertising, but the limits set forth in the Canada Elections Act and proposed in the bill would effectively prevent the federation from participating in communications that would successfully reach and engage voters.

ETFO recommends that the expenditure limits be increased significantly, although not above the limits set for political parties.

ETFO does not support limiting third-party advertising outside of the election period and recommends deleting the proposed new subsection to the Election Finances Act that would establish these limits.

Thanks very much. We would be happy to answer any questions that you might have. I can't believe I actually got through it.

The Chair (Mr. Grant Crack): You did well, sir. Thank you.

Mr. Milczyn.

Mr. Peter Z. Milczyn: Good morning, Mr. Hammond. Thank you for coming in today.

Just to continue on the final point you made in your submission about your organization's view that there should be no limit on third-party advertising outside of the election period, this bill proposes limits on third-party advertising pre-writ. It also proposes limits on political parties advertising pre-writ.

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If we were to follow your suggestion and remove the restriction on pre-writ advertising for third parties, would that create some kind of an uneven playing field for political parties to engage and respond to third-party campaigns? Because the political parties would be limited in how they could respond to a third-party campaign pre-writ. Do you think that the two go hand in hand, or are they really separate issues?

Mr. Sam Hammond: Quite frankly, not being a member of the communications team for a political party, I think you'd have to ask them that question. I think this process, through this committee work and, finally, the legislation, should deal with that.

Our focus is on, as we've said, in terms of the six months prior, the infringement that that has on a number of different organizations and those who wish to run third-party ads during that period. We think it's completely inappropriate to have any limits during that period.

Mr. Peter Z. Milczyn: Another key part of the proposed legislation is a ban on union and corporate donations. I understand from your submission that you support that provision for the ban for political donations to parties. Should there be a similar ban on union or corporate donations to third-party advertising campaigns? There could be a distinction on that for pre-writ campaigns and campaigns during the election period.

Mr. Sam Hammond: Yes. It's something that we wouldn't be involved in, frankly. What I said—what I think I said—is that we're not opposed to limits, and then follow that up with specifics in terms of what might replace, as you're doing in considering what might replace what is in place now, in terms of contributions from organizations both before and after the writ.

Mr. Peter Z. Milczyn: But my question was on donations to third-party advertising campaigns. Should there be a ban on union and corporate donations to those third-party advertising campaigns? I would allow you to make a distinction between a campaign pre-writ and one during the election.

Mr. Sam Hammond: Yes, and I've made that. I think my answer to your question would be yes.

Mr. Peter Z. Milczyn: Okay. Thank you.

The Chair (Mr. Grant Crack): Mr. Walker.

Mr. Bill Walker: Thank you, Mr. Hammond, and your colleagues.

The Chief Electoral Officer has raised a concern for many reports now in regard to the trend of the increasing third-party advertising fundraising abilities and the dollars that are being put into elections, and that it's actually having an unfair influence on the outcome.

You talked in your document about levelling the playing field. So as a candidate, as someone who has very structured, limited abilities, I'm trying to get my head around, with the committee, how we get that back to a place where someone can actually step up to the plate and become a candidate, knowing that they have limits when third parties can be virtually unfettered.

Do you support the definite need, that there's a very stringent limit of money being able to be spent in an election campaign by any party or any third party?

Mr. Sam Hammond: Not during the pre-writ period, as is proposed in Bill 201, that "six months prior to". Absolutely not.

Mr. Bill Walker: Can I ask a further point on that? Because I think we're on the same issue. My challenge again is, as a candidate, I'm very limited in what I can do outside of the writ period, or in the ability to raise funds anywhere close to what an unlimited third party can do. My concern would be that you can dump $100,000 or $500,000 in the week before. I have no ability to even come close to being able to counter that.

I get where you're coming from, with the unfettered and no limits, but on the other hand, if you look at it from my perspective, it's still a very unfair system if you can dump that kind of money and I can't.

Mr. Sam Hammond: No, I'm not sure I agree.

Mr. Bill Walker: I thought you might. If there was an amendment to the six-month writ period, that you could limit it to only issues and/or no party reference, no candidate reference, and that would be done by a third-party independent officer such as the Auditor General, would you be willing to accept that type of an approach?

Mr. Sam Hammond: Absolutely not. I think we should—

Mr. Bill Walker: Why?

Mr. Sam Hammond: I'll answer. I think we and other organizations should have the right to develop our own campaign material and to put that out under the legislation and the rules that we have now. For example, one of the major campaigns that we put forward was in direct response to—we had no choice but to respond to—campaign issues and issues that we felt were important to the public. We want and should be able, outside of that writ period, to have the freedom to develop those in a way in response to those educational concerns as we see fit.

Mr. Bill Walker: One of the things that we've certainly heard across the committee in the time I've sat and prior to—I introduced third-party advertising as a private member's bill because I was very concerned with where this was heading, the direction it's going, and that people can unduly influence an election and a candidate's ability to get a fair shake.

I'm about fairness. I'm a guy who gave up a fairly good career to step into this occupation, but I want to make sure that it's fair for all of us. I have no issue understanding, I think, your six-month concern, if there are limits that we all abide by and we have equal limits. But if you can have unfettered access to resources and money that I can't have, then I think you're actually supporting an unfair playing field.

You use words in here: "unreasonable infringement on the right of organizations like ETFO to freedom of expression." That could be flipped the opposite way. If you have an unlimited right, then I would suggest that's unfair. That's one of the things that we're trying, as a committee, to find: What's the middle ground? How can we ensure that everyone has that ability?

And if it's about issues, if it's about a generic issue, then I think an independent body can come in and say, "Yes, that makes sense." The Auditor General this morning said that the old act gave that ability. They could actually have an ability to suggest, "No, that one is much too partisan"—and on behalf of the government, as well, who had unfair advantages.

So I struggle a little bit with why having an independent third body to give you guidelines—"Yes, this is okay," or "This is outright partisan influence"—

Mr. Sam Hammond: Two things in response: First of all, ETFO has never solicited, looked for or received funds from anyone else in terms of our campaign.

Secondly, I think it would be extremely, extremely difficult for any individual or any group to go through that process of determining what kind of content is acceptable or unacceptable at any time leading up to or during an election period.

Mr. Bill Walker: But the Auditor General this morning said that this was groundbreaking, leading legislation that many people from not only across the country, but around the world were actually looking at as good. I trust that the Chief Electoral Officer is looking at this again, very specifically saying that there is an unfair advantage. He has addressed very significantly in a couple of reports the trend—and I'm not just meaning ETFO; I'm saying generic, third-party advertising. They spent more than all three of the major parties in the last election. That becomes very concerning to the general electorate. The people I've talked to are saying, "I want to make sure that anybody can have the opportunity and have a fair boundary to play within."

So I do think there's ability, as long as you have input into it on how you would define, because if it was working before and we didn't hear, I don't recall, any outcry prior on that ability from someone like the Chief Electoral Officer or the Auditor General to be able to have discretionary powers—

Mr. Sam Hammond: We don't disagree with you on during the writ period.

Mr. Bill Walker: But the challenge as a candidate—if you can come in for six months and drown me, then how

do I, in a 28-day period, overcome that, with very stringent limits on what I can do to actually counter what you've done for six months?

We work full-time. We're out doing all the constituency stuff. Not just you; again, on a larger-scale third party, if it's a large, massive initiative, it's very tough for an individual candidate, who's doing a full-time job representing the people who gave him the privilege to represent them, to counter that. That's one of the challenges. If you don't put in some restrictions beforehand, then you can bury me the week before. That's one of the big issues I saw. I've talked to other people who are potential candidates, who are saying, "Why would I give up what I'm doing to go into this?"

The Chair (Mr. Grant Crack): Thank you very much. Ms. Fife.

Ms. Catherine Fife: Thanks for coming in. I'm just going to pick up a little bit here, because if you were here this morning, you heard the Auditor General very clearly say that her overview of government advertising, for instance, is a joke, because it has been completely watered down. Partisan ads can go out with no limits and no cap on their funding whatsoever.

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That's the work of this committee right now. We're trying to defend the rights of those who speak on behalf of many people to be able to be part of the democratic discourse. We are trying to address the issue that government has this upper hand and can advertise—in fact, we learned this morning that Ontario has the most government advertising in Canada, and we were given many examples of ads that the auditor would have banned. So you have groups with genuine concerns around education, special education, Bill 115, collective bargaining rights, and health and safety in our schools—those are advocacy issues that citizens have a right to participate in—and then you have the government, who has this imbalance; we see it very clearly as an imbalance.

I would like for you to weigh in on that, too, if you don't mind, Sam.

Mr. Sam Hammond: Yes, and Catherine, thanks for highlighting some of the issues that we have focused on and put forward.

I think it's an extremely difficult situation in terms of what you've put forward in government advertising. It would be really hard for me saying that prior to that pre-writ period, there should be limitations on government advertising in terms of what they're doing, but I don't disagree with you that it does, in some ways, add to that unfair playing field in terms of the government, as you've said, being able to put out so much advertising on issues. It's also complicated because I think they have an obligation to let the people of Ontario know what they're doing in terms of moving forward. But it's an issue that needs to be considered with a great deal of thought in terms of how to move forward and how to make it a balanced, transparent playing field.

Ms. Catherine Fife: The groundbreaking legislation that the auditor was referring to this morning was actually the 2004 act, not the Government Advertising Act that was changed last year in 2015. She describes that as being gutted. If we are trying to instill some confidence in the electoral process, we are going to have to tackle that issue. Very clearly we see that.

The per-vote subsidy: You're one of the few delegations that have weighed in on the per-vote subsidy, so I just wanted to give you a little bit more time to talk about this. The federal electoral officer did come in and presented us with a report. It was really interesting because we asked about how they came to that number, and it was just a random number. There was really no good rationale or evidence-based decision around reducing that per-vote subsidy as time went on; it was just something that they thought they should do.

If our goal is to get big money out of politics, which this act does not do as it's crafted right now, can you tell us why you think the per-vote subsidy actually would perhaps level the playing field and add to the democratic process?

Mr. Sam Hammond: I'm actually going to ask Vivian if she wants to comment on that, because she's our numbers and details person.

Ms. Vivian McCaffrey: Thank you. I think that comes from seeing what happened at the federal level. It started with rewarding parties based on their electoral success in the previous election, so it seems to be a rational approach to a per-vote subsidy.

The concern really is who gets to decide when that process ends or how it's reduced. What the brief was drawing attention to is that the system can be removed, as it was at the federal level when it was to the advantage of one political party.

But in the meantime, hopefully in Ontario, it will serve as a positive replacement for union and corporate donations and allow parties to do what they always need to do, and that is to get support, solicit support from individual voters. We don't have a solution to how you assess the process. At what point do you determine whether the per-vote subsidy continues as is or is changed? Maybe an all-party committee; maybe it goes to the Elections Ontario office. We don't have a specific recommendation on that, but we think it's a good alternative, a good next step in terms of bringing fairness, with the caveat that it can be used to political ends to benefit one party more than others. So there is some vulnerability, but there's probably no perfect system.

Ms. Catherine Fife: Thank you for raising that. It gives us something to think of going forward.

Just on the six-month pre-writ, the electoral officer is in agreement. Political advertising and issue-based advocacy within those first six months—limiting those voices should not be part of this act, so we will try to get that amendment passed during clause-by-clause.

Thank you.

The Chair (Mr. Grant Crack): Thanks to the three of you for coming before committee this morning.

Mr. Sam Hammond: Thanks for the time, and thanks for the questions.

The Chair (Mr. Grant Crack): You're welcome. Have a great day.

ONTARIO ENGLISH CATHOLIC TEACHERS' ASSOCIATION

The Chair (Mr. Grant Crack): The last delegation prior to break is the Ontario English Catholic Teachers' Association, better known as OECTA. We have the president, Ms. Ann Hawkins, with us, as well as Marshall Jarvis, who is the general secretary, and I believe there are others. Perhaps, Ms. Hawkins, you could do the official introductions of who is with you today. We welcome you this morning, and you have up to 10 minutes for your presentation.

Ms. Ann Hawkins: Thank you. It's just going to be the two of us.

Thank you very much for the opportunity. I'm the president of the Catholic teachers of Ontario, representing approximately 45,000 members and serving approximately 600,000 students, give or take a few. Thank you for the opportunity.

You have been presented with our brief, and I know you'll find it interesting reading. I am going to spend some time highlighting some of the issues and the concerns that we have as an association. But before we begin at that, we do have one of our ads to show you. Sorry. Technical issues.

Video presentation.

Ms. Ann Hawkins: Thank you. That is one of four students that we highlighted in our election campaign. To be perfectly honest, I don't see a problem with those ads. I see this as being part of democracy, and having third-party advertising is absolutely crucial to the way that this particular province and this country run. That ad and the others cost $2.3 million. Given the proposal, none of that would be out in the public domain, which is what needs to happen for us to have a truly democratic system.

Every election, Ontario citizens go to the polls to make important decisions about who will represent them in government. To make these voting decisions, citizens weigh a range of opinions on a number of issues that impact their lives, and then they select the candidate that best represents their interests. At its most vibrant, a democratic elections process is one where citizens are exposed to a multitude of public voices, each offering a unique perspective on topics that are close to Ontarians' hearts.

If the goal is to enhance democratic participation, then the more voices the better. Time and again over the past months, we've heard the government say that elections finance reform will level the playing field, and that the objective of Bill 201 is to remove undue influence on election campaigns. This is something, in principle, with which we can all agree. However, what we have before us is a proposed bill that achieves neither of those objectives.

Rather than level the playing field, Bill 201 silences some voices while leaving others unrestricted to dominate the public discourse. Rather than remove undue influence, Bill 201 eliminates corporate and union donations while still allowing wealthy individuals to contribute massive and, in some cases, unreported amounts of money to parties and candidates. How does this enhance democracy? How does this improve equality? How does this level the playing field?

Every Ontario citizen has a vested interest in the outcome of an election. And so we must ask ourselves, what is the best way to help citizens make informed election decisions? Is it to pick and choose whose voices can be heard and when they're allowed to speak, or should we instead encourage broad public debate and issues advocacy?

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As you've already heard and will no doubt hear again, third parties play a vital role in issues advocacy, offering a voice to those who have neither the resources nor the platform to raise concerns and help to generate public debate. This type of issues advocacy is a cornerstone of democracy and must be encouraged, not regulated or restricted.

Catholic teachers have a long and proud history of offering our unique perspective in the public political arena. OECTA frequently contributes to discussions on issues of public significance in the field of education and elsewhere. We will continue to play this role transparently and within the prescribed rules of law.

Part of our participatory role involves reviewing legislation to better understand its implications and to offer suggestions for improvement based on our unique perspective within the education and labour sectors. It is in this spirit that we comment on the proposed Bill 201.

We have three broad areas of concern which I would like to present to the committee this morning. These include the proposed definition and limitations on third-party political advertising, the proposed pre-campaign-period limitations, and the proposed contribution limits for individuals and organizations.

The crux of the issue that you have obviously struggled with is the definition of third-party advertising in the proposed legislation and the fact that it is overly broad. It now includes the phrase "any issue associated with a candidate or a party." Defining political advertising is critical to ensure the democratic process, which then guarantees free speech.

The proposed legislation goes way beyond the current definition, which defines it as any attempt to promote or oppose a registered party or the election of a registered candidate. The problem with the proposed legislation is it now includes any "advertising that takes a position on an issue with which a registered party or candidate is associated." So the question is, who decides what is an issue? What does it mean to be associated with?

Some examples of this the implementation of full-day kindergarten; legislation that was proposed that 100,000 public sector jobs would be lost; issues on the economy; law and order.

If you're running a law-and-order campaign, does that mean that Mothers Against Drunk Driving do not get to advertise? Really?

How about the environment? We have severe issues with the environment. Does that mean that we do not get to talk about concerns that we have about environmental issues, or about child poverty? OECTA's Speak for Children campaign for years has spent a great deal of time dealing with the issue of child poverty and its eradication. Under this legislation, that would be captured and would be limited. That is unacceptable.

Three problems related to this issue: First, how will it be interpreted? Would everything be captured or do you have to name a platform issue? A healthy democracy depends on the ability of citizens to voice their concerns and debate topics of public interest. This is a direct attack on the ability of anyone, except a political party, being able to speak to any issue.

Secondly, how is it going to be enforced? How can the government monitor the entire province? How will Elections Canada determine who is violating the associated issues clause?

Mr. Marshall Jarvis: Elections Ontario.

Ms. Ann Hawkins: Elections Ontario, sorry.

Platforms evolve throughout the election process. Are we to be silenced on issues? I know that last election I was speaking to several candidates who were still working on platforms while they were running their campaigns. Does that mean if something new comes out, we will not be allowed to speak on it, especially as it relates to education and students? What mechanisms are in place to monitor the issues and the process? What are the punishments or consequences for violations? Will a non-issue today become an issue tomorrow if raised in a stump speech? You have some work ahead of you.

Our recommendation is that the government retain the current definition of political advertising.

Turning to campaign period limitations, the proposed six-month pre-campaign-period limitations go way beyond current federal legislation. In Harper, the Supreme Court upheld advertising spending limits during campaigns only because it was completely unrestricted prior to the campaign period.

This proposed bill will be challenged as unconstitutional. Pre-campaign periods limit and stifle free speech. Third parties speak for the voiceless. The new government initiative that is out right now from the Ministry of Education related to student well-being is a perfect example of this as students have neither the resources nor the platform to speak publicly on this issue. Restricting and limiting debate can only hurt democracy.

Our recommendation is that the government make third-party advertising unrestricted in the pre-election period and also raise the limits during the election to match the current federal limits.

Contribution limits: We're told the limits will decrease political influence over candidates. You want to decrease the influence? Why not eliminate it? The proposed bill does not eliminate influence; it reduces it for some but not for everyone—for the wealthy. Over a four-year cycle, an individual could donate more than $30,000. This level of contribution is only accessible to the wealthiest Ontarians, not your average family. Wealthy donors could enlist families or employees, which happened in Quebec in the 1970s. A wealthy family could donate money far in excess.

The Chair (Mr. Grant Crack): If you could wrap up, please. We're over—

Ms. Ann Hawkins: Absolutely.

Proposed changes simply shift the locus of influence from corporations toward the individuals who own and control those corporations, and this in no way levels the playing fields.

The bill also creates a new loophole. Current laws state that contributions less than $100 are not reported, except during campaign periods. The proposed law removes campaign-period exemption language, which means you can make numerous undisclosed and unreported donations, even during campaigns.

In conclusion: What is the objective behind the bill? It's unclear to me what it is. The system is already transparent. There are no egregious violations of the current law and no academic research calling for change. This bill seems to be cobbled together to respond to a variety of media stories, like the one in this paper full of misinformation.

If you—

The Chair (Mr. Grant Crack): Thank you very much.

Ms. Ann Hawkins: One statement.

The Chair (Mr. Grant Crack): Okay.

Ms. Ann Hawkins: It's imperative—this got added at the end—that this government take the time it needs to do as extensive revisions as needed to the bill to get it right because our democracy depends on it. Thank you.

The Chair (Mr. Grant Crack): Thank you very much, Ms. Hawkins.

We'll start with Mr. Hillier.

Mr. Randy Hillier: I've got a couple of questions here for you, again, on third-party advertising.

I view this in the extremes where we have educational advertising, such as the one you've shown—and I hope there is no interest in limiting that whatsoever—and as we go through that spectrum to the far end, we have partisan advertising at the other end, which is really what we're focused on, to limit third parties to be engaged in the partisan element. But, in between there, we have issues-based advocacy or political advertising.

I would state this, and I think this is intuitive to everyone: Anybody engaged in issues-based advocacy and using an advertising campaign to promote that issue—the objective of it is to have that issue become political and to have a political organization or a political party or elected people champion that issue. I think that's pretty intuitive. That's what the outcome is.

So I'm going to ask you the question that I've asked others because it is so difficult to codify our thoughts on this and to capture every possible conceivable advertising campaign down the road. I'm of the view that an independent body such as the Auditor General have the authority to make determinations when issues advocacy

turns more into the partisan realm—maybe if you could comment—and in exchange for that, relax the restrictions or further reduce restrictions on issues advocacy at any time.

1130

Ms. Ann Hawkins: Thank you for the question. I'm going to say very clearly right at the beginning, we're absolutely not in favour of any third-party organization scrutinizing. Several reasons: One, who would decide who they were? How would they make their decision? Again, it all goes back to the definitions, which is what I started with. If you've got your clear definitions, then you won't need a third party to have oversight.

Mr. Randy Hillier: I beg to differ. I don't think we can create a definition that captures all that—not very well. I think, because of that, there will be limitations that may capture advertising campaigns that we wouldn't want to necessarily capture.

My next question: Your presentation didn't mention the coordination between various third-party advertising campaigns and political parties. We know that has happened in the past, in previous elections, where third-party issues advocacy or third-party advertising has in large part just been a proxy for a political party. Any comments on—the committee has been talking about lowering that threshold from where we would have to prove collusion. There's been a lot of discussion about reducing that to prevent coordination between trade unions or third parties working and coordinating with a political party on their advertising campaigns.

Ms. Ann Hawkins: I'm going to turn this one over to my general secretary.

Mr. Marshall Jarvis: I think there are a few issues here. The first one is that we would have to agree to disagree with your interpretation of our first answer. The second one is the aspect of third parties acting as proxies. I can't recall any kind of legal action that has substantiated that claim. There have been political claims by political parties, but I have yet to see anyone who has been able to stand before us and say, "This party or this group has acted or colluded with a political party," and I would put to you that I don't believe there's a political party that would want to collude with a third-party advertiser. However, I will note that in many instances—in many instances—it's the policies during an election by a political party that leads to their downfall. I think history bears that out very well.

The Chair (Mr. Grant Crack): Thank you very much and we'll—

Mr. Randy Hillier: I don't know if that has anything to do with what my question was.

The Chair (Mr. Grant Crack): Thank you, Mr. Hillier. We're going to move on to Ms. Fife. Are you ready?

Ms. Catherine Fife: Yes.

The Chair (Mr. Grant Crack): Okay.

Ms. Catherine Fife: Thank you very much: a very impassioned deputation. And also, I just want to commend OECTA on that commercial. That advertisement is powerful. To have a student in the province of Ontario talk about the importance of voting and for you to draw the connection to how Bill 201 would affect that is, for us—I think it should stay with all of us.

Your other example of perhaps running a law-and-order campaign and then having Mothers Against Drunk Driving not being able to weigh in on an election issue as well—every issue can be political. Then you risk—this is the territory that we're trying to navigate, and you can see that we are not all on the same page.

I do want to go back to one of your points as well, though. One of the reasons that we're here is that this government is reacting to a situation where we have seen cash for access to this government accelerate and a direct correlation between the money that is coming in to one political party and how that money is impacting policy and legislation and sometimes regulations.

Do you think that Bill 201 is going to address the confidence issue that the public has on the cash-for-access piece?

Ms. Ann Hawkins: No.

Ms. Catherine Fife: Okay, that's good.

The other point I really want to say is that the enforcement piece is something that we are also going to be challenged with, because what it all comes down to is trust, I think. The whole issue that has really percolated through today's committee around having another third party—a stand-alone third party, be it the auditor or somebody—essentially censoring voices of citizens is very, very dangerous territory for us to go into. You have been consistent, as with many groups across the province, from the smallest advocacy to the largest, saying that this would be challenged in the charter; this is a constitutional issue. Do you not see it that way?

Ms. Ann Hawkins: Absolutely. We would be taking that to a challenge.

Ms. Catherine Fife: Thank you. Finally, could you please speak to—because we will not be able to accomplish anything at this committee if we don't address the issue of government advertising. This morning, the Auditor General was very clear that her powers as an auditor to ensure that partisan advertising does not go out have been severely limited by the Government Advertising Act. Can you speak to the importance of getting that piece right if we're going to be successful?

Ms. Ann Hawkins: I think two of the things you've said: the trust, and the ability to actually make this so that it is open and transparent for everybody. The legislation will have to be very clear on dealing with the issue of who in government, who in politics, has the access and is able to actually get funding, but not the excessive that you're getting. Obviously, when we see that, we'd be happy to comment.

Ms. Catherine Fife: Okay. Do you think your members know that if this bill passes, as flawed as it is right now, they won't be able to talk about mental health and safe schools and class size and voting? Do your members know what's at stake here with this piece of legislation?

Ms. Ann Hawkins: Not at this point, but they will.

Ms. Catherine Fife: Okay. Thank you.

The Chair (Mr. Grant Crack): Mr. Colle?

Mr. Mike Colle: I hope I have some time.

The Chair (Mr. Grant Crack): We'll give you a bit, sir.

Mr. Mike Colle: Thank you. Time.

I guess you made me think back to my days as an elector rep during the strike of 1973, I think it was—was it?—at Maple Leaf Gardens.

Ms. Ann Hawkins: Yes. You're aging us.

Mr. Mike Colle: There are a lot of intriguing thoughts, I think, that your presentation has brought forward, and that is, how do we ever get all these third parties involved with monitoring what you and your members can say in an election campaign or pre-writ or post-writ? How do we ever keep your right to express yourselves and participate and, at the same time, challenge the government? Don't you feel that we're almost getting too complicated here in trying to mess with the democratic process? We've got the Auditor General involved; we've got the Integrity Commissioner involved; we've got Elections Ontario involved. Now we're going to put in new rules to decide what you and your members can say or do in a democratic process. What kind of guidance can you give us to make sure we don't try to essentially stifle, really, the free range of speech and debate that is critical in elections?

Ms. Ann Hawkins: A couple of points. I started out with saying I don't see that there is a problem. I see that this piece of legislation was cobbled together because of the media. The media stirred up a storm, and the legislation got put together. I think it needs to be revised.

Now, Ms. Fife said earlier about the timing. If you need to take the time to go clause-by-clause, to make sure you don't do the repressive thing—because that's exactly what it is, as it sits right now. You're making it way more complicated. I'm going to go with the old saying: If it's not broken, why are you trying to fix it so badly?

Mr. Mike Colle: Yes. Luckily, this is at the first reading stage that we're doing this, so I think there's going to be a lot of time to do that.

The other question that your comments brought forward is, in my mind, is there any empirical evidence—I certainly have never seen any—that third-party advertising has any impact, and what degree of impact? I think there's obviously some impact. But what empirical studies have been done to show that all this furor over third-party advertising actually changes things in an election?

Ms. Ann Hawkins: I haven't seen any.

Mr. Mike Colle: I haven't seen any. I have suspicions that it does or it doesn't, but it's really all over the map. It's all on suspicion; it's not on any kind of real, hard evidence that has been compiled, that so much third-party advertising had this effect in this election and that election. We all have our theories, and as candidates, we all have our paranoia about what caused us to lose the election.

Ms. Ann Hawkins: As far as I know, there have been no studies. The things that win and lose an election are the policies and the statements that come out. The third-party advertising gives information, provides a voice, opens up debate.

Mr. Mike Colle: Yes, like the last time, as soon as the Conservatives said, "We're going to create a million jobs by firing 100,000 people"—boom, game over. I think it was at Gardiner's house there in north Toronto. Anyway—

Ms. Ann Hawkins: I don't think our ads changed that.

The Chair (Mr. Grant Crack): Thank you, Ms. Hawkins and Mr. Jarvis, for coming before committee this morning. We appreciate your insight and your comments and wish you a good day.

Ms. Ann Hawkins: Thank you very much.

Mr. Randy Hillier: Chair?

The Chair (Mr. Grant Crack): Mr. Hillier.

Mr. Randy Hillier: I just have a question that I'll pose to the clerk and the Chief Electoral Officer. There was discussion that there was not any empirical evidence that advertising had any influence or impact on elections. I'm just wondering if either the clerk or the Chief Electoral Officer would be able to confirm or deny that statement.

The Chair (Mr. Grant Crack): Perhaps I can clarify it. The research office has provided members of the committee with a summary of the findings and has distributed that to each member. If you would like—

Mr. Randy Hillier: Well, I'd like that—I'm asking the question, are there studies—

The Chair (Mr. Grant Crack): Mr. Parker.

Mr. Jeff Parker: Mr. Hillier, on June 24 you received a memo on the impact of third-party advertising during elections. The memo speaks for itself, but I would just summarize it by saying it's hard to determine. There is some evidence that there are impacts, but it's still a growing field of study.

Mr. Randy Hillier: So there are some studies that happened.

Mr. Jeff Parker: I would refer you to the memo for the complete information. That's the best place to go.

Mr. Randy Hillier: Thank you.

The Chair (Mr. Grant Crack): Thank you very much. This committee is recessed until 1 p.m. Have a great lunch, everyone.

The committee recessed from 1142 to 1300.

The Chair (Mr. Grant Crack): Good afternoon, everyone. I'd like to call the Standing Committee on General Government back to order after a brief recess.

OFFICE OF THE INTEGRITY COMMISSIONER

The Chair (Mr. Grant Crack): We have two honoured individuals this afternoon on the agenda, our first being from the Office of the Integrity Commissioner of Ontario, the Integrity Commissioner himself, the

Honourable J. David Wake. We welcome you, and I believe you're with Cathryn Motherwell, who is a director. We would welcome you both to committee this afternoon. You have up to 20 minutes for your presentation, followed by 40 minutes of questioning—and comments, of course—from the members of the committee. So we welcome you and the floor is yours, sir.

Hon. J. David Wake: Well, thank you, Mr. Chair, for inviting me. I'm pleased to be part of today's session to provide information to assist you in your review of Bill 201.

As you may know, the Office of the Integrity Commissioner has six distinct and key mandates; namely, MPP integrity, ethics executive for ministers' staff, registering and investigating activities of lobbyists, reviewing expenses for cabinet ministers and opposition leaders, reviewing expenses of agencies, boards and commissions, and receiving disclosures of wrongdoing from public servants.

Not all of my mandates are affected by the amendments proposed in Bill 201. However, in three of my mandates, I work closely with many of the same players affected by Bill 201, notably registered lobbyists, ministers' staff and MPPs.

My intention is to give you information about the three pieces of legislation that apply to lobbyists, ministers' staff and MPPs, particularly as they relate to the concept of pay-for-access as it has been characterized in the media, or pay-to-play, as it's more colloquially known, and identify some of the apparent inconsistencies that exist in the current system.

I will not be going through a line-by-line analysis of the bill. I'm sure you'll be gratified to hear that. Indeed, I realize that much of the committee's discussions have focused not only on what is in Bill 201 but also on what is not contained in the legislation. My appearance today is to help you understand that some of the changes contemplated by the committee could have an impact on my responsibilities as Integrity Commissioner.

Donations: Pay-for-access is not specifically covered in the bill but it appears to be one of the underlying concerns that led to the drafting of the bill. For the record and for those not familiar with the term, "pay-for-access" refers to situations in which money is exchanged for services or privileges. The money I'm referring to is political donations. The services or privileges are those that could be given by public office-holders. The concern is that the money may influence how the public office-holders fulfill their duties and, as a result, create a conflict of interest.

There's a tendency to view political donations negatively. I think this is a mistake. British Columbia's former Conflict of Interest Commissioner Ted Hughes, a former judge of the Saskatchewan Queen's Bench said, "In our system of parliamentary democracy, campaign contributions and assistance are to be encouraged and fostered and must be seen in a positive light as an interest accruing not only to a political party but also to the public generally...." I agree. Donations are important because they contribute to healthy political parties, and as Jean-Pierre Kingsley said in his remarks to this committee, "Healthy parties are good for democracy."

That said, I believe that we can all safely agree that the concept of pay-for-access is not one that we embrace in our democratic system. Donations may be necessary to fund healthy parties but they should not be required in order to get the attention of the government of the day. It would appear that Bill 201 may address some of the concerns that arise from the concept of pay-for-access, principally in proposing to reduce the amount of money that can be contributed to a political party, constituency association or individual candidate.

As members of the Legislature, you have to decide what level of risk is appropriate so that the system can balance the two competing interests: the importance of having healthy parties on the one hand while also limiting the risk of conflicts of interest. I suggest that, generally, there is a sliding-scale correlation between the amount of money that can be contributed and the degree of risk of a conflict of interest. The more money an individual receives, the greater the risk that decisions may be influenced by those contributions.

You may wish to ask me for my views on the contribution amounts contained in the legislation. In this, I do not have a view on a specific number. I believe that the final determination on what is appropriate lies with you as the elected members. However, I can only observe that, on the sliding scale, the lower the contribution limits, the smaller the risk of a conflict of interest occurring.

I would like to turn now to how the current system in Ontario deals with pay-for-access. There are differences in how the existing legislation treats the players involved in pay-for-access situations. I'd like you to consider whether these differences are appropriate.

Lobbyists: Let's start with the activities of the individuals who may donate to a political party. If donations are made by a lobbyist, then my office may have some jurisdiction to address the activities. It is important for you to know that lobbyists are not explicitly prohibited from making political donations or attending fundraising events. However, the Lobbyists Registration Act prohibits lobbyists from placing public office-holders in an actual or potential conflict of interest.

As of July 1 of this year, my office received the power to investigate situations where a lobbyist has contravened the Lobbyists Registration Act. This means that in the event that I find that a lobbyist has placed a public office-holder in a conflict of interest, I have the power to prohibit the lobbyist from lobbying for up to two years and may also publish information about their non-compliance.

Turning to the activities of ministers' staff: Ministers' staff are subject to the conflict-of-interest and political activity rules set out in the Public Service of Ontario Act, 2006. These rules apply to ministers' staff but not to ministers. However, ministers must ensure that their staff are familiar with these rules. Under the conflict-of-

interest rules, all public servants have an obligation to endeavour to avoid creating the appearance that they are giving preferential treatment. Public servants are also subject to different political activity rules, which apply to their activities both within and outside the workplace.

Under this act, as Integrity Commissioner, I am the ethics executive for some public servants, namely ministers' staff. Public servants in ministries and public bodies have their own ethics executives. As an ethics executive, I have the power to initiate inquiries if I have concerns that a staff person has contravened the rules. The question of whether the activities of a staff person involved in an alleged pay-for-access scenario are appropriate is not one that I can answer in the abstract. The answer would be dependent on the facts of each case.

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If I made a determination that staff of a minister contravened the rules, then as ethics executive I could provide direction to address the concern. I'm also required to notify the responsible minister of the contravention so that any appropriate disciplinary action could occur, including dismissal.

The Members' Integrity Act: Turning, then, finally to how the rules are applicable to MPPs, the Members' Integrity Act sets out the ethical framework applicable to all MPPs. The act limits the circumstances under which the Integrity Commissioner can conduct inquiries into the activities of any MPP. The act requires that another MPP file a request that I provide an opinion as to whether an MPP has contravened the act or parliamentary convention. In the absence of any such request, I have no independent powers to examine the conduct of any MPP. It may be helpful for the committee to know that integrity commissioners in five other Canadian jurisdictions do have the power to initiate inquiries on their own into conduct of MPPs; these are Saskatchewan, Quebec, Newfoundland and Labrador, Nunavut, and federally.

If I do receive a request from another MPP, I'm able to provide an opinion only on whether an MPP's activities contravened some part of the act or parliamentary convention. The act does not contain any specific rules about fundraising activities that MPPs may undertake. The act does have a conflict-of-interest provision in section 2, which would prevent any member from participating in decision-making that creates a conflict of interest. However, it is also important to note that former Integrity Commissioner Gregory Evans interpreted this provision to apply only to actual conflicts of interest, as opposed to apparent conflicts of interest.

It may be helpful for the committee to understand how I distinguish between an actual conflict of interest compared with an apparent conflict, or even a potential conflict. An actual, potential and apparent conflict of interest should be considered as part of a spectrum. An apparent conflict of interest is at one end of the spectrum. It refers to a situation which is not problematic but certainly looks like it. A potential conflict of interest is a situation that is not yet problematic but could become so. And finally, an actual conflict of interest is a situation that is problematic. This means that currently under the Members' Integrity Act, an MPP's fundraising activities would have to create an actual conflict in order for me to find that there is a contravention.

To summarize the current Ontario system: Under the Lobbyists Registration Act, if a lobbyist donated money inappropriately, I could initiate an investigation into whether the lobbyist placed a public office-holder in an actual or a potential conflict of interest.

Under the Public Service of Ontario Act, public servants have a responsibility to endeavour to avoid creating the appearance that they are giving preferential treatment.

As the ethics executive for ministers' staff, I can initiate an inquiry to determine if a minister's staff involved in fundraising activities has breached the rules on political activity or conflict of interest. If I find that there is a breach by a member of a minister's staff, I'm required to advise the minister—that is all I can do. And under the Members' Integrity Act, I can act only if I receive a complaint from another MPP. Even then, the act limits my inquiry to actual conflicts of interest, not apparent conflicts.

You can see quite clearly that the legislation deals more stringently with the actions of a public servant and a lobbyist than it does with an MPP. As I said at the beginning of my remarks, I highlight this situation to help articulate the challenges you face in determining what types of activity you would like this legislation to address; what kind of legislative restrictions, if any, should there be on fundraising activities of lobbyists, public servants or MPPs. That is not for me to say; it is my intent simply to outline the existing framework for you so that you can see where the differences lie.

However, I would be remiss if I did not also provide you with some context on how other jurisdictions are dealing with similar matters. Ontario is unique in Canada in having rules for public servants, including ministers' staff, codified in a regulation. The federal government comes closest, having established guidelines for the Privy Council office. These guidelines advise all public office-holders, including ministers and their staff, not to solicit funds from any organization with which their office or department has official dealings.

I emphasize here, though, that these are only guidelines. No enforcement mechanism exists under the federal regime, subject to the Prime Minister's discretion.

In the world of lobbyist regulation, no Canadian jurisdiction prohibits lobbyists from making political donations. Similarly, no Canadian jurisdiction requires lobbyists to declare how much they have contributed to a politician or political party and have that information appear on their registration form. This is, of course, disclosed through contribution registries maintained by bodies such as Elections Ontario.

Finally, in the world of ethical conduct for elected officials, there is the issue of whether a commissioner can initiate an inquiry and whether the legislation should

contemplate an apparent or potential conflict of interest in addition to an actual conflict of interest.

In BC, my counterpart has the authority to initiate inquiries on his own. The legislative scheme of that province clearly allows the commissioner to consider whether a politician's activities created either an actual or apparent conflict of interest. This is a key distinction from what we have here in Ontario.

At the federal level, the Conflict of Interest and Ethics Commissioner has the authority to initiate an examination under the act upon receiving information from any source, member or interested party. Section 16 of the federal act deals directly with fundraising and prohibits a minister or other public office-holder from personally soliciting funds from any person or organization if it would place them in an actual conflict of interest.

As you are aware, federally, in addition to the act and the code, there are stricter rules set out in the Open and Accountable Government document as administered by the Privy Council office, which informs the advice given by the federal commissioner. It also informs the advice which I give to members on a routine basis.

I understand that at least one presenter has suggested to you that these rules should be adopted in Ontario. The question of whether they're adopted as they are federally as guidelines or whether they're adopted in the form of legislation is a decision you would have to make. I'd suggest to you that there are pros and cons for both avenues you might choose to take. If this is of interest to you, I'm in favour of an Ontario-focused process that first identifies the activities that are problematic and then considers whether they are addressed by the current Ontario system. It may be that the current rules are sufficient. If additional rules are needed to address concerns, then you may wish to use the Open and Accountable Government document as a guide which can be adapted as needed to the situation in Ontario.

In conclusion, I hope I've assisted you by outlining the interrelationships of the existing ethical regimes in place for elected members, lobbyists and ministers' staff. These are complex challenges for complex times.

As you may know, I issued a report under section 30 of the Members' Integrity Act this week and also received four more requests for reports on matters that touch on some of the issues related to this committee's work. Given my ongoing role in assessing those requests, it may not be appropriate for me to address some of the questions that you may have. Indeed, when I received these recent requests, I had to consider whether I could make any remarks to you at all. I obviously decided that I could but that I must do so cautiously.

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My goal is to provide this committee with information, and as such, I want to emphasize that currently under the Members' Integrity Act my office has very limited authority to deal with the conduct of MPPs. In contrast, my office has the ability both to examine and, to various degrees, sanction the conduct of both the lobbyists and the ministers' staff. It may be that, in the course of your deliberations, you wish to consider changes that would affect my mandates. I look forward to participating in those discussions should you pursue that course.

As members of the committee, it is for you to determine whether the distinctions created by the current legislative scheme are acceptable. I would encourage you, in considering this question, to do as the Chief Electoral Officer has suggested and take a voter-centric approach to the situation.

The Chair (Mr. Grant Crack): Thank you very much, Mr. Wake.

We'll start with Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you for being here. I haven't had the opportunity to meet you up to now, but it's good to see you here today—

Hon. J. David Wake: We'll get a chance later in the fall, I hope.

Mr. Lou Rinaldi: —and hopefully not too often.

Again, thank you very much, and thank you for your thoughtful comments. I do have some questions. If they fall within that grey area where you're not comfortable, that's fine as well.

I want to just get your thoughts on ways to expand your current oversight powers in some sectors. You referred to this. Currently, your office has strict restrictions on the actions of ministers' staff, which include restrictions on post-employment careers; restrictions on receiving gifts, meals and other items; restrictions on political activities while at work; and restrictions on political activity, as in sections 94 through 98 of the Public Service of Ontario Act.

These restrictions set out by the Public Service of Ontario Act are in recognition of the important work that all legislative staff do and the important function of the opposition. Do you think that these rules could be expanded to include all ministerial and legislative staff so that we're all playing by the same rules? The previous commissioner recommended that, and I just wanted to get your thoughts.

Hon. J. David Wake: Just to clarify, you said that they extend to all ministerial staff presently.

Mr. Lou Rinaldi: They do.

Hon. J. David Wake: I think what Commissioner Morrison was recommending, and which I would adopt, is extending that to all members' political staff.

Mr. Lou Rinaldi: —the legislative staff, yes. That was my question. Sorry if it didn't come out—

Hon. J. David Wake: No, I think this is a position our office has taken for some time. I think everyone should be on the same "level playing field," as that expression has been used frequently at this committee.

Mr. Lou Rinaldi: Sure. I appreciate your thoughts, and I'm glad that we're consistent.

It has been suggested that the current definition of collusion is too hard to prove—requiring a party to have knowledge and consent of third-party advertisements. What are your thoughts on the current definition of collusion, if you can help us there?

Hon. J. David Wake: This goes outside of my mandate, but as a former prosecutor I can say that it was

always difficult to prove collusion. It's a very high bar to try and establish a conspiracy. It's one of the hardest defences to establish in criminal law. I've seen some of the other information that has been given before this committee that suggests that perhaps the bar should be reduced to that of co-operation rather than collusion. That would seem to make more sense. In fairness, it's not really for me to say because it's not part of my mandate, but I'll give you the benefit of my earlier life's view on the differences between the two.

Mr. Lou Rinaldi: Sure. Of course, it has been suggested that the Chief Electoral Officer have some responsibility in that, but based on your answer it would be very difficult to have a process in place.

My last question would be: What type of restrictions would you see on any involvement of former MPPs getting involved with third-party organizations and also advertising campaigns? There are some restrictions now with ministers after they leave their office. Do you think that should be expanded to MPPs?

Hon. J. David Wake: To former MPPs? There are certain limited restrictions to former MPPs but not to the same extent as former ministers. Ministers are privy to confidential information as part of the government deliberations. It's more focused on that. Usually it's not much of a difficulty. I wouldn't be advocating that it be extended to MPPs necessarily.

Mr. Lou Rinaldi: Great, thanks very much.

The Chair (Mr. Grant Crack): Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Congratulations. It's nice to see you here, sir.

Hon. J. David Wake: Thank you.

Mr. Lorenzo Berardinetti: I have a question regarding disclosure information. Our committee has heard from many presenters that Ontario is a leader in Canada when it comes to disclosure of donations to political parties in real time. All political parties and leadership contestants must disclose donations over $100 within 10 business days of receipt. This information is published for the public on Elections Ontario's website. I wanted to get your thoughts on the current real-time disclosure requirement.

Hon. J. David Wake: Okay. Again, this is somewhat outside of my mandate. However, I think I can indicate—I don't want to touch on the decision that I rendered this week but it is contained in that decision by way of a footnote. When we try to do the linking of who attended a certain event and who contributed, it's very difficult under the current set-up to do that because somebody may buy the ticket but somebody else may attend. There may be room for development there. That's all I can comment on.

Mr. Lorenzo Berardinetti: Thank you. I have a second question, Mr. Chair, if I have time.

The question is basically on the issue of preventing legislative staff from working with third parties, because we've seen in Ontario the rise of third parties trying to influence our elections. With third parties, I just wanted to know whether you have the tools or need the tools to ensure that work of legislative staff and third parties is tracked and doesn't become intertwined with each other.

Hon. J. David Wake: If I understand the question correctly, it's legislative staff—

Mr. Lorenzo Berardinetti: Getting involved with third-party advertisers, like outside groups that maybe want to influence the election.

Hon. J. David Wake: No, I don't have anything of any great value to assist in that particular part of the discussion. As I indicated in my remarks, I'm a little hesitant to go into what controls I can have or should have over ministers' staff because I expect that I'll be embarking on a full examination of that issue over the next little while. In the interests of impartiality, I want to keep a clear mind.

Mr. Lorenzo Berardinetti: Thank you very much.

The Chair (Mr. Grant Crack): Mr. Qaadri.

Mr. Shafiq Qaadri: Thank you, Commissioner Wake, not only for assuming office as our Integrity Commissioner but as well offering broad ethics guidelines to us all.

As you'll know, this bill is about election financing and partisan actors. There are a number of points. I'll perhaps just list them and perhaps you might weigh in on them as you see fit: first of all, levelling the playing field by putting an end to corporate and union donations—do you support that?—introducing a transitional per-vote allowance of funding, lowering contribution limits for individuals, limiting political party advertising six months or some time frame before an election, restricting pre-writ and during-campaign third-party political advertising—I appreciate that some of this may, of course, be beyond your mandate but we do seek ethics guidelines from you, and that will inform our decisions in terms of the legislation that we bring forward—as well as removing the by-election contribution period for central parties, and finally, limiting the role of loans in elections so that loans can only be guaranteed by those who are eligible to donate to political parties. As I'm sure you'll be aware, the issue of loans being guaranteed by yet another party down the party line has come to our attention through the press. So I realize that's quite a bit to inflict upon you, but I would welcome your comments.

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Hon. J. David Wake: You're right. Many of these don't touch on my mandates, although I've been following the discussions that have been going on in this committee and find them of great interest.

I did indicate in my opening remarks that lowering the amount of contributions is certainly one step. Whether it's half the battle, a quarter of the battle or the whole battle is for others to decide at some point. But I think that it's a step in the right direction and certainly, in the sliding scale analogy that I used, will make it easier to determine whether there has been a conflict of interest. That's not to say that a lower amount cannot also create a conflict of interest. But generally speaking, the higher the amount, the more likely the conflict of interest is to arise, and that's the risk that I referred to.

In terms of the third-party advertising: As a member of the public, yes, I'm following it, but I don't think it really speaks to the area that affects any of my mandates. I'm sorry, I really can't volunteer an opinion.

Mr. Shafiq Qaadri: Fair enough. Thank you.

The Chair (Mr. Grant Crack): You have two minutes left. Mr. Milczyn.

Mr. Peter Z. Milczyn: Just on that final point, the issue of third-party advertising and disclosure of third-party donations throughout the cycle of the legislative session, not just during a writ period: Do you think that real-time disclosure of donations to third parties doing advocacy or advertising or whatever they do is in some way linked to the work that you might be doing and would be valuable in terms of demonstrating transparency about who is trying to influence the public debate?

Hon. J. David Wake: Well, you've hit the magic buzzword, which is "transparency"—and it does. Transparency and accountability is something that, for this office, is our mantra. Anything that advances those interests is to be encouraged. I gave you the example of the real-time reporting and the difficulty I had under the present system in deciphering it. It would make my job easier if third-party donations could be reported in a way that's a little more fathomable.

Mr. Peter Z. Milczyn: Thank you.

The Chair (Mr. Grant Crack): Ms. Fife. She was first.

Ms. Catherine Fife: Thank you, Mr. Wake, for being here and Cathryn, as well.

Obviously, I have filed four complaints with your office, so I don't want to put you in a compromising position. That's why I won't be asking specifically about those complaints at all.

But as a matter of public record, you did have a finding this week as it relates to a complaint that was submitted to your office. As a matter of public record, you wrote about the Hydro One fundraiser held by Minister Chiarelli and by Minister Sousa: "It is conceivable that a reasonably well-informed person could have reasonable concerns about a $7,500-per-person fundraising event, held one month after the conclusion of a significant transaction, chaired and attended largely by individuals affiliated with organizations that benefited from that transaction."

Now I must tell you that this is a very powerful statement because it introduces—for this committee also, I think—what is reasonable, because at the same time, many of us would agree with you that your original statement around donations and about soliciting and engaging the electorate in conversations about politics and having some campaign contributions—for instance, across this province I think we heard at every stop how important those $27 donations that Bernie Sanders achieved as a politician—

Interjection.

Ms. Catherine Fife: How much? I'm sorry; you said something?

So $27, though, is very, very different than the $7,500 per person, if you will.

If you look at the issue of donations and around cash-for-access, and as you identified this question earlier in the week, do you see Bill 201 as it's crafted right now changing that or having an impact or preventing the apparent conflict of interest from happening again?

Hon. J. David Wake: This is where I'm on uneasy ground. I'll go back to putting my old judge's hat on. I was taught 22 years ago, when I first became a judge, that judges ought never to discuss what went on in their decisions or how they came to their decisions. They are a matter of record, and the decision has to speak for itself. I can't be here to explain what I said or what I didn't say. If you've interpreted that I found an apparent conflict of interest, that's your interpretation.

Ms. Catherine Fife: Well, I'm just including myself in the "well-informed person" complement of your quote. Fair enough.

The challenge that we have, though, is—and it's true: All of us, including the general public, would have very different interpretations of what is a reasonable donation. We've been charged, though, with putting the elector at the centre, with trying to create some confidence once again in this electoral process. So finding that amount of money that is reasonable—we've heard from regular citizens who would maybe make a $100 or $200 donation. That $1,500, as it's put in this bill, is still a lot of money. That's still big money, especially when you add what—it could go up to $7,750 in any given year.

So my question to you is—you talked about this world of ethical conduct. Money buys influence, especially when it's after hours, still in the province of Ontario. Do you see Bill 201 as solving this issue?

Hon. J. David Wake: I said that Bill 201 does not specifically address pay-for-access, but I suggested that the reduction of the contribution amounts moves in the direction of solving it. Whether it does or not is really up to you to decide. Then, in subsequent section 30 applications that I had to rule on, as I said to—I forget which of the other members it was—there can be very small amounts that can still produce a conflict of interest, and some significantly large amounts may not reduce the conflict of interest.

Ms. Catherine Fife: I really like the language that you used around the sliding scale and how that would impact risk and establishing risk.

I'll shift gears so as not to put you in an uncomfortable position.

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You did reference other jurisdictions and the powers that those integrity commissioners have. Having just returned from Newfoundland, integrity and ethics is very top of mind, because they went through a very difficult process and experience—as is the province of Ontario—around questionable practices, questionable policies and expenditures. You reference that you don't have the independent power to do an inquiry into an MPP. Do those other jurisdictions have—as the integrity commissioner, they can investigate an MPP? Independent?

Hon. J. David Wake: BC does, and federally Ms. Dawson does. Saskatchewan does. Quebec does. Newfoundland and Labrador does. Nunavut does. They have the power to initiate.

I'm sorry, I said—

Ms. Catherine Fife: They have the power to initiate an investigation?

Hon. J. David Wake: To initiate an investigation.

Ms. Catherine Fife: Right now, it would have to come from another member—member to member—for you to investigate?

Hon. J. David Wake: Right now in Ontario, yes. I have to wait for someone to swear an affidavit, file it with the Speaker and then have it sent to me. Then I can commence an investigation, an inquiry, and go through the process under sections 30 and 31 to determine whether there has been a contravention of the act or parliamentary convention.

Federally, it's kind of a halfway house between getting requests from anyone and everyone to—Mary Dawson can investigate but has the discretion not to. So if something comes to her attention, be it from a member of the public, an email exchange, another member or wherever, she can look into it and see whether there has been a contravention of the act. I can't.

Ms. Catherine Fife: Right now, though, Ontario is in the minority. The majority of the provinces—those integrity commissioners have greater leverage than you currently do under your act.

Hon. J. David Wake: I wouldn't say we're in the minority. In fact, there are five jurisdictions that have that authority.

Ms. Catherine Fife: Okay; that's good.

I was going to talk a bit about federally as a comparator, especially as it relates to lobbyists and lobbying, because you did reference those in your comments. Do you believe that the federal requirement that lobbyists provide monthly communication reports is a good policy—that that's a good practice?

Hon. J. David Wake: I'm not familiar with all of the practices—

Ms. Catherine Fife: Just the monthly reporting of who they met with and if funding exchanged hands.

Hon. J. David Wake: They report—what is it—every—

Ms. Cathryn Motherwell: Annually or semi-annually.

Hon. J. David Wake: Now it will be semi-annually. It was annually; now it's semi-annually.

Ms. Catherine Fife: Okay. So that recently changed?

Hon. J. David Wake: That was changed as of July 1.

Ms. Catherine Fife: So it's twice a year.

Hon. J. David Wake: Yes. It used to be annually. That obviously wasn't enough—so semi-annually. Otherwise, if it's monthly, I'd have to think of it in terms of a resourcing issue. If we had to follow it up on a monthly basis, it could be problematic for us.

Ms. Catherine Fife: You did raise the issue of linking. You said that there is an issue of linking when a lobbyist does meet with a cabinet minister and finding out—from a disclosure and from a transparency perspective, you did identify that you had some challenges with finding out who actually bought the ticket, for instance, to the $5,000 or $10,000 dinner and who actually attended. So right now, there is a gap there from a transparency perspective.

Hon. J. David Wake: Yes.

Ms. Catherine Fife: I'll leave that at that point. Thank you very much, Mr. Wake.

Hon. J. David Wake: Okay. Thank you.

The Chair (Mr. Grant Crack): Thank you. Mr. Hillier.

Mr. Randy Hillier: Thank you very much, David, for being here and accepting the committee's invitation to be here. I want to focus on your presentation.

Just to be very clear, at this present time, you don't have any powers of independent examination.

Hon. J. David Wake: I wouldn't say "independent examination." I'm entirely independent once I begin the examination, but I don't have the power to initiate the investigation.

Mr. Randy Hillier: You cannot initiate. You must wait for others to bring that forth to you, regardless of information that you may become aware of.

Hon. J. David Wake: Right. I may even become aware of it in relation to an investigation in one of my other mandates, but I can't do anything about it.

Mr. Randy Hillier: You can't do anything about it. You'd be frustrated in that activity.

In addition, and again just to clarify, essentially you're also limited to actual conflict and diminished authorities on apparent or potential conflicts. Again, that's not within your mandate by and large.

Hon. J. David Wake: Apparent and potential conflicts are not within, as I've interpreted the act, as Chief Justice Evans—Commissioner Evans—interpreted it back in 1991, and that's been the law since 1991 at least. It's actual conflict.

Mr. Randy Hillier: You brought this up, and it's been talked about at length—cash for access or pay-to-play, however you may want to phrase that. If an individual is approached by a minister or by an MPP to be involved in cash-for-access or whatnot, that individual is actually prevented from bringing a complaint forward to you, if there were a conflict. You'd have to wait for another MPP to bring that. And of course, it's unlikely any other MPP would have knowledge of it, except for somebody within their own caucus, possibly.

Hon. J. David Wake: I can't speculate.

Mr. Randy Hillier: Well, I know we're a very collegial type here, but we generally don't whisper about caucus proceedings and whatnot with one another.

I can see that as being a very extreme impediment. I would liken it to this: The SIU, for example, would not be able to investigate the actions of the police unless it was another police officer who brought forward the complaint. The public would be prevented from bringing

forth or even from having that knowledge of some event. Would that be a fair comparison?

Hon. J. David Wake: It's your analogy. I don't know.

Mr. Randy Hillier: Would it be a fair comment?

Hon. J. David Wake: The point is, unless another MPP brings the complaint to me, I cannot act. I cannot initiate an investigation. I can't even begin to ask questions about it.

Mr. Randy Hillier: There was another element that you mentioned. If there was a finding of ministerial staff that were in breach, or that there were some inappropriate actions, your response is limited in that you must inform the minister, but that's it.

Hon. J. David Wake: Yes.

Mr. Randy Hillier: The House and the broader public would then be reliant upon the minister to bring that information forward and thus, maybe, it's a case of bringing harm to his own office.

Hon. J. David Wake: Yes. The penny is dropping. I hear it.

Mr. Randy Hillier: It's a pretty astonishing revelation to me that you must only report to the one individual.

Hon. J. David Wake: That's the only power I have under the Public Service of Ontario Act: to report to the very minister whose staff member has committed a breach of the act—or at least not followed the conflict-of-interest rules.

Mr. Randy Hillier: I understand it's pretty much the same in the rest of the public service act as well. Like MPPs, the only one who can complain about the actions of a member of the public service is another member of the public service, and you have no independent initiation or examination there as well.

Hon. J. David Wake: I don't have anything to do with the regular public service, only the ministers' staff—although I do, under my disclosure of wrongdoing mandate, where it has to be a complaint made by a public servant or a former public servant about a public servant or a former public servant.

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Mr. Randy Hillier: I can't think of many other examples in modern civil society where people who have information and knowledge are actually prevented from bringing forth a complaint or initiating an action with that knowledge. Other than in this case with members and with members of the public service, that is not applicable to any other profession. If you're a member of the law society, if you're a member of the Better Business Bureau, if you're anything, the public and people with information are allowed and permitted to bring forth—

Hon. J. David Wake: If you'll permit me, I was a member of the Ontario Judicial Council for many years when I was Associate Chief Justice of the court. The Ontario Judicial Council deals with complaints about misconduct of judges, and there was no restriction on who could file a complaint. Unfortunately, we found that many of them were Internet complaints. The council and the rules surrounding the complaint procedure were set up long before the Internet, so it was expected that the people who would be making the complaints would have a more direct knowledge of the event being complained of. We were getting complaints from people who read a story about what a judge had said in a case in Ontario from their home in Halifax and sending a complaint. They could do that, and the council would accept it. The only problem is, if you go down that road, examine it carefully—because I recall that at council we would have to go through a tremendous amount of effort, time and resources to receive that complaint, open files, assign it to members of the council, and take it to an investigative subcommittee which in turn would have to report to our review committee, and then to dismiss it at the end.

Mr. Randy Hillier: But your counterpart at the federal level has the authority to dismiss, has the ability to do the examination, but is not compelled to do so, right?

Hon. J. David Wake: Exactly.

Mr. Randy Hillier: So that's a model that can, I would think, adequately deal with vexatious or frivolous—again, going back to an analogy, somebody who didn't like a decision from the court. That is not a reason in itself to bring a complaint.

Hon. J. David Wake: The majority of the complaints we received were of that nature. They should be filing an appeal, not filing a complaint.

Mr. Randy Hillier: So the federal model sounds like a good model to—

Hon. J. David Wake: It might be something for you to look into. It would certainly make things a lot easier for my office to handle than having an obligation to treat—as we do with all disclosures of wrongdoing, which is another one of my mandates. There, we take those complaints at face value and, prima facie, they're accepted as being legitimate complaints. We will investigate them to the fullest. This would be, as I described it, I think, to Ms. Fife, a halfway house.

Mr. Randy Hillier: I think that if we broaden that out a little bit, then it would not be just an incentive for political parties to use your office against other political parties, and maybe have some more substantive and justifiable complaints brought forward.

I want to go back to the federal guidelines. You talked about codifying these or leaving them as guidelines; there are advantages and disadvantages to each of those. I think the thrust of the federal guidelines is consistent with what we are expecting to achieve here in Bill 201, to limit that apparent conflict of interest, or potential conflict of interest, of ministers fundraising from their stakeholders. But, of course, with the guideline, there is no consequence to a breach of the guideline. I have always been of the view if a law has no consequence, then there's not much of a law. It can be adhered to or not.

Hon. J. David Wake: As I said in my remarks, it doesn't have an enforcement mechanism. Mind you, it comes out of the Privy Council office. It comes from the Prime Minister's office, in effect. If a cabinet minister was in breach of one of the provisions in the guidelines, that wouldn't work well for that particular cabinet

minister or member of the excluded staff. It's a guideline that has some degree of teeth, but it also has the discretion in the—

Mr. Randy Hillier: Yes.

Hon. J. David Wake: If it becomes legislation, then my concern is that there might not be any off-ramp to allow discretionary remedies for miscues along the way. It's a big step—

Mr. Randy Hillier: So we ought not to be overly prescriptive if—

Hon. J. David Wake: Or at least allow for an off-ramp at some point.

Mr. Randy Hillier: Right. Okay.

The other problem, as a guideline, as compared to it being codified in legislation—any alteration to the legislation would have to come before the House and would have to have some semblance of a public airing and discussion to discuss the merits and the rationale of it, where a guideline would not require any public discourse whatsoever for changes.

Hon. J. David Wake: Yes. That's right.

Mr. Randy Hillier: Whether it be relaxed or reinforced at some later date, the public interest would not be safeguarded through discussion.

One other element here: On the restriction on lobbying for former employees, that's only for the minister they were employed with, I believe.

Hon. J. David Wake: Yes.

Mr. Randy Hillier: Federally, I believe it's for all ministers—

Hon. J. David Wake: It's pretty stringent, which is why I'm suggesting that you'd have to look at the federal rules very carefully—they're very stringent—and see whether they are workable as a piece of legislation.

Mr. Randy Hillier: Right. I'm wondering how we might be able to take advantage of your expertise when it comes down to amendments in clause-by-clause consideration on things such as finding these off-ramps, as you refer to.

Hon. J. David Wake: As I indicated in my remarks, depending on which path you choose to go as a committee, if you are looking at amendments to the Members' Integrity Act, I'm certainly more than prepared to be party to those discussions. I don't know whether they fall naturally as part of Bill 201 or whether they should be handled holistically as part of a revamping of the Members' Integrity Act—

Mr. Randy Hillier: I think it does come into Bill 201 substantially. I think the intersection, from what we've seen, is clear. I would suggest that maybe you or somebody from your office might be able to attend clause-by-clause when amendments come forward and provide your advice and interpretations of those.

Hon. J. David Wake: Thank you. I repeat what I said: We're prepared to participate in any discussions that may be of some help to you.

The Chair (Mr. Grant Crack): Thank you very much.

Hon. J. David Wake: Within the limits of my office.

The Chair (Mr. Grant Crack): Ms. Fife, you have two minutes.

Ms. Catherine Fife: Thank you very much. Mr. Wake, you've given us a lot to think about in your deputation. But I think what we really are grappling with here, especially around the pay-for-access fundraisers that became very public last spring, is the appearance of conflict of interest. In your ruling that you made earlier this week, you were not able to comment even on what the appearance of conflict of interest has on confidence in our democracy, really. So I wanted to give you the opportunity here to talk about why the appearance or perception of conflict of interest in politics is problematic.

1400

Hon. J. David Wake: Well, it has been stated many times. I'll go back to my legal background and judicial background. Lord Justice Hewart in the 1930s, in a case, said that justice must not only be done, it must be seen to be done, which is a classic adage now which can be applied to the political forum as well.

However, there are other points—well, there's one other point of view. It was expressed by Chief Justice Evans, Commissioner Evans, in the Frances Lankin case to which I referred; that decision—I happen to have it in front of me—in which he said, "I believe that the present legislation wisely restricted 'conflict of interest' to a real or actual conflict. A 'perceived conflict' is that which an individual believes on the information available to him or her...."

"What standard is to be applied? The frequently suggested standard is that a legislator should not engage in conduct which would appear to be improper to a reasonable, non-partisan, fully informed person. The problem with such an 'appearance standard' is that there are few, if any, 'reasonable, non-partisan, fully informed persons,' and I doubt many would accept such a definition as a proper criteria for measuring the behaviour of legislators."

Ms. Catherine Fife: There you go—

Hon. J. David Wake: Now, you may disagree with him, and that's your job now on this committee.

Ms. Catherine Fife: You got the last word in there. That's good. Thank you.

Hon. J. David Wake: All right. Well, thank you all.

The Chair (Mr. Grant Crack): Thank you, Mr. Wake and Ms. Motherwell, for coming before committee this afternoon and sharing your thoughts. Have a great afternoon.

Mr. Randy Hillier: Excuse me, Chair?

The Chair (Mr. Grant Crack): Mr. Hillier?

Mr. Randy Hillier: Could I bother the committee and ask for a five-minute recess?

The Chair (Mr. Grant Crack): I have a request for a five-minute recess. Is that something the committee wishes to entertain? We will recess for five minutes, starting effective immediately.

The committee recessed from 1402 to 1408.

The Chair (Mr. Grant Crack): Back to order. I'd like to thank all the members of the committee so far for their work.

OFFICE OF THE CHIEF ELECTORAL OFFICER OF ONTARIO

The Chair (Mr. Grant Crack): Now we go to the big item. We have with us this afternoon the Chief Electoral Officer, Mr. Greg Essensa. We also have—

Mr. Jonathan Batty: Jonathan Batty, the director of compliance.

The Chair (Mr. Grant Crack): Mr. Batty. That's correct. Thank you very much. It's great to have both of you this afternoon.

We have up to four hours, it appears: up to two hours for your presentation, and up to two hours of questioning and comments by members of the committee.

Interjection.

The Chair (Mr. Grant Crack): Possibly.

Again, I'd like to welcome you back, gentlemen. The floor is yours. Again, you have up to two hours.

Mr. Greg Essensa: Thank you very much, Mr. Chair. Thank you, members of the committee. I would definitely like to thank you personally, all members of the committee, for having invited me to help review Ontario's political finance rules.

This committee has hosted an important public dialogue. It has looked at how our rules need to be updated to match how election campaigns are fought and won in the 21st century. I have long advocated that Ontario has needed this. I have been impressed by the many thoughtful insights and ideas that have been offered by deputants, and I am honoured to have served this committee.

I know that earlier today, you heard from my fellow officers of the assembly, Integrity Commissioner Wake and Auditor General Lysyk. Their roles and mandates are somewhat different than mine, but I know that, like me, they have provided you with the benefit of their best advice.

1410

My role has been unique, and I would like to offer my observations should this committee or another committee in the future invite me or another independent officer of the assembly to sit with a committee.

I followed a number of rules in serving this committee to preserve my role as an independent officer of the assembly.

(1) My participation has been public and transparent. I have not attended and will not attend in camera meetings for report-writing. I have given all input and advice in an open and transparent manner.

(2) I have not voted and will not vote on recommendations or motions.

(3) I was not the examiner for the committee. Members asked their own questions of deputants.

(4) I was not a permanent witness who was questioned by deputants and, conversely, was not asked to review, rebut or critique those who appeared before committee. I attended to hear the public debate and contribute factual information where I could.

(5) My office did not become the supporting secretariat for the committee. It has been expertly served by the Clerk and the legislative research service, and I'd like to congratulate and thank them for the tremendous job they have done. We could never replace them.

(6) The committee's report back from first reading will be made by the committee alone. I remain at arm's length from that process because I may agree or disagree with its final recommendations.

I'm also grateful for two other things: First, I appreciate the courtesy you extended my office by allowing me to have a designate attend when I was unable to be present; and, second and most importantly, I welcome the opportunity to do a presentation at this point in the hearings to share my perspective on what you should consider before beginning your deliberations.

My perspective is this: This committee's work is important for creating a modern election finance system. First reading is a key step in the legislative process. It is the point where the fundamental principles of law are reviewed and revised. Presumably, Bill 201 was referred to committee at this stage so its high-level objectives could be appraised and amended. I hope, as Bill 201 moves through the legislative process, that there will be hearings following second reading so that the public and I will be afforded the opportunity to provide input on details of the amended bill.

Based on what I have heard, let me now turn to what I perceive the public expects from Bill 201 and some of the realities of the political process.

I do not intend today to retell the history of the Election Finances Act. History is behind us. The committee is now at the stepping-off point into the future. That does not mean, however, that we can forget the lessons of the past.

As a province, we are still debating the fundamental question put by the Camp Commission: How do we eliminate the reality and the perception of the influence of the wealthy few in politics, enhance the political activity of ordinary citizens, and promote party activity directed to the interests of the general public? This is not an ivory-tower question; this is a very real question, and the electorate wants their legislators to find a practical answer to it.

In moving into the future, as stated in Elections Ontario's strategic plan, we need to "build modern services for Ontarians that put the needs of electors first." The significant question then is: What do our citizens want their election finance laws to look like? As I said on the first day and as what presenters said on the days that followed, citizens expect congruence between federal, municipal and provincial election laws when it makes sense. The Canada Elections Act contains many provisions that would be good to adopt in Ontario, but as the Chief Electoral Officer of Canada himself observed, some aspects of elections in Ontario are unique. We need

to have laws in place that match our political realities. I think we can learn from, build on and improve on what we see in other jurisdictions to create election laws that make sense in Ontario. I think that is what you've heard from all deputants.

In drafting this law, Ontario needs to consider the political reality that parties require funding. Our parliamentary system requires political parties. Without them, our system of government would be compromised. Parties require financial support. Anyone who suggests otherwise fails to appreciate their role and character. They all require financial resources. Money is an essential element in politics.

You have heard numerous submissions on this topic. Presenters have told you what they think the appropriate contribution and spending limits should be and what amount of public and private funding parties should receive.

You also heard the Chief Electoral Officers of Canada from the past and present speak of the special role parties play in the democratic process. They also spoke of the need to strike the right balance in creating a funding formula that sustains parties but does not unfairly enrich them or, conversely, leave them beholden to any one contribution source.

I have been impressed throughout the hearing process by the emphasis that academics, former politicians and others have placed on the need to maintain the integrity of the election process. Numerous presenters have spoken to you about the need to ensure there is a "level playing field." It is the guiding principle about which I spoke at length on the first day of hearings.

The concept of a level playing field is central to our democracy. It is also a unifying principle of election administration. It ties together the voting process and the campaign process, and this is how it ties them together: Election outcomes are supposed to reflect the genuine will of the people. Political finance rules are supposed to ensure parties have equal opportunity to raise and spend funds to advance their message and win votes. Electoral outcomes should not be distorted because of unequal opportunities to influence the electorate.

Academics and judges have written about this at length. As an election administrator, I see that it boils down to one fundamental proposition. The proposition is this: All who enter the electoral arena should be treated equally. This is what I would like to address in the balance of my presentation today.

I would like to address in very practical terms what I mean by equal treatment in the electoral process. It would be very simple to impose identical rules on all participants in the electoral process; however, I do not think that is a good idea. Let me explain why by using a simple example. A law could require that every single dollar given to every single person or organization at every stage of the political process be instantaneously reported to the public. That's an example of a rule that has identical and universal application.

However, a rule of that sort does not take into account the relative size, ability or resources of the people and organizations to which it applies. While it might be easy for a major political party, with a permanent staff and headquarters, to comply, it could prove to be tremendously challenging for an independent candidate to do so. And we have to ask ourselves: Does a voter in Timmins really need to know within 24 hours that an independent candidate in Kingston received a $20 contribution? A rule like that is not rational and could deter someone from wanting to be an independent candidate. No one here wants to see a rule like that adopted. Conversely, no one recommends that contributions should never be disclosed.

The debate, then, becomes: What rules are rational, necessary and practical to have in place? In other words, we need to strike the right balance between transparency and participation in the electoral process.

In designing laws to strike that right balance, I believe our election finance rules do need to take into account the relative size, ability and resources of the people and organizations in the electoral process.

I do have a number of recommendations to make; some I have spoken to before, some I arrived at based on what I've heard at this committee. This is what I believe and what I recommend:

(1) I believe new third-party advertising rules are required, and the suggested provisions in Bill 201 need to be strengthened.

(2) I believe that union and corporate contributions should be prohibited in the manner suggested by Bill 201, but recommend lower limits and, consequently, different subsidy levels.

(3) I believe that Bill 201 should be amended to strengthen the contribution and spending limits in the Election Finances Act.

(4) I recommend that, beyond these policy issues, there are some other matters that are best addressed after second reading.

Let me address each of these in turn.

I spoke on the first day of the need for new third-party advertising rules. As I noted before, the courts have ruled that (1) voters must have access to information about each candidate to assess the relative strengths and weaknesses of each party, and (2) those having the most resources should not be able to monopolize election discourse because it deprives others of a reasonable opportunity to speak and be heard. Where this is not checked, the voter's ability to be adequately informed of all views is undermined.

1420

Some presenters have told you that any limits on third-party advertisers are unwarranted and unconstitutional. Quite frankly, I think that argument is astounding. It flies in the face of the evidence before this committee, what experts and academics recommend and what courts have held. They have chosen to ignore the reasonable proposition that the ability to spend significant amounts of money to promote one's view is not in itself a requisite for freedom of expression. In making their recommendations, I think those presenters have lost sight of the most fundamental aspect of elections: The centre of the

election should be the voter, not the self-interest of any vocal minority with significant resources, be it a union or a professional interest group.

Bill 201 does not suggest that anyone's right to free speech be prohibited. I believe, however, that Bill 201 does not go far enough in regulating third-party advertisers. The more I heard in committee, the more my view was confirmed. In Ontario we have third-party advertisers that rival the spending of major political parties. They are active on a year-round basis, not just on the eve of regularly scheduled general elections. I reviewed this evidence in great detail on the first day of hearings, so I am not going to repeat it. No presenter disagreed with my findings. Based on the evidence before you, it is only common sense to conclude that third parties should play by similar rules as political parties.

I therefore recommend as follows: Between elections, issue advertising should not be regulated. However, if an interest group sponsors advertising between elections that specifically promotes or attacks the next election of a party or leader, the group should be required to report on their contributions and spending. I spoke of the need for this on the very first day of hearings.

During elections, if an interest group sponsors advertising that specifically promotes or attacks the election of a party or a leader, or advertises to raise an issue for public debate in the election, the group should be required to register and report on their contributions and spending.

Contributions to a third party, whether from a union, corporation or individual, should be capped at $1,000. Spending by a third party between general elections should be capped at $100,000 annually. In a general election period, its spending should be capped at $100,000.

Collusion and coordination between third parties and political parties should be prohibited. In order to prevent this sort of coordination, the people involved with third parties need to be at arm's length from political parties. It should be an offence to subvert this requirement, and since the offence is so serious, it should attract the most severe sanction under our election laws. It should be treated as a "corrupt practice."

To conclude on this point, Bill 201 has not gone as far as I would have hoped. I think it proposes incremental change when wholesale change is required. I think it proposes an oversight system, which is problematic and will be seen as being arbitrary. Most importantly, I think it fails to grapple with the issue of the year-round advertising that specifically attacks or promotes parties and leaders, which is being sponsored by interest groups. This advertising, which exceeds what any political party spends between elections, is wholly unregulated. There is no contribution or spending limit. Its financing is hidden from public scrutiny.

For this reason, my office has drafted model legislation that, if adopted, would address my recommendations.

I propose, for example, that we have much clearer definitions of what advertising is regulated, and when it is regulated.

I propose that we adopt a definition of political advertising that would apply between elections. It should apply to "commercially purchased advertising in any medium which is disseminated or distributed by any person or entity outside an election period and specifically depicts a registered party, registered party leader, or registered candidate for the purpose of promoting or opposing their election."

I propose that we adopt a specific definition of election period advertising. It should apply to "commercially purchased advertising in any medium which is disseminated or distributed by any person or entity for the purpose of:

"(a) promoting or opposing the election of any registered party, registered party leader, or registered candidate; or,

"(b) raising a public policy issue for consideration by the electorate during an election."

I believe these definitions reasonably balance the rights of all. These principles are clear to follow and to administer. I hope these model provisions, and the others I propose, will be adopted by the committee.

I would now like to speak about the proposed contribution amounts in Bill 201. On the first day of hearings, I spoke about the role of money in politics and the need to ensure that persons and entities are treated equally. I have heard many deputants throughout the hearings recommend that the proposed individual contribution limit of $1,550 to various party entities is high and will afford a small number of individuals a greater ability to contribute than the majority of Ontarians.

This limit would, in fact, represent a 17% increase over the $1,330 that individuals can now give to a candidate. In total, an individual could contribute as much as $7,750 to a party and its various entities and representatives in a year with an election.

Taking this evidence into account, I believe that the contribution limits should be lower than are proposed in Bill 201. I recommend that an individual should only be able to contribute as much as $5,000 to a party and its various entities and representatives in a year with an election. An individual, for example, should only be able to contribute $1,000 to a party or a candidate. Collectively, an individual should only be able to contribute $2,000 to all the candidates of one party. I have provided a table which sets out my recommended contribution limits, in the appendices.

I believe these lower limits, if adopted by Bill 201, would better accomplish the objective of eliminating the reality and the perception of the influence of the wealthy few in politics.

I recommend that the subsidy should be permanent. If the subsidy is to be reviewed, it should be through the legislative process, before a committee and in the assembly, which is the public process. A review is something that should not be assigned to cabinet, which is a confidential process.

I also believe that, in a couple of instances, Bill 201 takes a dramatic departure from the level-field principle.

I do not believe that candidates or leadership contestants should be exempt from the contribution limit that other individuals must observe. I think that allowing self-funding at a level well above the regular contribution amount is a loophole that benefits those with greater financial resources. This sort of loophole is the sort of provision that helps to perpetuate gender and minority imbalance in representative democracy.

The other provision that causes me immediate concern is that an individual's contributions to all independent candidates are capped at $1,550. I am not sure why there is a need to have this sort of provision, for two main reasons. First, our election finance law does not impose any sort of limit on what an individual can collectively give to candidates of different parties, so this would treat independent candidates differently. Second, I am not aware of independent candidacies in past elections attracting significant individual contributions from any one source.

To me, these provisions create an imbalance in the level playing field. They do not currently exist in our law. Introducing self-contribution exemptions and provisions that single out independent candidates for differential treatment is ill-advised.

Turning now to my recommendations on other aspects of our contribution and spending rules, I should note that my thinking on these topics has taken into account the many submissions that others have made to you. I believe the definition of contribution needs to be fair and make common sense. Employers who are paying employees to work for a candidate instead of in their workplace are materially contributing to a campaign. Common sense says that these contributions should be subject to the same limits as other contributions. Currently, it is only considered a contribution if employees are paid a bonus amount on top of their salary by either their employer, their union or someone else, and only the bonus amount is considered to be a contribution. That does not make sense to me.

I do not know the value of the services that have been provided to parties over the years as a result of this definitional loophole. Because the services have not had to be valued and reported to Elections Ontario, there is little or no transparency. I think this needs to end, and I'm recommending that this loophole be closed.

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For political finance rules to create a level playing field, the rules have to address not only how money is raised; they also need to address how it is spent. Our law now imposes spending limits on parties and candidates. However, there are some categories of spending that are not subject to any limit. There are a number of exceptions to the spending limit rules for parties and candidates.

For example, a person with a disability who is running for office is not subject to limits on spending related to the accommodations that he or she needs in order to campaign. Another example is that child care expenses are exempt. I agree with these exceptions, as they are designed to allow equal participation in the electoral process and do not afford those with greater financial resources an advantage over others.

There are exceptions, however, that I do believe need to be removed. I recommend that travel, research and polling expenses should all be subject to the campaign spending limits for parties and candidates. I think the current provisions unduly benefit parties and candidates with great financial resources for two reasons:

First, those parties and candidates have an undue advantage over their competitors in shaping their platforms and messages and then meeting voters across the province.

Second, we need to remember that these expenses, as they are not subject to the spending limit, do not qualify for any reimbursement. Thus, parties and candidates with fewer resources do not get any reimbursement for what they spend. They are put at a further disadvantage.

Travel, research and polling are significant elements of any serious election campaign. To maintain a level playing field, they should be included in campaign spending limits.

I do not think that, to level the playing field, it is necessary to impose advertising spending limits on political parties between elections or change their limits in place during elections.

To conclude my recommendations, I also suggest that there are some provisions that need further work. My recommendations to this point in time have addressed significant policy issues. There are, however, some technical matters raised in Bill 201 that need to be reviewed. The matters are as follows.

As I said earlier in the hearings, there needs to be clarity in the statute that government advertising is not subject to review under the Election Finances Act. That activity is regulated by a statute beyond my role and mandate. It falls under the role and mandate of the Auditor General, who has just made submissions to you about these issues earlier today.

My next observation deals with a new area of activity my office will be required to regulate. I am in favour of nomination contestants having to register with Elections Ontario. However, I think imposing the same registration and reporting requirements on these individuals as are in place for leadership contests is problematic. Nomination contests number in the hundreds before an election, have very modest spending and expenses, take place locally and are volunteer-run. To my mind, imposing the same rules as apply to leadership contests is going to be unduly burdensome on parties and their local members.

Unlike the 122 party nomination contests that may take place for each party before an election, leadership contests are relatively rare. They involve large-scale fundraising, province-wide campaigns and a centrally run process administered by full-time party staff. Nomination contests are much different.

Most importantly, the administrative model set out in Bill 201 differs significantly from the provisions adopted federally, which appear to better reflect the practical realities of a local-level candidate selection process. I recommend these provisions be reviewed and revised.

My next technical recommendation concerns the group contribution provision in Bill 201. I believe the group contribution provision in the current law, which allows trade unions to amass funds from their members and have that amount treated as one contribution, needs to be repealed. This needs to be done because trade union contributions are now being prohibited. It is not clear how the amended provision in Bill 201 matches this policy direction. I recommend these provisions applying to unions be reviewed and then either be revised or repealed.

Finally, I believe that the provisions regarding foundations should be repealed. I think the requirement to establish a foundation prior to a party being registered is outdated and unnecessary. It is found in section 39 of the statute and was required at the point the act was first created in 1975. In that era, parties required large infrastructures in order to qualify for registration. They had to run a slate of candidates in 50% or more of Ontario's electoral districts, or mount a large petition campaign. These provisions do not reflect the current, more democratic registration thresholds.

I also believe that the trust arrangements that currently exist to allow monies to be transferred to parties without being treated as a contribution should be wound up. This provision was always intended to be transitional. Over the last 40 years, most of these trusts have wound down voluntarily, as was intended. However, there are one or two still active at the constituency level. I think 40 years is a long enough time to allow for a transition, and it is time that these trusts are ended.

I think it is also likely that if Bill 201 is amended in the way others have suggested and I have recommended, the proposed law deserves another careful examination. I know some deputants have spoken about their concerns about the need to reform the timing of disclosure and loan provisions, and I will be very interested to see how those matters are considered in the next iteration of Bill 201.

Before I conclude my remarks, I would like to thank you again for inviting me to assist you with this process. I have appreciated being able to make my recommendations to you and, through the committee, to the public.

On my first day with you, I said that Ontario is at a watershed moment, and I still think this rings true. What this committee takes forward will help shape election campaigns for the 21st century. I do hope this legislation will strike the careful balance between free speech and the rights of electors that I believe is needed.

You have heard from many, not just me. I think all those who appeared before you—including myself; other officers of the assembly; Mr. Mayrand, the Chief Electoral Officer of Canada; and Mr. Kingsley, the former Chief Electoral Officer of Canada—have appreciated being able to speak to Bill 201 directly after first reading. This process has also afforded interested citizens a process to comment on the law from first principles.

The concept of the level playing field has been discussed at some length, and I look forward to seeing how recommendations in support of this principle manifest themselves at the next stage of the legislative process.

I hope my recommendations from today will be of use. Like others, I am looking forward to seeing how Bill 201 moves through this committee and the Legislative Assembly. Bill 201 has made many great strides forward, but I do think it needs some changes. I would welcome the opportunity to present to you at the next stage of this landmark process.

I thank you for your attention this afternoon and for inviting me to share my perspectives with you. I would be happy to answer any questions you have, Mr. Chair.

The Chair (Mr. Grant Crack): Thank you, sir. We'll start with Mr. Hillier. We have up to two hours of questions and comments from members of the committee.

Mr. Hillier.

Mr. Randy Hillier: Thank you, Chair.

The Chair (Mr. Grant Crack): You're welcome.

Mr. Randy Hillier: Thank you very much for not only being here today, but for all the time and advice that you provided the committee at all our hearings. I appreciate your recommendations; I appreciate hearing them.

Your recommendation that the subsidy be made permanent: We've heard a broad range of comments on the subsidy, with many people demonstrating that parties can be weaned off the public subsidy, with the experience at the federal level giving credence to that notion. So I'm wondering, first off, why you think it's important that it be made permanent, but secondary to that—and we've had some conversations, and we've heard from others about different models of subsidy. We've heard criticism of the subsidy based on votes in the last election, and those criticisms appear to me to have merit.

I'd like you to comment: Have you considered or contemplated these other models, like the matching contribution models? And if so, maybe you'd share your insights with the committee on benefits or advantages or disadvantages with the matching contributions as compared to the per-vote subsidy.

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Mr. Greg Essensa: First off, thank you for the question. To address the first part of the equation, when I first appeared on the first day of committee, I indicated that, based on the most recent, full electoral period of time, corporate and union donations represented about $50 million of the entire $98 million that was raised by the four big parties here in Ontario. Eliminating the ability of corporate and union donations meant, from my perspective, that political parties needed, in essence, to remain in some capacity to make themselves whole again. The subsidy doesn't come close to that, in reality. However, it does present a stable funding base, which I think is healthy for democracy.

I think you heard from primarily Mr. Kingsley, and you heard from Mr. Mayrand, talk about the importance of a stable political environment: that political parties have stability to be able to conduct research, to have the ability to conduct policy initiatives, and have a source of funding, and that there's an appropriate balance between

public funding and contribution funding from the electorate. I am of the belief that there needs to be a greater degree of public funding with the elimination of corporate and union donations.

In regard to the second part of your question, there are other programs that we have looked at: Quebec has matching contributions; New York state has a matching rebate program as well.

At this point, from my perspective, I think the annual subsidy, the quarterly allowance, is the most easily digestible process for the electorate at this time. I think there would need to be greater research done into Quebec and into the others that do matching grant programs.

I have heard, anecdotally, that it does place a greater reliance on the political parties for the matching grant program. I'm not sure, at this point in Ontario's electoral finance reform, that the annual subsidy isn't the most appropriate means, in the initial stages. Should it be reviewed? Possibly, after a period of time. But I do believe that there needs to be a permanent funding model.

Mr. Randy Hillier: I think there are some areas of this legislation where we're going to move into some unknown territories—for this province, anyway. But I have heard the criticisms of the per-vote subsidy, of a continual public subsidy based on your performance and your platform of four years previous. I do think there's legitimacy to that, where matching funding would cause political parties to maybe cater their current policies to be more in line with the expectations of the electorate.

I think, at present, Bill 201 allows or creates a mechanism to review the per-vote subsidy in a period of time, but not in an open, public fashion. I think, and maybe in your comments—because I do believe that third-party advertising also has the potential to be problematic down the road. What are your thoughts, Greg, on having an open review of the entirety of Bill 201 after the next election cycle and being able to evaluate and examine how the third-party advertising functioned, how the per-vote subsidy is functioning, or any of these other elements that may be adopted by Bill 201, such as changes to the Members' Integrity Act etc.?

Mr. Greg Essensa: I am a strong, strong believer that any electoral law should be regularly reviewed by the legislators themselves. Our society changes rapidly; elections campaigns change rapidly. The influence of money has been well documented, and you've heard it throughout the course of these hearings.

Several years ago, when I first was appointed Chief Electoral Officer, I appeared before a similar committee like this, which Mr. Sorbara was chairing, and I indicated to him at the time that the last time they had truly looked at reforming electoral laws in Ontario, I was four. I think that there should be a regularly scheduled period of time—that the legislators put in the statute that they will review electoral laws, because I do believe our electoral system does need to be—it is the central core to our democracy, and I would welcome a regularly scheduled opportunity for both the Election Act and the Election Finances Act to be reviewed by the Legislature.

Mr. Randy Hillier: Okay. I'm going to leave it at that and pass it over to my colleague as we go around the table.

The Chair (Mr. Grant Crack): Mr. Walker.

Mr. Bill Walker: Thank you, Mr. Essensa, for all of your efforts and your consistency. You've brought a lot to this process, I believe, through your prior reports. You've been very consistent. You've raised this, and I certainly hope this committee will address your thoughts.

I tried to listen, as well as skim through fairly quickly, and I don't think there's anything in there with regard to the six-month limitation and whether you do or don't support that. One of the earlier groups this morning suggested there shouldn't be that six-month limitation prior to a writ period. I believe firmly that if you have basically unlimited resources, you can just bury me in the month or the week or whatever it may be prior to an election. So I'm actually in support of that. Do you have any view on that point?

Mr. Greg Essensa: As I recommended in my first appearance here and I recommended again today, I would hope that this committee and the Legislature would turn its mind to the continual electoral campaign because, quite frankly, that's what I do see. I do see partisan advertisement that takes place well in advance of the six months before a generally scheduled election.

Having said that, I am a strong believer in freedom of expression and free speech in our country. We need to balance the difference between issue advocacy and partisan advocacy. That's why very specifically I have recommended to this committee that—to me, it lies in the definitional element of the bill. To me, partisan advocacy is when you are providing advertisement that is either depicting a party leader, depicting a candidate or depicting a party and trying to influence the electorate the next time they appear at the ballot box. That, to me, is partisan advertising. Issue advocacy should be completely free.

Mr. Bill Walker: I would support those views certainly, and that's why even the six months was kind of an arbitrary number there. I agree with you on the full year-round advertising, and particularly your level-the-playing-field concept that I believe is also where I was trying to go with my private member's bill.

Nothing, again, with regard to penalties for contravention of the rules. I believe that it's one thing to report, but I can just say, "Yes, I reported what I spent," but I can continually go there. Any thought process on imposing any penalties if someone is caught, whether it be a lobbyist, a third-party group, any affiliation that is actually caught in contravention of the rules once they're in place?

Mr. Greg Essensa: I believe the bill does go there and it does impose the penalty of five times—so if the limit is $100,000 and you overspend by $100,000, then the penalty could be imposed up to five times the amount you've spent over the limit. So there is a penalty provision that is already in Bill 201 that takes that into consideration.

Mr. Bill Walker: And I included in my private member's bill even the ability to not participate in the next election cycle as part of that. Do you feel that's too stringent?

Mr. Greg Essensa: I would support the current provision in the bill. I think that five times above the limit is an adequate deterrent that would hopefully shape a third party's decision on what they would determine to spend in relation to an election campaign.

Mr. Bill Walker: And you made a comment—and I think is an important one that sometimes doesn't get as much air time, but it's that ability for an employer to pay employees to work for a candidate. You have no real ability to comment on how impactful that is because we don't monitor it. I certainly don't think it should be allowed. I think it should be there as part of the contribution limit—if not, as a secondary or a first step, perhaps, that they at least have to report those so that you, as the electoral officer, a cycle down the road, could have some data to look at. I believe that's as impactful as anything. If you can put a number of people in a paid position to go out and very specifically and methodically work on a campaign, and I'm totally at the leisure of volunteers, that again is creating an unequal playing field.

Mr. Greg Essensa: I would encourage this committee and the Legislature to give considerable contemplation to this issue. My office receives many, many complaints during the election about this practice, this "loophole" that exists.

We have no transparency into that. We have no understanding of how much this is factual or how much this is just anecdotal information.

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If Bill 201 does put in place the elimination of corporate and union donations, then, from my humble perspective, it should also eliminate this loophole. It should be a contribution if an employer can suddenly say, "Here are my five staff. You're going to go work for this campaign for the next two weeks. I'm just going to pay you your salary." I think that that is a contribution. It should be treated as such.

Mr. Bill Walker: I fully concur. Thank you very much.

The Chair (Mr. Grant Crack): Thank you. Mr. Rinaldi.

Mr. Lou Rinaldi: Again, thank you for all of your commitment. You've heard this over and over again. We certainly appreciate you being here, in many cases to clear the air on some issues that we have now. I think it will make the committee work easier, I guess—if it is going to be easier.

I want to go back to third-party donation limits. I know that you talked about it quite a bit in your presentation today. You brought it up in 2009 to a legislative committee, so obviously it's something that you have given a lot of thought to. You've touched on some of these things but I think it's important to emphasize a little bit more so that we get a better understanding of where your thoughts are coming from.

It is important to you because you kept on emphasizing, but do you think it should be that the third-party donations should be amounts that—sorry. Do you think they should be the same amount as donation limits to political parties when it comes to third parties? Do you think that only individuals should be allowed to make those donations to a third party?

Around the loan piece, should proposed rules around the loan guarantees in Bill 201 apply toward third-party contributions?

If you could shed a little bit more light on that in the face of trying to make it a little bit more transparent.

Mr. Greg Essensa: Let me go back, Mr. Rinaldi, and talk about what has helped shape my view over the last eight years toward third parties. When the government introduced, in 2007, the requirement that third parties register with Elections Ontario, it was the first election that we truly had any insight into what third parties were spending. In the first election, it was relatively modest. I think the total was $1.7 million amongst all of the third parties. I think that we had 35 third parties who registered.

What we have seen is a straight, steady stream upwards, where now third parties are outspending our major political parties here in the province collectively, which has given rise to my belief that they are having some impact on the electoral process. As I said in my most recent annual report, one of the guiding elements of my role as Chief Electoral Officer is that whenever I see something that distorts the core principles of our democracy, I do believe it is my role and my job to report to the Legislature to say that I'm concerned by this.

This has not been something that has been relatively—I have not given it a great deal of thought. I have not looked at the numbers over a long period of time. I see that this is distorting that level playing field here in Ontario, so I do believe we need to take that into account.

When I look at third parties and I compare them to all the other, what I would call, political actors in the political arena, third parties are treated completely differently. There are no contribution limits; there are no spending limits; there's no transparency. I have no idea how much money third parties—I shouldn't say "I"; Ontarians have no idea how much third parties spend prior to an election, who's contributing to that and how much is being contributed. Fundamentally, in our democracy, as you've heard from my colleagues the Auditor General and the Integrity Commissioner, greater transparency is good. Greater transparency is better for the electorate and for all concerned.

Should there be contribution limits? I believe there should be. You have contribution limits as a candidate. Your party has contribution limits. I believe there should be contribution limits as well, and they should be transparent. We should see who's giving money.

When we see advertisements happen six, eight months before an election that are being run on the night of the Oscars or during the Stanley Cup playoffs, those aren't cheap. I think all Ontarians deserve to see that. Whether

you put limits on that or not, I think from just a transparency perspective, Ontarians deserve to have the right to see who's contributing and making that.

With respect to your last question on loans, I'm not sure that I would apply the same degree of restrictions or limitations on third parties with respect to loans that perhaps is in the bill for parties now.

Mr. Lou Rinaldi: So, just to close my part of the session, with the concerns that you shared with us—much appreciated—how well does the proposed Bill 201 address some of those, if any?

Mr. Greg Essensa: I think the challenge with Bill 201, as I said on the first day and I repeated today, is in the definition. I think that there are opportunities for us. It is not, as you've heard throughout the course of the deliberations—and I know you have travelled the province much like myself and have heard the deliberations—I really do truly believe that the current definition in Bill 201 is problematic. It's problematic to administer, it's problematic to operationalize, and I think if the current definition is allowed to stand, I would concur with many of the third parties who I have heard coming forward and saying that it will restrict their freedom of expression and freedom of speech, and I think that's problematic.

Mr. Lou Rinaldi: Thank you.

The Chair (Mr. Grant Crack): Thank you very much. Mr. Milczyn.

Mr. Peter Z. Milczyn: Just to continue on this, Mr. Essensa, over the course of the last few months we've heard from many organizations raising concerns about the provisions for third-party advertising. One of the narratives has been that many of these organizations are relatively simple grassroots organizations. But it seems that actually, when you review some of the filings that have been made, a lot of them are large corporations or trade unions, probably the majority of them. That also raises the issue that they might have subsidiaries. There can be a main union, there can be locals. In the provisions of the legislation as it goes forward, should we be looking, for the sake of transparency, at making sure that the information that's collected is very transparent about—this is the real entity and all of its component parts that's funding something?

I guess the next part of that is if that is indeed a big concern, should the restrictions on corporate and union donations in election campaigns to political parties also be extended to third-party advertising?

Mr. Greg Essensa: I concur with your earlier part of the commentary around the need for greater transparency and provisions in this statute that provide requirements on those third parties to provide more information to Elections Ontario that we can publish and make available for public consumption.

As far as the same limitations, I think there is a distinction between political parties and third parties, so I do think that the law does need to make some distinction in that regard. But I'm just cautious in how I answer that because I don't want the committee to find itself making provisions that might represent a constitutional challenge towards it. But I do think it's quite important that there be greater transparency in what third parties are raising, what they're spending and what they're reporting out on.

Mr. Peter Z. Milczyn: So just to be clear—because maybe my question wasn't entirely clear—when it comes to corporate or union donations, subsidiaries of a corporation or individual units of a trade union, should that be lumped together so it's really transparent that if it's automotive company X, it's all of their component parts, or if it's trade union Y, it's a number of their component parts, so that can actually be transparently seen?

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Mr. Greg Essensa: I would concur with that proposition. I don't believe you can necessarily restrict, obviously, corporate and trade unions from contributing to third parties, but I think you can provide greater transparency on who is actually contributing.

Mr. Peter Z. Milczyn: Another question I have for you. We do have a by-election going on right now in Scarborough–Rouge River. The Premier, as leader of the Ontario Liberal Party, made a commitment that the Ontario Liberal Party would not be utilizing some of the loopholes, if you like, in the current legislation that allow doubling up on contributions during a by-election. In the real-time reporting that you have observed to date, are the other political parties following suit?

Mr. Greg Essensa: Quite honestly, Mr. Milczyn, I have not looked directly at that, so it would be premature for me to comment because I have not looked to that level of detail.

The by-election was only called last week. We would have limited data to begin with at this point, so I can't honestly answer that one way or the other.

Mr. Peter Z. Milczyn: Thank you.

The Chair (Mr. Grant Crack): Thank you. Ms. Fife.

Ms. Catherine Fife: Thank you for the report. There's a lot in this report that I definitely want to take back to our caucus. Are you amenable to receiving questions via correspondence? I'd be pleased to copy other folks as well.

Mr. Greg Essensa: Absolutely.

Ms. Catherine Fife: Because there are some substantive changes, but also—I keep going back to some of the delegations that we heard from over the last two and a half months. The cash-for-access question is still an outstanding question as it relates to Bill 201. Right here in this committee room, we heard from a woman who has long-standing, outstanding concerns around Tarion. She indicated that she didn't have the money to get access to the government to have that policy shift, that legislative shift.

You make some new recommendations around new personal contribution limits, although I am thankful that you did point out that the limit that is currently in Bill 201 is actually a 17% increase over what people can contribute, from $1,330 to $1,550. You recommend that individuals should only be able to contribute as much as $5,000 to a party and its various entities and representatives in a year, and from an individual's perspective, they

could only contribute $1,000 to a party or a candidate and, collectively, $2,000 to all candidates of one party.

What was your thought process in getting to this new number? Because there appears to be no clear rhyme or reason on these contribution limits, period.

Mr. Greg Essensa: Being afforded a member of the committee—I listened very intently to the deliberations and the submissions across the province. I found them helpful and rewarding. When we went back and examined how many current contributions actually supersede $1,550—and we've done the math right down—the bulk of the contributions are under $1,000. I came to the conclusion that that was my recommended number.

As I said to you on the very first day, you will hear a lot of different numbers from a lot of different individuals. We've heard from individuals from Democracy Watch suggesting that you should adopt the Quebec model of no more than $100, all the way up to individuals saying that perhaps the limitation is too low. When we looked, at Elections Ontario, based on what we've seen in the contributions that the major political parties, the top four parties, received over the last campaign period, the bulk of the contributions were under $1,000.

I think that it's a reasonable number to consider.

Ms. Catherine Fife: Talking numbers has been an interesting process as well, because the per-vote subsidy—it was really interesting to hear from the federal electoral officer about how they came up with that number as well and what the rationale was around the strategy of phasing it out versus keeping it. So I'm interested in taking back this recommendation as well to the caucus.

As well, your recommendations around research and polling: I think that's definitely in line with some of those subversive contributions that go undisclosed in the province of Ontario, so I am interested in that.

I still think that we have an outstanding issue here, though, around issue advocacy and around political advertising. Getting that definition of political advertising right is probably going to be the biggest challenge, I think, for this committee.

I just wanted to thank you for your work and for sharing in the fun of this committee as we travelled around the province. I look forward to following up with you and with your office in a more tangible and direct way.

Mr. Greg Essensa: Thank you.

The Chair (Mr. Grant Crack): Thank you, Ms. Fife. Mr. Qaadri.

Mr. Shafiq Qaadri: Thanks to our Chief Electoral Officer for being here, and your presence and your submission.

I wanted to ask you about some of the British Columbia experience. I think there was not great support for some of his measures; for example, spending limits on associated-issue advertising. I just wanted to ask you: Did you by chance speak with, correspond or email-exchange with BC and find out a little bit more about his approach on the associated-issue advertising expense issue?

Mr. Greg Essensa: I did have the opportunity to see the Chief Electoral Officer of BC this summer. We had a very, very brief conversation. I do intend to follow up with him, but I don't have any substantive commentary on that. It's an issue that I would hope to address after second reading, but at this point, I don't have any substantive commentary to provide.

Mr. Shafiq Qaadri: Okay. Following from some of the federal experiences, I'm sure you're aware that Canada's Chief Electoral Officer has recommended that we adopt what they call the OGI—the opinions, guidelines and interpretations process—and, of course, to apply that in an Ontario setting. Would you support that, and what are some of the reasons yes or no?

Mr. Greg Essensa: I would completely support that. My understanding, from my conversations with my colleague at Elections Canada, is that they have found the OGI process to be extraordinarily valuable. There are often interpretive issues pertaining to both the Election Act and the Election Finances Act. He has indicated to myself that the OGI process allows Elections Canada to work with the political parties at hand, to provide a very open and transparent process, to provide, "Here's our interpretation; here's the feedback we received from the political parties; here are the amendments we've made," and then it's published well in advance of the election so that all of the various political stakeholders have a clear understanding of how the act is going to be interpreted in some of those very nuanced areas. I would be wholly supportive of that recommendation.

Mr. Shafiq Qaadri: Okay; great. Thank you.

The Chair (Mr. Grant Crack): Thank you. Patiently waiting: Mr. Hillier.

Mr. Randy Hillier: Thank you once again, Chair.

Earlier in the committee hearings, we heard a lot about disclosure of employment and occupation and the benefit of that, but I didn't hear any reference in your recommendations with regard to disclosure. That's the first part of the question, because that relates also to your comments about paid volunteers being recognized as a contribution. So maybe I'll follow up that second part after your comments about the first part with regard to disclosure.

Mr. Greg Essensa: I, too, followed along very closely with the commentary that I did hear during the deliberations across the province. Any time, I think, any jurisdiction has moved to eliminate corporate and union donations, there is always the belief, true or not or anecdotal, that there will now be this "dark money" that funnels its way under the table and is not necessarily seen.

Anything that provides greater transparency, I would be supportive of. I think the more transparency in our electoral process, the better it is for citizens as well as any political stakeholder in the arena. Greater transparency, from my perspective, is always something we should strive for.

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Mr. Randy Hillier: Although it was not identified in the recommendations, greater disclosure—

Mr. Greg Essensa: As I indicated in my speaking remarks, as part of my recommendations, there are a number of what I would detail as small, technical amendments such as that, that I would hope to address prior to or after second reading, when it comes back to committee.

Mr. Randy Hillier: Okay.

Mr. Greg Essensa: Otherwise, I think we would be here for a whole lot more than four hours, to be honest.

Mr. Randy Hillier: We'll try not to take that long.

Going back to the paid volunteers, if you could explain to me how this would work. If paid volunteers, whether it be an employee of a firm, an employee of a union—because union and corporate donations are prohibited, basically we would be saying that paid volunteers do not exist. It doesn't happen.

Mr. Greg Essensa: Yes. I concur. I think if you look at the policy directive to eliminate corporate and union donations, it should apply to the same element for "volunteer labour," because that is a roundabout loophole way of allowing corporations and unions still to donate.

Mr. Randy Hillier: Would that, in your view, necessitate a need for disclosure of volunteers or a recording of volunteers for audit purposes or verification purposes after the fact?

Mr. Greg Essensa: Possibly. I would like to give greater consideration and thought to that. I'm also of the belief and understanding that political campaigns are run on the backs of volunteers, as all of you around the table well know and those working in your offices. There are already a number of significant reporting requirements that you have. I'd like to give a little bit further consideration but I understand where the thought of the question is going toward.

Mr. Randy Hillier: My last question, I think, goes back to your comments about the self-funding. I'll phrase the question like this: One of the great motivations in this committee, in this discussion, as Minister Gerretsen said, is to get the big money out of politics and also to address this view of cash-for-access and to go along with that 100%—those are good motives and the necessity is intuitive to everybody.

So my question is, self-funding is a very, very different kettle of fish. If I am self-funding my campaign, I'm sure I'm not going to give myself greater access to myself and that I'm not going to be unduly influential in my determinations. Unless there is a misunderstanding in the motivations here of Bill 201, I don't understand how we look at self-funding in the same light.

Mr. Greg Essensa: I would go back, Mr. Hillier, to my commentary when I quoted the Camp Commission, where it said, "How do we eliminate the reality and the perception of the influence of the wealthy few in politics?"

My recommendations are based a lot on that important question. You're charged, as this committee, and the Legislature is charged with coming back to that level playing field and ensuring that those with more means don't have an undue advantage or undue influence in the electoral process. That's why my recommendation is as such, that it should be the same contribution limits for a leadership contest as it is for a party or a candidate.

Mr. Randy Hillier: Yes. What I see in practice may be a little bit different than what you've seen—of course there are inequities in every campaign.

Mr. Greg Essensa: Absolutely.

Mr. Randy Hillier: There is no such thing as equality. Some people are better connected with others, some people have more wealthy friends, others may have friends of more modest means. There's a whole series of inequities. Somebody may not be long established and with a great commercial network of friends or whatever, and not being able to finance themselves—or to restrict their ability to finance their own activity—I don't know if that achieves the outcome that we're looking for.

Mr. Greg Essensa: I guess I just see it a little differently.

Mr. Randy Hillier: There are some other elements of the bill. I don't think it's fair to bring them up. We've heard from the Auditor General. We've heard from the Integrity Commissioner today. They've both spoken to elements of Bill 201, either about the absence of elements in Bill 201 or where their jurisdictions intersect with elections financing.

Not to put you in an undue position, but some of the comments from the Integrity Commissioner about their inability to independently examine activities and actions, do you—I use the analogy that we don't allow just the police to investigate or to lodge a complaint with the police, but we seem to do that with politicians; we only allow another politician to lodge a complaint. Are there any other elements in that vein in the bill or in the act that—for example, can you independently initiate examinations?

Mr. Greg Essensa: Under the current legislative framework, I do have the ability to independently begin an investigation and conduct an investigation, which I have utilized in my role.

When it comes to rules about dealing between government decision-makers and persons and entities trying to influence decision makers, those laws are usually found in your conflict-of-interest and ethics laws; they're not traditionally found in your election finance laws. I very closely listened to the debate today with my colleagues. There are respective statutes that I would suggest are perhaps better utilized in dealing with the issues that all members of the committee might have in regard to those than the Election Finances Act. I don't disagree though that, tangentially, they do overlap. I do understand that. I'm not the person to speak on behalf of either the Auditor General or the Integrity Commissioner. They obviously have their own mandates and are better versed on those than I, but I do believe there are other statutes that we've heard of today that might be better utilized to address some of those concerns.

Mr. Randy Hillier: Well, thank you very much.

The Chair (Mr. Grant Crack): Thank you. Mr. Rinaldi?

Mr. Lou Rinaldi: Just to follow up on Mr. Hillier's question about folks who work in campaign offices, I think your comment is that they should be included as part of a contribution, but that's only the paid.

Mr. Greg Essensa: Only if they're paid.

Mr. Lou Rinaldi: So the volunteers that we normally get—

Mr. Greg Essensa: Absolutely.

Mr. Lou Rinaldi: Because that would be really, really—

Mr. Greg Essensa: I completely concur with that, Mr. Rinaldi. If someone is volunteering their time to work on a campaign and they're not being compensated for it, there's no issue whatsoever.

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Mr. Lou Rinaldi: I guess the policing piece comes with that, the policing of that, right? So, if somebody comes to my campaign office—it's Mr. Smith; he might identify that he's with ABC company and he wants to volunteer at my campaign—what are the candidate's or the campaign manager's responsibilities? We might not know whether he's getting paid or not. How do you police that? Can you give us some insight?

Mr. Greg Essensa: I think that there is an ability in the bill currently to provide some provisions that would provide guidelines or regulations, or guidelines that could be issued from Elections Ontario, that would specifically address how candidates and campaign managers could address these issues in a very practical fashion. From my perspective, though, it's most important that the bill addresses this loophole. I think that the actual mechanics of that, the operationalization, could be managed through guidelines from my office and other tools and vehicles such as that.

Mr. Lou Rinaldi: I don't know about my colleagues, but it's becoming more and more difficult. People are too busy these days to give volunteers to help out. Whenever we start putting in restrictions or potential issues with these volunteers, it detracts even more from wanting to volunteer.

I think it's a bit of a touchy situation. If you have to put these folks through some kind of a strenuous interrogation—are they volunteers, are they being paid or whatever—sometimes that will deter, I think, the possibility of these folks wanting to volunteer. That's just my opinion.

Thank you, Chair.

The Chair (Mr. Grant Crack): Thank you, Mr. Rinaldi. Mr. Milczyn.

Mr. Peter Z. Milczyn: Mr. Essensa, on the issue of the various third-party activities within election campaigns, we touched on the issue of employees being directed to work on a campaign and how that would be treated. What about other activities that a third party might be engaged in related to an election campaign—mailings to their members or employees or stakeholders; the use of phone banks to communicate with their particular group; bussing volunteers around to different constituencies for campaign activities; and the fact that they might have paid political staff generally working for them? Should we be delving that deep into all these activities? If yes, why, and if no, why not?

Mr. Greg Essensa: I would suggest, Mr. Milczyn, that third parties, as have been approved by the Supreme Court, have a distinct role to play in the political area and as a political participant. I would not be of the opinion of suggesting that the items that you suggested—phone banks and busing and all of that—be restricted or that there be a greater oversight.

As I indicated in my original submission, where it becomes problematic is when there are political actors providing advice, direction and guidance for both a political party and a third party. As I indicated at the very beginning, as you've heard today, the current definition in the statute is very problematic. Collusion has a very, very high standard to prove. But where there is coordination between third parties and political parties, I believe that there needs to be a lesser standard and a greater emphasis to restrict that from happening.

The Chair (Mr. Grant Crack): Thank you, Mr. Milczyn. Mr. Walker.

Mr. Bill Walker: Just following up on that question, Mr. Essensa, I think what I heard you saying—but maybe not explicitly, so I'll ask it again. Things like busing, phone banks, whatever examples were used: To be consistent with what you've said all the way along, those should be political contributions. If someone is donating busing for a thousand people to get from point A to point B, and I don't have access to that same level of contribution, then I think that is an unfair advantage.

I think those types of things are absolutely critical to be included—and that we make sure we're black and white, we're crystal clear. Whether you're paying an employee to go do the work or you're actually paying for the service to get them there, to me, is it a contribution that is going toward the campaign from either that corporate and/or union and/or third-party organization?

Mr. Greg Essensa: Most all of that is already covered in the current bill. Those types of contributions, of the business of supplying services or goods, are already currently covered in the bill, that those would be contributions.

Mr. Bill Walker: As existing or in as proposed—today?

Mr. Greg Essensa: As existing. In the existing act—it's in the act today.

Mr. Bill Walker: Okay. I just need a further point, because I thought one of the things that you said earlier is you weren't able to track a lot of third-party contributions because they're not actually reportable.

Mr. Greg Essensa: What we're referring to, though, is third-party contributions that go towards political advocacy and ads. If a third party runs ads during the Stanley Cup playoffs in April before a general election in the fall, there's no transparency into that. The third party is not required to file any type of report with us. We have no idea who has contributed to those ads. That's what I

meant about the lack of transparency and greater transparency about who has contributed towards that.

When it comes during an election campaign, the act currently covers—section 21(1)—already covers the contribution of business supplies, goods or services. That's already currently covered in the statute.

Mr. Bill Walker: Again, just for clarification: Within the current legislation there would be no penalties if those weren't reported?

Mr. Greg Essensa: Yes, that's correct.

Interjection.

Mr. Greg Essensa: I'm sorry; there are penalties towards that. If they don't report those, there are the same penalties that currently apply in the act.

Mr. Bill Walker: Okay. Thank you.

The Chair (Mr. Grant Crack): Thank you. Further questions? Comments?

I can't believe this, but I'd like to congratulate all the members for working so hard today.

Mr. Shafiq Qaadri: One final comment, I'd like to add.

The Chair (Mr. Grant Crack): Mr. Qaadri.

Mr. Shafiq Qaadri: Members of committee, I'd like to thank Dr. Jeff Parker for his services rendered to this Legislature, as he'll be leaving us in one week.

Applause.

Mr. Jeff Parker: You're too kind.

The Chair (Mr. Grant Crack): Thank you.

I'd also like to remind members of the committee of a few points. Amendments to the bill will be filed with the Clerk of the Committee by 4 p.m. on Monday, August 22, as per the order of the House dated Tuesday, May 31.

I look forward to seeing you all on Monday, August 29 through to September 1. We shall sit, if necessary, from 9 a.m. to 6 p.m. each day for clause-by-clause consideration of Bill 201. That is per the order of the House dated May 31.

Having said that, I want to wish you all a great weekend. We shall see you soon. Thanks to all, and good luck in your future career, Mr. Parker. This meeting is adjourned.

The committee adjourned at 1527.

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