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Chair

The Honourable Larry Bagnell

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• (1105)

[English]

The Chair (Hon. Larry Bagnell (Yukon, Lib.)): Good morning, everyone. Welcome to the 64th meeting of the Standing Committee on Procedure and House Affairs. The first hour of the meeting will be televised.

Today we are continuing our study of the Chief Electoral Officer's report entitled "An Electoral Framework for the 21st Century: Recommendations from the Chief Electoral Officer of Canada Following the 42nd General Election", with a specific focus on recommendations B12, publishing false statements to affect election results, and B27, foreigners inducing electors to vote or refrain from voting. If people want to raise other items with the commissioner while we have him here, or if he wants to raise items, I'm sure that's fine.

In order to assist us in our deliberations, we are joined today by Yves Côté, the Commissioner of Canada Elections, and Marc Chénier, general counsel and senior director of the Office of the Commissioner of Canada Elections.

Welcome, and thank you for coming here. This will be very helpful.

The commissioner has distributed his remarks to all of you, so you have them in writing.

I will now turn the floor over to the commissioner for his opening statement.

[Translation]

Mr. Yves Côté (Commissioner of Canada Elections, Office of the Commissioner of Canada Elections): Thank you, Mr. Chair.

I would like to thank the committee for its invitation to appear today to assist with your examination of the Chief Electoral Officer's report on the last general election.

As you said, I am joined by Marc Chénier, general counsel for our group and senior director of legal services in our office.

Before I turn to the issues of interest that you mentioned a few minutes ago, Mr. Chair, I would mention that there are several additional recommendations contained in the CEO's report on which the committee has not yet reported that have a direct bearing on the mandate of my office.

[English]

There are three: the power to apply to a court to compel testimony, the authority for the commissioner to lay charges, and the ability for contract investigators within our office to obtain production orders under the Criminal Code. These recommendations are extremely important for our office, and I dearly hope the committee will support them.

Let me now turn to the two specific issues that were identified as being of interest to the committee. They have to do with the publication of false statements about the personal conduct or character of a candidate and the prohibition on foreigners inducing electors to vote or refrain from voting. Both of these sections raise, although admittedly in different ways, issues related to fundamental democratic values. Chief among them is freedom of expression, which, as the Supreme Court has repeatedly stated, is probably at its highest in the electoral and democratic context. It is therefore essential for Parliament to proceed extremely carefully in this area.

[Translation]

The objective of any amendment should be clearly identified: what is it that should be prohibited or regulated, and why? And—this is extremely important—the means chosen to achieve this objective should be as minimally intrusive as possible. Otherwise there will be a risk that the courts will interfere and find that you as members of Parliament have overreached.

The vague and general language in these provisions also creates false expectations and a perception that these provisions are not enforced as they should be. As a result, it can lead to an erosion of Canadians' trust in our electoral system.

[English]

Recommendation B12 is with regard to false statements. Section 91 of the act is one example of where this problem exists. The language contained in the provision is extremely broad, and does not provide an adequate degree of clarity as to the type of false statements that are prohibited. While the public believes it is applicable to a wide variety of scenarios, from an enforcement standpoint, the circumstances in which it can be applied are actually quite limited. The reason for this is that historically, the courts have set a very high standard on the concept of falsehood. For example, judges have ruled that in order for a false statement to be captured by provisions of this nature, it must falsely impute a high degree of "moral turpitude", to use the expression they have used, or criminality.

In addition, as it stands now, only false statements about candidates or prospective candidates are caught by section 91. As the role of political parties and party leaders has grown considerably since the section was adopted in 1908—more than 100 years ago—it may be time to consider whether the scope of the provision should be broadened to include false statements made with respect to these other key players.

• (1110)

[*Translation*]

A final point.

At present, when a violation of section 91 occurs and a conviction is entered, the appropriate sentence is imposed on the accused. Nothing else follows. An issue for consideration is whether other consequences should flow from a contravention of the provision. For example, should a violation of section 91 be identified as an illegal act or corrupt practice? This could provide a basis for challenging the results of an election, in cases where the false statements may have seriously impacted on the results. This is currently the case for a contravention of section 92, which prohibits the making of a false statement about the withdrawal of a candidate.

Failing such changes to section 91, I think this section should probably be repealed.

Whether section 91 is repealed or not, I would suggest that amendments to paragraph 482(b) should be considered in order to clarify its intent. This is a provision of broad application that is intended to fill any gaps in the act's offence provision concerning deceitful conduct. While it makes it an offence to use “any pretence or contrivance” to induce voters to vote in a certain way, the aim could be to prohibit, for example, attempts to influence electors using means that are fundamentally opposed to our recognized democratic values or that undermine the processes laid out in our electoral legislation.

[*English*]

The challenge in drafting such a provision, and this is a major challenge, will be to ensure that it does not capture typical forms of political expression and debate, which often include exaggeration and what is often referred to as political spin. The prohibition ultimately should not stifle debate or unduly limit political expression. Rather, it should aim to protect our democratic values, including transparency and accessibility. For example, it should target fake news in cases where the intent was clearly to confuse electors and undermine their ability to cast an informed vote.

Let me now turn to recommendation B27. The breadth of this provision related to inducement by foreigners also creates a number of enforcement challenges. As the members of this committee will likely recall—in fact, will no doubt recall—there were a number of examples of non-Canadians who, during the last campaign, expressed views or opinions, either through social media, in editorial comments, or during interviews.

We received at the office a number of complaints in relation to these types of incidents. Many believed that anyone who is not Canadian and not residing in Canada is prohibited from expressing support for a party or a candidate. Although a very literal reading of the provision could lead to that conclusion, it is hard to imagine that,

in this day and age, in 2017, Parliament would want to make illegal the expression of an opinion by a foreigner; hence the need, in my view, to consider tightening and refining the wording of the provision.

[*Translation*]

Considering the act's focus on maintaining a level playing field, the focus should probably include elements that prohibit foreigners from incurring significant expenses to oppose or promote a candidate or party. These could include, for example, incurring expenses to pay employees to work in a call centre or to organize door-to-door canvassing during a campaign.

The CEO also recommended—in recommendation C49—that it would be useful to review the wording of the provision to make it clear that it applies to “attempts to influence electors.” The use of “induce” in the English version of the act causes confusion about what is captured by the prohibition. The reason for this is that it implies that, for an offence to have been committed, the attempt to influence had to have been successful. This gives rise to an almost impossible burden of proof for the prosecution, as you can appreciate.

Finally, I wish to briefly mention one last area of potential reform regarding third parties.

In Canada, third parties are only regulated with respect to their election advertising activities.

• (1115)

Provided they act independently from a candidate or party, they may incur limitless amounts of expenses when carrying out activities such as polling, voter contact services, promotional events, and so forth. They can also use whatever sources of funding, including foreign funds, to finance these non-election advertising activities.

[*English*]

The level of third party engagement in Canada's electoral process will likely continue to grow in the years to come. For that reason, Parliament should consider whether there is a need to re-examine the third party regime with a view to maintaining a level playing field for all participants.

In conclusion, Mr. Chair, I'd like to thank the committee for its support of a number of important recommendations concerning our office. In particular, I was extremely pleased to see that the committee had agreed with a recommendation that a regime of administrative monetary penalties be adopted. This recommendation, coupled with the ability to negotiate broader terms and conditions included in compliance agreements, will allow my office the much-needed flexibility it requires to carry out its compliance and enforcement mandate more efficiently. It would also—and I think this is a very important point—facilitate the quick and efficient resolution of a number of matters in a transparent manner, eliminating the need to take some of them to court. As criminal courts across the country are dealing with the aftermath of the decision of the Supreme Court in Jordan, this is, I would submit, a highly relevant consideration.

[Translation]

In closing, Mr. Chair, although I will endeavour to provide fulsome answers to your questions, I would like to remind the members of this committee that I will not be able to discuss the details of any particular matter that is or may have been the subject of a complaint to, or an investigation by my office.

I will be pleased to take your questions.

[English]

The Chair: Thank you very much. That was very helpful and you're totally correct: we're looking at having some penalties in the act, throughout the act possibly, that are not criminal. So that's a very good thing.

Just so you know, recommendations A33 and A34, which you mentioned at the beginning, the committee has dealt with already, but you have brought to our attention one that we hadn't noticed, C45, the ability of contract investigators to obtain production orders. While you're here, perhaps you could briefly introduce that recommendation for us, from your knowledge, and share any comments you want to make about it. We'll have the three recommendations to deal with after you've left: the two you outlined in great detail plus we might as well deal with C45 if you have any comments on it, because it is related to you. We haven't got to section C yet in our deliberations.

Mr. Yves Côté: Thank you, Mr. Chair.

Recommendation C45 is what I would describe as a rather technical amendment and that's essentially why it finds itself in chapter C of the recommendations. It has to do with the fact that we have on staff at the office a certain number of contractual investigators, people who are not employees of the public service, and as the law currently stands, they are not in a position to apply for things such as production orders under the Criminal Code, because these instruments, production orders, which, for example, we use to force a bank to give us information about financial transactions, can only be applied for before a judge by public servants.

As I said, we have a number of investigators who are contractual employees, and currently they are not covered by the Criminal Code. What it would require is simply a very small amendment to make sure that contractual employees may apply for both search warrants and production orders. Search warrants are currently already covered, but when these new provisions on production orders were introduced, I think somebody forgot to make sure that contractual investigators could also have the ability to apply for them. That's why I say it's a rather technical amendment, and I don't think it should pose any significant problems.

• (1120)

The Chair: Thank you. That's very helpful.

We will start the seven-minute round—seven minutes include both the questions and the answers—with Mr. Simms.

Mr. Scott Simms (Coast of Bays—Central—Notre Dame, Lib.): Thank you for your intervention, Mr. Côté.

Very quickly, this is a crude example. Today there is an election in the United Kingdom. The polls are open currently. I truly hope, although they won't win government, that the Liberal Democrats will

win more seats. I've just said it publicly. If this were the other way around, would I be breaking—

Mr. Yves Côté: You understand that I will not comment on that.

Mr. Scott Simms: I'm sorry. What's that?

Mr. Yves Côté: You will understand that I will not comment on that.

Mr. Arnold Chan (Scarborough—Agincourt, Lib.): Nor will the rest of us.

Mr. Scott Simms: Oh, okay. I was just wondering if I would be breaking the law if it were the other way around.

I guess what I'm trying to say is, if I'm making a comment about their election the way I just did, and if a British member of Parliament did the same thing to me, would it be against the law as it is now? I'm just looking for interpretation.

Mr. Yves Côté: I don't think you would be committing an offence when we have the law as it is now.

I think that for any investigation, or any way in which this matter would be dealt with, we would look at the guarantee of freedom of expression that certainly the charter extends to everyone. Before we decided to move ahead with enforcement action, we would be quite conscious of the need to bear that in mind. That's one point that we would certainly consider.

On the other hand, I don't think you would be breaking our law if you did that—or if he did that or she did that.

Mr. Scott Simms: All right. That's fine.

David.

[Translation]

Mr. David de Burgh Graham (Laurentides—Labelle, Lib.): Thank you.

Thank you for being here. We are very pleased to hear your testimony.

My question is about investigations. If you receive a complaint about electoral fraud, for instance, how do you proceed? Where will the problems arise, specifically with regard to recommendations A33, A34, and C45 and the commissioner's decisions?

Mr. Yves Côté: If we receive a complaint about electoral fraud, we assume it is something major and relatively big. We begin with a preliminary review of the allegations and facts brought to our attention. If we confirm that there are sufficient grounds to proceed and launch an investigation, we would open a formal investigation and would then talk to the people we believe might have been involved.

The reason for recommendation A33 is that, in certain circumstances—and I have experienced this in the past four or five years since I have been in my position—we ask persons to appear because we strongly suspect and, in some cases, know with certainty that they are aware of certain things and have information. For their own reasons, they refuse to cooperate. They say they do not want to tell us anything.

You as members of Parliament are in a position to properly assess what I am going to say. In politics, loyalty to the party and the team is often considered a fundamental value. For these people, it is very difficult to cooperate and give information that could help us move forward with our investigation.

If, for example, after contacting all the individuals to whom we wanted to ask questions, no one wanted to cooperate, a provision such as the one suggested in recommendation A33 could be useful. We could go before a judge, an independent party, and explain what is going on, what the allegations are, how serious they are, and the fact that, unfortunately, we cannot convince anyone to talk. We would then ask the judge to issue an order compelling a particular person to talk to us.

There would of course be guarantees attached to this process if the judge agreed to issue the order. To begin, it would be clear that nothing said by the person compelled to speak to us could be used against them. The person would have the right to legal representation. The meeting would be private and not public.

It should be noted that such guarantees do not mean that we would use this power left and right to conduct investigations into all kinds of minor matters. It would be for circumstances that could seriously affect public confidence in the electoral system. Citizens need to be reassured that an investigation was conducted in order to obtain the information we need to move on to the next steps.

That is my opinion on recommendation A33. In five or six provinces in Canada, the commissioner or person in an equivalent position currently has this power. I am including officials from the office of the chief electoral officer of Quebec.

This is already the case federally since the head of the competition bureau has this power and may, under certain circumstances, ask a Federal Court judge to issue an order to compel someone to testify.

This is the main point I wanted to make with regard to recommendation A33.

• (1125)

Mr. David de Burgh Graham: At a practical level, your office is separate from that of the CEO. You have changed buildings and you have less contact with the CEO.

What are the real effects of this change?

Mr. Yves Côté: As you said earlier, since Bill C-23 was passed, we have been an entity within the office of the director of public prosecutions. Officially and legally, we have been removed from the CEO's organization.

In my opinion, things are going quite well on the whole. They are going very well in fact. For the CEO and for us, however, it is difficult for technical reasons to share information more quickly, since we are now officially part of two different government institutions. Certain rules apply, which makes things a little more difficult.

That said, you probably know that the government has introduced Bill C-33 and that, if it is passed in its current form, it would return us to the CEO's office.

I would also note, importantly, that since we arrived at the office of the director of public prosecutions, this office has provide exemplary service and support in all respects, as was the case when we were part of Elections Canada.

Mr. David de Burgh Graham: Thank you very much.

[English]

The Chair: Thank you.

Mr. Richards.

Mr. Blake Richards (Banff—Airdrie, CPC): Thank you.

Mr. Commissioner, thanks for being here. I have a couple of questions for you today.

First, in regard to recommendation B27, which deals with section 331 of the Canada Elections Act, that prohibits anyone who doesn't reside in Canada or who is not a Canadian citizen or permanent resident from inducing electors—this is actually taken right from it —“to vote or refrain from voting or vote or refrain from voting for a particular candidate”. The recommendation states that you receive many complaints under this section, but indicates that overly broad wording leads to difficulty in the rule being enforced.

If many people are filing complaints, then there clearly must be some significant issues here, some real issues. I always think of the saying, where there's smoke there's fire. Can you give us an idea of how many complaints you typically receive, particularly with those last couple of elections?

Also, can you provide some suggestions on how to strengthen that section that will give you the ability to better ensure the integrity of our voting system?

Mr. Yves Côté: Mr. Chair, the question as put mentioned that usually where there's smoke there's fire. I have to say that sometimes where there's smoke there's only smoke. I say this because, when you look at section 331, as I said in my opening remarks, you can think that it applies to all kinds of various things.

One thing brought to our attention a number of times in the course of the last general election were the comments or editorials in the media, especially in the U.S. but also sometimes outside the U.S., and also pieces published in national Canadian newspapers but authored by non-Canadians residing outside of Canada. Many people thought this was objectionable and should not happen.

In my point of view, I don't think the intent of section 331, which was adopted, by the way, as I said, a long time ago, was to capture this kind of thing.

• (1130)

Mr. Blake Richards: Sorry, I hate to interrupt you, but I have a limited amount of time.

What I was trying to get a sense of is the number of complaints you receive. You've indicated that you see some of those as smoke only being smoke, but there are likely to be some where fire is in existence. I'm trying to get a sense of how many complaints you typically receive. Maybe you could give me an idea of the numbers or percentages that you think would be legitimate complaints and, I guess, how we could look at strengthening those sections.

Mr. Yves Côté: The numbers we have now suggest we had 14 complaints in the course of the last general election having to do with possible infringements of section 331. A number of those were disposed of fairly quickly. I made reference to that in my last annual report. They had to do with a national political party doing business with somebody from outside the country, allegedly trying to get some strategic advice in terms of how a campaign should be run. We took the position publicly, as I said in my report, to the effect that this was not something caught by section 331.

Mr. Blake Richards: Let me move to the other question that I had for you.

When you were at the Senate legal and constitutional affairs committee in April, you indicated that you had a number of complaints about third parties. I don't know if we're talking about the same subject matter that you just indicated here or not, but I'm wondering if you can indicate whether that's become an issue, that third parties are so significantly involved there may be unfair electoral outcomes as a result.

You also stated today, and I believe at the Senate committee as well, that Parliament should consider whether there is a need to re-examine the third party regime with a view to maintaining a level playing field for all participants. You also have indicated that, when third parties are able to receive foreign funding and use that foreign funding during the election period, provided they receive the funds prior to six months before the election is called, it means that, really, third parties can use unlimited foreign funding and there's really no restriction on the amounts they can use, outside of election advertising. You said today that you believe we should look at the other expenses, like polling, voter contact services, promotional events, and these types of things.

I wonder if you could expand on that and give us an idea of any other suggestions you have that we could use to strengthen the third party financing regime to ensure that there is that level playing field you're talking about, that it is maintained in relation to foreign funding, and specifically fleshing out this idea of the other types of expenditures that are completely unlimited at this point. Do you think we need to go beyond that six-month period, so there can't just be someone at six months and a day, especially with a fixed election date, which obviously drops a bunch of money in and is able to significantly influence a Canadian election?

Mr. Yves Côté: Mr. Chair, I would start by quoting a judge of the Supreme Court of Canada in the Harper decision, going back to 2004, and that was Mr. Justice Bastarache writing for the majority. What he said was this: "For spending limits to be fully effective, they must apply to all possible election expenses...". The regime that we have for third parties was passed more than 15 years ago, and yet we very well know it only applies to what is referred to as "election advertising" as defined in the act. That is pretty narrow and pretty limited, and that is the production, if you will, of advertising material

and the purchase of the means necessary to transmit such materials. All kinds of other things are simply not covered at this point in time.

As I said at the Senate committee, we have received a fairly significant number of complaints, way more than we had for the previous general election. People complained that third parties in this last election did all kinds of things that had, they allege, an impact on the electoral results, and that this was not fair. What I said at the Senate committee, and what I said this morning here, is that I think that 15 or 17 years after the regime was adopted, the time has come for Parliament and for you, members of Parliament, to think about this. If we really have in mind to maintain a level playing field, should more be done with a view to addressing the role that third parties have played and, I would assume, are probably likely to play in the next general election? To me, the question as to whether or not we still have a level playing field is really an open question, and I would urge you to consider that very, very carefully.

• (1135)

The Chair: Thank you, Commissioner.

We'll now go to Mr. Stewart. Welcome to the committee, Mr. Stewart.

Mr. Kennedy Stewart (Burnaby South, NDP): Thank you very much for having me today.

Thank you for the testimony.

I had a question about the foreign influence and how we regulate that. I was speaking with an Internet advertising firm, and they said they have an ability to do something called geofencing, which is taking a geographic area and buying all the social media and all the online ad presence in one particular geographic area, for example, an electoral district. That's very useful for us, because we know during our election that perhaps we could spend some of our advertising saturating our own local area with election pledges and those types of things.

However, my concern is that this technique can also be used by non-Canadians. We just had an election in British Columbia, which was very close. The balance of power hangs on one seat. You could see somebody seeing that coming and deciding to buy all the social media and all the online presence within that one particular electoral district and try to push it toward one party or another.

Say, a Chinese company decides they want to do that, and they flood this particular electoral district with hundreds of thousands of dollars of online advertising. What is the recourse under the current law? Obviously that's foreign money coming into our electoral system, but because it's through an online presence, how would you approach laying charges or even investigating that situation?

Mr. Yves Côté: As you said, this would raise very complicated and very difficult issues. For the purpose of simplicity, I will assume there has been no co-operation with a Canadian party or player, so we have a Chinese company on its own doing that. First, it becomes very difficult to investigate, as you suggested. Second, even assuming you could get the information you needed to proceed with a charge, I would think the only thing you could contemplate doing, based on the wording of the legislation as it is now, would be essentially to lay a charge in Canada. If the company has some presence in Canada now or at some point in time, you could take them to court and perhaps do something with respect to their assets if they were convicted. However, if they operate only outside of Canada—in China, in the example you use—it is extremely difficult to enforce the legislation in circumstances like this.

Mr. Kennedy Stewart: Say, it's an online newspaper that has column ads, and that's what they're buying. Could you change legislation so that you actually go after the website on which these are hosted, which would be hosted within Canada?

Mr. Yves Côté: Assuming there is this real Canadian connection in the example you gave, depending on the facts of the case, you could possibly investigate and lay charges against the Canadian outfit or enterprise that did that on the basis that they became party to the offence committed by the Chinese company, again, using your example. So assuming you could show that they counselled, abetted the commission of the offence, then technically, legally, there are those steps that could be taken.

Mr. Kennedy Stewart: Does the act as it stands facilitate that? We've just had all kinds of testimony in the United States about how Russia is apparently influencing their elections. We've heard this has now spread to the U.K. and to the Brexit referendum. Most of that would be through online spending. Some of it would be through other means, like hacking and those types of things, but a lot of it could be through advertising.

Do you think improvements could be made in the act to help you stop what I think would be a new threat coming in the coming years?

• (1140)

Mr. Yves Côté: Yes, there are improvements that could be brought to the legislation to make it easier to do that. At the same time, when you keep in mind that very often for us Canadians the companies or the Internet players involved, if you will, are outside Canada, whether it be Google or Facebook, all kinds of issues also arise in trying to get to these companies in a legal way to make them co-operate or cease what they have been doing.

On that point, Mr. Chair, I would mention that in Germany very recently, in the last couple of months, the government has taken steps to implement a system that would subject companies like Facebook and Google to pay huge fines—and I think the maximum is 45 million euros—if they fail, when required to do so, to take fake news off their networks. That's one way the Germans have apparently found to address the issue. It is a very complicated issue.

You may know that this morning the Senate committee, before which Marc and I appeared a few months ago, just issued its report, which I only could glance at because it only came out a few minutes before we came here. They did a lot of thinking around those issues,

and they formulated some recommendations that you may find useful and interesting.

Mr. Kennedy Stewart: Okay, thank you.

I have another question about false statements. Could you perhaps give us examples of false statements? Could you, say, give an actual statement that was claimed to be false but that you did not consider false and did not investigate, and an example of a statement that was considered false? Do you have those at hand?

Mr. Yves Côté: I have a couple of examples that I can share with the committee.

Mr. Kennedy Stewart: That would be great.

Mr. Yves Côté: One is a case going back to the 2000 general election involving somebody by the name of Shannon Jones. In the course of an electoral campaign, she stated that the outgoing MP, who was running again, had, as I think she put it, one of the worst attendance records in Parliament at only 53%, and she was saying something like, “Well, if anybody showed up for work only 50% of the time, they would be fired.”

Mr. Kennedy Stewart: I won't test that.

Mr. Yves Côté: She was charged with an offence under the provision at play here, and the judge found that this was not sufficient to justify or to warrant a conviction under the provision. The judge said that the provision should be used where the candidate is alleged to be, and I'm quoting from the judge's reasons, “a thief, a criminal, a felon, or that some type of moral turpitude was involved.”

Also, I think there are some cases.... By the way, I think that six or seven provinces have essentially the same provision as we have here and the wording is almost exactly the same, about the personal conduct or character of the individual.

In another case, which comes out of Manitoba, the person said the candidate who was running against her was “a liar, a thief, a drug peddler.” The judge in that case found that this was sufficient to... and, in fact, she pleaded guilty and she received a fairly significant fine.

The point I would make on this is that I think there is a need, because many people in Canada think, when they look at this provision, that any time a false statement is made about a candidate, let's say, that is enough to trigger this, and the courts are not there at all. They understand that freedom of expression in the political realm is pretty broad, and, as I said in my remarks, political spin, insinuation, and exaggeration are part of the way, for better or for worse, that electoral campaigns are run in this country and in many other countries. Courts recognize that and will be careful before they intervene.

That said, when somebody crosses the line and impugns somebody by way of, as I said, criminal conduct or fraud or anything like that, then the courts would be more open to perhaps considering issuing a verdict of guilt.

Mr. Kennedy Stewart: But you're requesting just eliminating that power from your purview.

Mr. Yves Côté: No, I'm not suggesting that.

Mr. Kennedy Stewart: Okay.

Mr. Yves Côté: I think what I said in my opening remarks is that I think there is a role to be played by that provision, and I think the challenge for you MPs and for Parliament is to find a way to refine it, to make it better adjusted to the reality so that it's easier for us to apply and also so that citizens, when they look at the provision, understand that it is not any and all false statements that are caught by the provision.

• (1145)

The Chair: Thank you very much.

We'll now go to Ms. Sahota.

Ms. Ruby Sahota (Brampton North, Lib.): Thank you.

Thank you for being here today, Commissioner.

My questions will be based on recommendation B12.

I am a bit confused by your statement. I know you want more clarity in the provision and if it's not there, then you'd like it repealed, but in your written remarks, in the first paragraph regarding recommendation B12, you stated that "the provision is extremely broad." That's what I understand it to be, but then I was a little confused when the third paragraph said "it may be time to consider whether the scope of the provision should be broadened to include false statements made with respect to these key players."

I'm just a little confused. I do think that false news, fake news, and a whole bunch of things need to be addressed in today's world. We are seeing a lot of problems in election campaigns around the world, but we already have a problem with provisions being too broad, so I don't know whether adding more things will in fact broaden or make it even harder to implement.

I'm just confused. Could you clarify? I think I'm of the position that I would like to strengthen it, especially given the current climate. I think that false statements about personal character are really important to me as a woman, because I do believe that women candidates oftentimes have their character called into question more than male candidates do, so I am a little concerned about that.

If you would answer that question, then I'll have a follow-up question.

Mr. Yves Côté: Yes.

It's probably my not expressing myself clearly enough, so I'll try to clarify what I meant when I said that perhaps there would be an issue in whether it should be broadened.

Section 91 as it reads now applies only to candidates or prospective candidates, and yet people could make some very damaging comments about, for example, a political party or a senior

organizer in a political party that, by nature of these words, could have a very detrimental effect on the outcome of an election.

The question I am putting to you is, when this was passed in 1908 perhaps we didn't have the same kind of involvement by senior officials of parties, or parties, so that issue, to me, is an open issue in whether you'd like to broaden it. That's why I am saying this.

In terms of narrowing it, I am suggesting looking at the way that courts and judges have applied that provision in various court cases. You find they are looking for something that's pretty narrow. For example, one of the judges said that if you make a comment about the way somebody carried out their official duties, a lot of leeway will be given to people making those kinds of statements, but if you impugn or attack somebody's personal reputation, that's something else. That's why I'm saying to you that false statements.... You may wish to add words to clarify so that courts have an indication of what Parliament would like them to do, or would like the legislation to say.

As I said at the outset, we are in the realm of freedom of expression, so it is extremely important for any new legislation—if you decide to open it up and change it—to bear that in mind. The court will give lots of leeway to people expressing themselves in the course of a political debate, so you have to make sure that your objectives clearly outline and define, and that the means you use are as narrow as possible to achieve the goal.

Ms. Ruby Sahota: Of course, and I'm sure you have these occurrences where people allege false statements in political debate, but I think most of us around the table here can agree that if you're debating an opponent and you're talking about the way their party voted or what they had implemented, that is political spin at times and can be seen in different perspectives.

For example, in the last election my Conservative opponent, Mr. Gill, sent out letters to each household in my riding implying that I had supported a private member's bill and introduced it in the House, but I had never been a member prior to running; I was a new candidate. That was definitely a false statement, but previously there was another member with the same first name as mine, so by eliminating the last name and sending out a letter to each household, it could be stated that somebody with that first name had done this, but it was done during my election campaign, implying that I had introduced this bill.

That's where things become murky and it's a false statement, but I had never thought of making a complaint about that necessarily because I think there are ways to address that, through media, through responding to allegations like that.

It's the personal character that really bothers me, and as we want to encourage more women to run, I feel we should not send a message that as an elected body, we don't care if these types of things happen in a campaign. We should be sending the message that yes, on the books we have something, but it isn't enforceable and I want to help you make it enforceable.

How do we make this an illegal act or a corrupt practice? You said that it doesn't go that far.

• (1150)

Mr. Yves Côté: That would be easy enough. There are provisions in the act that set out illegal acts or corrupt practices. That's section 502.

If you decide to go that route, it would be a question of adding a paragraph to one of those two sections to make it clear that from now on this would be that.

At the same time I think it's important for me to highlight for the committee, Mr. Chair, that if consideration is given to going in that direction, I would urge you to think very carefully, because if you do that, it could open up the possibility to challenge the results of an election. I think one of the things you would want to avoid, or at least consider seriously, is to avoid having a multiplicity of challenges after an election if somebody says a false statement was made about their character and now they'd like to challenge the result of the election.

I would urge you to think very carefully where you would set the bar in how such a challenge could be launched, and then give guidance to the court, to the judge, as precisely as possible on how they should decide whether or not the results of the election should be quashed.

Ms. Ruby Sahota: Okay. I don't have enough time now, but I would love to have more input on how we can make it enforceable but maybe not take it that far, so that we don't have this occurring time and time again.

The Chair: Thank you, Ms. Sahota.

Before we go to Mr. Richards, I want to reiterate something the witness said. It's sort of serendipitous that while we're talking about recommendation B27 on section 331 of the act, the prohibition on foreigners inducing electors to vote, this morning the Senate tabled its report, "Controlling Foreign Influence in Canadian Elections".

Mr. Richards, you're on.

Mr. Blake Richards: That was a great segue for me, because I wanted to mention that as well and ask the commissioner about it.

The Senate put out this report. I don't know if you've seen it yet. It just came out. In "Controlling Foreign Influence in Canadian Elections", they made a number of recommendations in order to ensure that foreign funding isn't playing a direct or indirect role in Canadian elections.

There are things like prohibiting influence by foreign entities, modernizing the regulation of third parties' involvement, increasing penalties, and removing the six-month limitation on that requirement to report contributions. Then, of course, they're also asking that Elections Canada be required to perform random audits of third parties' election advertising expenses and the contributions they receive that may be used during an election period. Those are some of the recommendations they made.

You've indicated to us, obviously, that you think we need to look at third party financing and consider modernizing and updating that. You indicated in a response to me earlier that in order for provisions

to be effective, they must apply to all possible election expenses. I'm looking for your suggestions on what the committee can do, because I firmly agree with you that we should be looking at this. This is an issue that needs to be dealt with. I would assume that when you say it must apply to all possible election expenses, you're indicating that the provision that it's only for advertising expenses is not broad enough, and that you believe we need to expand that further. I'd love to hear your thoughts on that.

In particular, I'd also like to hear your thoughts on the six-month limitation. With the fixed election dates, as I mentioned earlier, in terms of it being six months before the writ is dropped, everyone knows that if they want to get that money in, they can do it six months plus a day before then, and nobody knows. Nobody is the wiser. As a result, there could be very significant foreign funding that could seriously influence our election.

I'd love to hear your thoughts on those two things.

• (1155)

Mr. Yves Côté: I'll say three things.

One is that we got the Senate report literally half an hour before we came here, so I merely flipped through the pages and cannot comment in any way on its contents.

Yes, it seems to me that there are things such as the organization of rallies by third parties, for example. Currently, the position that we and Elections Canada have taken is that this is not political or electoral advertising. Therefore, as it stands right now, a third party may conceivably expend a huge sum of money in organizing rallies, maybe in various cities across the country, and maybe spending many thousands of dollars. Because it is not technically electoral advertising, this is not regulated in any way.

Mr. Blake Richards: Could it be for things such as paying for door-to-door canvassers as well?

Mr. Yves Côté: Yes, exactly. Totally. Or having—

Mr. Blake Richards: Are you saying that broadening this would be helpful?

Mr. Yves Côté: —people working the phones and trying to get people to vote one way or the other.... Quite clearly, this is currently an open field and people are free to do a number of things.

On the six-month rule, I really think this should be looked at very closely and perhaps have steps taken to eliminate it totally or to make it in such a way where much more is caught and regulated than is the case now—no question.

Mr. Blake Richards: Yes, I appreciate that. I firmly agree with that as well.

In order to ensure that more of it is caught, there's this idea of performing random audits of third parties' election expenses. Would that be helpful in ensuring that more of it is caught?

Mr. Yves Côté: Well, assuming that the legislation, the new regulatory framework, is such that many more things have to be reported and also that there are some limitations, spot audits certainly would be a good way of getting the information that perhaps is needed to uncover or discover illegal actions on the part of some of these third parties.

Mr. Blake Richards: Thank you, I appreciate that.

Do you have any other suggestions if we're going to look at that, and I firmly believe we should, on things we could do to modernize that? For example, should we increase penalties, or are there other things we could do to make sure more of this is being caught and to ensure we're keeping foreign influence out of the elections? If you don't have any suggestions you can give us verbally today, would you endeavour to provide us something in writing that would be helpful?

Mr. Yves Côté: Yes, we could provide you with additional ideas. One suggestion I would make is not necessarily to have more severe penalties, because I think the penalties provided for are quite severe. For me, the real challenge, the real objective Parliament should pursue, is to identify what it wants to do in terms of how it wants to limit third parties in what they would be allowed to do or partially allowed to do.

Yes, Mr. Justice Bastarache said what I said a few minutes ago, but at the same time, the courts, as you probably know, have invalidated third party spending on a number of occasions in the past. It's a very delicate area in which to go, and you really have to be careful how, once your objective has been identified, you go about accomplishing it.

Mr. Blake Richards: Thank you. I appreciate your suggestions and thoughts.

The Chair: Thank you, Blake.

We just have a couple of minutes left for the last questioner, Mr. Chan.

Mr. Arnold Chan: Commissioner and Mr. Chénier, I want to thank you both for appearing today.

I want to follow up on some of the comments from my fellow colleagues about a particular recommendation, B27, inducements by non-residents. I want to deal with a very specific example in my mind, and I want to get your thoughts about it.

I have within my riding a fairly large number of schools that provide services for foreign students, international students, who come to Canada often in order to complete secondary school and prepare potentially for continuing their education in Canada at a post-secondary level.

One of the things that often comes up, and it certainly happened in my election, is they're interested in participating in the Canadian political process. One of the requirements they have, for example, is to get enough volunteer hours, which is a requirement for graduation. In Ontario, they need 40 hours. They often come banging on my door saying that they would like to help me in my election and asking if they get any volunteer hours. These are essentially non-resident international students.

Do they breach the act under the current provision of section 331 by participating in a Canadian election?

• (1200)

Mr. Yves Côté: Section 331 states, "No person who does not reside in Canada", so presumably—

Mr. Arnold Chan: These are non-residents, so they're here on a temporary basis. They're residing in Canada but they're not... They're temporary residents so they're non-residents. They don't have status in the sense of being a Canadian resident. Technically, are they fine because they have this temporary status?

Mr. Yves Côté: If they are studying here, a good argument can be made that in fact they are residing, even if only temporarily, in Canada.

Mr. Arnold Chan: Again, I was just concerned about that particular... I know the current recommendation is the repeal of the section, and I agree that the most difficult part related to this normally is enforcement, particularly for those who reside wherever they reside. If you're blogging about the Canadian election and you're living in Burma, it's hard to actually have any kind of a... You can say that, yes, they are intending to influence our election, but there's no real practical enforcement mechanism.

I'm sensitive to the issues that Blake and others have raised with respect to foreign influences, but in the world of social media, I just don't know how we effectively, other than as it relates to actual resources like monetary, have any kind of regulatory control over this type of activity in this day and age.

Mr. Yves Côté: It poses a very serious challenge; there's no question about that. Many countries around the world are trying to grapple with this, not only in the electoral context but in other contexts. It is certainly not a simple issue.

By the way, Mr. Chair, I think Mr. Chan said that my recommendation was to abolish section 331. That is not my recommendation. My recommendation is that you should look at it with a view to perhaps refining and—

Mr. Arnold Chan: —if possible—

Mr. Yves Côté: Yes.

Mr. Arnold Chan: —and if you can't, then repeal.

The Chair: Commissioner, just before we finish, do you have any closing comments you'd like to make?

Mr. Yves Côté: If I may, and perhaps this comes out of the blue for members of this committee, we get a lot of complaints about missing tag lines on political signs during the campaign. Sometimes the tag lines are not missing; it's only that they are printed in a slightly off colour that makes it very difficult to read. By way of perhaps trying to address this issue, sometimes we have to actually use magnifiers to see that it is there, and once we see it's there, we have to drop the investigation. If there were a way for you to recommend or to propose an amendment that would say that the tag lines have to be reasonably visible, that would remove a big headache for a number of us.

That's a very small point, but as a parting comment, that's a request I would make.

The Chair: That's the line on the election signs that says it's authorized by the official agent of a party.

Mr. Yves Côté: Yes.

The Chair: Thank you very much for coming. That was very helpful input on the recommendations that we're going to deal with now.

Mr. Yves Côté: Thank you very much.

[Proceedings continue in camera]

The Chair: We'll suspend for a couple of minutes while we prepare to go in camera.

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