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**Official Report
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Monday 6 June 2016

**Journal
des débats
(Hansard)**

Lundi 6 juin 2016

**Standing Committee on
General Government**

Election Finances Statute Law
Amendment Act, 2016

**Comité permanent des
affaires gouvernementales**

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

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Monday 6 June 2016

Lundi 6 juin 2016

The committee met at 1400 in committee room 2.

**ELECTION FINANCES STATUTE LAW
AMENDMENT ACT, 2016**

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

Consideration of the following bill:

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

The Chair (Mr. Grant Crack): Good afternoon, everyone. I'd like to welcome members of the committee, legislative research, the Clerks' office, Hansard and our special guests this afternoon. I'd like to call the Standing Committee on General Government to order. Today, we're here to hear from our Chief Electoral Officer in the province of Ontario, Mr. Greg Essensa, concerning Bill 201.

I will just read the order of the House, if I may, so that everyone understands the process that we're going to move forward. It's just one line, one sentence: "That the Standing Committee on General Government be authorized to meet from 2 p.m. to 6 p.m. on Monday, June 6, 2016, for the purpose of hearing from the Chief Electoral Officer of Ontario, who will be invited to make a presentation of up to two hours, followed by discussion with the officer moderated by" me, "the Chair."

It's a little bit different. We normally have three minutes of questioning and three minutes of questioning, that type of thing. I'm going to ask my colleagues, prior to commencement on the part of the Chief Electoral Officer, to respect the Chair. We're going to have a free discussion back and forth at the end and enjoy ourselves, but I would like to ensure that we can maintain order—not that there's not order all the time.

CHIEF ELECTORAL OFFICER OF ONTARIO

The Chair (Mr. Grant Crack): Having said that, it gives me great pleasure to welcome Mr. Essensa here. I will turn the floor over to you for your up-to-two-hour presentation. If you'd be so kind as to introduce yourself officially, your title and your guest with you. Thank you.

Mr. Greg Essensa: Good afternoon, Mr. Chair, members of the committee. My name is Greg Essensa. I'm Ontario's Chief Electoral Officer. I am joined today by Mr. Jonathan Batty, who is my general counsel and director of compliance.

I would like to thank the members of the committee for inviting me to speak as they begin the important task of examining Ontario's political finance rules. This is the first significant review of these rules in over 40 years. Since I became Chief Electoral Officer in 2008, I have advocated that our rules need to be updated to match how election campaigns are fought and won in the 21st century. I am happy to contribute to this important public dialogue.

I have been asked and have agreed to serve as an adviser to this committee. I am honoured that the members of the Legislative Assembly and its parties place confidence in me to provide them with advice on these matters. This is an important task, and I'd like to speak for a moment as to how I can best serve the committee.

As Chief Electoral Officer, I am an independent officer of the Legislative Assembly. My mandate includes overseeing the registration and financial reporting requirements of all parties and candidates, not just those represented in the Legislative Assembly. You might say that I referee the rules of the political game in provincial elections. I see my role as helping ensure there is a level playing field on which all compete. I will speak more about what that means shortly.

Because of my unique position, I need to observe the following parameters in serving this committee:

—My participation needs to be public and transparent. While committees sometimes have in camera meetings for report writing, I think it best that I not attend such meetings. I intend that any input or advice I give to the committee be given in an open and transparent manner.

—As an adviser, I cannot be asked and will not vote on recommendations or motions. I cannot and will not become the examiner of the committee. Members need to ask their own questions of witnesses.

—As an adviser, I cannot become a permanent witness who can be questioned by all who appear before committee. It would also not be fair to witnesses if I am asked by the committee to immediately rebut a presenter.

—I am here because I want to hear and understand the public debate. I will contribute non-partisan information and advice where I can. I may want to have my staff to

support me, but my office cannot become the policy and research secretariat for the committee. Committees are well served by the Clerk, legislative counsel and the legislative research service. We can assist, but not replace, those important roles.

—The committee's report back from first reading has to be made by the committee alone. It may be that there are dissenting views on some issues. As an independent officer, I need to be at arm's length from that process. I need to remain free to remain neutral, to agree or to disagree with any reports or recommendations.

—I may not be able to attend every hearing. I may designate someone from my office to attend in my place. At the conclusion of the hearings, I may also suggest doing a final presentation to share my perspective on what the committee may wish to consider before it begins its deliberations.

With those ground rules established, let me now turn to the issues at hand. By way of introduction, I would like to first speak to the history of the Election Finances Act, federal legislation and the role of money in politics.

The Election Finances Reform Act, as it was first titled, was introduced in the Legislative Assembly in February 1975. Prior to its introduction, a tripartite commission had been tasked in December 1972 with examining Ontario's political finance rules. The commission, known as the Camp commission, was chaired by Dalton Camp and had two other commissioners. They submitted their report to the Speaker in November 1974.

The commission studied the issues and made their report against the following backdrop:

—To the south, the Watergate scandal had unfolded and the United States Congress, in response, adopted significant election finance reforms.

—In Canada, the recommendations from the Barbeau commission in 1966 led to the introduction of federal legislation in 1974 that overhauled the financial rules governing elections to the House of Commons.

—In Ontario, there was growing public concern and dissatisfaction with party fundraising practices.

In December 1972, the Camp commission was tasked with responsibility for devising a set of rules that would "maintain a political system in which the various parties can function and campaign for public support freely and openly and ... in an atmosphere above and beyond public doubt, suspicion or cynicism...."

The task before this committee, 44 years later, is much the same. This is not to say that the rules adopted in the Election Finances Reform Act in 1975 were flawed. When they were passed, they placed Ontario as one of the leading jurisdictions in transparency and fairness in political finance oversight in Canada. Those rules, however, were tailored to a world that is much different from the one that we live in today, and it is time now to re-examine these rules.

The task before this committee, in 2016, is to consider what financial rules should apply to Ontario's electoral process in the 21st century.

As the committee is undertaking its task, I am very aware that there is a lot of discussion of the political

finance rules that apply in federal elections. Indeed, many of the provisions of the bill before the committee are modelled after the rules in the Canada Elections Act.

One of the interesting things in the Camp commission report is that in some areas the commissioners felt that the federal rules were not stringent enough. The Camp commission took issue with the fact that, for example, there were no federal contribution limits to parties and candidates.

The Camp commission noted that, "Were Ontario to duplicate the federal act, if only in the interest of conformity, the political parties, whose establishments and activities overlap in many areas, would no doubt be appreciative, since the possibility of confusion created by the existence of two distinctly different acts, provincial and federal, would then be eliminated."

However, the Camp commission also believed that "provincial politics and federal politics are not the same, as much as the parties may resemble one another, and we do not feel the provincial legislation needs so much to be congruent with the federal act as it needs to serve the general interests of Ontario."

Let me tell you what I believe. My belief is shaped from my 32 years' experience administering municipal and provincial elections. As noted in the strategic plan for my office, our vision is that we "will build modern services for Ontarians that put the needs of electors first." This is the right vision for my office and the right vision for our election laws. This is the foundational element upon which a democratic system rests. If it does not, it does not enjoy legitimacy.

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I think that electors do expect that there will be some congruence between federal, provincial and municipal election laws. While it is true that each level of government has its own unique facets, I believe that it serves electors best when their interests and activities are regulated in a similar way.

I believe that the Canada Elections Act includes many provisions that would be good to adopt in Ontario. For example, I have recommended for several years that administrative penalties similar to some of the compliance provisions in the federal law should be adopted in Ontario. I do not think, however, that electors simply want congruence of federal, provincial and municipal election laws. If there is simply congruence, there may not be progress.

There are some provisions in Ontario's election finance laws that are not found at the federal level or in any other province. Ontario remains the only jurisdiction in Canada, for example, with real-time disclosure of monetary contributions to parties and leadership contestants.

I think that electors look to their electoral agencies and to their legislators to learn from, build on and improve on what they see in other jurisdictions.

It is worth taking a moment to reflect on the history of election finance regulation in Canada. The last landmark study on election finances in Canada was conducted

almost 25 years ago by the Royal Commission on Electoral Reform and Party Financing; for short, it was called the Lortie commission. I imagine that the presenters to you over the coming weeks and months will refer you to its findings and recommendations.

An academic background study for the Lortie commission examined Ontario's election finance laws in 1991. The study found our laws to be a comprehensive system that served as a model for other provinces. When our system was adopted, it regulated contributions, unlike the federal system, which largely focused on expenditure limits. As the study noted, the guiding principle of the Camp commission was democratization. Its proposed system was designed to "eliminate the reality and the perception of the influence of the wealthy few in politics, enhance the political activities of ordinary citizens and promote party activity directed to the interests of the general public."

That principle rings true today. Over time, many of the political finance innovations first introduced by Ontario legislators, especially in the area of contributions, have been adopted federally.

I think it is also fair to say that the current federal contribution rules have, from the standpoint of the average citizen, surpassed Ontario's current requirements. It does not seem logical or desirable from their standpoint that union and corporate contributions are prohibited federally but not provincially. My office receives complaints about union and corporate contributions. When asked why we do not prohibit the activity, our answer is, "Because the law allows it, and we do not write the law."

The key question before the committee, and ultimately the assembly, is how it now wishes to write the law. Today, when this committee considers adopting provisions modelled on the Canada Elections Act, it may want to consider whether the rules will go far enough to serve the interests of electors.

I will be making some recommendations, in particular in the area of third-party advertising rules, that suggest we can build on and learn from federal and recent Ontario experience.

When I put forward recommendations for legislative reform, I do so from a unique vantage point as Chief Electoral Officer. I am intimately familiar with all political parties—large and small, old and new. They all require financial resources; money is an essential element in politics.

Our parliamentary system requires political parties. Without them, our system of government would be compromised. Parties require financial support. Anyone who suggests otherwise fails to appreciate their role and character.

The Camp commission put it this way: "In any system close to the ideal, a political party with a reasonable base of public support ought to have the funds so that it can maintain an efficient level of research, organization and communications capacity between elections, and campaign effectively during elections."

The hard question is not whether parties require financial support, but: What is the appropriate level of support?

In practical terms, if contribution amounts are too low or restricted, parties will not be able to function effectively. Conversely, if they are too relaxed, the perceived or actual undue influence of money can undermine the legitimacy of the electoral system.

The financial support that all Ontario political parties received in contributions from 2012 to 2014, which was one electoral cycle, was about \$98 million. This includes corporate and union contributions that amounted to about \$50 million, or about 50% of all contributions. Over that period, about \$517 million was paid in subsidies and reimbursements. It is also interesting to note that in 2014, 82% of all individual contributions to central parties were for amounts below \$1,525.

The assembly is ultimately going to have to decide what the appropriate funding sources and amounts are. It is going to have to consider what the correct balance is. I can help provide this committee with financial analysis on the options it considers.

I know this committee is going to hear from presenters about what they think the appropriate contribution and spending limits should be, and what the right balance should be between public and private funding sources. To that end, my next remarks are directed to those who will be presenting to the committee, rather than the committee itself.

Ontarians need to remember that all political parties—not just the ones that are able to elect members of the Legislative Assembly—play a critical and special role in the democratic process.

Election administrators recognize this, and so do the courts. The Court of Appeal for Ontario, when considering the validity of the federal party subsidy system, quoted the following passage:

"Political parties are something of an anomaly. They occupy a unique space in the governmental structure of constitutional democracies. On the one hand, they perform a variety of ... functions that are absolutely essential to the operation of systems of government which are grounded in the principles of democracy.... On the other hand, unlike all of the other major institutions that form part of the framework of government, political parties stand apart and quite separate from the state. Political parties live in a kind of 'never never' land; betwixt and between; neither fish nor fowl."

Boiled down to plain language, the court recognized that while political parties are private entities, they have an equally important public character. This duality is necessary because they help give citizens political choice, the most necessary element in any democracy. Because of this duality, citizens should be able to contribute their private support to a party, and parties should also receive public funding.

The Camp commission noted that, to strike the appropriate balance between private and public support, Ontario needed to adopt "a formula by which political

parties will be assured reasonable means for the purposes of meeting their campaign costs and their organizational expenses without the present heavy reliance upon large corporate or institutional contributions. If such is to be achieved, it can only be done by a mixture and method of means.”

In 1974, the Camp commission invited Ontario’s legislators to consider tax measures and reimbursements as part of this formula. As an interesting historical fact, the commission studied and rejected the idea of providing parties between elections with a subsidy in direct proportion to the votes they received in the last election, one of the main reasons being that it was believed that such a subsidy would attract the public’s ire.

In 2016, witnesses before this committee will be making their own proposals as to what the appropriate public and private funding formula is. In the same vein, my next comment is directed to the committee.

No election administrator will tell you that there is a single best election finance system. This conclusion is supported by academic literature. While there are established frameworks that apply widely accepted international principles about voting processes, there has been less progress in developing minimum standards in the area of campaign finance.

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This is not to say that innovations from other jurisdictions are not valuable, but there is no one-size-fits-all model to adopt. Every jurisdiction, be it in Canada or elsewhere, has to decide what system will best serve its citizens and support its political parties.

While there is no single political finance model to adopt, there are some emerging international norms that are taking shape. They are as follows:

(1) Public funding may be provided to parties, but there is no general obligation to do so.

(2) Where public funding is provided, it should be consistent with the principles of equality, both in the ability to be able to access the support and be proportionately awarded.

(3) Parties should regularly and publicly disclose their assets, income and expenditures to an independent agency.

(4) Party income and spending may legitimately be restricted. However, such restrictions should be reasonable and equally applied.

I know that this section of my remarks dealing with normative standards may sound a little like a political science lecture, and to some degree it is, because the committee may ask how our election finance laws should change and how to assess whether the change is desirable. These are the norms against which our laws will be and should be measured.

I know the committee is looking to me and to others to give them some perspective on what innovations Ontario should adopt in its regulation of political finances. My perspective is shaped by the principles of the level playing field. The normative standards I have just

described are similarly informed by the guiding principle of the level playing field.

Let me turn to what I mean by the level playing field. The concept of the level playing field is central to our democracy. Political scientists will tell you that the concept “originates in theories of distributive justice and relates to the idea of fairness and equal opportunities.” It relates to the belief that governmental change must be made possible by providing equal opportunity to those competing to govern. Legal scholars will tell you it is a concept rooted in the theories of popular sovereignty and the rule of law.

Let me tell you what it means to me as Ontario’s election administrator.

At the outset of my presentation, I said that I referee the rules of the political game and help ensure there is a level playing field. It is a helpful metaphor for my role, because anyone who has ever been in a competition, whether it be the Stanley Cup finals or a school spelling bee, knows what it is like when the officiating spoils the match. When that happens, the competitors and spectators alike know one of three things: It means the referee has poor judgment, is biased, or the rules are flawed.

When an election administrator makes a bad decision, or when election rules are flawed, the real danger is that an election outcome is not fair and proper. I believe a level playing field should be the guiding principle of all aspects of elections, both in voting rules and campaign finance rules. It is necessary for maintaining the integrity of the electoral process. This is for very practical reasons. As one international expert observed, “To the extent that electoral outcomes should reflect the genuine will of the people, the regulation of party finance assists ... by reducing financial inequalities between parties that could distort the translation of citizen wishes into policy proposals.”

Financial inequalities may be remedied through a variety of means that include contribution and spending rules and public subsidies. The concept that election laws should afford a level playing field is widely accepted in Canada and internationally. The Supreme Court of Canada has endorsed this principle. The level playing field is an integral part of section 3 of the Canadian Charter of Rights and Freedoms.

Section 3 of the charter provides every Canadian with the right to vote. Our courts have ruled that this means more than just the “bare right to place a ballot in the ballot box.” The courts explain that the right affords the right to effective representation.

In respect of a law that discriminated against small political parties, section 3 was found to include the following protection for voters: “The right to play a meaningful role in the electoral process includes the right of each citizen to exercise the ... vote in a manner that accurately reflects his or her preferences. In order to exercise the right to vote in this manner, citizens must be able to assess the relative strengths and weaknesses of each party’s platform, and in order to assess the relative strengths and weaknesses of each party, voters must have access to information about each candidate.”

In respect of a law that limited third-party advertising, section 3 was found to include the following protection for voters:

“Where those having access to the most resources monopolize the election discourse, their opponents will be deprived of a reasonable opportunity to speak and be heard. This unequal dissemination of points of view undermines the voter’s ability to be adequately informed of all views. In this way, equality in the political discourse is necessary for meaningful participation in the electoral process and ultimately enhances the right to vote.”

The reason I like and have quoted both these passages is because the Supreme Court puts the elector at the centre of the consideration in determining the validity of the election law at issue. In my role, I have to be aware of and consider this balance.

There are some, though, who would argue that placing limits on such things as third-party advertising is an infringement on the right of free speech. The Lortie commission of which I spoke earlier considered this very issue, and reported this:

“Freedom of expression is essential if there is to be meaningful debate on important and contentious issues.... At the same time, the capacity to spend money on advertising campaigns to publicize an individual’s or group’s views on election issues, parties or candidates is not an appropriate measure of whether individuals or groups have sufficient opportunities to exercise their right of freedom of expression. The ability to spend significant amounts of money to promote one’s view is not, in itself, a requisite for freedom of expression.”

It also quoted:

“To ensure a right of equal participation in democratic government, laws limiting spending are needed to preserve the equality of democratic rights and ensure that one person’s exercise of the freedom to spend does not hinder the communication opportunities of others.”

Our Supreme Court has stated that it has relied on the Lortie commission’s findings to shape its “conception of electoral fairness.” This conception is basically that of the level playing field. In the words of the court, it is “consistent with the egalitarian model of elections adopted by Parliament as an essential component of our democratic society.”

While maintaining a level playing field is easily acknowledged by our courts as a valid legislative purpose for Canadian election laws, the same is not true in the United States. In recent years, that concept has been expressly rejected by a majority of the United States Supreme Court. I will not go into that recent legal history, but I will tell you what I have seen and learned from my counterparts in the United States.

I am a member and past president of an international organization of accountability officers called COGEL, the Council on Governmental Ethics Laws. It is based in the United States and was founded in the wake of Watergate. It was established to recommend best practices and compare legal developments, especially in the area of campaign finance regulation.

My counterparts are very concerned about the unregulated and unlimited amounts of money that can be spent by some entities in US elections. They see Canadian rules and envy them. However, when I discuss some of the emerging trends I see in our elections, especially in the area of third-party advertising, they warn of how electoral outcomes have been affected by such activities in their jurisdictions.

Let me turn to the issue of third-party advertising. I want to recommend to you how our rules should balance between freedom of speech and electoral equality.

This is the third time I have appeared before a committee of the assembly to speak to the topic of advertising in provincial elections. As Chief Electoral Officer, I have made it a priority to recommend changes to our election laws so that elections can be administered in ways that are responsive to the needs of citizens and to their local communities.

In my remarks about third-party regulation, I will discuss what I have recommended to you before, what I have seen in recent years, and what I am recommending to you now.

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In December 2008, shortly after I became Chief Electoral Officer, I recommended to the Select Committee on Elections that the advertising provisions of the Election Finances Act should be reviewed. I noted at that time that the law had been drafted over 30 years ago and the way in which campaigns are run had changed. I then documented my recommendations in a report I tabled with the committee in February 2009.

In May 2009, I was invited to appear again before that committee to discuss third-party advertising, and I was happy to do so. At that time, I said:

“It is important to remember that apart from parties and candidates, there are individuals and organizations who participate in the democratic process. These third parties participate in elections by commenting on a candidate or party’s position, adding issues into the political debate in an election and attempting to influence which parties or candidates are elected.

“Third parties participate in the democratic process by sponsoring advertising, the same way as candidates and parties. They advertise before and during campaigns to deliver a message about a particular issue or about the merits of a specific party or candidate.”

At that same appearance before the select committee, I also reviewed the history of Ontario’s third-party advertising rules and changes made before the October 2007 general election. The rules already imposed black-outs on third-party political advertising and treated third-party advertising as a contribution to a party or candidate, provided there was direct evidence the advertising had been specifically controlled by a political party or a candidate, and, if that third-party advertising was controlled by a party or candidate, that the cost of such advertising was (1) subject to the contribution limits; and (2) treated as a campaign expense of the party or candidate.

The changes made in 2007 imposed new rules on third-party advertisers who are not controlled by a party or a candidate. These rules, which are in place today, require third-party advertisers spending over \$500 on election advertising to register with Elections Ontario, and for registered third-party advertisers to report on (1) their advertising spending six months after an election; and (2) all contributions they received during the campaign and in the two months before the election was called. These provisions are similar to federal third-party provisions, with the exception that the amendments did not impose any spending limits.

In total, 20 entities registered and reported on their advertising activities in the 2007 general election. Based on what I saw in the advertising expenses and contributions reported by third parties coming out of the 2007 general election, I recommended to the Select Committee on Elections that it was time for a review of Ontario's political finance and third-party advertising rules. I invited the Select Committee to consider the following questions:

- (1) Should Ontario adopt third-party spending limits?
- (2) Should Ontario adopt third-party contribution limits?
- (3) Should Ontario adopt stricter registration and anti-collusion provisions?

These are the very same questions that are before this committee.

When I invited the select committee to consider these questions in 2009, I also said this: "I do not have the answers to these questions or particular policy recommendations to make to you. As Chief Electoral Officer, that is not my place." Today, seven years later, I do have some policy recommendations for you to consider. In the intervening years, there have been two general elections and 16 by-elections.

My role, as I've stated, as Chief Electoral Officer is to maintain a level playing field. I am mandated by the Election Finances Act to make recommendations for legislative change and changes to spending and contribution limits. It is my place to make recommendations where I have undisputed evidence that something is outdated or that the level playing field is in danger of being distorted.

In my 2012-13 annual report, I first recommended that a comprehensive review was necessary to provide specific recommendations on how Ontario can:

- (1) adopt third-party spending limits;
- (2) adopt third-party contribution limits; and
- (3) strengthen the reporting requirements for third parties and adopt stricter registration and anti-collusion provisions.

Third parties need to be treated like any other political entity that tries to influence electoral outcomes.

Let me now speak about third-party advertising trends since 2007. To show you these trends, my written submission contains a table that depicts a summary of third-party advertising between 2007 and 2014.

In the 2007 general election, there were 20 registered third parties, and they collectively spent \$1.85 million. Of note, the collective advertising spending of third parties amounted to 5% of all election spending in this general election. There were three third parties that spent between \$100,000 and \$1 million, and there was one third party that spent over \$1 million—it spent \$1.08 million.

In the 2011 general election, there were 22 registered third parties, and they collectively spent \$6.08 million. Of note, the collective advertising spending of third parties amounted to 14% of all election spending at this general election. There was one third party that spent between \$100,000 and \$1 million, and there were now three third parties that spent over \$1 million—one of which spent almost \$2.7 million.

In the 2014 general election, there were 37 registered third parties, and they collectively spent \$8.64 million. Of note, the collective advertising spending of third parties amounted to 17% of all election spending at this general election. There were six third parties that spent between \$100,000 and \$1 million, and there were three third parties that spent over \$1 million—one of which spent almost \$2.5 million.

We also see that third-party advertising has recently assumed a significant role in by-elections. Before the 2011 general election, there was no registered third-party advertising in any by-election. Since 2012, there has been a marked increase. I will not run through all the by-election figures; I will let the table speak for itself. However, I will draw the committee's attention to what was spent on third-party advertising in the two concurrent by-elections in September 2012.

The eight registered third parties collectively spent \$1.66 million, one of which spent almost \$782,000. In those two by-elections, the parties and candidates collectively spent only \$1.05 million. Third-party spending constituted about 61% of all spending in this campaign period.

When looking back over the last nine years, these figures show that third-party advertising has played a significant and growing role in Ontario elections. Although the number of third-party advertisers has almost doubled, it is evident that the spending has increased even more dramatically, so that these advertisers now play a disproportionately large role in election campaigns.

The problem with our current rules is that they provide third parties an almost unlimited ability to raise and spend funds, in contrast to parties and candidates, which are subject to limits. The latitude afforded third parties has allowed them to spend amounts on political advertising that surpass the amounts spent by political parties.

Let me speak for a minute about what these figures do not show. These figures do not show the significant expenses that some organizations must be incurring on political advertising between elections that directly promotes or opposes leaders and their parties. In recent

years in Ontario, anyone who has opened a newspaper or watched television has seen third-party advertising between elections depicting provincial party leaders. We do not know what these advertisers spent.

Some advertisements have appeared during Oscar broadcasts and Stanley Cup playoffs or in major dailies. Because they appeared before the scheduled or anticipated call of a general election, the advertisers were not required to register and report on their contributions and expenses to Elections Ontario.

We do, however, know two things about party- and leader-focused advertising between elections:

(1) The advertising was intended to have an effect on the outcome of the upcoming general election; and

(2) The contributions and costs must have been considerable.

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Ontario's experience with third-party advertising in elections is unique in Canada, even in comparison to what we have seen in federal elections.

As a way of federal comparison, Ontario makes up just under 40% of the Canadian population and has just under 40% of the seats in the House of Commons. In comparing federal and Ontario elections, we would normally think that all things being equal, third-party participation in election campaigns would be similar.

In the last federal general election in 2015, there were 114 registered third parties. In the last Ontario general election, there were 37. Given that federal elections span the country, the number of third-party advertisers we had in Ontario is proportionate. However, the similarities end there. Comparatively more is spent on third-party advertising in Ontario provincial elections.

While it is true that there are federal third-party spending limits, the dramatic difference between the two jurisdictions cannot be explained by the existence of federal third-party spending limits.

In the last federal election, the total spending on third-party advertising amounted to \$6.05 million. The individual spending limit for third parties was just under \$440,000, but they spent, on average, only \$53,000. The limit allowed third parties to collectively spend about \$1.40 per person in Canada in the 2015 federal general election, which had a writ period twice as long as usual. In actuality, they collectively spent only 17 cents per person.

In the last two federal general elections, third-party spending has been well below the spending limits.

In 2015, 104 of the 114 third parties spent less than 50% of the \$440,000 that was allowed. While one third party spent close to the maximum amount, it was one of only four that spent over 80% of the limit.

In 2011, 51 of the 55 third parties spent less than 50% of the \$188,000 that was allowed. No third party spent close to the maximum amount. The closest spent \$166,000, or 88% of the limit.

At the federal level, this would tell us that the current spending limits are generous; very few approach the limit.

How do we compare? If Ontario had a proportionate third-party spending limit in the last general election, it would have allowed third parties collectively to spend about 22 cents per person in contrast to the 63 cents they actually spent. The spending limit for an individual third party in the 2014 general election would have been about \$82,000. This would have meant that 10 of our 37 third parties could have spent the maximum allowable amount and another three could have spent more than 50% of the maximum amount.

The scale of third-party advertising in Ontario is much greater than it is at the federal level. The committee must keep this in mind as it considers how best to regulate third parties.

Bill 201 includes some provisions that are modelled upon the current federal legislation regulating third parties. The model was first enacted 16 years ago.

The federal third-party rules were designed in the 1990s. The drafters had to consider the judicial rulings from prior years that had struck down federal laws prohibiting third-party advertising in elections.

The current federal rules withstood challenge in 2004. When the rules were upheld by the Supreme Court, the decision spoke of the need to balance the rights of third-party advertisers with the rights of electors. Of primary importance, the court found that electors need to be presented competing opinions. Political discourse in an election should not be monopolized because it can distort electoral outcomes.

Bill 201 includes definitions, spending limits and anti-collusion provisions that are found in the Canada Elections Act.

I have spoken for a number of years of the need to consider third-party spending and contribution limits, and I'm glad that the committee will have the opportunity to hear from Ontarians on these important topics.

When considering spending limits, the committee should keep in mind that the third-party spending limit proposed in Bill 201 is proportionately somewhat larger than what is allowed under current federal rules.

When considering contribution limits, the committee should keep in mind that third-party activity in Ontario politics has had a greater presence than in federal politics. Adopting federal limits will not necessarily mean that their advertising will be scaled back. Most federal third parties do not spend nearly as much as they might. Ontario's third parties appear to have comparatively greater resources at their disposal. They may spend closer to the limits than their federal counterparts.

In election laws, contribution and spending limits are often adopted together. We see this, for example, for other political entities. Bill 201 does not propose contribution limits to third-party advertisers. I do recommend contribution limits be adopted. I think this is an area the committee may wish to invite comment on from presenters who appear before it.

I have some additional recommendations related to third-party advertising that, in practical terms, will help strike the balance between freedom of speech and

electoral equality. These recommendations address anti-collusion provisions, advertising between elections, and the need for clear and contemporary definitions.

From a regulatory perspective, the primary risk of collusion in respect of third-party advertising, especially when there are contribution and spending limits for parties and candidates, is collusion between those running for office and third parties. For example, a candidate may be tempted to coordinate his or her activities with a sympathetic third-party advertiser in order to circumvent contribution and spending limits. I think that Bill 201 should have more stringent anti-collusion provisions.

To prove collusion under our current legislation, collusion can only be established where it can be proved that a third party's advertising has been done with the knowledge and consent of a candidate or party. It essentially means that the candidate has to have controlled the advertising. I will leave it to the lawyers to tell you how hard it is to prove there is direct evidence of this sort of control.

What I will tell you, as an election administrator, is that it undermines confidence in the electoral process. The public can plainly see that candidates and organizations that claim to be non-partisan are able to actively coordinate their advertising. They are not prohibited from doing so because neither is exercising direct control over the other. This sort of coordination is especially troubling when an organization relies on former political staff or partisan strategists to shape a third party's advertising. The public sees this as an apparent conflict of interest, and I do, too.

I believe our election law needs to directly address this matter. There are clear regulatory precedents for doing so. In the United States, the Federal Election Commission and a number of state jurisdictions have adopted rules that prohibit coordination between campaigns and independent organizations, like the PACs we read so much about in US elections. I recommend that our election laws have new provisions that prohibit coordination among parties and third-party advertisers.

Specifically, there need to be rules that deem it to be coordination when former political staff, party officials or a party's consultants are involved with third-party advertising activity. Unless we have this sort of "deeming rule," it is virtually impossible to prove collusion between a candidate and a third party. In the US provisions to which I refer, a person can defend against this deeming rule if they can prove their work is not timed or coordinated with a campaign.

I am glad to see that Bill 201 recognizes that political advertising between elections is an increasing practice that distorts the level playing field. This is an area that is not currently addressed in federal rules. I think it important that Ontario's legislators turn their minds to this issue, as what they adopt may become a model for the country.

What is proposed is that in the six-month period before a regularly scheduled election is called, the political advertising of parties be limited to \$1 million, and for third parties it be limited to \$600,000.

I am concerned that the advertising of third parties has not been regulated throughout the whole period between elections. The restriction would only, in effect, regulate activity in the last six months of the life of a Legislature. In cases where there is a minority government, where some may say a party's hold on power hangs in the balance and political advertising may dictate whether it rises or falls, these proposed rules have no effect.

1450

Because of what Ontarians have witnessed in the way of third-party advertising prior to the 2014 general election, which was not a scheduled general election, I do believe that activity needs to be made more transparent. The spending on advertising between elections that directly depicts leaders and their parties, and specifically advocates that citizens support or oppose them when they are next at the ballot box, should be regulated.

You may hear from lawyers and constitutional experts that imposing spending limits throughout the full period between elections may pose constitutional challenges. To that concern, I would note that even if there are no limits imposed, it would serve Ontarians well to know who is spending what on trying to affect the outcome of the next election.

When I administer our election laws, I believe it is important that the rules be up to date and clear. When they are not, it can confuse citizens and afford opportunity for some to argue and interpret the rules for their own partisan advantage.

I have said for many years that the definition of political advertising needs to be updated. When the Election Finances Reform Act was first passed, it provided some very specific definitions as to how the dominant media of the day should be regulated. It applied to television advertising, radio advertising, daily newspapers, weekly newspapers. When the act was amended in 1999, it imposed a general rule for a new medium called the Internet and has since been amended to acknowledge such things as websites.

Think of what the Internet embraces today. In the 1970s, it would have been like simply saying that advertising transmitted using electricity was subject to blackout. Our act has not kept pace with technological developments and their use in the campaign context. It needs to be updated and it should be revisited in a thoughtful way.

I am concerned that, apart from the need to be updated in terms of the means of communication, the definition of what is political advertising needs to be carefully considered. Having read Hansard from the assembly, there is debate that government advertising, depending on its content, may in some cases now be treated as political advertising and be subject to review under the Election Finances Act.

As Chief Electoral Officer, I would like some clear direction about whether or not government-sponsored advertising is now covered by this statute. This is why: The definition of "political advertising" has been changed to include "advertising that takes a position on

an issue with which a registered party or candidate is associated.” I understand the policy intent behind this provision. I agree with the intent, as it is designed to level the playing field. I am concerned, though, about how this rule applies in practice.

Applying this rule is not just as easy as reading party and candidate platforms or reading their news releases. That in itself can be a challenging task as there are at any one time more than 20 parties in Ontario, and there are several hundred candidates in each election. No election agency can have perfect knowledge of the issues at play in every corner of the province.

An issue that is not associated with any party or candidate one day may be associated with them the next. One day a third party could lawfully engage in an unregulated multi-million-dollar advertising campaign. The next day, if it becomes an issue that a party or a candidate becomes associated with, it becomes an unlawful activity.

That means that I would need to advise organizations who wish to comply of what the “real” rule is. The “real” rule is not whether the advertising is associated with a party or a candidate; the “real” rule is whether it may become associated with a party or a candidate.

This uncertainty helps no one. I know that this definition is borrowed from the federal law passed 16 years ago, but I would like to recommend that Ontario legislators adopt a clearer rule.

The challenge with drafting this provision is that no one has a desire to interfere with free speech. It is an important concern and is the subject of much constitutional debate in Canada and the United States.

During an election, it is impossible to make a principled and consistent distinction between what is campaign advertising and what is issue-based advertising. As decisions of the United States Supreme Court have noted on at least two occasions, “What separates issue advocacy and political advocacy is a line in the sand drawn on a windy day.”

Closer to home, the Lortie commission grappled with this very issue and came to the same conclusion. The commission noted, “Any attempt to distinguish between partisan advocacy and issue advocacy—to prohibit spending on the former and to allow unregulated spending on the latter—cannot be sustained. At elections, the advocacy of issue positions inevitably has consequences for election discourse and thus has partisan implications, either direct or indirect: voters cast their ballots for candidates and not for issues.”

I see this bill, therefore, as inevitably requiring that Elections Ontario regulate issue advertising. However, the period that is regulated now precedes the call of a scheduled general election by six months. I am therefore concerned that the new definition, coupled with the extended non-election period to which it now applies, could capture advertising activity that was not intended. This is one reason, for example, that I want it to be very clear whether or not the act applies to government-sponsored advertising.

In light of these particular questions, and the comments I have made for regulating third-party advertising between elections, I have a recommendation to make to this committee. I recommend that the definition of political advertising proposed in the bill apply only during writ periods—in other words, that it not apply to the six months preceding the call of a scheduled general election.

I believe that we should have the same rules in place regardless of whether or not there could be an unscheduled general election. I believe that all third-party political advertising should be regulated for the whole period between elections. Like other political entities, an organization that regularly solicits contributions for political advertising and sponsors such advertising should publicly report on the source of those contributions and how much they spent annually and in elections.

Between elections, issue-based advertising should not be regulated. I do not think it is helpful in the non-writ period to use the measure of whether or not the advertising is associated with a candidate or a party. Rather, I propose that third-party political advertising that is subject to regulation and reporting is solely limited to advertising that directly depicts leaders and their parties, and specifically advocates that citizens support or oppose them when they are next at the ballot box.

I think these recommendations meet three policy objectives:

(1) They respect the level playing field. They strike a balance between the competing concerns of freedom of speech and electoral equality.

(2) They make transparent activity that is designed to influence electoral outcomes that would otherwise remain undisclosed.

(3) They provide clear and discernible standards that are clearly understood and can be consistently administered.

Having discussed third-party advertising rules in detail, I would like to turn to other equally important aspects of the bill. Like the Camp commission, this committee needs to ensure that parties have adequate funds to conduct research, organize, communicate between elections, and campaign in elections. Bill 201 proposes the most significant redesign of Ontario election laws in more than 40 years. The most important proposal is the elimination of union and corporate contributions and the adoption of an annual subsidy. In some cases it proposes rules similar to those in place federally but in other cases departs from those rules.

There are five major subjects the bill addresses:

- (1) contribution sources;
- (2) annual subsidies;
- (3) contribution limits;
- (4) campaign spending limits; and
- (5) campaign expense reimbursements.

Let me summarize some important considerations in respect of these five subjects and then say a few words about some technical amendments.

The first area that I would like to discuss is contribution sources. Federal contributions from individuals, corporations, and unions were lowered in 2004. Corporate and union contributions were finally banned in 2007, at the same time individual contribution limits were again lowered. Rather than adopt a piecemeal approach, this bill in one step prohibits all contributions from corporations and unions and lowers the limits for individuals to be in line with the federal system.

1500

As was the case at the federal level, eliminating corporate and union donations will have a significant impact on party income levels. In the period from 2012 to 2014, which contained three annual periods, several by-elections and a general election, union and corporate contributions made to Ontario's four largest parties amounted to just over \$50 million.

Eliminating corporate and union contributions may encourage campaigns to rely on loans to a greater extent than is the case today. It could also be the case that individual contributions may be used to mask contributions from union and corporate sources. Elections Ontario will need to implement compliance strategies to address any regulatory risks.

My next remarks on annual subsidies are closely tied to the topic of contributions. Federally, an annual subsidy was introduced in 2003. Corporate and union contributions were not prohibited at the federal level for another four years, so subsidies were introduced in circumstances unlike those before this committee.

Federally, special transitional rules were adopted to immediately implement an annual allowance, paid quarterly to registered parties. They were paid \$1.75 for each vote the party received in the last general election. In 2011, the Canada Elections Act was amended to phase out the awarding of annual party subsidies. It was phased out over a three-year period, from 2012 to 2015.

In contrast, Bill 201 proposes that Ontario phase in an annual party subsidy over a five-year period. In the first year, an eligible party would receive \$2.26 per vote. That multiplier is steadily reduced until it flatlines at \$1.13 in the fifth year. This would give the four largest parties approximately \$10.7 million in 2017 and \$4.7 million in the first half of 2018.

If the \$1.75-per-vote subsidy that once existed federally was adopted, it would only provide the four largest parties with approximately \$8.3 million in 2017 and \$4.2 million in the first half of 2018. In comparison, in 2014, these parties, their associations and their candidates took in over \$26 million from corporate and union donations.

The proposed subsidy does not provide a dollar-for-dollar replacement of the expected loss of contribution income from corporate and union sources or the individuals who once donated more than \$1,550 every year. While the subsidy provides a more stable source of funding, and the elimination of corporate and union contributions means fewer overhead costs are incurred in relation to attracting such contributions, the proposed annual subsidy does not appear to be designed to over-enrich the party coffers of our largest parties.

The level playing field needs to apply to all political parties. The proposed approach is prudent given that Elections Canada itself noted that federal "public funding measures introduced in 2004 (and partially repealed since) have benefited mostly the parties represented in Parliament, and the gap between those parties and the others has grown."

Generally, the contribution limits proposed for Ontario are similar to those in place federally. The proposed contribution limits also have the effect of levelling the playing field. Currently, in an annual cycle with a general election, the provincial rules allow a single contributor to give to a party, its candidates, and its associations a total of \$33,250. This amount is compounded because multiple and overlapping contribution periods are allowed when by-elections occur. Bill 201 proposes to lower individual contribution limits and remove what some have called "the by-election loophole."

The committee should be aware that while the annual individual contribution threshold is being lowered, it may not significantly limit what donors actually give parties and candidates. Our research from the 2014 general election and the annual period shows that 94% of all individual contributions to candidates and associations for the four largest parties were for amounts of less than \$1,330. For these four parties, 82% of their contributions from individuals were below \$1,525.

I think that, overall, these provisions will serve to limit the disproportionate amount that some individuals were able to donate in comparison to their fellow citizens, and I welcome these amendments.

I would next invite the committee to consider the issue of spending limits. Campaign spending limits in federal and Ontario elections, with two major exceptions, are similar. The two exceptions, though, distort the level playing field.

Federally, travel and research and polling expenses are subject to spending limits. Federal parties and candidates cannot significantly outspend each other on these expenses, and what they do spend may be reimbursed. Parties and candidates in Ontario, by contrast, can outspend each other and are not reimbursed for these expenses. I recommend that research and polling expenses and travel expenses are subject to spending limits.

I'd now like to move to the subject of reimbursements. I am heartened that the threshold for obtaining candidate reimbursements has been lowered as they have been lowered federally. I am interested that the thresholds for party reimbursements have not been similarly lowered and that, in respect of party and candidate reimbursements, the qualifying amount has not been increased to match what is in the Canada Elections Act. Federal reimbursement thresholds were lowered and reimbursement thresholds were increased when contribution limits from individuals, corporations and unions were lowered in 2004.

While the expense reports from the 2015 general election will not be reported until later this month, the expense reports from the 2011 federal general election

show the following reimbursements for parties and candidates:

—The Conservative Party of Canada received \$21.11 million.

—The Liberal Party of Canada received \$17.39 million.

—The New Democratic Party received \$14.16 million.

—The Green Party received \$1.21 million.

Following the 2014 general election, their provincial counterparts respectively received these amounts:

—The PC Party of Ontario received \$1.8 million.

—The Ontario Liberal Party received \$1.79 million.

—The Ontario New Democratic Party received \$1.02 million.

—The Green Party of Ontario received \$43,566.

Even taking into account the differing scale of the respective elections, federal election reimbursements are considerably greater than they are in Ontario.

I look forward to observing what presenters before the committee have to say with respect to reimbursements.

Finally, there are a few administrative matters that Bill 201 addresses. Bill 201 proposes that:

—Nomination contests will now be subject to registration, contribution, spending and reporting requirements.

—Loans will be regulated more in accordance with the federal rules.

—Leadership contests will be subject to greater contribution, spending and reporting requirements.

I look forward to observing the discussion on these matters and providing my perspective on them as this bill proceeds through the legislative process.

Before I conclude my remarks, I would like to thank you again for inviting me to assist with this process.

I believe Ontario is at a watershed moment. This committee, and ultimately the assembly, is considering how best to regulate political finances—the very lifeblood of election campaigns—for the 21st century. In doing so, the assembly must strike the careful balance between free speech and the principles of egalitarian elections in the modern electoral context.

I have made extensive comments on political advertising, public subsidies and other matters addressed by this bill. Thank you for providing me the time to share my thoughts on these subjects with you. I anticipate that I am going to be the first of many who do so.

I am very cognizant that Bill 201 has been referred to committee directly after first reading. This provides both the committee and the people who appear before it the opportunity to consider the legislation from first principles.

At the outset of my presentation, I discussed the concept of the level playing field at some length. I believe it is the guiding principle that should inform the design of election finance legislation. It provides a principled standard against which the comments and recommendations made to you in the course of these hearings can be assessed.

I hope my recommendations from today will be of use, and I look forward to assisting you as you proceed. I am looking forward to observing the submissions from others, as I am sure they will be very informative. If, at the conclusion of your hearings, I have further thoughts to share in light of what I have heard, I would welcome the opportunity to present to you again.

I thank you for your attention this afternoon. I would be more than happy to answer any questions you may have. Thank you, Mr. Chair.

The Chair (Mr. Grant Crack): Thank you very much, Mr. Essensa, for providing your submission this afternoon.

I know that members of the committee are really eager to begin the discussion. I'm just wondering if anyone would be interested in a small recess or if we want to get into it. It's the committee's prerogative.

Mr. Randy Hillier: Take five.

The Chair (Mr. Grant Crack): Close to five minutes?

Mr. Mike Colle: Ten minutes?

The Chair (Mr. Grant Crack): Is 10 okay? Okay. We'll recess for 10 minutes and let Mr. Essensa gather his thoughts after that in-depth presentation. I appreciate it.

We're recessed.

The committee recessed from 1511 to 1524.

The Chair (Mr. Grant Crack): Good afternoon, once again. We shall reconvene the committee meeting.

As I had made my introductory remarks, this is an open discussion, so I would ask that everyone be respectful. Of course, I know that's going to be the case. Perhaps utilize the Chair to your advantage, and I'll help to guide your discussions.

Mr. Hillier?

Mr. Randy Hillier: Thank you, Chair, and we'll certainly look for a lovely moderated conversation this afternoon.

But before I ask a couple of questions, might I ask: If we don't complete all our questions today of Mr. Essensa, will we have the opportunity to request his presence back to the committee for further discussions and conversations?

The Chair (Mr. Grant Crack): At this time, not according to the order of the House and the time frame that we have for this particular week, but in the future I would—

Mr. Randy Hillier: I'm not saying this particular week, but at some other time during our weeks, and if Mr. Essensa would be amenable to returning.

The Chair (Mr. Grant Crack): Right. Mr. Essensa has actually offered to come back to the committee at further notice. However, this is just on first reading as well, so we will be going through public hearings as well, at which time Mr. Essensa could return.

Mr. Randy Hillier: Super.

The Chair (Mr. Grant Crack): I'm pretty optimistic that—

Mr. Randy Hillier: Okay.

I might start with just two questions of Mr. Essensa, and that's as a result of your presentation. Before getting into recommendations, there are two things. First, I was astonished at the revelation of the disproportionate level of third-party advertising in Ontario as compared to federal elections. I know you use words that the bill needs to help prevent collusion and any appearance of collusion and whatnot, but I want to know if you have any rationale or explanation of why there is such a disproportionate level of third-party advertising into provincial elections as compared to federal. I think the numbers you showed identify that there's about a four-fold or 400% greater involvement in third-party advertising in provincial elections.

The other question was, you mentioned in your statement that you've received complaints about union and corporate donations, but you were not able to examine or investigate those complaints because, of course, they were lawful. But maybe if you could expand on that as to what those sorts of complaints entailed and what were some of the circumstances surrounding them, or if there's any other context that might be shared with the committee so that we have an understanding of what the public was concerned about with those complaints.

Mr. Greg Essensa: Thank you, Mr. Hillier, for the questions. I'll begin with the first one.

As I've indicated and the table in the back of my submission to you depicts, we have seen almost a straight-line increase in the amount of spending that has been incurred here in Ontario from third parties.

Back when legislation was introduced in 2007—and I made reference in my comments—I appeared before the select committee in 2009 and indicated at the time that I felt it was important to review this because we were seeing this disproportionate amount of money that was being spent here in Ontario in comparison to what we were seeing at the federal level. Since that time, as the numbers in the submission indicate, that number has been going almost straight northward, and now we're at a point where we are seeing third parties in fact outspend political parties in our provincial elections.

It's the unregulated nature of this that has brought me to the point of raising the spectre—that one of the key guiding principles to me in my role is to ensure a level playing field.

Mr. Randy Hillier: Do we see this in other provincial jurisdictions?

Mr. Greg Essensa: We don't. Not every jurisdiction in Canada has third-party spending rules. Most do, but most have some form of regulation far greater than ours. In Quebec, it's very, very low. It's about \$100. Provinces like Manitoba—I don't have the exact number, but they're around \$5,000. The numbers are considerably, considerably lower than what we have seen as spending here in Ontario.

Mr. Randy Hillier: Do you attribute that to the unregulated nature, or is there some other motivating factor that is encouraging people to spend that disproportionate level who are seeking an outcome in this province as

compared to any other province or the feds? We're not seeing that at the municipal level—not that I'm aware of; not that I've seen. We're not seeing it at the federal level or other provincial levels. But Ontario is an outlier, it appears, and people are willing to spend significant amounts of money to influence an outcome in a general election here.

1530

Mr. Greg Essensa: I'm not in a position—there are probably some presenters who will be before this committee over the course of the several weeks that you're sitting, some academics who might be in a better position to answer that question as to the reason why that is. I can only tell you, as Chief Electoral Officer and as the lead electoral administrator in the province, it is clear to me that the unregulated nature of this is troublesome. I do think that the committee now has an opportunity to address it in a fulsome manner.

The second part of your earlier question was in relation to the questions that my office receives. In every election, and it seems it's somewhat on an increasing number as well, we do receive a number of people calling us complaining about third parties. The complaints are all over the map, to be perfectly honest. Sometimes they complain about the fact that these advertisements are occurring so far in advance of the general election. Sometimes they want to know who is funding these advertisements. They want to know who is behind the contributions of those. Often, as I indicated, we're not in a position to be able to answer those because none of those third parties are required to provide any details to us as to what they spend or who contributes to them prior to the writ being issued.

Any advertisements that take place three months, five months, six months in advance of an election—there is very little transparency here in Ontario as to who is contributing and what amounts of money they're spending, and, from my perspective, I think that the ads are obviously intended to have a direct relationship to the electoral outcome in the next general election. I think there needs to be greater transparency surrounding that.

Mr. Randy Hillier: But your statement, what I took out from it originally was not just third-party advertising but direct political donations or contributions. Maybe you could—

Mr. Greg Essensa: I actually believe, and I have stated this in reports, that third parties should be treated the same as all other political actors. What I mean by that is that candidates, parties and constituency associations all have greater transparency requirements. Your constituency association and your party have to file with my office an annual report based on contributions they brought in and what expenditures they had. That's all transparent. We make that public.

Third parties only have to provide to us what they spent during the writ period and the six months after the writ period, and they only have to provide to us who contributed during that period. The other time frames throughout the course of the calendar year, we have no

insight into. Given the nature and the scale upon which we have seen third-party advertising explode here in Ontario, I think we need to have greater transparency around that. The third parties should be treated similarly to all the other political actors.

The Chair (Mr. Grant Crack): We're going to move to Mr. Rinaldi. Following that, we'll move to Ms. Fife. Mr. Rinaldi.

Mr. Lou Rinaldi: Thank you for a very comprehensive—sorry, I was a bit late coming in, but I appreciate the written comments to go through. You make some valid recommendations on this, so obviously you had an opportunity to review the proposed legislation in front of us that this committee is going to talk to a number of folks.

Besides individual recommendations you have made based on what is here, I wonder if we could get your comments on a little bit about the process that we're taking—whatever it's going to accomplish, at the end of the day, we don't know that yet, obviously—and if there's anything else that your office or yourself can add to the discussion.

Mr. Greg Essensa: Sure. I think any process that is open and transparent and invites experts on this subject to attend as frequently as what I understand this committee is going to do is a very solid process. I think it's important to hear from a wide array of individuals who have input that will be of value to this committee. I understand that this committee is going to be travelling the province throughout the course of the summer. I think that that adds great value. It allows individuals from all walks of life to provide input to all committee members.

As I indicated at the very outset of my speaking remarks, I was honoured that the committee asked me to make myself available as an adviser to the committee. I think that I can provide insight in my unique role, as Chief Electoral Officer, as to how certain recommendations or certain things might become operationalized or, administratively, what some of the issues or challenges surrounding those recommendations are, and be able to provide to the committee members a practical overview of what considerations are before them and what they will mean to electoral fortunes in the province going forward.

Mr. Lou Rinaldi: Thank you.

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

Ms. Catherine Fife: Thank you very much for the presentation. There were a number of points that really resonated with us as New Democrats, particularly the entire concept of a level playing field going forward, because we have argued for a process that would have looked very different than this.

I'm very happy that you mentioned the Lortie commission because, when you look back, and you see how election financing and electoral reform has happened in the province and in this country—indeed, the Lortie commission reviewed election financing before legislation was before the House. Also, the Camp commission—at the time, the Tories were in government, but the Camp

commission had three members, one from each party. This, of course, looks very different than that. Wouldn't you agree, Mr. Chair?

The Chair (Mr. Grant Crack): Yes.

Ms. Catherine Fife: That's why you're laughing. I thought so.

The Chair (Mr. Grant Crack): No. As a matter of fact, I was just having a conversation with the Clerk.

Ms. Catherine Fife: That was really about equality and consensus and not ramming through changes, especially on something like electoral reform. So your theme of a level playing field resonated with us.

I wanted to touch on a couple of different issues, but I won't dominate because I want to make sure that I hear all the other pieces. One of the issues that we have been raising in the House—and I think you referenced it if you've been following Hansard—is issue-based advocacy on the part of the citizens of the province of Ontario.

On page 22 in particular, you draw attention to the fact that around—and also you called all third parties “political actors,” if you will. Where we have concerns as New Democrats is with the citizens' advocacy group, for instance, who may take issue with the autism strategy of this government, or the cap-and-trade policy going forward. This is all happening within the context, of course, of government advertising, which is ongoing right now and has become very accelerated. Even the Auditor General referenced on the weekend that the latest cap-and-trade commercial—she would have deemed that partisan if the rules had not changed in June 2015.

So this is the context, and we hardly see it as a level playing field, as you can imagine. The government going forward is set to put some very strict limits on the voices of Ontarians and their ability to voice their concerns about any government, really, but in this particular instance it would be a Liberal government. At the same time, on the other side, you have a government that has no threshold and no framework that limits their ability to advertise. We see this as a fundamental issue of fairness, and I wondered if you would comment on that.

You have said in here, which I am very happy to see, Greg, that you're concerned about how “the new definition, coupled with the extended non-election period to which it now applies, could capture advertising activity that was not intended.” That's why I wanted to start off with this question for you.

Mr. Greg Essensa: Thank you for the question, Ms. Fife. The balance that must be maintained is one that is of considerable debate, as I referenced in my speaking remarks. When we were doing research for my speaking remarks, we came across US Supreme Court decisions and we came across the Lortie commission and the Camp commission—any group that has reviewed political campaign finance reform has grappled with this issue.

The quote that I indicated in my speaking remarks from the US Supreme Court is the one that I like the best: “What separates issue advocacy and political advocacy is a line in the sand drawn on a windy day.” It is

extraordinarily difficult, and that is why I have asked for clear definition from this bill as to what my role as Chief Electoral Officer is and how this pertains, because the current definition, as it applies, I see as being extraordinarily difficult to administer as the Chief Electoral Officer leading up to an election because one day that issue may be completely non-partisan, but the next day, it is completely associated with a party or a candidate.

It would be virtually impossible—even the best-intentioned advocacy groups may seek our advice one day, and we might sign off and say, “That is completely fine. Go right ahead.” And a week and a half later, it becomes part of a party’s platform.

1540

Clearly, from my perspective—and that’s why I did come to the recommendation that the definition of political advertising proposed in the bill only apply during the writ period because, under the way it’s currently constructed, it would be virtually impossible for my office to be able to provide succinct, valued opinions, and I’m quite certain that I would be in a constant state of conflict with different groups.

Ms. Catherine Fife: I appreciate you saying that because there will be tension, obviously.

Mr. Greg Essensa: Absolutely.

Ms. Catherine Fife: Your recommendation is that citizens have the right to voice their discontent or their support with a government policy or program right up to the writ period; is that correct?

Mr. Greg Essensa: That would be our recommendation.

Ms. Catherine Fife: Thank you very much.

I’ll leave it off, but I do support your idea of having clause-by-clause be a very open process, because the numbers speak for themselves. We’re going to be able to voice our concerns, travel around the province and listen to Ontarians, but at the end of the day, there is a Liberal majority. So I support your call for an open and transparent clause-by-clause process which does not happen in camera. So thank you for bringing that to our attention.

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

Mr. Steve Clark: Thanks, Chair. I just want to go back to a comment that my colleague Mr. Hillier brought up about the complaints that you’ve received at your office. I’m just thinking, going back to some of the past elections—your document shows that in my by-election in 2010 there weren’t any registered third parties although I was nominated once the writ had already been issued. I think I was the last candidate that had been selected by a party. During the election, there had been a number of rumblings about labour being donated to particular campaigns and not—I guess the rules don’t deem them as deemed contributions.

Mr. Greg Essensa: Correct.

Mr. Steve Clark: So I just wondered if that’s a complaint that you would hear during elections and by-elections—the legality of donated labour, for example, to a constituency, or to campaign offices or as part of an unregistered third party.

Mr. Greg Essensa: I can’t say for certain that we don’t have that type of complaint, but it certainly is not as large as the complaint of individuals complaining to us about their third party that is being funded by their representative’s union or whatnot, that they do not agree with. We consistently hear that complaint. That seems to be the greater of the issues that come to my office. An individual might be in some profession where a union is supporting one of the third parties or in fact is a third party themselves, and they don’t support necessarily the direction in which the third party is advertising. We hear extensively about those types of complaints.

Mr. Steve Clark: Your numbers would verify that our province has huge spending on that side, compared to some of the other jurisdictions.

Mr. Greg Essensa: There is no question that we are, I think I can safely say, the largest in the country as far as third-party spending.

Mr. Steve Clark: Go ahead, Randy.

Mr. Randy Hillier: Can I just follow up on this?

The Chair (Mr. Grant Crack): Okay, one follow-up and then we’ll go to Ms. Hoggarth after.

Mr. Randy Hillier: Just for the record, are most of those complaints—what I took from that is that a substantial amount of the complaints would be from union members about their unions contributing money.

Mr. Greg Essensa: I can’t necessarily say that for sure. I would suggest that there is more concern about third-party advertising in this province from an electoral management body, I believe, that we receive, than my counterparts in other jurisdictions receive, but I would not necessarily say that it has been seen—

Mr. Randy Hillier: You haven’t got it broken down statistically, then, what—

Mr. Greg Essensa: No.

Mr. Randy Hillier: Okay.

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

Ms. Ann Hoggarth: Thank you very much for your presentation. I found it very interesting and enlightening. You made it very clear that you are non-partisan.

Mr. Greg Essensa: Correct.

Ms. Ann Hoggarth: Obviously, at some points there may be some partisan views around this table. How can we as committee members best get advice from you while still ensuring your neutrality?

Mr. Greg Essensa: I think the opportunity to be part of the committee, to hear the presentations and the deputations, will afford me the opportunity to hear the public debate that is going to go on on this particular bill. Being a member of the committee, I would assume there might be opportunities to have a fulsome, frank discussion like this throughout the course of the deliberations, where I can provide perspective back to you that might be helpful.

I also suggested in my opening comments that at the committee’s indulgence, I likely would like the opportunity to come back at the end of the committee, before you enter into your deliberations on a clause-by-clause basis, to perhaps speak again to you on what I have heard

during the public debate and discourse and potential considerations that you might want to look at before you begin those final deliberations.

Ms. Ann Hoggarth: Thank you very much.

The Chair (Mr. Grant Crack): We'll go to Mr. Hillier, Ms. Fife and then Mr. Colle.

Mr. Randy Hillier: I want to draw your attention, Mr. Essensa, to two elements of the proposed bill, and that's section 21(1) and section 1(1), both to deal with contributions.

If we could, we'll just start with 21(1): If you could elaborate or give me your advice on what 21(1) means. As compared to the existing bill, this allows for trade unions and other organizations to make group contributions, unlike the present bill, which doesn't allow unions to make group contributions. My reading of it is that as long as the group contribution is made and the individual who it's made on behalf of is recorded, that would now be lawful.

Maybe I'll expand on that a wee little bit. My looking on that 21(1) says that if a local union has 100 members, they could donate \$100, \$200 or up to \$1,550 on behalf of each of the individuals within that group—or an unincorporated association. This clause does not apply to corporates. When I look at that one in conjunction with clause 1(1)(b)—again, this is contributions in kind, but as long as the payment is not in excess of their daily rate, then it's not deemed to be a contribution.

If you could maybe give me your understanding of those two clauses and if you think that creates a very significant loophole, or maybe an unintended consequence that committee members aren't aware of.

Mr. Greg Essensa: I'm going to respectfully ask my general counsel, Jonathan Batty, to provide you with guidance on this particular provision.

Mr. Jonathan Batty: When the committee is looking at the first provision in the bill, subsection 1(1) with the change of the definition to "contribution," our understanding of the material change in connection with the definition of "contribution" is that the term "nomination contestant" has been added to the definition, because previously, nomination contestants weren't regulated in this area under the statute. Our understanding is that that's a technical change in order to square up the bill with what we have in the current legislation, but with the extension to the activities of nomination contestants.

In respect of section 21(1), which is regarding group contributions, there is already a provision in the statute with respect to group contributions. Our understanding of this portion of the bill is that with the intent to remove the ability for corporations and unions to be able to contribute, there are a number of ancillary amendments that are required throughout the legislation, including a change to the wording of the group contribution provisions, which, in themselves, are already rather dense in the statute.

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Our understanding is that it's not being amended to provide some "out" to allow corporate and union con-

tributions. That's our understanding of the intent here. If, however, in the actual text, that isn't clear or there is room for confusion or it is creating confusion, then that's something that I think the committee needs to take a look at and that we could provide some advice on, on a technical basis, at some later point.

Mr. Randy Hillier: Forgetting what we may think the intent or the objective or whatever is, reading that language—"any contribution to a political party, constituency association, nomination contestant" etc. "made through any trade union, unincorporated association or organization," blah, blah, blah, "shall be recorded by the trade union, unincorporated association or organization as to the individual sources and amounts making up the contribution." So there have been some changes, and some of them may be just technical. Maybe they got it right; maybe they got it wrong. But my reading of that says that, as long as you're an unincorporated association or a trade union or some other organization, you will be able to contribute individually now to any political party, constituency association or nomination contestant and you'll be able to contribute up to \$1,150 for each of the people that you record on.

If that's correct, the way that language is, we'll still have union donations, but just called something different. They're called "group contributions" instead of "union contributions."

Mr. Greg Essensa: Through you, Mr. Chair: We would like to actually take that away, Mr. Hillier, and let us re-examine that. Our understanding, as Mr. Batty indicated, is that the intention was to clean up these provisions. But let us please take that, and we'll come back and respond to that at a later date.

Mr. Randy Hillier: And the last part of that was 1(1). Do you find any inconsistency here with contributions in kind? I know that the statute is much like it is at the present time, with some housekeeping language in there. But at the present time, if an organization pays somebody their daily rate and not in excess of their daily rate and tells them, "Don't bother coming to work today; go and work on Randy Hillier's campaign or Eleanor McMahon's campaign," they're free to do so, and that is not a contribution.

Do you have any comments on that? Do you think that that is really consistent with the intent that has been expressed in the discussions about restoring confidence in our electoral processes and preventing this perception that there may be collusion happening—I think that's the word you used—between third parties and political parties? This appears to me to not address those intents that have been expressed so far.

Mr. Greg Essensa: Again, through you, Mr. Chair, we would like to take that offline, review that and come back to the committee at a later date and provide you a more succinct answer to that, because you have raised a valid consideration for us to look at.

Mr. Randy Hillier: Much appreciated.

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

Ms. Fife.

Ms. Catherine Fife: I'll look forward to seeing the clarity on that one, because I read it differently. I know that it's part of the act that's being repealed, but I think that it's important to have clarity on it as well.

I wanted to move to the issue of donations and the cap on donations. You have said publicly that the proposed individual contribution limit may not significantly reduce what donors give because most people donate lower amounts anyway, right? But there are people who can donate, still, a \$7,750 amount to have the potential, outsized, for influence. So there's still the ability, in the course of a year, if circumstances arise, that people can donate \$7,750, which is a considerable amount of money.

Noting that most people probably can't give that amount of money, do you think that this is still an amount which could influence politicians and party policy, if you will?

Mr. Greg Essensa: I'm not sure if I can speak to—and I don't believe it's actually my role to speak to—whether it can or cannot influence party policy. What I can tell you is, based on the numbers in the review we've done, about 82% of the contributions from the 2014 general election were for less than the \$1,525. There's a relatively small number, when you actually break it down—when you look at the overall number of contributions that are made, it's a relatively small number that are above that amount.

As I indicated in my speaking remarks, we were pleased to see that it has been substantively reduced, from \$33,250, I believe, down to just over \$7,000. I'm sure there will be presenters that appear before this committee who will give you greater reason or rationale as to if that limit is appropriate or not. I'm certainly not in a position to speak to whether or not that is an appropriate amount to influence policy of the government.

Ms. Catherine Fife: The reason I did ask the question is that \$7,750 is still a considerable amount of money.

This review was sparked because we did find out that there were ministers who had quotas—huge quotas, like \$500,000 quotas. So if the goal of our work is to travel around the province and try to figure out election financing in a fair and balanced way—“balanced” is your language as well—I think it's important for us to acknowledge that money does play a role in elections, especially around the third-party advertising that has happened.

I think I'm going back to the question of process, because in the past, actually since 2002, Greg, your office has been calling for an independent body to review third-party advertising. So we're going to be looking at third-party advertising, as politicians. Some of us have benefited from it; some of us have not. Some of us have been hurt by third-party advertising; some of us have not. Can you tell us why you have been consistent on the need to have an independent body review third-party advertising?

Mr. Greg Essensa: Looking at third-party advertising and political financing as a whole, I have been consistent in my approach. From the moment I was appointed Chief

Electoral Officer in 2009, as I commented, I believed that a review was completely necessary.

I did recommend an independent study in the past, but I think innovation is important, and it doesn't mean that this is the only way that a review can happen. I think innovation is an important aspect. If you look at how this bill has proceeded from first reading to this committee immediately, how the Legislature has asked an independent officer to sit as an adviser, which is a very unique consideration for a bill, and, I think, the fact that there are meetings happening across the province that allow all Ontarians of every political stripe and interest to come forward and provide this committee with salient information that they can deliberate on—I'm quite excited to hear from the experts across the province, to hear their views on the bill and to provide committee members with important information as they begin their important deliberations.

I have said for the longest period of time that I am a firm believer that Ontario political financing rules need to be balanced and need to maintain that level playing field. It is the core principle that guides me as Chief Electoral Officer and guides Elections Ontario. I think it's important for this committee to use it as its guiding principle as well.

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Ms. Catherine Fife: Okay. The reason I ask about the importance of independence is that we've been very firm on this, and very vocal, in that it does speak to trust, right? In the end, the result of this committee, hopefully, is that we have a piece of legislation which speaks to the people of this province and indicates that the electoral process will be fair, will be balanced and will not favour one political party at the end of the day.

If you were in charge of this process—which is what we had wanted; I'm sure you know this—when I looked at your role as the adviser to the committee, I see limitations to your office. I see the work that we are doing as, clearly, a key part of your mandate. Do you think that as well?

Mr. Greg Essensa: I think I have an important role to provide to the committee, to provide to the Legislative Assembly, and most importantly, to provide to Ontarians.

Ms. Catherine Fife: Yes.

Mr. Greg Essensa: As I've indicated, my role as Chief Electoral Officer is to ensure that that basic principle of a level playing field is met, and when I don't believe it is, for me to raise my voice and to speak to that.

Ms. Catherine Fife: The reason I raise your role within the context of this committee, though, is that in your opening remarks you have said, “I cannot be asked and will not vote on recommendations or motions. I cannot and will not become the examiner of the committee.... As an adviser, I cannot become a permanent witness,” even though, in my opinion and in our opinion, you are one of the most expert people in the province. So I think that, unfortunately, in my estimation, this committee is limiting your role as an independent officer of the Legislature.

We need to have a purely independent view of third-party advertising, of the limits that citizens can donate to political parties. At the end of the day, for us, process matters, so this is a process question.

Going forward, I share the desire to actually have you come back to the committee and reflect on what we've heard. So I'm hopeful that that is a possibility, and that your hands are not tied by the limitations that are set in your role as an adviser to this committee.

Mr. Greg Essensa: What I would say to that is I will not compromise my role as Chief Electoral Officer. If I believe that the committee has moved down a path that I don't agree with—in either annual reports or any other communication that comes my way through the Legislative Assembly—I will definitely speak out against what I believe is not adhering to a level playing field and is not adhering to first principles to enhance our democratic electoral process here in the province of Ontario. That is my role. As I say, I will not be compromised.

That's why it's important that I, at the outset, establish those parameters. I'm not voting on any motion or recommendation because I may not agree, ultimately, with the decision of the committee. I may have a differing or dissenting view that I wish to voice at some later point.

Ms. Catherine Fife: Two of your key recommendations in your report are very firm.

Mr. Greg Essensa: Yes.

Ms. Catherine Fife: These two major issues are around the contribution limits to be adopted, that Bill 201 does not propose contribution limits to third-party advertisers. That's a major issue. The second one has to do with the limitations potentially placed on citizens going forward, and what constitutes a political issue campaign. Those are the two major ones that I see going forward. Let's hope we can actually get those recommendations forward. Thank you.

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

Mr. Mike Colle: I guess I'd like some clarity on that. In hearing your presentation, you specifically asked for some definitions of what your role would be. We're hearing from the third party—she is intimating—that you should have unlimited involvement as to the role that you would have in this process. I'm not sure where you stand on that.

Mr. Greg Essensa: My role has never changed as an independent officer of the Legislature, meaning I report to all of you. My authorities are specifically addressed in my home statutes of the Election Act and the Election Finances Act. Parts of those acts require that I provide to the Legislative Assembly my best advice on how best to enhance the electoral process here in Ontario. And when and if I see issues that are affecting those core principles of our democracy—secrecy of the vote, transparency, integrity, a level playing field—it is my job to comment back to the Legislature or to a legislative committee such as this when I do see issues of concern.

The clarity on definition is pertaining to a very specific provision that's in the current bill that I see as somewhat challenging, but I don't necessarily see that the

clarity of my role is being challenged. I see it very clearly. I am here to provide my best advice to all members of this committee. I am here to hear the public debate that is going to be undertaken. I have requested the opportunity to present to the committee at the conclusion of all of the hearings because I am quite of the belief that there will be some presenters who will bring some interesting and valid considerations for the committee, and I think it would be appropriate for me to provide comment back to the committee before it begins its deliberations.

But I don't see it compromising—and I will not compromise—my role as Chief Electoral Officer in any—

Mr. Mike Colle: So you don't see any restrictions in this set-up that has been established on you exercising your prerogatives as an independent officer of the Legislature?

Mr. Greg Essensa: I was very clear at the outset. That's why I began my comments to this committee that while I was honoured to be asked to sit on this committee, I would only do so under "the following parameters," which I've outlined in my submission to you. I think that that's important. I want to make sure that all of my commentary to this committee is public and transparent, as it should be. I am here as Chief Electoral Officer, and one of my primary considerations is to make sure that, as our strategic plan indicates, we put the electorate front and centre of all of our considerations. I believe that's my role here, as well: to consider for all Ontarians, and to provide this committee with the best advice in respect of that.

Mr. Mike Colle: I guess I just want to get into another area which is seldom looked at. I've been involved in a few elections, you might say, over the years, and one of the trends that I've noticed which is quite alarming is that it is getting more and more expensive and complicated to run as a candidate in an election, whether it be provincially, federally or otherwise. This expense is driven by the cost of media.

At one time you started off and, when you had a good piece of literature, you went door to door and you were involved in your community—that would be a good base for you to get elected. But I think that has been totally turned upside down because of the nature of society—it's not just the political culture, but the media culture.

For instance, it may be different in other parts of the province, but I know that in Toronto the cost of advertising—how do you, as a candidate, ever get your name out? You can't afford to buy television, radio time or even banner ads on social media. The cost of a postal walk to get to 60,000 doors—you could spend all the money you've ever raised on that alone.

That's the one side of the equation I think we should look at: how we can, as you said very succinctly, have a level playing field for all candidates, so that it can be somewhat affordable to run in a democratic election. It is going totally the other way, and I think that's what's driving all this fundraising madness on the other end, because you know the cost of an election sign. We used

to make our own signs with silk screening at one time, in the garage. Try to do that today. You've got to pay for these Coroplast signs and billboards. I hope the committee would look at addressing the high cost of democracy and running—and it's not only Ontario; it's all across. The cost of getting elected is going through the roof.

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Then, the icing on the cake is that when you file your papers, you need a chartered accountant, and they want \$3,000, \$4,000, \$5,000 or \$10,000 to do your book-keeping. And you can't get a certified registered accountant; you can't get a management—no, no, you've got to get a CA. And, then, which CA in their right mind would want to be responsible for a political set of books that have been done on the back of a napkin half the time? So that's another huge cost that's incurred. Then try and rent a campaign office. If you go in there for a two- or three-month campaign office, you're talking \$5,000, \$6,000, \$7,000 or \$10,000 for a campaign period, just for half of it.

So this is one part of the paradigm that we've got to look at because I think it drives a lot of these third parties that become involved: "Well, maybe you could get some help in advertising—get a third party in here." Therefore, I think they're related and we should maybe get your ideas on that and the ideas that would help it going forward.

Mr. Greg Essensa: A couple of comments, Mr. Colle: As I indicated in my submission to you and in my speaking comments, money is needed to run political parties. Money is needed for candidates. Money is needed to ensure that our democratic process and our system, as it is currently constructed, continues to work. That's supported by the quotes from the Camp commission and the Lortie commission that I referenced in my speaking comments.

One of the areas that I think this committee could look at that I did reference in relationship to your concerns was in the area of reimbursements. When the federal government introduced its reforms in 2004 and 2007, it did something that this Bill 201 does not do: It lowered the thresholds under which you could get reimbursements and it increased the amount of what those reimbursements were. The current bill does not do that, and it is something, as I indicated in my speaking comments this morning, that I think this committee should undertake some review of.

The challenge this committee will always have is: What is the appropriate amount of money? I don't discount your comments. Running a campaign in downtown Toronto is extraordinarily expensive compared to running a campaign in Kenora–Rainy River. But they have different issues. I know that you will hear from presenters over the course of the several months over the summer who will provide you with guidance and advice on what those levels should be, but one area that I think this committee could look at, as I indicated, was how the federal government, when they did their reforms in 2004 and 2007, addressed the reimbursement numbers.

Mr. Mike Colle: Thank you.

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

Mr. Jim McDonell: Yes, a couple of questions. I've only run in two elections here, 2011 and 2014. In the 2011 election—my spouse is a teacher. She had \$60 taken off her paycheque, as did all teachers. They did receive an individual contribution, but of course it directly went against trying to have a PC member elected. Does this bill capture—in my thought, that would capture it as an individual campaign contribution. It would not show up under your third party. As a union, they were able to do that and target money in whatever direction they wanted. I'm concerned with that, and I read 21(1) and that seems to allow for that type of occurrence to happen. I suggest in that case that was not her wish, but being a teacher in the province, she had no options.

Mr. Greg Essensa: I'm not sure, Mr. McDonell, I fully understand what the question is.

Mr. Jim McDonell: I'm just wondering: Does this bill stop that in any way? Because to me, that's an unfair advantage being provided to one party over another, but it would not appear as third-party advertising since individual receipts are issued.

Mr. Greg Essensa: Right. I think what the bill doesn't do in relationship to that, which I have advocated for, is that there's a lack of greater transparency as to who is contributing to third parties. My suggestion and my recommendation to this committee is to consider that, any time a third party in the whole election cycle—so the end of one election to the beginning of the next election cycle—starts running advertisements that depict party leaders or try to influence an Ontarian the next time they arrive at the ballot box, there needs to be greater transparency on that: greater transparency as to who has contributed and how much has been spent. As I indicated in one of my earlier comments to one of the members of the committee, every other political actor is treated that way, in that manner, and I believe third parties should be treated in a similar fashion. That, I think, would capture the concern you raised.

Mr. Jim McDonell: I have two daughters, plus my wife, and in the last election they received letters—

Ms. Ann Hogarth: I'm sorry, I can't hear.

Mr. Jim McDonell: They received letters suggesting that if they would volunteer a day to either the Liberal or NDP they would compensate them for the day's salary. They could take a day off, which would be covered by the province, but they would reimburse that. That, of course, would not appear as an expense on my competitors' sheets. I think that again is another way that we see the third party actually having a large influence, because volunteers are very hard to get, and if you can actually pay their salary and bus them in, it makes a big difference. It doesn't appear on maybe a balance sheet, but time is expensive, and having people going around door to door with flyers, when I look around—I've helped in a couple of my own elections and in by-elections. You might be lucky to have five or six volunteers in an office. When you can bus in 30 or 40 or 100, it makes a big difference.

Mr. Greg Essensa: The issue you raise is very similar to the issue Mr. Hillier raised about section 1(1). That's the area that we've asked to take back and review, and we will come back to this committee with a more fulsome response.

Mr. Jim McDonell: Again, I appreciate the comments made by Mr. Colle when he talked about how expensive it is to run an election. First of all, you have to raise the money, and that's very difficult, plus you have limits.

When I look at the last election, in the riding north of me, literally hundreds—200 or 300 signs being placed by the Working Families Coalition and placed over one or two days. We could never match that. Those are the types of things we see going on.

There's also labour being put into that because when you put up that many signs in one day—and that's just in one riding—obviously that labour has to be somehow accommodated, plus the value of the signs. When you put that many out, they're very well seen. In a large, rural ridings, when you put that many signs out, that dwarfs what we're putting out as a party, certainly the large three-by-five sheets. These are actions we've seen by third-party advertisers.

The Chair (Mr. Grant Crack): Any comment?

Mr. Greg Essensa: As I've indicated, third-party reform is central to this committee, from my perspective. I spoke at length about it in my comments. I am quite interested to see the debate as the proceedings unfold over the course of the summer. But I have commented for many years now that third-party reform needs to happen, and I think this committee has the perfect opportunity to make the reforms necessary.

Mr. Jim McDonell: Just a further comment: In the last election, we probably bought, I'm going to say, 10 or 15 spots on the radio. The third-party advertising literally had hundreds. That's how you blanket. If I had the money, I wouldn't be able to buy the slots anyway because they're taken up. I listen more to the radio than the TV because you're driving. It's just astounding what an impact that has. And you look at one of the by-elections where the third-party advertising dwarfs what the other three parties are doing; it obviously has an impact.

Mr. Greg Essensa: I quite honestly think the numbers speak for themselves.

Mr. Jim McDonell: Yes. Thank you.

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

Ms. Ann Hoggarth: I'm sort of back to the same thing that I asked before, but I just want to make it very clear: The opposition is perhaps suggesting that you have a different role in this committee than you have asked to have, and I was wondering: Are you feeling that you did not want to lead the committee on this process, that it would not protect your neutrality?

Mr. Greg Essensa: I think the change in inviting me to be a member of the committee affords me, as I indicated previously—as Chief Electoral Officer, I'm an independent officer. I will not be compromised in my role to provide advice to the committee at certain times.

The ability to come back and present after all of the presentations have been made—I've made that request. I also believe ultimately that as an independent officer I need to remain neutral and I need to remain apart because there might be recommendations in this bill that I still disagree with.

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Ms. Ann Hoggarth: So this is the role that you feel most comfortable in?

Mr. Greg Essensa: I think I can provide salient advice and guidance to the committee based on my years of experience, based on what we have seen at Elections Ontario, but I do need to remain neutral and independent from the committee in the end because, as I've said repeatedly, there might be portions of this bill that I still disagree with and may want to comment to the Legislative Assembly about.

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

Ms. Catherine Fife: Just to be clear, it was me who suggested that we would have liked to have had the electoral officer run this process. Also, I did reference the fact that Mr. Essensa had said on several occasions since 2010 that an independent review would be warranted.

Your role within this committee is of great importance to all of us. That's why I asked you, with regard to your two key recommendations: If you were running this committee, would you bring a recommendation forward that did not have proposed contribution limits to third-party advertisers, as Bill 201 currently has?

Mr. Greg Essensa: I think the process needs to unfold: to hear from all of the presenters, and then let the committee come up to its deliberations. I'm not in the business of speculating as to what might have been done. I think what's important for the committee to consider—you are quite correct. I recommended back in 2009 that contribution limits should be considered. I still stand by that recommendation and believe that the committee should take that into account when it's beginning its deliberations on reforms to the bill.

Ms. Catherine Fife: I'd like to go back to third-party advertising. As you know, in budget 2015 there were changes made to the Government Advertising Act. The auditor described the changes as gutting the restrictions on partisan advertising and said it would allow the government to run partisan ads, as we just saw this weekend. Do you think it's fair to restrict third parties without a similar restriction on partisan government ads? This is the pivotal piece for us, and I want to connect it to a decision that was made at the federal level in *Harper v. Canada*. Justice Bastarache said, "Where those having access to the most resources monopolize the election discourse, their opponents will be deprived of a reasonable opportunity to speak and be heard. This unequal dissemination of points of view undermines the voter's ability to be adequately informed of all views."

To that end, in this instance, with the way that Bill 201 is currently crafted around citizen involvement, around being able to voice their opinions, versus a government that has a piece of legislation called the Government

Advertising Act which allows them to be prolific in their advertising and their promotion and sometimes their self-congratulatory messages, how does this find that balance that you are looking for, that you have recommended to this committee that we find going forward?

Mr. Greg Essensa: Thank you for the question.

The quote you referenced was similar to the one that I had in my speaking comments to you.

I think the balance between free speech and electoral equality, which many constitutional experts have grappled with for a long period of time and will continue to do, will be one of the greatest challenges this committee has.

As far as the Government Advertising Act, one of my colleagues is responsible for that, and I am not in a position to comment on the appropriateness of that. She's in a better position to do so.

What I have asked for is a clear understanding of what my role as Chief Electoral Officer will be, because I am concerned, as I indicated in my speaking comments, with the current definition of political advertising. I think that is something that this committee will need to grapple with, and it will be an issue that I will continually raise because, quite honestly, as I've indicated, this is something that will become problematic for us in the 2018 general election if it is not addressed by this committee.

Ms. Catherine Fife: I appreciate that you have referenced that.

You've sort of tied in with my next point, and that was that the BC Court of Appeal ruled in its 2012 reference regarding the BC Election Act, which sought to restrict pre-campaigning, which uses the same definition as Bill 201. It argued that, "The definition of election advertising is overly broad. It captures virtually all political expression regardless of whether such is intended to influence the election...." I think that you're expressing a shared concern around the current definition of political advertising that's currently in Bill 201; is that correct?

Mr. Greg Essensa: That is correct.

Ms. Catherine Fife: Thank you very much.

So you can see, though, why the makeup of this committee, made up of politicians from political parties, trying to figure out the definition—

Interjections.

Ms. Catherine Fife: Well, I put it to the committee: If you don't think that the commercials that ran this weekend on cap-and-trade are political propaganda, then we have a fundamental issue with this committee. We fundamentally do.

Interjections.

Ms. Catherine Fife: The taxpayers of this province should not be paying for a commercial before the plan is even out. They shouldn't be advertising a plan on cap-and-trade that has not been released. That is a fundamental imbalance of power in this democracy. You have an enabling piece of legislation called the Government Advertising Act which permits it. It's a permissive piece of legislation.

This is the problem with this process. This is the problem with the makeup of this committee: that there is a majority of government members who can overrule anything that we say in this committee. That is the furthest thing from an independent review of the Election Finances Act.

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

Mr. Randy Hillier: It's my pleasure. Thank you, Chair, for doing such a great moderating job today.

The Chair (Mr. Grant Crack): I appreciate the support.

Mr. Randy Hillier: I've got another two-part question here for you. You've often mentioned, Greg, that you want to achieve a level and fair playing field. That's an overarching concern that any legislation ought to be. Although I concur that that is a compelling objective, we also want to make sure that we encapsulate that other part that you mentioned in your address, where you mentioned the appearance or the actuality of a wealthy few having undue influence and not being a barrier to democracy for others who are not those wealthy few.

My question to you: When I read this legislation and look at my own experience, this proposed legislation, the way it's written, would have prevented me from running as a candidate for the leadership of the Progressive Conservative Party in 2009—the financial constraints imposed and the restrictions on loans etc. I would not have been able to raise the funds or whatnot. It was fairly significant; I think the entry fee at the time was \$75,000. I required help. Under this bill, I would not have been able to get that help that I did get to enter the race.

We know that this bill has come about because of the allegations and the suspicions of undue influence and collusion between fundraising events with ministers, with people in politics. That has really been the impetus, the motivation for it. Have you seen significant concerns raised in the past about local nominations, local candidates being part of that collusion or part of that suspicion or allegations, or even being a problem that needs to be addressed, first off, I guess?

The second part of the question is, hearing all of your recommendations—and I think there's a lot of value and significant merit to your recommendations—it begs the question: Did the government consult with you in any fashion or in any way before they brought this proposed legislation for first reading?

1630

Mr. Greg Essensa: There was no direct consultation between us—

Mr. Randy Hillier: So it was at the kitchen table on the back of the napkin, from the sound of it.

Mr. Greg Essensa: I would not say that—there was no direct consultation, but there was work between the administrators, Cabinet Office and ourselves. They had some clarification questions that they asked us about, which is the normal practice.

Mr. Randy Hillier: Right. There wasn't a sit-down discussion about what is fundamentally or structurally defective in the existing legislation, that we should be

looking to achieve that fair and balanced playing field without barriers.

Mr. Greg Essensa: There's no question that we did meet with Cabinet Office and we provided some input into areas of concern. But that is the normal practice that has always been in place, where Cabinet Office will often ask us how particular provisions will be operationalized, or administratively, if there are cost implications or issues such as that. But that was the extent of the consultation.

Mr. Randy Hillier: So back to that first part, local candidates and leadership candidates and whatnot, we see this bill expanding its reach and its capture of all these other people involved into this new bill where that hasn't been part of the discussion, at least not here at Queen's Park or in the front pages of the Toronto Star, of the need to reform our election finances.

I'll go back to that thought, that statement that I made, that under this bill people with more modest means would be prevented—we would be hampered and obstructed from seeking leadership. Any comments or thoughts about barriers to elected office also being just as necessary to address as making sure that there's a level playing field?

Mr. Greg Essensa: I'm quite honestly not sure I'm in a position to provide comment on that perspective. We have not been involved in local nomination contests. My office has no role whatsoever in local nomination contests; those are between the parties and how the party functions.

Mr. Randy Hillier: Have you been reaching out in these technical discussions, or with cabinet, saying that that is a shortcoming and needs to be addressed?

Mr. Greg Essensa: No. My comments and recommendations were made here today.

Clearly, the bill anticipates greater transparency into nomination contests and leadership contests, requiring now the reporting of contributions and spending limits and such. I think that effectively, though, brings it more in consistency with how the other, as I refer to them, political actors are being dealt with, being candidates, parties and constituency associations.

Mr. Randy Hillier: Is that something that is fairly the norm or outside the norm in other provincial jurisdictions?

Mr. Greg Essensa: I think it aligns us closer to the federal rules. I think it provides greater transparency. I have always been a big believer in the more transparency around electoral events and happenings—whether they be nomination contests, whether they be leadership contests, by-elections, general elections—the greater transparency, the better for all Ontarians.

Mr. Randy Hillier: The transparency, I go for 100%, but we also are putting in financial restrictions, as well as transparency, on, for example, borrowing money from a financial institution. Loan guarantees: I—and many others—would not have been able to get a loan guarantee for what I needed for the leadership contest, because the loan guarantee now is \$1,500. When you've got a

\$75,000 entry fee in a leadership race, a \$1,500 loan guarantee doesn't go very far. So transparency is important—absolutely. We need to know what is going on. But we'd best be careful that we don't put in unintended barriers for people of modest means to be involved in the democratic process and that it's only available for those few wealthy that you talked about earlier.

Mr. Greg Essensa: I completely concur. I think that the areas you referenced are ones that I'll be quite interested to hear the public discourse on. I think that there are opportunities for this committee to consider what they hear during the several weeks of committee hearings, and it may be something that I address in my final submission to this committee.

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

Mr. Steve Clark: Before I forget, you made a couple of references to your appearances at the committee and, especially when you mentioned it the second time, it made me think that you don't want to come back to the committee during these first reading hearings. The words you chose made me think that you're not going to come back again until the second reading debate. So I just want to ask you directly: Would you be opposed to coming back to appear at the committee later on in our deliberations, before clause-by-clause discussion?

Mr. Greg Essensa: I would not be opposed to appearing as many times as the committee wishes me to appear. I see my role as being an adviser to the committee. Should the committee wish for me to appear three times, four times, I would not be opposed to that. During the select committee in 2009, I believe I appeared three or four times. My role as Chief Electoral Officer is to provide the greatest advice I can to the members of this committee, and I'd be honoured to do so.

Mr. Steve Clark: That's good.

The member for Kitchener–Waterloo brought up the Auditor General and advertising. I was at that press conference where the Auditor General expressed concern about this government's changes to advertising, which I think most people on this side of the table agree benefit the government. I was surprised that she didn't mention Manitoba. They just had an election in Manitoba, and for the first time they banned government advertising in a 90-day period leading up to the election, with the exception of emergency announcements and employment announcements—tendering. I'd like your comments on that. Particularly, I didn't see any follow-up in the media that there were any issues around the 90-day ban. Obviously, some of us, including me, think the government should go back to the rules for the Auditor General as she used to have them.

This Manitoba issue is very interesting, and I'd love to hear your comments on it.

Mr. Greg Essensa: That question is probably better suited to the Auditor General than it is to me. I am well aware of what happened in Manitoba, but the Government Advertising Act—it is my colleague, and I would not want to speak on behalf of the Auditor General. That is her role to perform as an independent officer. So,

respectfully, I'm not sure I'm the appropriate independent officer to—

Mr. Steve Clark: Have you had any conversations with Elections Manitoba?

Mr. Greg Essensa: Not in respect of that. My office did have conversations in respect of their election, but not in respect of that.

Mr. Steve Clark: Do you know if they had a problem, previously, regarding government advertising?

Mr. Greg Essensa: Not that I'm aware of.

The Chair (Mr. Grant Crack): We shall move to Ms. McMahon.

Ms. Eleanor McMahon: Thank you very much for being here, for your service to our province and for this incredibly thoughtful presentation today. What a home run, in terms of providing us with thoughtful guidance in terms of how we might proceed. I think, without casting it too widely, this is precisely why we asked you to come.

I've enjoyed the conversation from the perspective of colleagues' comments about your role as an independent officer and, if I may—I don't want to miscast it—your reaffirmation of your desire to remain in that capacity and your desire to keep the electorate front and centre, which is laudable. I think we all share that desire.

As someone who has a background in communications and marketing and who worked in advertising for most of my career before I was elected, I find the conversation about advertising really interesting. I would observe that there are many marketing channels and ways in which to influence Ontarians. Those aren't generally just television and radio, but obviously there are several ways to do that. I understand, too, your desire to leave that decision and that conversation in the hands of those who have resident expertise in that regard. That isn't to say that you can't and shouldn't be an observer, an arbiter, in that process, but I hear you saying that that resident expertise may indeed lie outside your purview, which I am inclined to agree with. That's why, again, I look forward to your ongoing comments.

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Lastly, I'm looking forward to the comments on the debate, too, in terms of the confidence. I have confidence in this committee to be the ones who are having this conversation. There is significant opportunity for hearings across the province. I know that my colleagues will be doing their job in their ridings, as we are, bringing this opportunity to the attention of stakeholders and enlightening them to the opportunity to appear before you and share their guidance and expertise, as you've done today.

I wonder if I might focus for a minute on something that I'm very interested in, and that is the subsidy issue and the per-vote allowance. Your comments on that were interesting. I wonder if you might take a moment to expand on them, if you could. There is a discussion in the legislation about a per-vote allowance of \$2.26, introduced to help parties transition to the new rules while allowing them to fulfill the roles that they've set out to do. I know that this isn't a new idea. I worked for Prime

Minister Chrétien and I know that he introduced it federally.

I know too that there is a provincial chief electoral officers' conference in July. I wondered if that might be a good opportunity to not talk about this legislation in isolation but to have a conversation with your colleagues in other provinces about what Ontario is trying to do and whether or not that might be a suitable mechanism to tap into their expertise and their thoughts, particularly on this issue, but more broadly, too.

Mr. Greg Essensa: Thank you very much for the comments and for the question at hand. In relation to the latter comment, prior to me appearing here today, we did extensive reaching out. We actually met with Jean-Pierre Kingsley, who was the former Chief Electoral Officer of Elections Canada at the time of the reforms, because I've known Jean-Pierre for a long period and I wanted to hear his perspectives, when the bills were introduced, on what he would have done differently and if there were changes. He provided some exceptional guidance to us. As well, we've reached out to Elections Canada to understand their current issues or challenges with their political financing regime.

With respect to the annual subsidy, from my perspective it was clear, when we did our review of the annual contributions in the last general election, that corporations and trade unions gave a substantial amount of money to all of what I consider the big four political parties here in Ontario. Like they did federally, when they eliminated corporations and unions, they put in place a process—shall we say—to ease the pain, to provide the annual subsidy approach.

What I was looking at was, as I indicated in my commentary, that the current proposed subsidy does not provide a dollar-for-dollar replacement. It appears to me that, based on the numbers, it is not designed to over-enrich the parties as they currently are construed. That was something that was of great interest to me when I was looking at the annual subsidies.

The level playing field aspect I did bring forth, because I do think that this committee needs to not only consider what it does for the larger four parties but that in Ontario we have over 20 political parties, ensuring that, whatever public political financing process we put in place, as the Camp commission indicated and as the Lortie commission indicated, there is equal opportunity for all political parties to have access, in reasonable forms with reasonable standards and thresholds, to that political financing, for the health of our democracy. Having a wide array of political parties with various views on how to govern our great province, I think it is healthy for democracy that they do have access to those funds.

However this committee wants to look at annual subsidies—knock on wood, I think that you will hear quite a bit about political subsidies from various presenters who will make submissions to you over the course of the hearings. I'm quite interested to hear that public debate.

Ms. Eleanor McMahon: As am I. Thank you.

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

Ms. Catherine Fife: It's sort of my last question. According to the way that Bill 201 is currently crafted in regard to advertising, as you read it as it stands right now, would concerned parents be restricted from advertising regarding changes to autism funding prior to an election?

Mr. Greg Essensa: I think that's impossible to say, to be perfectly honest. My office already deals with issue advocacy. Every group that approaches our office—Mr. Batty is my general counsel and reviews their advertisements, to ensure that in fact they do comply with the current law.

Ms. Catherine Fife: So they can, right now, but if Bill 201, which puts limits and restrictions on how much money those parents can spend prior to an election—

Mr. Greg Essensa: Yes, it does.

Ms. Catherine Fife: Yes, it does. That's what I'm getting to. I'm not talking about what the current—I'm talking about Bill 201. Restrictions would be placed on those parents, as it's crafted right now. That's why you've made the recommendation that it be changed.

Would the government face the same limitations?

Mr. Greg Essensa: Based on our reading of the bill, I believe they would be.

Ms. Catherine Fife: So right now, the government, based on the Government Advertising Act, which currently allows them to advertise on any issue—you're saying that they have the same balanced rights as citizens' groups?

Bill 201 puts a restriction of up to \$100,000 a month on advocacy groups, be they environmental or autism or health care, for instance. Those same limitations do not apply to government. Is that correct?

Mr. Greg Essensa: Quite honestly, I think that it's a difficult question to answer, because you're now morphing between what is in Bill 201 and what is in the Government Advertising Act.

Ms. Catherine Fife: The two will be balanced off come election time, right?

Mr. Greg Essensa: I'm not certain that I'm in a position to answer that question directly.

Ms. Catherine Fife: Okay. I will be asking the auditor that same question. Thank you.

Finally, in Bill 201, contributions below \$100 are not considered contributions and are not recorded. How much could be donated by an individual without appearing in any disclosure if they were to contribute to each riding association candidate and party? I'm trying to get at following the money on contributions. It was very surprising for us that \$100 was set as the limit, and anything under \$100 was not considered a contribution.

Mr. Greg Essensa: It would be the same as today.

Ms. Catherine Fife: Yes.

Thank you very much, Chair.

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

Ms. Ann Hoggarth: Hi. The feds have been working on election financing changes since the early 2000s, and I think that continues now. Their rules are seen by many as

some of the most stringent rules around, and Bill 201 builds on those federal rules.

I was wondering: Are there any shortcomings in the federal legislation that may be worth examining as we continue to improve upon the drafting of this bill?

Mr. Greg Essensa: We have certainly reviewed the Canada Elections Act and we have spoken to Elections Canada as part of the research that we did internally at Elections Ontario prior to making these submissions.

Certainly, the primary recommendation—it was in my speaking comments—was the third-party advertising between elections, and the fact that it is completely unregulated and there is little transparency. That, to me, is the area of greatest concern that I think this committee could address.

Third parties that take ads a year and a half out before an election that depict a leader or depict a party with a direct intent to influence an elector the next time they appear at a ballot box—I believe that this committee has the opportunity to provide greater transparency to all Ontarians in that regard. That does not happen at the federal level, but I think it's important. If you choose not to put limitations on it, at the very least those entities should be required to file annually with my office how much money they spent and who contributed to that. Greater transparency for all, I think, only enhances our democratic process.

Ms. Ann Hoggarth: Thank you so much.

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

Mr. Randy Hillier: Once again, I want to look at this bill and see what's missing, and if there are some elements, Mr. Essensa, that you can expand on for us.

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We know that you were involved in a highly publicized affair that became known as the Sudbury bribery scandal. You did your examination. You did your investigation. You have significant authorities for examination and investigation under the present acts. I don't think there has been any alteration to your authorities and powers to examine and investigate. But, in addition to our legislation, we also rely on conventions to achieve the ends that we want to achieve, and there is good reason for both conventions and legislation.

During that Sudbury bribery scandal, you made your evaluation known—the results of your examination and investigation—then it was turned over to the Attorney General, and it went to the OPP. Historically, we've seen that when there is an investigation, we never put the person doing the investigation in a position of conflict, and in many cases such as this, it would have been turned over to an outside police force, such as the RCMP, that is not under the authority of the Ontario government.

My question is this: Do you think there is a need in this legislation, or that we make provisions that further investigations or charges be done by an independent crown or investigations by other police services so it doesn't undermine public confidence? I think we could all agree that there was a level of confidence that was undermined, and continues to be, by having an arm of the

provincial government investigating the leadership of the provincial government—just your thoughts on that. And would you have been averse had the Attorney General recommended that the RCMP and an independent crown do the follow-up investigation from yours?

Mr. Greg Essensa: Mr. Hillier, with the greatest respect, I'm here to appear before this committee on Bill 201.

Mr. Randy Hillier: Yes. I'm wondering: Should this be included; should we encapsulate something like that to restore and build on public confidence?

Mr. Greg Essensa: Based on the powers that have been afforded to me in the Election Act and the Election Finances Act, and demonstrated by the investigation into the Sudbury issue, I have all the authorities that I need to conduct my investigation, and we were able to do so in a fairly timely manner. I have completed my role, as my role pertains to—

Mr. Randy Hillier: Yes. Hopefully you understand where I'm going here. I'm not being critical of—

Mr. Greg Essensa: I completely understand. I don't envision that this bill in any way changes the authorities that I need and that I have. It does not eliminate or reduce any of those.

Mr. Randy Hillier: You wouldn't want to see an independent process?

Mr. Greg Essensa: That's inappropriate for me to comment on. My role ends once I turn over my findings to the Attorney General. Then it becomes part of the broader government.

Mr. Randy Hillier: I guess you've given me a lot of recommendations about how you would see Bill 201—your thoughts, your views, your evaluation of Bill 201 in the form of recommendations and thoughts. As far as those other parts—that openness, that transparency, that level playing field—I'm surprised that you are hesitant to want to also discuss the powers of enforcement contained in the bill as well.

Mr. Greg Essensa: The powers of enforcement are quite substantive. As I indicated at the opening of my comments, one of the things the committee may wish to consider, in respect of that, is the ability to levy administrative penalties; it is allowed at the federal level. Many of the challenges we have are relatively minor in scope, and the ability to levy administrative penalties is an area that might be of consideration for the committee.

Mr. Randy Hillier: Maybe I'll let my colleague from Leeds–Grenville expand on the administrative monetary penalties. The general view of administrative monetary penalties is—it's a technical violation. The proper i's were not dotted; the proper t's were not stroked. But the offences are not of that nature. I certainly would not want to see offences changed over to administrative monetary penalties, but I'll leave that for my colleague from Leeds–Grenville maybe to expand on.

I'll just finish off: Would you be averse to or would you object to greater clarity in Bill 201 that independence of prosecution and independence of laying of charges need to be strengthened?

Mr. Greg Essensa: I think what is before this committee is the first opportunity in well over 34 years to really look at the fulsome aspect of political financing here in Ontario. From a regulatory perspective and an enforcement perspective, that's certainly within the bounds and means of this committee to consider.

In my experience in my eight years as Chief Electoral Officer, I have found there are considerable authorities granted to me to pursue investigations, to compel witness testimony, to compel information. There are some areas pertaining to administrative penalties that I think are within consideration, but it does not prevent the committee from looking further at other vehicles or means for enforcement.

Mr. Randy Hillier: But you don't want to be a subject-matter expert on those and provide your own recommendations—

Mr. Greg Essensa: Any aspect of my home statutes, the Election Act or the Election Finances Act, I'm intimately familiar with and I'm more than happy to provide perspective and advice to this committee on.

Mr. Randy Hillier: Well, obviously not. I've just asked you for your advice on enforcement and powers—

Mr. Greg Essensa: I think as I indicated, outside of the administrative penalties aspect, I have a considerable amount of authority.

Mr. Randy Hillier: But on the question that I asked, you chose not to provide any advice or guidance.

Mr. Lou Rinaldi: He doesn't need any. He did.

Mr. Randy Hillier: Lou, no—

Ms. Eleanor McMahon: Mr. Chair, a point of order.

The Chair (Mr. Grant Crack): Point of order, Ms. McMahon.

Ms. Eleanor McMahon: I'm not sure where this is taking us but I feel like this is a little bit of duress and this is a bit discourteous to our witness, so I would ask the member opposite to just—

Mr. Steve Clark: It's certainly uncomfortable—

Ms. Eleanor McMahon: I know you're making observations, but we're making him feel uncomfortable and I think that's unfair.

Interjection.

Ms. Eleanor McMahon: That is not a partisan comment; that is a just comment. I'm speaking out for him, and that's my intervention.

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

Interjection.

The Chair (Mr. Grant Crack): If I could rule, Mr. Hillier, on the point of order, I'd appreciate that. It is not a point of order but thank you for your comments. I would just ask Mr. Hillier to continue his line of questioning with regard to Bill 201.

Mr. Randy Hillier: In the standing orders, there is—anyway, let's get back to this.

You're here, and we're looking for advice and guidance. I've asked if you have any specific advice or guidance to a statement that as a result of an experience that we've all seen—and it's not just that one experience.

That's just used as an illustration. Public confidence—you've said it yourself—it's important that it is not undermined. We saw some examples where public confidence was undermined, and you and your office said you saw or believed that there had been a violation of the Election Act.

In the case that I'm referring to, the breakdown in public confidence was not the result of your investigation; it was the subsequent actions to your investigation. That's where I see a fault in Bill 201. It's not addressing—your investigation was turned over. The government had another level, another branch, of government investigate itself.

1700

Do you not believe, and is it not important for this committee to know your beliefs, your recommendations on how to reaffirm public confidence that that doesn't happen again, and that some mechanism be included that when the government itself is being investigated, it be turned over to an independent, impartial prosecution and further examination after you've done your own?

I think that's a fair request. It's important for us, as committee members, to know more about your own experiences—you saw what went on; you made your findings—and also just the lengthy delay in moving it forward. I take you at your word; I take everybody at their word that we don't want to undermine public confidence. We want to restore it, improve it and promote it. I'm still not accepting that you're not willing to share your ideas for improvements, or maybe just state that no improvements are required and everything is just fine.

Mr. Greg Essensa: A couple of things, Mr. Hillier. I actually believe the Sudbury investigation enhanced public confidence in Elections Ontario, based on the amount of correspondence and feedback I did receive.

Mr. Randy Hillier: I agree.

Mr. Greg Essensa: So I don't feel there is a lack of public confidence.

Mr. Randy Hillier: I was talking in a broader—in government, not in your office, for clarity.

Mr. Greg Essensa: I would remind you that there is still an ongoing, live investigation, and it would be inappropriate for me to comment on that ongoing investigation, not to say that your question pertains to Bill 201. As I earlier indicated, the bill does not take away or detract from any of the powers and authorities I currently have. As demonstrated by the Sudbury investigation, I think those powers and authorities allowed us to get to the heart of the issue and report a fulsome report to the Legislative Assembly within two months. Nothing has come in front of me since that time that would indicate that I would be considering recommending different powers and authorities from this committee in respect to Bill 201.

Mr. Randy Hillier: Thanks.

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

Mr. Jim McDonell: A couple of things, and maybe just a little comment in line with Mr. Hillier's comments—not to do with Sudbury but to talk about public

confidence in the Ornge air ambulance investigation, which was turned over to the OPP as well; some concern there as to some of the time frames.

We called one of the witnesses back before us after a year and a quarter, and the district commissioner was asked by Frank Klees if he had a chance to contact our major witness. His answer was no, and his comment was, "Well, after a year and a quarter what are you doing?" I followed up through somebody I knew who was talking about the issue, and he knew the person personally and he asked him, and the comment from the commissioner was, "You wouldn't believe how they've got our hands tied up. We can't do anything."

It really makes you wonder, especially when you've got five investigations held, how nothing has happened on any of them. I appreciate how far you can go, and all you can do is turn it over, but that's the reality. I think that public awareness of what is happening, after five years—it's almost five years now, and there's been no action and no resolution, charges or anything. It's just continuing. People are really wondering about just what is happening, and is the OPP the right force to be able to talk? Should it have been put to a different level, especially with some of the comments about payments being made outside the country so it is outside their jurisdiction and—

The Chair (Mr. Grant Crack): Mr. McDonell, sorry to interrupt, but we are dealing here with the Chief Electoral Officer and Bill 201. I would like to remind all members that we should stay focused on the election financing reform that's before us. I would recommend that you continue your line of questioning with reference to Bill 201, please.

Mr. Jim McDonell: Okay, Chair.

There was a comment made here about the bill being done at the federal level and how this one does so much more to enhance it. I'm just wondering: In your opinion, does this bill approach the same level of tightness or level of scrutiny that the federal legislation does, or are there places that maybe it has gone overboard and we need to do less or areas that need to be tightened up that we haven't addressed? Any comment on that?

Mr. Greg Essensa: I think, as I indicated in my comments, a lot of the current Bill 201 does take a lot of the provisions from the Canada Elections Act, certainly pertaining to the elimination of contributions from corporations and unions. There's a similar model on an annual subsidy. There are some other elements of the bill pertaining to loans and loan guarantees that are fairly similar to the Canada Elections Act.

What I also indicated, though, in my speaking comments is that many of those provisions were built back in 2004 and 2007 and have been enhanced over time. I don't believe that Ontarians simply believe there should be congruence between the federal and provincial statutes. I think there is an opportunity for this committee, as I indicated, to build on this bill, to hear from the presenters that you're going to hear over the course of this week and over the several weeks of the summer.

There are differences in the bill. I've highlighted areas that I think this committee could take for consideration. Back to Mr. Colle's comments about funding of elections: increasing the reimbursement ratio. The federal bill certainly has substantively more it gives back to candidates and parties than our current provincial bill and the current Bill 201 does.

I think there are several areas that I highlighted in my commentary and in my submission to you that this committee could undertake to review and consider to enhance the bill and to improve upon what is currently in the Canada Elections Act.

Mr. Jim McDonell: Just again, a little further to another aspect: I know you don't want to comment on some of the concerns from the Auditor General or the chief financial officer about some of their requirements, but I see it has been brought up a number of times in committee about the advertising done by the government, now or pre-writ. I guess in your opinion that is a dangerous issue and something that—you're spending essentially unlimited taxpayer dollars, and it has the ability to be partisan. Is there a need to have an independent officer to review that or at least have some control over the content of the advertising and whether it's in the best interests of the taxpayer?

Mr. Greg Essensa: As I indicated to earlier questions in this regard, the overseer of the Government Advertising Act is a colleague of mine and the Auditor General. She would be best positioned to answer that question, and I would not want to speak on her behalf.

I have sought and asked for clarity around the political advertising component and the definition here in this bill because, as I indicated in my speaking commentary, I do find it a little problematic. I'm hoping that ultimately, whenever revisions are made to the bill, that will be addressed.

Mr. Jim McDonell: Thank you.

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

Mr. Steve Clark: On page 4 of your presentation to us, the fourth paragraph, you said, "I believe that the Canada Elections Act includes many provisions that would be good to adopt in Ontario. For example, I have recommended for several years that administrative penalties, similar to some of the compliance provisions in the federal law, should be adopted in Ontario." Will you outline what you believe should be adopted in Ontario?

Mr. Greg Essensa: Sure. I do believe that many of the compliance issues that we deal with at Elections Ontario are of a technical and lower-tier operational level than warrant recommending to the Attorney General that they, in fact, should be prosecuted. The Canada Elections Act, at the federal level, has administrative penalties, and they are able to apply those. I have recommended for years that, in the rewriting of our bill, we consider administrative penalties to address those. They can be as minor as individuals and/or parties not filing annual returns. They may be consistently late in filing those returns. The amount of effort and work on Elections Ontario's behalf is substantive, and I do believe, in our

discussions with Elections Canada and the commissioner, that there is the ability to provide administrative penalties as a deterrent to many of what I would call minor compliance issues.

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Mr. Steve Clark: So in terms of third-party advertising, for an example, we've got a municipal bill that provides a penalty that you can't participate in the following municipal election. That's one that has consistently been in place by this government. So, drawing the line from their municipal legislation to this provincial legislation, would you feel that it would be appropriate to mirror that legislation? If there was a third party that broke the advertising laws, should they not be barred from participating in the next election?

Mr. Greg Essensa: I think it's certainly within the realm of possibility for the committee to consider such an amendment. Yes.

Mr. Steve Clark: The government has that as a municipal law right now. Right now, for example, if we filed late on our financials for an election, we'd just call the—my understanding is, and you can verify this, we'd just contact your office and say, "We'd like an extension," and you have to give it by the act. Is that correct?

Mr. Greg Essensa: This is where the act is grey. As a matter of practice, we give you that extension. But this is where administrative penalties, I would suggest, are a more appropriate means to those compliance issues.

Mr. Steve Clark: Yes, and your discussion with your office is very casual, from my understanding. You'll make inquiries with riding associations and the riding association might not hear back from your people for months. So they might be in compliance, or they might not be, right? That's what I've been told in the past, that—

Mr. Greg Essensa: There is ongoing dialogue—

Mr. Steve Clark: —you don't see the letter that says, "These are the discrepancies that we find in your statement, and we would like them cleared up by a certain date." My understanding is that doesn't happen right now.

Mr. Greg Essensa: I would—

Mr. Steve Clark: It's pretty casual.

Mr. Greg Essensa: I think the approach is that we attempt to make sure that people get themselves into compliance, so there is constant communication.

Sometimes it's not as simplistic as that. We often have to track down CFOs. A member like yourself who is an elected member of the Legislative Assembly: It's fairly easy for us to get in contact with your CFO and track that person down. A candidate who lost: It's difficult enough to find the candidate, let alone their CFO. It becomes more problematic and more—

Mr. Steve Clark: I understand. You've got lots of candidates, and you've got a challenge with 107 ridings. I understand that.

Will you at some point provide the committee with the provisions of the Canada Elections Act that you favour should be included in this bill?

Mr. Greg Essensa: We can certainly look to do that in our second submission at the end of the public consultations. We'd be happy to.

Mr. Steve Clark: Going back to my other question: If a third party doesn't adhere to your laws for advertising, you would support them not being able to participate in a following election.

Mr. Greg Essensa: I think that is certainly on the table for this committee to consider.

Mr. Steve Clark: Thank you.

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

Ms. Catherine Fife: I just want to go back to contribution limits for a moment. The new donation cap is \$7,750 in an election year, with \$6,200 of that going to candidates and constituency associations and nomination campaigns. How much of the \$7,750 contribution would appear in the real-time disclosure? My understanding is that it would be \$1,550, so only the contribution to the central party. If not, can you clarify, because this is of concern to us.

Mr. Greg Essensa: Ms. Fife, that's a very technical question. I would respectfully ask the ability for us to go back and look at that. I don't want to give you exact, because we've not examined that level of technical detail.

Ms. Catherine Fife: I would appreciate some clarification—

Mr. Greg Essensa: No problem.

Ms. Catherine Fife: —because this is one of the pieces around real disclosure that actually is a strength that Ontario has, right?

Mr. Greg Essensa: Yes.

Ms. Catherine Fife: If you're going to take this question back, I just would add to it: What do you think of the argument that this means the majority of a maximum contribution would not be included in real-time disclosure? Because this is a concerning practice that would happen. If the entire \$7,750 is not disclosed in real time, then it becomes very difficult for us to track who is donating where. I think that speaking to the importance of real disclosure from an accountability perspective would be of value to the committee.

Thank you.

Mr. Greg Essensa: Thank you.

The Chair (Mr. Grant Crack): We shall move to Mr. Rinaldi.

Mr. Lou Rinaldi: First of all, I must say again how much we appreciate having you here as an adviser. For a committee such as this, and the way it's structured—although it's not our normal committee structuring process—I think, on a personal level, it's a real asset to us to have that. Even what you demonstrate today, that knowledge, it's something that would take us a lot—so we really, really appreciate it.

You indicated to the member from the opposition about the investigative process if something should go astray, and referred to Sudbury. I don't want to talk about Sudbury, because it is still not resolved. It's a legal process, and I think it's not appropriate to talk here.

But would you, just for our committee—although I'm not sure it's in the bill; I haven't seen it there. I think you indicated you feel fairly strongly that you have the tools to deal with investigating something. Is there anything else on that piece that you can elaborate on, to reassure us that if something happens somewhere—and it has happened—that both from an elected member and party perspective—and I'm sure that after an election—I know that in my 2007 election, there were a whole number of complaints dealing with some issues and they were resolved, thanks to your office. Should any of that stuff be included in this bill that's not here? I guess I want reaffirmation that you're happy with the tools you have.

Mr. Greg Essensa: Thank you for the question, Mr. Rinaldi. I think it depends on the level of the investigation. Certainly, I have broad powers. I have the ability to compel testimony. I have the ability to compel information from a wide variety of sources. I have the same abilities as a public inquiries commission to compel testimony and information at whatever source I deem necessary.

As I indicated to Mr. Clark and Mr. Hillier, the area that certainly could be of consideration is the area of administrative penalties, to deal with the more technical challenges that candidates, parties and constituency associations sometimes find themselves in. But I would not, at this point, be considering recommending wholesale changes to the authorities that I currently have.

Mr. Lou Rinaldi: I'm not sure if you can answer my last question. I guess we have to deal with Sudbury to a certain extent, but not in detail. Do you feel confident that after you did your work—and I believe that whatever the outcome of your research was, it was satisfactory, and you turned it over to the OPP. Do you feel that the OPP, with the information that you gave them, are competent to come to a resolution somewhere down the road, or do we need some other outside agency to deal with this?

I'm not sure if you want to answer that.

Mr. Greg Essensa: I will answer it this way: There are differing models, and there's no question. You only have to look at the federal model to understand that they have a separate election commissioner who is solely responsible for investigations and prosecutions.

There are different models. This model is fairly consistent across the country, though. But certainly, it would be within the purview of the committee to look at different models if they so deemed it necessary.

Mr. Lou Rinaldi: Thank you.

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

Mr. Randy Hillier: Thank you once again. Final questions, I think, for myself for today—

Mr. Lou Rinaldi: Oh, no.

Mr. Randy Hillier: But I might come up with some more.

Mr. Lou Rinaldi: You might.

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Mr. Randy Hillier: Listen, Mr. Essensa, reading this legislation, I see another place where a truck drove through it, and I want to see if you can comment on it.

That is under section 37. This is under third-party advertising, third-party contributions. Keeping in mind our group contributions that we talked about earlier, under 37.4, contributions of \$100 or more have to be recorded and identified: who they are from, with name, address, date, amount etc.

Here's what I see potentially happening with Bill 201 the way it's presently constructed: Any third-party advertiser, any third party engaged in this, can—and let's just use for an example my past Local 586 that I was a member of with the International Brotherhood of Electrical Workers. There are many locals across the province. It appears to me that they could deem a contribution of \$99 for every member into a third-party advertising fund, as long as it didn't exceed the expenditures that you're talking about, and every other union local could do the same or even create new unincorporated associations with those deemed contributions. As long as they keep it under that \$99 level each, there would be no openness; there would be no transparency; there would be no accountability. It could be no changes at all in the outcomes or maybe even worse than what we're seeing these days.

Maybe you could comment on section 37.

Mr. Greg Essensa: I guess my comment, Mr. Hillier, is that that's the same rule that applies today.

Mr. Randy Hillier: Yes, but we're trying to tighten things up, I think.

Mr. Greg Essensa: That's certainly within the purview of the committee, if it was considering looking at a lower threshold than \$100. I will be quite interested to see, over the course of the coming weeks, what the academic community and other presenters have to say in respect of that. But that is exactly the same provision that we have today.

Mr. Randy Hillier: Other than the fact, when you look back at the group contributions that we talked about earlier, that we now have included trade unions in that group contribution, which are not present in the present bill.

Mr. Greg Essensa: You are correct in that regard. You have to take into account, though, that spending limits still do apply. An ability to, as you indicate, amass all of that money with the appropriate spending limits doesn't distort the level playing field, is my point.

Mr. Randy Hillier: You have multiple union locals, for example—and there are many unions with many locals with many members who can be engaged in many different issues within an election. As long as they're segmented, then the spending limits apply to each one of them. So you could have, in the aggregate, a very significant third-party advertising effect.

Mr. Greg Essensa: You could, and I think that is something the committee will have to grapple with. As I indicated in my comments, the balance between freedom of expression, free speech, and your ability to put normative standards on top of that or restrictions on top of that is something that every constitutional scholar has grappled with forever. This will be an issue for this com-

mittee as well. I am not disputing what you are saying. It is something—

Mr. Randy Hillier: No, and absolutely, I—you won't find a bigger defender for free speech. But if we're going to start putting limitations on third-party advertising, and that's what this bill is proposing to do, then we want it to be a level playing field—I think we've used that term—and we want to promote public confidence, not undermine it. I see this third-party advertising component of this bill, in conjunction with the group contributions, as a big truck driving through that intention. Deem a contribution from every member in your union local at \$99—you don't even have to include their name or anything, so nobody will actually know—and take the money down to the Toronto Star or the National Post or CFRB and buy yourself a pile of advertising. And here we all are thinking that we've got some control and some openness and some transparency, and in effect we have nothing.

Mr. Greg Essensa: I would answer that, Mr. Hillier, with the comment I made earlier: We would like the opportunity to go back and review that group contribution to fully have an appreciation and before I would give you a direct comment on the assertions that you've just made.

Mr. Randy Hillier: Okay. The last one—and then I'll let you be—is that the bill doesn't address allowable expenses. I know you mentioned that. Our allowable expenses provincially are quite disproportionate and different than federal allowable expenses. However, we've gone to a subsidy. I guess, maybe, just if you could—do you see any advantages or disadvantages in either way of—federally they've gone without the subsidy but with better allowable expenses. This legislation is proposing 180 degrees different from that: vote subsidies, but not improving the allowable expenses. Any comment on one way being a more effective, more balanced or more level playing field?

Mr. Greg Essensa: I think you will hear from presenters in the coming weeks on what is a better model per se. I think this committee has to grapple with both the provision of an annual subsidy and/or how it wishes to deal with the reimbursements.

As I indicated, when the federal government made their reforms, they both lowered the thresholds for reimbursements and they increased the amounts of reimbursements. This bill does not do that, and it's something I have suggested that this committee may wish to examine as part of its deliberations.

Mr. Randy Hillier: Much appreciated.

Mr. Greg Essensa: Thank you.

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

Mr. Mike Colle: Yes, thank you, Mr. Essensa. I have three or four questions, but quickly, how can you or anyone monitor a company that has, let's say, 1,000 employees? There is the limit, and through the grapevine the CEO of the company says, "Hey, we're supporting this party. We expect everybody to donate to this party. It's good for the company. I think it's the right choice, so we expect everybody to do the honourable thing here." How do you stop that type of thing?

Mr. Greg Essensa: As I indicated in my commentary, certainly our compliance division, based on looking at elimination of corporate and union donations, will have to come up with some strategies for us best to examine such issues. I think in the coming days you will hear from witnesses who will address this very issue in front of you with suggestions that—things I’ve read about and heard of that they may request that you consider amending the bill, that anyone who makes a contribution has to also provide who their employer is. On issues such as that, I think that you will hear in the coming days from presenters who will look at—

Mr. Mike Colle: That would be helpful. Do you think we need, as part of this change, if this goes forward, an education outreach type campaign so that the general public and interested people are aware of the changes? Because they’re going to be quite intricate and complex. Do you think that is going to be needed?

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Mr. Greg Essensa: There’s no question that Elections Ontario will, as part of our advertising and promotion of the 2018 general election, be invoking these changes. We’ll be providing information through our website; we’ll be providing it through our outreach groups. We’ll also be providing it to third parties and, through our political advisory committee, to all the political parties in Ontario to make sure that they have a full understanding. We will be issuing guidelines and commentary that will be available from my office on what these changes entail, how they will be implemented and what the administrative considerations need to be as we move forward to 2018, but yes, I would suggest that, depending on the breadth of scope of the changes that this committee ultimately recommends and the assembly passes, there would need to be a considerable amount of outreach.

Having said that, the media is certainly very much covering this issue; it’s a very live issue to the media. I think that there will be a substantive amount of coverage from the media as this bill progresses its way through the House.

Mr. Mike Colle: I guess there will be. The only thing I’m concerned about is that a lot of this is inside baseball. The average person doesn’t have the time to follow the details, so I think we have to go beyond our normal ways of reaching out, given these changes could be quite substantive, from the past. As you said, it has been over 40 years since we made—so I think it would be helpful to get information out to ordinary voters.

The other question I had is in terms of defining a third party, a definition. We’re obviously into a whole new realm here of political definitions and activism. We no longer have the old static approach to political involvement. We’ve got all these digital platforms now. We have people who can do all kinds of social media engineering. They post blogs under the names of journalism and information. Have you given any thought, or should we be pursuing that type of definition with regard to the new politics that are out there, in defining “third party” and what it really is?

I could set up a blog. I’m a third party that has been involved in elections in Ontario, and I say, “Listen: Now I’m just a blog. We’ve set up a blog and we are going to get our message out on social media—banners, everything. We’re going to do all kinds of”—what do you call it when you play around with the hits on social media? Basically, they know what you eat, what you drink, where you shop, how you get to work and everything—the metrics of it. Maybe the committee should look at getting an expert to come and talk about this whole new realm of politics and digital media, and how we might be able to look at that to prevent a new form of third-party encroachment that is really unknown to us right now but is out there in social marketing.

Mr. Greg Essensa: I have advocated for many years that one of the challenges with the Election Finances Act is that it has not kept pace with societal and technological changes. As I indicated in my comments to you earlier, even issues such as the Internet and websites are very loosely defined. I think and I hope that you will hear presenters throughout the course of the deliberations that you’re about to undertake and hear from the general public—there will be a number of people who will approach you to talk about what exactly should be defined and regulated in the Ontario election finances reform act.

The challenge is that with the pace of change of technology we have seen, the ability for the legislation to keep pace has certainly lagged for many, many years. I’ll be quite interested to see what the level of discourse is. It is certainly something that I intend to bring back towards the end of my second round of presentation to you.

Mr. Mike Colle: One final question: One irritant that has been around for years is that you’ll have either third parties or you’ll have your political opponent. What they’ll do is they’ll put out advertising; usually it’s print advertising. As you know, we’re supposed to note that this is authorized by the CFO of the persons putting out—I don’t know if third parties are mandated to do that or not. If they put out print literature or signage, are they mandated to indicate that they have paid for this ad? It’s interesting.

Mr. Greg Essensa: On political advertising, yes. They are required to put out “Authorized by” whichever third party has authorized that expenditure.

Mr. Mike Colle: Even on printed material?

Mr. Greg Essensa: Yes.

Mr. Mike Colle: Because what I find happens is that they’ll comply with the so-called rule by stating it, but it will be microscopic in size. You can’t see it with a magnifying glass: “Paid by the CFO of this organization or this party.”

I think that we have to somehow find a way of stopping that kind of gaming that takes place with the rules. If literature is put out by a party, they’re going to have to indicate in a reasonable way that they’ve paid for it and they’ve printed it, rather than hiding behind the letter, or the small letter of the law, I should say.

Mr. Greg Essensa: Again, it certainly would be open to this committee to consider alterations to the finance

reform act that would address those concerns, absolutely. I suspect you will hear a considerable amount about third-party advertising and that vernacular throughout the course of the presentations before you.

Mr. Mike Colle: Thank you.

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

Ms. Ann Hoggarth: Bill 201 seeks to implement donation limits of \$1,550 to a candidate and a maximum of \$3,100 to a party's candidates. The current proposal sets the donation limit for independent candidates at \$1,550. Should the proposed limit for independent candidates match the amounts for the candidates of a party—in other words, \$1,550 for a candidate and a maximum of \$3,100 to all independent candidates?

Mr. Greg Essensa: I've always believed that consistency of practice amongst all political actors, as I have referred to them, is a benefit. It makes the dissemination of information and the dissemination of rules far easier for those involved to understand, to implement and to practise. It's not something that I've addressed as a concern from my perspective.

Mr. Randy Hillier: I agree with that.

Ms. Ann Hoggarth: I know, because you almost had to be one.

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

Ms. Harinder Malhi: The proposals of Bill 201 seek to limit the amount political parties can spend on advertising in the six months prior to the general election to \$1 million. How does Elections Ontario plan on implementing that? Is there going to be some sort of new reporting mechanism before election day?

Mr. Greg Essensa: Again, that's the devil in the details as to how that would be reported, whether that would be reported post-event.

The issue that I raised that is of concern to me is that that provision takes effect in a regularly scheduled general election. Where I have concern is when we have a non-fixed-date election, because that becomes fairly challenging. But in answer to your question, that's the detailed aspect of when that gets reported. Does it get reported after the election or during the annual election filing period? Are there special provisions that the political parties have to provide before the writ period? Again, I'm not certain at this point.

Ms. Harinder Malhi: Okay. Thank you.

The Chair (Mr. Grant Crack): Further discussion? Any further questions? Ms. Fife.

Ms. Catherine Fife: Not for the presenter; just a point of clarity: I asked a question around real-time disclosure earlier of the independent officer. How will this be communicated back to the committee?

The Chair (Mr. Grant Crack): That's not a question for me.

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Ms. Catherine Fife: I asked a question and they weren't able to answer, so I'm just wondering how an answer will be communicated to the entire committee, not just to me.

The Chair (Mr. Grant Crack): Any questions that aren't dealt with, in part or in their entirety, can be forwarded to the Clerk's office and then distributed for a response. Then, of course—

Mr. Mike Colle: I'd really like a hard copy, not just electronic.

Mr. Steve Clark: Just put it on the blog.

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

Mr. Randy Hillier: Maybe I'll just expand on that. We did speak about those group contributions in sections 26 and section 1. Would you be able to provide those? You were going to look into that. I don't want to put words in your mouth or anything, but I believe that was the—

Mr. Greg Essensa: To be helpful to the committee and to the Chair: Perhaps if the questions were directed to the Chair in writing, we could respond back in writing and those could be distributed to the committee members at the appropriate time.

Mr. Randy Hillier: Okay.

The Chair (Mr. Grant Crack): That would be the appropriate manner. Whatever questions you have will go through the Clerk to the Chief Electoral Officer and his office.

Mr. Randy Hillier: So I'll turn my attention to the Clerk now. Do you have that information that was requested regarding group contributions and an explanation of whether or not the group contributions—how it would be implemented? Would a union or trade organization be able to deem donations and/or contributions on behalf of that organization, and would it apply to trade unions?

The Chair (Mr. Grant Crack): Would you like to respond to that?

Interjection.

The Chair (Mr. Grant Crack): Please just put all questions in writing so that we have the exact details, and then maybe make the official request.

Ms. Fife?

Ms. Catherine Fife: I don't think we should have to put them in writing. We've asked questions. They're part of the Hansard. At this point, the officer hasn't been able—they have expressed an interest in getting back to us. I think that there's a process in place that it just goes through the Clerk's office, but we shouldn't have to rewrite the question out.

The Chair (Mr. Grant Crack): Okay. We do have it in Hansard, so the Clerk and legislative research will decipher, because your question is along the same lines but not worded exactly the same as it was the first time and now the second time. But I think they'll get the gist of it. Thank you very much.

Mr. McDonell?

Mr. Jim McDonell: I just wonder if it makes sense to distribute those questions so that people can actually see what you've gleaned out of Hansard to send on—just as you're going through, just a copy.

The Chair (Mr. Grant Crack): Again, once the questions are deciphered, they will be distributed to Mr.

Essensa for a response, and copies will be provided to all members of the committee.

Mr. Randy Hillier: You're such a moderate Chair.

The Chair (Mr. Grant Crack): You're a good man, too.

I'd like to remind the subcommittee that there is a meeting tomorrow after question period. Technically, it's scheduled for 11:40, but that's generally not the case. So right after, the subcommittee will meet to discuss how we're going to move forward with the public hearings across the province. I would like all members of the subcommittee to be here in this room tomorrow after question period.

And I'm going to be calling and making it official, so everyone's listening: I'm going to call a committee meeting at 4 p.m. on Tuesday.

Interjection.

The Chair (Mr. Grant Crack): Sorry; Wednesday. Well, we start at 2. There's an order from the House, 2 to 4 tomorrow, which is the leader of the Green Party. Then,

on Wednesday, we have, from 2 to 4, a choice of the official opposition, which we haven't received yet at the Clerk's office. If we do not receive that, then I will cancel the meeting. As well, Thursday is the same process, and we have not yet received who would be coming forward as the third party's choice.

Going back to Wednesday: In order to adopt the subcommittee report on travel, I will call a special meeting after we hear from the official opposition's choice.

Again, tomorrow is Mr. Schreiner. Wednesday is the official opposition's choice. Thursday is the third party. So Wednesday at 4 p.m., a general government committee meeting.

I would like to thank Mr. Essensa and Mr. Batty for coming before committee this afternoon and bringing your counsel with you—very enlightened and good discussion. Thank you very much, and have a good evening. We look forward to seeing you in the future.

This meeting is—ready?—adjourned.

The committee adjourned at 1745.

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