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

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**EVIDENCE**

**Thursday, October 6, 2011**

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**Chair**

**Mr. Joe Preston**



## Standing Committee on Procedure and House Affairs

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• (1215)

[English]

**The Chair (Mr. Joe Preston (Elgin—Middlesex—London, CPC)):** I would like to call us to order, please, and remind the committee that we are now in public and are televised today.

I would like to welcome Monsieur Mayrand. It seems days since I've seen you. Welcome. As usual, it's great to have you at our committee.

I would ask you to start off by introducing those you have with you. Then we'll welcome your first presentation and will then ask you a few questions.

Thank you.

**Mr. Marc Mayrand (Chief Electoral Officer, Elections Canada):** Thank you, Mr. Chair.

With me is Mr. François Bernier, the deputy chief electoral officer responsible for political financing, and also Mr. Stéphane Perrault, responsible for legal services.

Thank you.

[Translation]

Good afternoon everyone. I am pleased to appear before the committee today to brief both long-standing and newer members on the report I submitted after the 40th general election recommending amendments that, in my view, would be desirable for the better administration of the Canada Elections Act. I would like to thank the committee and particularly you, Mr. Chair, for having made this report a priority and for continuing to give it your attention.

At the outset, I would mention that issues arose in the May 2 general election that may warrant other recommendations for amending the act. A number of these are discussed in my report on the election. We are still working on our evaluations of the last general election and hope to conclude this exercise early in the new year. Following that, I would appreciate the opportunity to appear before the committee to discuss the evaluation results and issues raised that may also require a review of certain provisions of the act.

That said, the purpose of my appearance today is to discuss my June 2010 recommendations report, *Responding to Changing Needs*. The title refers to the evolving needs of both electors and political entities. Maintaining a healthy democracy requires an electoral process that responds to societal changes, while continuing to foster accessibility, trust and efficiency.

My recommendations cover three key areas: the electoral process, political financing, and the governance of Elections Canada.

The report also contains a number of technical recommendations. In a letter to the committee dated September 22, 2010, I presented one additional technical recommendation dealing with the definitions of leadership and nomination campaign expenses. I would appreciate the committee's review of that recommendation as well.

I will now highlight a few of the recommendations related to the three key areas that I just mentioned, starting with the electoral process. I refer you to the document titled "Mapping of the Chief Electoral Officer's Recommendations" that I provided in advance to the committee—the famous tables. This document gives details that may be of assistance during our discussion.

With regard to the electoral process, our objective is to enhance services to electors by making it more accessible, fostering trust and improving efficiency.

I am proposing that the Chief Electoral Officer be authorized to set up and conduct pilot projects during by-elections or general elections. That is recommendation 1.1.

This authority already exists in the Canada Elections Act for the testing of electronic voting. The opportunity to conduct pilot projects on various aspects of the electoral process would allow us to test other initiatives, better assess potential impacts and, in cases where this is applicable, present parliamentarians with evidence-based recommendations for legislative amendments.

One example would be testing new approaches to the voting process at polling sites, with the aim of improving service to electors and simplifying the tasks of poll workers.

As I mention in my report, in New Brunswick, workers at central polling places are not assigned to a specific polling division. Electors can go to the polling station that has the shortest lineup, receive their ballot and exercise their right to vote. This is an interesting concept that offers many opportunities for electoral efficiency. However, it deviates from a long-established process and would need to be further evaluated in light of the specific requirements of the federal legislation as well as the diversity of voting circumstances across Canada's regions.

To further improve accessibility, it is important that the Canada Elections Act be changed to reflect the evolving needs of Canadians. Today, an increasing number of electors and political entities want to do business electronically with Elections Canada. They are accustomed to interacting with other organizations electronically every day. However, the act sets out requirements with respect to signatures and the production of paper documents; these restrict us from providing a full suite of electronic services.

I am therefore recommending that the Chief Electoral Officer be authorized to allow appropriate means of authentication other than a signature, as set out in recommendations 1.10 and 3.3.

• (1220)

Among other things, this would enable new electors—including youth—to register online and political entities to make electronic transactions, such as the electronic transmission of financial returns.

[English]

The second area of recommendations relates to political financing. Over the years, successive reforms have affected the coherence of the political financing regime and increased the regulatory burden imposed on various political entities. Amendments are needed to reduce this burden and promote greater accountability. My recommendations seek to balance two key objectives: trust and efficiency.

To increase trust in the management of public funds, I am recommending greater transparency in the review process for the electoral campaign returns of political parties. If requested by the Chief Electoral Officer, parties would be required to provide explanation or documents to support their election expenses returns.

This change would bring the requirements applying to parties more in line with the requirements that apply to candidates and leadership contestants. I also note that in all provincial jurisdictions in Canada, parties may be required to produce supporting documentation for their election expenses.

As you know, the current regime relies almost exclusively on penal sanctions, which are not always the most effective approach to compliance. I am therefore proposing new measures that I believe would increase compliance. I recommend that a candidate who files an electoral campaign return late should forfeit a portion of the nomination deposit and that the amount of the election expenses reimbursement of a candidate or party who has exceeded the election expenses limit be reduced dollar for dollar.

The most important change that I am recommending to reduce the administrative burden relates to the unpaid claims regime affecting candidates. I recommend extending to 18 months the period during which candidates may pay their campaign debts without the need to obtain an authorization from the Chief Electoral Officer or a judge, as this constitutes an unnecessary burden. However, at the end of the 18-month period, there should be more stringent disclosure requirements regarding the status of unpaid claims and requirements to provide supporting documentation. This would serve to make the regime not only more manageable but also more effective in providing transparency.

In the area of governance, I would like to note that Elections Canada has long cooperated with electoral agencies in other Canadian jurisdictions. However, under the current legal framework we have a limited capacity to implement joint initiatives—for example, as regards the joint development of public education or outreach tools. This situation could be remedied by explicitly authorizing the Chief Electoral Officer to enter into service agreements and common supply arrangements with other Canadian jurisdictions. This would help us serve Canadians more effectively.

Finally, I'm asking for further clarity regarding our role in providing technical assistance to other countries for the development of their electoral processes. These activities are currently funded by the Government of Canada through ad hoc transfer payments. A clear legal framework is required. I am recommending that the Chief Electoral Officer be granted the authority to commit transferred funds, at the request of the Government of Canada, for such activities.

I also seek the explicit authority to cooperate on electoral matters and share information with international organizations and electoral agencies.

Part of the process to develop my recommendations report entailed consultations with the advisory committee of political parties and in some cases with government departments. The recommendations seek to respond to Canadians' changing needs while preserving the integrity of the electoral process, and I believe they are important to improve our electoral framework.

I greatly appreciate the time the committee has already taken and is willing to take in the future to consider these recommendations. I would be happy to have officials from my office provide technical assistance to the committee in its review of these recommendations.

Mr. Chair, my colleagues and I would be pleased to answer any questions from the committee.

Thank you.

• (1225)

**The Chair:** Thank you, Monsieur Mayrand.

Last year you helped us by having a couple of your experts from Elections Canada with us as we were going through the recommendations, and as one of my questions I was going to ask you if that would be possible again.

**Mr. Marc Mayrand:** Yes.

**The Chair:** Thank you very much for supplying that.

I also thank you.... I re-read the speech you gave the last time you came concerning this group of recommendations, and you've written a new one and given us new information today.

**Mr. Marc Mayrand:** I try to be consistent.

**The Chair:** Yes. I thought I would know it all, because I've read your old speech.

Thank you very much.

We'll go right to questions. We are limited in our time today.

Mr. Albrecht, you are first, for five minutes, please.

**Mr. Harold Albrecht (Kitchener—Conestoga, CPC):** Thank you, Mr. Chair.

Thank you, Mr. Mayrand, for being with us today.

You focused on a number of the recommendations. In the previous session, the committee studied some of them. For example, you referred to the dollar-for-dollar reduction for the candidates who may have gone over their expense limits, and I think we've had some pretty good discussions about that. Obviously, we're going to need to revisit it. I think that a dollar-for-dollar reduction, once you get beyond a certain point, may not be quite aggressive enough. But that's for another day.

I also want to commend you for your initiatives related to increasing the student participation. If I have time, I'll come back to that later.

There's a situation that occurred in Guelph in the past election, and you refer to it in your report. I'm wondering if you could highlight what happened in Guelph, at the university, and what we can do to prevent this happening again. There's been a lot of confusion about this situation, and I'd welcome your response.

**Mr. Marc Mayrand:** At Guelph there's been a fair bit of demand from students and student organizations over time seeking to cast their ballots on campus. We have not been able to address those requests systematically, given that we were living under minority Parliaments and had to be ready to run general elections. So we published, gave instruction, and explained to student associations and returning officers how they could facilitate voting by students. Mostly, we informed them about the special voting rules, and about setting up a registration desk on campus.

In one situation, the RO went a little further and offered special voting services on campus. This was on the Guelph campus. The matter was brought to our attention during the election. We looked into it and pretty quickly came out with a ruling on the legality of the vote that had been cast. However, I said that there was no plan, and there's never been any plan, to extend it across the country.

In the future, this is an important area that the committee may want to consider. We have some recommendations. It's probably an area that would lend itself to pilots. Those of you who live in Ontario probably know that in Ontario it was possible to vote on campus through advanced polls this time around. Manitoba has also done some things in that regard, as well as New Brunswick. So I think it's an area that we need to address for the next general election.

**Mr. Harold Albrecht:** Mr. Mayrand, I respect your answer in the context of wanting to increase the number of students who vote, and all of us around this table are in agreement with that. But this causes me some concern. In your recommendations, you say "A well-intentioned returning officer decided...". Yet the decision reached was that the votes cast were considered valid. You've indicated that we haven't gone that route, as a country, and we haven't authorized those kinds of voting booths. I'm concerned that a unilateral decision was made without instruction from this committee or Parliament.

I'm wondering if you could explain how the votes are valid, even though this was not an endorsed voting booth.

• (1230)

**Mr. Marc Mayrand:** I'll ask my colleague to respond to your question, and I may add to it afterwards.

**The Chair:** You have one minute.

**Mr. Stéphane Perrault (Senior General Counsel and Senior Director, Legal Services, Elections Canada):** The votes cast at Guelph were cast under the special voting rules, not the rules that apply to a regular polling station. The votes were cast in a manner that respects the special voting rules.

The use of the special voting rules in circumstances that are outside of a returning office or military voting place is something that is done occasionally. For example, it's used by workers in remote working areas and in hospitals. It has been used for a long time. Because of the different nature of the rules that apply, we do not use it broadly and we do not use it without consulting first with the candidates and the political parties that would be affected by the use of those rules.

**The Chair:** You have only 10 seconds.

**Mr. Harold Albrecht:** So I have 30 seconds.

**The Chair:** You don't have 30, you have 10.

**Mr. Harold Albrecht:** If it was carried out under those rules, and it's legitimate, it's either legitimate across the country or it isn't. I think this needs serious discussion and needs to be addressed aggressively by this committee and by Parliament.

I'm right next door to Guelph, and I know there's a lot of discomfort with what happened there. I'm disappointed with what happened.

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

Ms. Charlton, will you be taking this round? Maybe you'll share some with Mr. Comartin.

**Ms. Chris Charlton (Hamilton Mountain, NDP):** Perhaps. Let me get right into it.

Thank you all for your presentation. It was a pleasure to have a chance to get to know all of you a little better at your offices earlier this week, so thank you for that invitation as well.

On the whole, I'm excited about the proposals for updating the voters list. We have an increasingly transient population, and since we're not going back to permanent enumerations, I think the steps you're proposing are going in the right direction. I really appreciate trying to ease the administrative burden on volunteers. Most of our campaigns are driven by volunteers, and anything that we can do to make their task less daunting, so that they'll continue to be engaged in Canadian politics, is really important. On those fronts, for the most part I agree with your recommendations.

I have a specific concern that is a little outside the scope of your presentation but still related. We've come a long way towards cleaning up the influence of big money in campaigns. We've eliminated corporate donations. We've brought in limits to donations from individuals. In many ways, we've worked really hard to level the playing field. But there still are some loopholes, and I wonder whether you could comment on one in particular. The rules on how you deal with debts incurred by leadership candidates still need to be tightened up. We're now some years past a Liberal leadership race for which debt levels are still high—I think the highest is around \$330,000. If that debt is never paid back, that would in essence be an indirect contribution to a leadership campaign. I wonder if you have brought forward any recommendations with respect to tightening up that part of the accountability, particularly with respect to leadership contests. If it pertains elsewhere, I would be interested in your commenting on that.

**Mr. Marc Mayrand:** Yes, there are specific recommendations regarding outstanding claims in the report on the regime and how the regime could be improved. One of the problems we have with the current system is that there is no finality. That's a concern that's been raised by many.

I also point out that we're still dealing with over \$1.3 million in outstanding debts from candidates in the 2004 election. That's a problem that's not unique to leadership contestants—it also exists for candidates. It's normal practice for candidates to use credit to fund their campaign. They often rely on the rebate they will get after the campaign to cover off their debts. Sometimes the campaign doesn't go as well as they thought, so they are struggling to repay their debts.

There are issues there, and they're pointed out in the report. I don't know how much detail you want to go into on this today, but there are provisions in the act that were adopted in the 1970s and that were never aligned with the reforms that took place in 2004, and especially 2006, regarding limits on contributions.

One of the issues that's pointed out in the report is that maybe contributors to leadership contestants could be limited to one contribution per event, as opposed to candidates who can generate annual contributions. That's one thing that may help address the debt burden for those leadership contestants.

There are other things that are pointed to as possible solutions in the recommendation report regarding improving the regime. There's a "deemed provision" that contributions not paid after 18 months, subject to broad exceptions, are deemed to be contributions. In the context in which these provisions were made, it was legal for corporations, unions, or other associations to make a contribution. We end up here, after we've pushed the limit of the current regime. If a bank extended a line of credit on a commercial basis 18 months ago, and the line of credit was still unpaid, technically the bank would have made an illegal contribution. I'm not sure that was the intent, the purpose, of those provisions. That's why they need to be revisited. We've put forward specific recommendations to address these issues and I'm looking forward to your views on these.

• (1235)

**The Chair:** Thank you.

Monsieur Garneau.

**Mr. Marc Garneau (Westmount—Ville-Marie, Lib.):** Thank you, Mr. Chair.

In the best of worlds, one day we'll be able to register to vote online and we'll be able to vote online. That's one of the reasons I certainly support the latitude you're requesting with respect to pilot projects to go ahead and check this. I don't know whether this would ultimately have us go to higher voter involvement—I hope so—but it may also bring us greater cost efficiencies, as well. But there are some challenges associated with it.

I don't know if any country actually has a federal election that's done online, but I'd like to hear your views on whether you think this is possible one day, taking into account the challenges associated with privacy of information and avoiding fraud.

**Mr. Marc Mayrand:** As I mentioned in various reports of the past, we are looking at online, or Internet, voting. We have started looking at what's going on around the world, how successful those initiatives have been.

Our concern, or our approach here, or our goal, is to improve accessibility and convenience to electors, especially those who in the current regime are put at a disadvantage. I'm thinking here of disabled electors who still cannot cast an independent and secret ballot, in most cases. I am talking also about Canadians residing abroad.

There is a regime right now, the special voting rule. The problem we have there is quite a number of ballots are returned late because it's dependent on postal systems around the world that are not as effective as ours.

We are also looking at the militaries. Again, they have challenges casting ballots, those who are stationed away.

That being said, online voting presents significant challenges. You mentioned a few in terms of integrity, independence of the vote, the secrecy of the vote, the auditability, and also that the process be reliable. And we are looking at these things.

We are planning to rely on the provision of the act, section 18.1, to come back to this committee over the next two years and propose a test of online voting to Canadians. That proposal will indicate, of course, all the parameters of the online voting and the security measures that will be attached to the process.

I will share with the committee right now, without taking too much time, one of the things we're struggling with. If you ask me, I don't have a solution at this point in time for online voting from any computer. I think there's an issue of authentication that has not been resolved. It's not likely to be resolved here in Canada in the immediate future, unless there is a commitment and the political will to establish digital identity. But we're far from that. So what we're looking at, aside from militaries and maybe a Canadian residing abroad, is kiosk voting, which means it would be supervised voting but an electronic voting. And that would provide, again, some flexibility and benefits to electors.

I look forward to have an opportunity to engage in more detail around these initiatives.

•(1240)

**The Chair:** You have a minute left.

**Mr. Marc Garneau:** Very quickly, recommendations three and four ask for greater flexibility in the hiring of additional staff and also perhaps more latitude on what they're paid. I have not read the entire report, but I've read the general recommendation here. Is this within certain parameters, or is it discretionary with respect to the hiring and the pay?

**Mr. Marc Mayrand:** The hiring challenge we have is.... Again, we need to recruit around 230,000 people to work on election day. Under the current regime, we have to wait until after day 17—so that's two weeks before polling day—to recruit. The reason for this is that we need to get names from candidates.

What we've observed over time is that there's a declining number of names being referred by candidates. I think it's less than a third of the names that are coming from a candidate.

What's being proposed here is that rather than waiting until day 17, allow us to start recruiting on day 28. That would allow us to better train officials and also to run a campaign to recruit the number of people we need for the election.

In the recommendation, we would be asking riding associations to provide names, if they have volunteers who would like to work on the election, but not wait until the candidate is officially confirmed, pursuant to the legislation, because that takes another 10 days. And that's lost time.

**The Chair:** Thank you.

Mr. Lukiwski, you have four minutes.

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

I was going to go along the line of questioning that Chris has already taken, and that's the repayment of leadership loans and the like. I don't know if this would be a correct term or not, but it appears to be kind of a loophole if four years later there are still unpaid loans. And every party goes through leadership campaigns. The NDP is engaged in one now.

So I think we need some finality on that. I'm glad to hear you agree with that, and I think we have to deal with that as a committee.

But another issue that's in the media right now that we actually raised—which I would consider to be a loophole—is the issue of what occurred at the last NDP convention, where there were some union contributions but on a sponsorship level. Ostensibly they said it was for advertising, and I know advertising is supposed to be fair market value and all of that. I also understand this issue was discussed at the ethics committee at which you appeared recently. Your response was that it is before the Commissioner of Canada Elections. So I understand all that.

I'm asking you your opinion, sir, whether you think that what occurred at the NDP convention, regardless of what happens with the ruling from the Commissioner of Canada Elections, would be the type of loophole that should be closed? Obviously whether it's ostensibly an advertising payment or a sponsorship, it's a lot of

money and it goes to the bottom line of the party that organizes that convention. It helps pay their bills.

I would certainly suggest that looks to me like a contribution. Now, what is your opinion on that?

**Mr. Marc Mayrand:** As I indicated earlier this week before the ethics committee, the act doesn't approach the issue in that fashion. It basically says what a contribution is, and it allows for commercial transactions to be carried out by parties. And that's the analysis that's going to be done by the commissioner, whether there was a fair market value transaction in relation to allegations of sponsorship or advertising that occurred during certain conventions.

Again, because the act is relatively clear and it's the facts that can complicate matters, if the committee wants to consider it, the alternative would be to altogether prohibit sponsoring or advertising or any other type of transaction where third parties would be seen as funding various aspects of a convention. How broad should that prohibition be extended? I think it raises important issues for consideration of the committee.

•(1245)

**Mr. Tom Lukiwski:** Again, I was looking for an opinion from you on this particular case. Given the fact that the Commissioner of Canada Elections is examining this, and given the fact that he has an extensive backlog of other cases he's looking at, I'm not sure when this would be dealt with. Are you in a position to advise or to make recommendations to the Commissioner of Canada Elections on this particular case and on what may happen in the future?

**Mr. Marc Mayrand:** No. There is an arm's-length relationship with the commissioner.

**Mr. Tom Lukiwski:** Just in your flat-out opinion, would you like to see a complete prohibition of the types of contribution or sponsorships, based on the fact that we have already eliminated all union and corporate donations for political parties and candidates?

**Mr. Marc Mayrand:** I think we would have to think about how we would frame such a prohibition. How would we define advertising; how would we define—

**Mr. Tom Lukiwski:** Besides the definitions or the framework around it, I'm just asking for a straight opinion. Based on the fact that it is now prohibited by law for union or corporate donations to be made, should it not then similarly affect political parties and their conventions?

**Mr. Marc Mayrand:** Again, it's going to raise a number of issues. I'm afraid I would have to think through it very carefully, because it doesn't stop—

**Mr. Tom Lukiwski:** If you could think it through and then get back to this committee—

**Mr. Marc Mayrand:** Again, currently the regime doesn't stop a party from entering commercial transactions. And I think we would need to be very clear as to what type of transaction, even commercial ones, we would want to prohibit.

**The Chair:** Mr. Comartin.

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** Thank you.

Just to pursue that, it seems to me, Mr. Mayrand, if we go down that road then we're going to get ourselves into having to look at third-party involvement in elections as well and the source of those funds for campaigns that are run not by recognized political parties but by third parties, whether that be from the corporate world, unions, non-profits even, who in fact engage in third-party advertising and promotion during the election period.

So if we follow Mr. Lukiwski's suggestions, do we not also have to open that up?

**Mr. Marc Mayrand:** I think we already have a regime for third party. They are limited in terms of what they can spend during an electoral campaign. I believe the ceiling is \$150,000 at the national level. I'm not sure, but I think there is a regime. Some technical amendments are being proposed there with regard to the third-party regime, but I'm not sure that, again, the situation raised earlier would—

**Mr. Joe Comartin:** I'm sorry, Mr. Mayrand, and recognizing time, the point I was making is that the government side is claiming that we've completely removed corporate and unions from involvement in the electoral process. In fact, in third-party advertising, promotion, and campaigning, they very much are still involved.

**Mr. Marc Mayrand:** My understanding of what was being proposed was to prohibit sponsorship that would constitute or could be seen as constituting a contribution.

I see your point.

**Mr. Joe Comartin:** I was responding more politically. I really wasn't expecting you to know this.

It's unfair for us to put you in the middle of this, Mr. Mayrand. It was more rhetorical to Mr. Lukiwski than otherwise.

To come back to what we should be considering here, your recommendation to move donations or contributions that can be made for a leadership campaign from a single event to an annual contribution, are you suggesting there be any limit on the number of years? For instance, somebody keeps applying for extensions and has the same contributor or contributors that keep giving money over, say, a three- or a five-year period. Would you contemplate that as being acceptable, or would you put a limit on the number of years that a person could receive additional donations from the same contributor?

• (1250)

**Mr. Marc Mayrand:** My recommendation is based on the regime that exists for Canada. There's no limit as to who can make repeated contributions and there's no limit in terms of time.

I will leave it to the committee to advise whether it would be more appropriate to limit the time period there.

**Mr. Joe Comartin:** With regard to the loan situation, you've already highlighted this, and I know there are some comments here in the report, but because we're on TV, could you indicate or make any recommendations with regard to how we deal with that? This is in regard to where you've got not so much a loan from an institution, because I think it's easier how we deal with those, as a loan from an individual or a small corporation who hasn't been repaid and we're way beyond the deadline when it should have been paid. How do we deal with that in terms of it not being deemed a contribution? Should

it be deemed a contribution? And if it is deemed a contribution, what type of penalty should there be?

**Mr. Marc Mayrand:** You will see in the report that we're making a number of recommendations, first of all, to streamline the process. What we're proposing is to give 18 months to candidates or leadership contestants, any entity, to repay their outstanding loans or debts. After that, they would need to seek authorization from the court to be able to carry that out.

We're asking because this is part of the problem today. All the candidate has to do now is notify us that they will not be able to repay within the time period and give us generally a reason, but we don't have any authority to probe the reason or the explanation. If they tell us they have an outstanding loan or a promissory note, we can't challenge that promissory note. So that's part of the issue.

At the end of the day, you will see in the recommendations that we're favouring transparency over finality. We do propose some suggestions with regard to finality, one of them being to go as far as banning a candidate or leadership contestant to run again until those debts have been repaid. That would be a civil remedy, and it raises all sorts of questions too, but we're offering that for consideration by the committee.

**The Chair:** Thank you, and thank you, Mr. Comartin.

Mr. Reid, four minutes for you, please.

**Mr. Scott Reid (Lanark—Frontenac—Lennox and Addington, CPC):** Sure.

Maybe I'll start with the last suggestion. The simple remedy of banning somebody from seeking office again strikes me as being problematic from the point of view of the charter. Frankly, it also instinctually offends my democratic sensibility. It occurs to me that candidates' primary focus is on getting themselves elected, not on managing their books. One can imagine situations pretty easily in which it's really the official agent's fault, but the candidate gets banned from running. Perhaps we should ban the person from becoming an official agent if they can't handle it. That would actually be less legally problematic. I'm not sure it would actually resolve the problem.

What does strike me as resolving the problem to some degree is to just ban loans. Wouldn't that solve the problem of unpaid loans into the future? Everything else I think of has to be draconian. You have to find some way of punishing people so severely that they won't want to do this in the future. It strikes me that you either download the problem onto somebody else.... Candidate X runs for office and overspends the limit—I know I'm shifting from loans here to people overspending their limit—so we now impose a burden on the campaign, which then gets transferred to the riding association or the party. Meanwhile, candidate X has wandered off. They were really in it for one shot, and their only concern was whether or not they got elected. They really don't care about the institution and essentially don't care whether their failure involves additional costs being imposed on somebody else.

We could change it to make it a personal liability, but that would be something that millionaires could laugh off but that would be a brutal imposition on those who are less well off.



Everything you do tends to come back to the same kind of problem, so why not move to the most obvious one and say that you have to raise the money, that you can't borrow money?

• (1255)

**Mr. Marc Mayrand:** That suggestion might raise charter issues itself. I think it still goes to the accessibility of the process for candidates.

The other thing is—and I understand there was legislation in the previous Parliament to at least regulate the use of loans to fund the campaigns—if we went to a total ban, we would see whether people resorted to other alternatives. Would they be going underground? I don't know. We have to be careful whenever we set up regulations.

**Mr. Scott Reid:** That could happen anyway. Realistically, if someone makes up their mind to overspend in one way or another or to seek financing that they don't report, that presumably is something that could occur under the status quo, so I don't think you are necessarily going to get this automatic result.

In terms of a charter challenge on banning the ability to borrow money, I can't see how.... It doesn't have the effect of hurting secondary players or people who are outsiders or who have less access to resources or minorities in any particular way, because those who are already the most well heeled have the most plausible case that they'll be able to repay. They are precisely the ones who would be able to get financing anyway. So I can't see on what basis one would challenge its constitutionality.

**Mr. Marc Mayrand:** It may be seen as a limit on the right to be a candidate, which is also protected by the charter.

All you have to be is a Canadian citizen who has reached the age of 18. It would have to be submitted to the test of whether it's reasonable under the circumstances. There may be, again, a good reason, but I think how we crafted such a prohibition would be quite critical to meet the test of being reasonable.

**Mr. Scott Reid:** Thank you.

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

We'll hear from Mr. MacKenzie. We're going to do a couple of one-offs. We have about four minutes left. We're going to try to get in those who haven't asked a question yet.

**Mr. Dave MacKenzie (Oxford, CPC):** Thank you, Mr. Chair.

Mr. Mayrand, the whole issue being talked about here, theoretically taking away corporate and large contributions, has somehow, I think, been turned into pretty much a grey area. I would suggest to you that if a corporation wished to go to a political party and make a large contribution to have its signs erected at a convention it knew the national press was going to cover, then, if I understand what you're saying, that would be okay as long as there was some sort of value received for the money they spent. It seems to me it's gone beyond what was intended in this whole thing.

**Mr. Marc Mayrand:** Again, the transaction has to be examined in the context of the commercial world and whether it was done at fair market value. Again, any variance from the commercial value would be treated as a contribution, and in this case an illegal one.

**Mr. Dave MacKenzie:** It would seem to me, though, that—

**Mr. Marc Mayrand:** The commercial value cannot be just the opinion of those who enter the transaction. That's what I am saying.

**Mr. Dave MacKenzie:** Absolutely, I understand that. But it would seem to me that you've opened up what was the intent to close it off. If a corporation wanted to have that sign erected, and a party suggested that at their convention it would get national exposure, it would be a pretty expensive proposition. The advertising costs could be pretty high.

**Mr. Marc Mayrand:** Again, that's a matter that has arisen recently. The committee may very well wish to look into this more closely and determine whether amendments are necessary and what those amendments would be.

**Mr. Dave MacKenzie:** Thank you.

**The Chair:** We'll have the last question from Mr. Comartin.

**Mr. Joe Comartin:** I was just going to ask the question Mr. Reid asked. Have you sought a legal opinion? If we were going to say at a certain stage that you cannot run again, either for leadership, because you have not complied, or even to stand as a candidate in the next election.... Have you sought a legal opinion as to whether that would survive a charter challenge?

**Mr. Stéphane Perrault:** I can answer the question. Of course, I won't provide my legal advice to the committee.

It was put in the recommendations as something for the committee to consider. It was not a recommendation but a recognition that there is a range of possibilities to bring some closure, going from a strict liability offence to the ultimate inability to sit. I should mention that it would not be permanent any more than is permanent the current inability to become a candidate if you haven't filed your return for the last election. So it's not entirely unprecedented in the legislation. It was not made as a recommendation; it was put to the committee to look into the broadest possible range of sanctions that could bring some closure, which is not the case right now with the current regime.

• (1300)

**Mr. Joe Comartin:** Thank you.

**The Chair:** Thank you.

We've reached our limit for time for questions today. I thank you for coming.

You know that we've set aside a number of meetings now, and we'll continue to look at your recommendations. As we heard today, there are a couple of other things it sounds like we'd better discuss too. Thank you again for coming.

It looks as if it will be next Thursday before we start working on those recommendations.

I have a motion I'd like to get the committee to move and vote on. The motion is that the evidence and documentation received by the Standing Committee on Procedure and House Affairs during the third session of the 40th Parliament in relation to its study on the report of the Chief Electoral Officer of Canada entitled "Responding to Changing Needs - Recommendations from the Chief Electoral Officer of Canada Following the 40th General Election" be taken into consideration by the committee in the current session.

That's asking that the testimony we looked at last time now be available to us.

**An hon. member:** So moved.

(Motion agreed to)

**The Chair:** Great, we now have that in our quiver of weapons. Thank you.

We are adjourned.

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